**Musisi v National Water & Sewerage Corporation**

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

**Date of judgment:** 12 March 1974

**Case Number:** 149/1973 (93/74)

**Before:** Allen J

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*[1] Negligence – Contributory negligence – Infant – Care to be expected from infant – Principles.*

*[2] Negligence – Contributory negligence – Mother of infant – Not in issue in action to which mother not a party.*

**Editor’s Summary**

The infant plaintiff aged 4½ years was injured when he fell into a trench dug by the defendant and in respect of which the court found that the defendant was negligent in providing no proper crossing.

For the defendant it was submitted that the plaintiff had been contributorily negligent and that the plaintiff’s mother was negligent in allowing him out alone.

**Held –**

(i) Negligence of the plaintiff’s mother was not in issue as she was not a party to the action;

( ii) it must be shown that a child has failed to show the amount of care reasonably to be expected from a child of his age and that he is capable of realising the probable consequences of his conduct;

(iii) no such capability was proved against the plaintiff.

Judgment for the plaintiff.

**Cases referred to Judgment:**

(1) *Lynch v. Nurdin* 113 E.R. 1041; (1841) 1 Q.B. 29.

(2) *Walmsley v. Humenick* (1954), 2 D.L.R. 232.