**National Insurance Corporation v Kafero**

**Division:** Court of Appeal at Kampala

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**Date of judgment:** 25 October 1974

**Case Number:** 29/1974 (3/75)

**Before:** Spry Ag P, Mustafa and Musoke JJA

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**Appeal from:** High Court of Uganda – Nyamuchoncho, J

*[1] Insurance – Motor insurance – Nominal defendant – Notice –* 42 *days’ notice only required – Traffic*

*and Road Safety Act* 1970*, s.* 44 (2) (*U*.).

*[2] Limitation of Actions – Proceedings against government – Scheduled corporation – Whether*

*National Insurance Corporation as nominal defendant a scheduled corporation – Civil Procedure and*

*Limitation* (*Miscellaneous Provisions*) *Act* 1969, *s*. 1 (*U*.).

**JUDGMENT**

The following considered judgments were read. **Spry Ag P:** This is an appeal from a decision of the High Court given on a preliminary objection. The respondent filed a suit against the appellant corporation, as nominal defendant under s. 40 of the Traffic and Road Safety Act 1970, to which I shall refer as the Traffic Act, claiming damages for injuries he received when, as a pedestrian, he was struck by an unidentified motor vehicle. It is accepted, for the purpose of this appeal, that the respondent gave the notice required by s. 44 (2) of that Act. A preliminary objection was taken that the plaint was incompetent because there had been no compliance with the requirements of s. 1 of the Civil Procedure and Limitation (Miscellaneous Provisions) Act 1969 (Act 20 of 1969). For convenience, I shall refer to that statute as Act 20. I do not think it necessary to set out in full the provisions of these statutes Briefly, s. 1 of Act 20 provides, *inter alia*, that no one may sue a scheduled corporation, and the National Insurance Corporation is a scheduled corporation, until after the expiration of sixty days from the giving of notice containing certain prescribed particulars. The Traffic Act provides, by s. 44 (1), *inter alia*, that a person who suffers bodily injury from a vehicle the identity of which cannot be established after reasonable inquiries may, by suing the National Insurance Corporation as a nominal defendant, recover compensation from a statutory fund. S. 44 (2) provides that a person shall not be entitled to recover unless within forty-two days of the accident, he has given notice containing certain prescribed particulars, and there is provision for extension of that period. The particulars required in a notice to comply with s. 44 (2) overlap, to some extent, but are not identical with those required by s. 1 of Act 20. The short point for decision in this appeal is whether or not a person wishing to sue the National Insurance Corporation as nominal defendant is required to give notice both under s. 1 of Act 20 and under s. 44 (2) of the Traffic Act. The trial judge held that actions against the nominal defendant should be governed by s. 44. He considered that the nominal defendant was to be regarded as a different person from the National Insurance Corporation, the name of which was used “merely for convenience”. He said: “I am inclined to the view that when the nominal defendant issued a notice given pursuant to section 44 of the Traffic Act is all that is required. If I am mistaken in this, I would still hold that a notice given under section 44 to the nominal defendant satisfies the requirement of section 1 of Act 20 of 1969 by virtue of section 44 of the Interpretation Act.” Mr. Katende, who appeared for the appellant corporation and who presented his arguments most clearly and persuasively, submitted that the notices required under the two Acts are different in character and purpose and that one could not be a substitute for the other. The information they are required to furnish is not identical. The periods prescribed are different and, which is perhaps more important, the one provides a maximum period after the accident within which notice is to be given and the other a minimum period between notice and suit. He argued that there is no conflict or incompatibility between these provisions and no reason why both should not be complied with. The Traffic Act contains no express repeal or abrogation of Act 20 and the courts always lean against implied repeal, except when there is such repugnancy that two provisions cannot stand together. I would say at once that I reject the suggestion that a notice under s. 44 (2) of the Traffic Act can satisfy the requirements of s. 1 of Act 20, because the character of the one notice is so essentially different from that of the other. I am also not persuaded that the fact that the appellant corporation is a nominal defendant only is, of itself, a reason for saying that s. 1 of Act 20 need not be complied with. It is quite true, as the judge said, that the status of the appellant corporation is that of a trustee and that it satisfies any judgments given against it under s. 44 of the Traffic Act out of funds that it administers and not out of its own funds but I cannot see that that is any reason for depriving it of privileges conferred on it by statute. If the Traffic Act contained no procedural provisions, I would have thought that an intending plaintiff would have had to comply with the provisions of s. 1 of Act 20. I see the matter in a somewhat different light. Ss. 40 to 48 of the Traffic Act create rights of action and also contain procedural provisions, including provisions for notice clearly intended to give the appellant corporation reasonable opportunity to investigate claims while the evidence is still fresh. It seems to me that the legislature has enacted what amounts, in a small way, to a code, and that its provisions, including as they do both substantive and procedural law, were intended or must be deemed, so far as they extend, to be exclusive. Mr. Katende argued that if the legislature had intended to exclude the provisions of s. 1 of Act 20, they could and would have done so. That is a valid argument, but it can equally be argued, and in my opinion with even greater force, that if the intention had been to preserve the existing requirement of a notice before suit and add another, admittedly different, requirement of a similar nature, it could without difficulty have been spelled out. I think, therefore, though for a somewhat different reason, that the judge was correct in his decision and I would dismiss the appeal, with costs. As the other members of the Court agree, although for another reason, it is so ordered. The question of limitation does not arise on this appeal, but in view of certain observations in the judgment of Mustafa, J.A., which I have had the advantage of reading, I think I should place on record my opinion that the period of limitation for suits against the National Insurance Corporation as nominal defendant is that prescribed in s. 2 (1) of Act 20. In the first place, on a strict reading of s. 2 (1) and the Third Schedule, no action founded on tort may be brought against the National Insurance Corporation after the expiration of twelve months from the date on which the cause of action arose. To exclude that provision where the Corporation is acting in a particular capacity necessitates the interpolation of words that are not there. Secondly, the Act is clearly designed to give special protection to authorities and persons performing public functions or duties. I think the Corporation is performing a public duty when it acts as nominal defendant. I do not think the fact that the Corporation is not liable to pay either damages or costs out of its own funds, affects the question of limitation.

