

IN THE HIGH COURT OF TANZANIA  
AT IRINGA

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(DC) CIVIL APPEAL NO. 11 OF 2009  
(Originating from Civil Case No. 19 of 2005 in the  
District Court of Iringa at Iringa)

JIMMY VENANCE & ANOTHER  
C/O B. P. MKWATA & COMPANY } ..... APPELLANTS  
ADVOCATE - IRINGA }

VERSUS

1. SAMORA KAGALI  
2. PRASTIDA DUMA } ..... RESPONDENTS  
3. VICTOR MBOGI }

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**JUDGMENT**

L. M. K. UZIA, J.

This is an appeal arising from Civil Case No. 19 of 2005 against the decision of the District Court of Iringa at Iringa (S. M. Kulita, RM).

Way back in 2005, the respondents collectively instituted a case against the appellants alleging that on 14<sup>th</sup> April, 2005, the 2<sup>nd</sup> appellant allowed his son (1<sup>st</sup> appellant) to drive his motor vehicle with Registration No. TZM 2536 while he was not holding

a driving licence hence not a qualified driver. On that date, he carelessly by drove the motor vehicle along Ipogoro Road and in the course failed to control the same and plunged it into the ridge of the road consequently the motor vehicle overturned. Several people were injured in the process, among others were the appellants. In the District Court the appellant (former plaintiffs) jointly and severally claimed to be compensated for pain and agony as a result of injuries suffered and inconvenience and trouble incurred. The Respondents (former defendants) were liable to pay compensation. The 2<sup>nd</sup> defendant was vicariously liable for having permitted 1<sup>st</sup> defendant to drive his motor vehicle in the course of duty while knowing that was not a licence holder.

The trial court found that the 1<sup>st</sup> defendant had no licence. He drove a vehicle and caused accident. The 2<sup>nd</sup> defendant allowed the 1<sup>st</sup> defendant to drive his vehicle while knowing that was not holding a vehicle licence. The accident occurred when the 1<sup>st</sup> defendant was in the cause of his employment. The court ordered the 2<sup>nd</sup> defendants to compesate Samora Kagali TShs. 3,000,000/- and the 2<sup>nd</sup> and 3<sup>rd</sup> plaintiffs, Plastida Duma and Victor Mbogi to compensated TShs. 2,000,000/- each.

Dissatisfied, the appellants, Jimmy Venance and Venance Mhanga have lodged an appeal to this court. Mr. Mkwata, learned counsel represented the appellants; he filed an appeal containing three (3) main grounds:-

1. (a) That the trial Magistrate erred in law in holding that the averments contained in the plaint did not disclose sufficiently cause of action against the second appellant herein.  
  
(b) That the trial Magistrate erred in law in holding that the 2<sup>nd</sup> appellant herein was vicariously liable for the acts or omissions of the 1<sup>st</sup> appellant in the absence of a master and servant relationship.
2. That the trial Magistrate erred in law when he failed to address his mind on the appellants defence as contained in their respective written statement of defence and make any finding on the same.
3. (a) That the Magistrate erred in law when he failed to state the factors upon which he relied on assessing the quantum of damages which he awarded.  
  
(b) That given the extent of injuries sustained by the respondents which were minor, the quantum of damages awarded are on the higher side.

On the 1<sup>st</sup> June, 2010, the parties to the appeal prayed to

this court to grant them leave to argue the appeal by way of written submission, this court granted them leave as prayed.

Briefly, Mr. Mkwata argued that the 2<sup>nd</sup> appellant, who happened to be the owner of the motor vehicle does not shoulder any liability on the basis of merely being the owner of the motor vehicle which caused an accident or merely being a parent of the person who was steering the motor vehicle at the time of accident. The owner of the motor vehicle only becomes vicariously liable only when it is alleged and proved that the accident was caused by the driver in the course of his employment with the owner of the motor vehicle. In order for the plaintiff to disclose cause of action against the owner of the motor vehicle there must be a specific averment in the plaint that the driver caused the accident while in the course of his employment. The case of **Hans Nagorsen vs. B. P. Tanzania Ltd 1987 TLR 175** was cited by Mkwata to drive his argument home.

