**Mubiru & others v Uganda Electricity Board & another**

**Division:** High Court of Uganda at Kampala

**Date of judgment:** 8 March 1974

**Case Number:** 241/1973 (96/74)

**Before:** Allen J

**Sourced by:** LawAfrica

*[1] Costs – Defence – Revealed only at trail – Costs refused.*

**Judgment**

**Allen J:** This suit is a claim by four children suing through their next friend, Josephine Mamubiru, for damages in negligence in a traffic accident which resulted in the death of their father Maurisio Galiwango on 24 December 1972. The accident occurred on the Gayaza Road seven miles from Kampala between a motor cycle carrying the deceased Galiwango and another man and a Datsun motor car which was driven by the second defendant, Mathias Malumba. The Uganda Electricity Board was sued as co-defendant because the motor car was registered in the Board’s name. Before considering the details of the accident and the relative liabilities of the parties there is one matter which I shall deal with first. This is whether or not the Board was properly joined as a co-defendant. Counsel for the plaintiffs maintained that, as the police accident report showed that the Board were the owners of the car and the registration book indicated that it was registered in the name of the Board, they could not be blamed for assuming that the Board was the owner and so suing them as a result. S.49 of the Traffic and Road Safety Act, 1970 reads as follows: “The person in whose name a motor vehicle, trailer or engineering plant is registered shall, unless the contrary be proved, be presumed to be the owner of the motor vehicle, trailer or engineering plant.” Counsel for the two defendants conceded that the above section did not support his submission that the Board should not have been sued at all, but he relied upon s.186 (1) of the same Act. This is the interpretation section and under the word “owner” appears the following definitions: “Owner”, (*a*) in the case of a vehicle which is for the time being registered under the Act and is not being used under a hiring agreement or hire-purchase agreement, means the person appearing as the owner of the vehicle in the register kept by the Registrar under this Act; and (*b*) in relation to a vehicle which is the subject of a hiring agreement or a hire-purchase agreement, means the person in possession of the vehicle under that agreement;” The second defendant, Mulumba, testified that he was the owner of the car which was registered in the name of his employers, because he had purchased the car after obtaining a loan from the Board for this purpose and that the car would remain so registered until he had completed repaying the loan. In support of this Mr. Hughes, an administrative officer of the Board, testified that this was the usual practice of the Board, when advancing loans to their staff for the purchase of motor vehicles and that it had been followed in the case of Mulumba and his car. From his records Mr. Hughes stated that Mulumba had been advanced the sum of Shs. 14,188/- for this purpose. None of this evidence was disputed and it is clear that the ownership of this vehicle comes within the category of para. (*b*) of the above definition of “owner” under s. 186 (1) of the Act. There was no evidence at all that the Board controlled the use of the vehicle nor that anyone other than Mulumba could use or possess it. It was, in fact, available solely for the use and possession of Mulumba and so, in law, he is regarded as the owner of the vehicle. The accident occurred on the evening of 24 December 1972, Christmas Eve, and there was no evidence at all that the second defendant was on duty or performing any task or journey on behalf of his employers. According to Mulumba he was on his way home from Kampala Market at the time so that, even if the vehicle had in fact belonged to the Board there would have been no doubt that Mulumba was going about his own private business. As a result I find that the Uganda Electricity Board, the first defendant, was in no way liable for the consequences of the activities of either Mulumba or his car in this matter. In order to dispose of the first defendant completely at this stage it will be convenient to consider the question of costs with regard to this defendant only. Counsel for the defence submitted that the plaintiffs should pay the first defendant’s costs for wrongly joining them as co-defendants since they had notice of the position when this suit first came before the court on 2 July 1973 and an adjournment was granted in order to file an amended plaint and to join Mulumba as co-defendant with the Board which was at that time, the sole defendant. Counsel for the defence maintained that the plaintiffs could have applied for further and better particulars if they were in any doubt as to the ownership of the vehicle and that they should have withdrawn the action against the Board at that time. On the other hand counsel for the plaintiffs submitted that they were uncertain of the ownership but that the police report showed that the Board was the owner. In the original defence filed on 19 April 1973 when the Board was the only defendant, in para. 2, the Board denied being the “registered owner” of the vehicle. This itself was a confusing and untrue statement. The registration book shows that the car was in fact registered in the name of the Board as owner and so it would have been better and proper for the defendant to set out the position clearly right from the start. After the amended plaint had been filed, joining Mulumba as co-defendant, a defence was filed on behalf of Mulumba only and no amendment was made to the defence of the first defendant. In the defence of the second defendant no mention was made of either the ownership or possession of the car and the opportunity was not taken by the defendants to clarify the position. In my opinion, this was the fault of the defendants. They were in a position to know exactly what the relationship was between the two defendants with regard to the ownership of the car and there was apparently no good reason to hide this from the plaintiffs, nor to delay in informing them of it. As far as I can see, there is nothing in the pleadings as they stand that would cause the plaintiffs to have any good reason to withdraw their claim against the Board. The true position was not clarified until the actual trial took place. If the Board wanted to avoid or, at least, save costs then steps should have been taken long before the hearing to ensure that the plaintiffs were put in possession of all the relevant facts with regard to the ownership of this car. Since this was not done or, at least, there is no evidence or record of it having been done, then the plaintiffs cannot be held to blame for pursuing their case against the Board. Accordingly, the claim against the first defendant, the Uganda Electricity Board, is dismissed but the Board must bear its own costs. *Case against first defendant dismissed without costs.*

For the plaintiffs:

*Nsubuga-Nsambu* (instructed by *Nsambu & Luganda*, Kampala)

For the defendants:

*Kirenga* (instructed by *Kirenga & Gaffa*, Kampala)