**Nyadoi v Railways Corporation**

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

**Date of judgment:** 31 May 1974

**Case Number:** 1276/1973 (122/74)

**Before:** Saied J

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*[1] Civil Practice and Procedure – Pleading – Cause of action – Act of servant alleged – Presumption*

*of responsibility of master – Cause of action shown.*

*[2] Civil Practice and Procedure – Plaint – Contents – Name of defendant only required*, *not names of*

*servants – Civil Procedure Rules*, O. 7, *r.* 1 (*c*) (*U.*).

**JUDGMENT**

**Saied J:** This is an application by the defendant under O. 7, r. 11 (*a*) of the Civil Procedure Rules that the plaint be rejected on the ground that it does not disclose a cause of action. The plaintiff’s claim against the defendant is for general and special damages based on a cause of action which is set out in paras. 3 and 4 of the plaint as follows:

“3. The plaintiff’s claim against the defendant is for general damages and special damages of Shs. 370/-. The said claim arose as herebelow stated. 4. O n, or about, the 30.8.73 at 9.30 p.m. at Nagongera, Uganda, the plaintiff, who was lawfully travelling as a passenger in the defendant’s train, was negligently/carelessly pushed outside off the moving train and/or made to fall offside the moving train by the defendant’s servants/employees/agents and as a result caused the plaintiff to suffer very severe injuries.” The plaint continues to set out the particulars of negligence attributed to the defendant’s servant/employees/agents. The defendant filed a defence admitting that the plaintiff was a passenger in the train but denied the other allegations contained in para. 4 of the plaint. Alternatively, the defendant pleaded contributory negligence and, lastly, stated that the defence was filed without prejudice to the defendant’s contention that the plaint does not disclose any cause of action for the failure to disclose the defendant’s servants/employees/agents and whether or not they were acting in the scope of their employment. The same objection forms the subject matter of this application which Mr. Hayanga, appearing for the defendant, argued on two fronts. First, he submitted that the plaint was lacking in giving certain information as required by O. 7, r. 1. He relies on sub-rules (*c*) and (*e*). He maintained that the identity of the defendant’s servants etc., allegedly responsible for pushing the plaintiff out of the moving train, ought to have been set out as required by sub-rule (*c*). His argument is that the defendant, who employs many people, has been unable to establish the identity of the servants/employees/agents concerned. Mr. Kasule, who appeared for the plaintiff, submitted that the particulars required under this sub-rule of the defendant have been supplied. I think that Mr. Hayanga has not only misconstrued the sub-rule but misread it. It reads: “1. The plaint shall contain the following particulars– ( *a*) . . . ( *b*) . . . ( *c*) T he name, description and place of residence of the defendant, so far as they can be ascertained.” Paragraph 2 of the plaint does in fact give such particulars of the defendant Corporation which is being sued under the doctrine of vicarious liability. There is nothing in sub-rule (*c*) to require the particulars of the defendant’s servants/employees/agents to be set out in the plaint. I see no merit in this objection. Mr. Hayanga’s second objection relates to the cause of action. He relies on 0.7, r. 1 (*e*) as a prop for his main argument that the plaint does not disclose any cause of action under r. 11 (*a*). It is obvious that para. 4 of the plaint satisfies the requirements of sub-rule (*e*) as it sets out the “facts constituting the cause of action and when it arose”. I need not dwell on this argument. The issue, which was argued at length, is whether the plaint discloses a cause of action. Mr. Hayanga’s contention is that the plaint omits one essential averment, which is that the particular servants/employees/agents, for whose wrongful acts the defendant is now being sued, were at the relevant time acting in the course of their employment or in discharge of their duties. He cited the case of *Muwonge v. Attorney-General*, [1967] E.A. p. 17, as authority for the essential ingredients of vicarious liability which ought to be pleaded. He relied on four previous cases of this court in support of his argument. Those cases are *Constant Munyegera v. General Motors* (1972), H.C.B., 127 (unreported); *Kazora v. Attorney-General*, Mbarara District Registry Civil Suit No. 1 of 1972 (unreported); *John Mbabazi v. Attorney-General*, H.C.C.C. No. 654 of 1972 (unreported); *Joseph Ngalomyambe v. Attorney-General*, H.C.C.C. No. 728 of 1972. He said that these four decisions find support in the case of *Sullivan v. Alimohamed Osman*, [1959] E.A. 239. The last case cited by him is *Kangave v. Attorney-General*, [1973] E.A. 265 which he sought to distinguish on the basis that there the defendant’s servant was known and the issue involved s. 4 of the Government Proceedings Act. Counsel for the plaintiff maintained that it is not necessary to identify the particular servant of the defendant, as to do so would be tantamount to pleading matters of evidence which is not permissible. Relying on the case of *Commissioner of Transport v. Gohil*, [1959] E.A. 936, he said that the omission relied upon by Mr. Hayanga does not render the plaint incompetent. Mr. Kasule went on to comment on *Kangave’s* case (*supra*) which “sets out the law properly”. I shall start with the latest authority of *Kangave’s* case. I should say at once that I do not agree with Mr. Hayanga’s comment that this case has no application to the instant case because it dealt with s. 4 of the Government Proceedings Act. The contention there also was that the plaint disclosed no cause of action as there was no averment that the servant was driving the vehicle in the course of his employment. I have no hesitation in saying that that case is of immense persuasive value in considering the objection being raised in this case. Phadke, J., considering the two “streams” of previous decisions, which seem to conflict in that the first set of cases, including two of this court cited by Mr. Hayanga, that is No. 1 and 2, and *Sullivan’s* case, (*supra*) favoured a rigid interpretation of 0.7, r. 11 (*a*); while the other set of cases,