On the other hand, Mr. Mkwata, counsel for the appellants argued that the trial court awarded damages for personal injuries to the respondents without stating the factors upon which he relied upon in assessing the quantum that he awarded. In this respect he cited the case of **Hawa Abdul vs. Murgian & Sons (T) Ltd and another [1980] TLR 330**.

The evidence in the trial shows that, the respondents were not admitted in Hospital. Instead they were treated and discharged. There was no evidence which shows that they

suffered pain and/or long period or that the injuries had effect on their health leading to loss of entities of life or that they had suffered and are suffering any financial loss as a result of the injuries.

In reply, Mr. Onesmo, learned counsel for the respondents vehemently argued that there was no such a person as Lazaro Kitosi, what happened is that, the 2<sup>nd</sup> appellant permitted the 1<sup>st</sup> appellant to drive the minibus which caused accident. There is no doubt the elements of vicarious liability mentioned in the case of **Lukungu v. Labia (2003) EA 129 at P.132.**

He also submitted that, the general damages were not the higher side considering the pressures of inflation, devaluation of our shilling and similar factors.

In my judgment, I have found that the decision of the trial court was not wrong. There are some cases decided in other jurisdictions, which are persuasive to us. The case of **Cemdy v. Ministry of Health (1951) 2 KB 343 at page 359**, Lord Justice Denning held:

*"In my opinion, authorities Government Boards, or other corporations, are in law under self-same duty, as the humblest doctor, whenever they accept a patient for treatment, they must use reasonable care, and still to cure him of his ailment. The hospitals cannot of course do it themselves, they have no ears*

*to listen through the stethoscope, and no hands to hold the surgeon's knife. They must do it by the staff which they employ and if their staff are negligent in giving the treatment, they are just as liable, for that negligence as is anyone else, who employ others, to do his duties for him what possible difference in law, I ask, can there be between hospital authorities, who accept a patient for treatment, and sailing, of slipping authorities, who accept passengers for camage?"*

*"None whatever once they undertake the task they come under a duty to use care, in the doing of it, and that is so, whether they do it, for reward or not ....."* (emphasis supplied).

In the case of **Ormvod v. Crosville Motor Services Ltd (1953) 2 All ER at 755**, Lord Denning said:-

*"The law puts an especial responsibility on the owner of a vehicle who allows it to go on the road in charge of someone else, no matter whether it his servant, his friend or anyone else. If it is being used wholly. or partly on the owners business or for the owners purposes, the owner is liable for any negligence on the part of the driver. The owner only escapes liability when he lends it or hires it to a third person to be used for purposes in which the owner has no interest or concern ....."*



In this case, there ample evidence showing that the minibus was driven by son of the owner of the vehicle having been permitted by the driver of the minibus employee of the owner of the vehicle. The negligent act of his driver was within the owners business or for the owners purposes because it was carrying Samora Kagali, Prastida Duma and Victor Mbogi, passengers in the vehicle.

For the foregoing reasons, I find the appellants 1<sup>st</sup> ground of appeal without merit. Further to that, the trial Magistrate did not misdirect himself on damages because the amount was not to the higher side. In another persuasive case of **West v Shepeld (1964) AC 326**, damages for tort, or even breach of contract are such damages, which so far as money can compensate will give the injured party reparation for the wrongful act. After all, as it was pointed out, in that case, money cannot renew the physical frame of the limbs etc that has been battered and all the court can do is to award sums which must be regarded as given reasonable compensation.

In this case, considering the current money value, the amount awarded by the trial court is not to the higher side. I leave it undisturbed to all respondents. In the upshot, I dismiss the appeal with costs.

L.M. K. Uzia,

**JUDGE**

16<sup>th</sup> November, 2010

Right of appeal.

L.M. K. Uzia,

**JUDGE**

16<sup>th</sup> November, 2010

Date : 16. 11. 2010  
Coram : L. M. K. Uzia, Judge  
For Appellant :  
For Respondent :  
Court Clerk : N. Rashid  
Mr. Mkwata for Onesmo.

The case is for judgment

Court: Judgment delivered in chambers today in the presence of all parties 16/11/2010.

L.M. K. Uzia,

**JUDGE**

16<sup>th</sup> November, 2010

I CERTIFY THAT THIS IS THE TRUE COPY OF THE ORIGINAL JUDGMENT.



  
DISTRICT REGISTRAR  
HIGH COURT OF TANZANIA  
IRINGA