**Mustafa JA:** I have read the judgment prepared by Spry, Ag. P. and agree that the appeal be dismissed. The only point for decision in this appeal is whether a plaintiff suing the National Insurance Corporation as a nominal defendant for damages under the provisions of the Traffic and Road Safety Act 1970 (hereafter called the Traffic Act) is required to give notice both under s. 44 of the Traffic Act as well as under s. 1 of the Civil Procedure and Limitation (Miscellaneous Provisions) Act 1969 (hereafter called Act 20 of 1969). In terms of s. 1 of Act 20 of 1969, a person suing scheduled corporations of which the National Insurance Corporation is one must give the said scheduled corporation sixty days advance notice of such intended action. In terms of s. 44 (2) of the Traffic Act, a person suing the National Insurance Corporation as a nominal defendant must give notice of such intended action within 42 days of the accident. In the case under appeal the respondent had only served notice under the Traffic Act. The trial judge held that in an action against the National Insurance Corporation as a nominal defendant a plaintiff need only comply with the provisions requiring notice under s. 44 of the Traffic Act. He held, in effect, that the privileges attaching to the National Insurance Corporation as a scheduled corporation embodied in the provisions of Act 20 of 1969 do not attach to it when it is sued as a nominal defendant under the provisions of the Traffic Act. With respect, I think he is right on this point. In my view a scheduled corporation, qua scheduled corporation, has certain privileges and partial immunities under the provisions of Act 20 of 1969. The period of limitation for instance for actions against it for tort is 12 months, not the usual 3 years, see s. 2 (1) of Act 20 of 1969. However as a nominal defendant under the provisions of the Traffic Act, the National Insurance Corporation would no longer be clothed with such privileges, but would be in the position of an ordinary litigant. First because it then no longer operates as a scheduled corporation as constituted, in its composition, aims and functions; it is named the nominal defendant merely for the sake of convenience; any ordinary person or body could have been so named, and a plaintiff’s rights should not be restrictively affected by the accident of the National Insurance Corporation being named as such. Secondly because the Traffic Act has special provisions granting certain substantive rights as well as laying down a reasonably comprehensive set of rules of procedure for enforcing such rights. A litigant suing under the provisions of the Traffic Act has to comply only with the provisions of the said Act as regards notice. I concur in the order of Spry, Ag. P.

**Musoke JA:** I have had the advantage of reading the judgments of Spry, Ag. P., and Mustafa, J.A. and agree that the appeal be dismissed. On the question of the statutory notice to be given by an intending litigant for damages in respect of death or bodily injury caused by unidentified or uninsured motor vehicle under s. 44 of the Traffic and Road Safety Act (referred to hereinafter as “the Traffic Act”), I share the view of the trial judge that the statutory notice under s. 1 of the Civil Procedure and Limitation (Miscellaneous Provisions) Act 1969 (to which I shall refer as Act 20) is not necessary. The remedy under s. 44 is a creature of the Traffic Act, which Act also lays down the procedure to be adopted in enforcing that remedy. Again the notice under s. 1 of Act 20 is mandatory and any failure to give it would be fatal to any proceedings. On the other hand the notice required under s. 44 of the Traffic Act, apart from being different in form in certain aspects, is not necessarily mandatory and the Court is given wide powers under subs. (3) to grant leave for an action to be instituted without that notice if certain conditions are satisfied. I am also of the view that when the National Insurance Corporation is sued as a nominal defendant under the Traffic Act, it ceases to be a scheduled corporation, for the reasons advanced by Mustafa, J.A., and therefore, the limitation period under Act 20 would not apply.

*Appeal dismissed.*

For the appellant:

*JW Katende* (instructed by *Mugenyi & Co*, Kampala)

For the respondent:

*JK Ekemu* (instructed by *Kulubya & Co*, Kampala)