including *Auto Garage v. Matokov* (*No. 3*), [1971] E.A. 514, being inclined towards a more liberal approach, concluded with the comment at p. 268: “It seems that whereas the Court of Appeal may have formerly been minded to take a rigid view of 0.7, r. 11 as in *Hasmani v. National Bank of India* (*supra*), and possibly in *Sullivan v. Alimohamed Osman* (*supra*), its current view is to adopt a more liberal approach based upon different reasoning.” It is interesting to note that in the later case of *Kawesa v. Attorney-General*, [1973] E.A. 407, Opu, J. reached the same conclusion without referring to *Kangave’s* case. I respectfully agree with the conclusions and comment of Phadke, J. as stated above. In the end he preferred to follow *Gohil’s* case and particularly the principles enunciated by Mahon, J. in *Labhuben v. Jivraj* cited therein, whose facts were similar to those raised in *Kangave’s* case. That was not the first time that *Gohil’s* case had been followed with approval in this country. Fuad, J., followed it in *Dritoo v. West Nile District Administration,* [1968] E.A. 428 where the plaintiff was wrongfully arrested, detained and assaulted by the defendant’s chief of police, one Mr. Angila and other policemen in the employment of the defendant. The plaint did not contain an averment that these policemen were acting in the course of their employment. This omission was relied upon by the defendant as a preliminary point that the plaint raised no issue between the plaintiff and the defendant. In overruling this objection, Fuad, J. said: “I respectfully agree with the judgment of Crawshaw, J. (as he then was) in *The Commissioner of Transport v. T. R. Gohil*, [1959] E.A. 936, where he overruled an objection to pleadings that merely stated that the driver was the servant of the defendant, and I do not think it is necessary to set out his reasons. The reasoning of Crawshaw, J. was adopted by Murphy, J. in another Tanganyika case, *Yakobo v. Tanganyika Contractors*, [1963] E.A. 261. I was of the opinion that Mr. Clerk’s other point was prematurely raised, and a decision thereon should be postponed until the final determination of the case, after all the evidence had been heard.” It is unfortunate that *Dritoo’s* case was not considered in any of the previous four decisions of this Court upon which Mr. Hayanga relies. In the final analysis, the question really is to choose between the two alternatives, that is, the more literal and rigid interpretation or the more liberal one which seems to be the present trend. I am inclined to the view that the reasoning in *Gohil’s* case, and particularly the extract from the judgment of Mahon, J., therein cited, is of general application in such cases and it does not seem to offend against the observations of Spry, V.-P., in the case of *Auto Garage v. Motokov* (No. 3) at p. 519. It follows therefore, and I so find, that it is sufficient to plead, as has been done here, that the person responsible for pushing the plaintiff out of the moving train was a servant of the defendant. The presumption then arises that the defendant is responsible for any negligence on the part of his servant. That this must be so is due to the operation of the doctrine of vicarious liability which, in the words of Lord Denning, M.R. in *Launchbury v. Morgans*, [1971] 2 Q.B. 245, means that “one person takes the place of another so far as liability is concerned”. If the servant was not acting in the course of his employment, this would absolve the defendant from liability, but this fact must surely be pleaded, as has been done by the defendant as a ground of defence – *Gohil’s* case (*supra*). For these reasons, I am not persuaded that the plaint, as it stands, does not disclose a cause of action. I hold that it sufficiently discloses a cause of action. The application to reject the plaint is therefore dismissed with costs to the plaintiff.

*Order accordingly*.

For the plaintiff:

*R Kasule* (instructed by *Kawanja & Kasule*, Kampala)

For the respondent: