**Lutaya v Attorney-General**

**Division:** Supreme Court of Uganda at Mengo

**Date of Judgment:** 19 March 2004

**Case Number:** 10/02

**Before:** Odoki CJ, Oder, Tsekooko, Mulenga and Kanyeihamba JJSC

**Sourced by:** LawAfrica

**Summarised by:** M Kibanga

*[1] Tort – Vicarious Liability – Soldiers – Government Soldiers on duty without provisions – Soldiers*

*invading private land – Whether invasion done in the course of employment – Whether Attorney-General*

*vicariously liable.*

**Editors’ Summary**

The appellant sued the respondent in the High Court for general and special damages for trespass. In the plaint, it was stated that soldiers of the National Resistance Army, who were employees of the government, trespassed upon the appellant’s land, cut down trees and timber to build huts and also removed food from the appellant’s land for themselves and their families. The respondent admitted the existence of the soldiers at the station near the appellant’s farm but denied the existence of the farm or that they trespassed and stated that if they trespassed, they did so on a frolic of their own. The High Court dismissed the suit. An appeal to the Court of Appeal was also dismissed on the ground that the respondent was not vicariously liable for the acts of the soldiers. The appellant then appealed to the Supreme Court.

**Held** – As the Ministry of Defence deployed soldiers at that station to perform State duties, failure by the Ministry to make provisions for the soldiers tempted them to use initiative to survive in order to perform State duties. What the soldiers did was done in the course of their duty and the respondent was vicariously liable; *Muwonge v Attorney-General* [1967] EA 7 followed.

Appeal was allowed and matter referred to the High Court for assessment of damages.

**Cases referred to in judgment**

(“**A**” means adopted; “**AL**” means allowed; “**AP**” means applied; “**APP**” means approved; “**C**” means

considered; “**D**” means distinguished; “**DA**” means disapproved; “**DT**” means doubted; “**E**” means

explained; “**F**” means followed; “**O**” means overruled)

*Barugahare v Attorney-General* civil appeal number 28 of 1995 (unreported) – **C**

*Kafumbe Mukasa v Attorney-General* [1984] HCB 33 – **C**

*Muwonge v Attorney-General* [1967] EA 7 – **F**

*Sembatya v Attorney-General* civil appeal number 21 of 1994 (unreported) – **C**

**Judgment**