

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF BUKOBA
AT BUKOBA**

CIVIL CASE NO. 04 OF 2020

MWESIGWA REVELIAN.....PLAINTIFF

VERSUS

THE KARAGWE MILITIA ADVISOR OFFICE.....1ST DEFENDANT

THE PERMANENT SECRETARY, MINISTRY OF DEFENCE

AND NATIONAL SERVICE.....2ND DEFENDANT


THE ATTORNEY GENERAL.....3RD DEFENDANT

JUDGMENT

11th July & 12th August 2022

Kilekamajenga, J.

The plaintiff filed this case against the defendants claiming a total of ninety million Tanzania Shillings (Tshs. 90,000,000) and general damages to the tune of ten million Tanzania Shillings (Tshs. 10,000,000) plus interest. The plaintiff claimed damages for injury caused to his fore part of his right hand by being shot by the militia trainee during the range exercise conducted at Kafunjo village within Karagwe District. It was alleged that, on 1st October 2015, while the plaintiff was his place of residence at Kafunjo village, the militiamen who were being trained and supervised by the first defendant, shot the plaintiff on the right hand, an act which was negligently caused. As a result, the plaintiff sustained injuries that moved him to seek medical treatment. He sought assistance from



the first defendant but was not assisted hence this case. During the trial, the court framed the following issues for determination:

- 1. Whether the plaintiff was shot with a gun on his right hand.*
- 2. Whether the District militia advisor took necessary steps before conducting the range exercise.*
- 3. Whether the plaintiff was injured as the result of the negligence caused by the defendants.*
- 4. What reliefs are the parties entitled.*

During the trial, the plaintiff summoned six witnesses to prove the case to the required standard. PW1 was the Agricultural Field Officer who testified that, on 01st October 2015 he acted the office of Village Executive Officer. He knew the plaintiff as a blind person who operates a coffee kiosk within the village. On that day, he heard several gun shots from the ranger exercise area. Later on the same day, he received a phone call from the hamlet chairman who is now the deceased informing him that the plaintiff was shot on the right hand. He walked out of the office to the plaintiff's place which was about fifty meters away and found many people gathered. PW1 witnessed the plaintiff wounded on the right hand and he saw the bullet was still in the hand. As the plaintiff's hand continued to bleed, Mr. Fulgence Clemence and Julius tied the plaintiff's hand with a cloth to stop the bleeding. Thereafter, PW1 wrote a letter to introduce the plaintiff to Kamagambo Health Centre for medical treatment. He handed the letter to the hamlet chairman who escorted the plaintiff to the Health Centre. PW1 further testified that, other villagers also collected seventeen bullets from their

compounds and brought them to him. The hamlet chairman took the bullets to the Ward Executive Officer. During cross-examination, PW1 confirmed that, they received information about the ranger exercise a week earlier and he informed the villagers. The range was conducted at the hill. However, he did not know how the bullet reached the plaintiff's house.

The evidence of PW1 was supported with the testimony of the Ward Executive Officer (PW2). On 1st October 2015 while he was in the office, he received a phone call from Julius Silivery who informed about the plaintiff being wounded with a bullet. He instructed Silivery to inform the hamlet chairman (Leopold Kishumo) about the incident who brought the plaintiff to his office. PW2 witnessed the plaintiff tied with a cloth on the hand to prevent further bleeding. He untied the hand and saw something sharp protruding from the hand. The plaintiff was finally taken to Kamagambo Health Centre by the hamlet chairman (Leopold Kishumo). When they came back from the Health Centre, he was informed that the sharp object from the hand was a bullet which was taken to the military camp by the hamlet chairman. Thereafter, the plaintiff went back home. PW2 further testified that, they informed about the presence of the range exercise in their ward. They were told not to move around but take precautions though the plaintiff was shot while at home. On the 3rd day, the hamlet chairman and plaintiff went to PW2 with seventeen bullets collected from the homes of villagers. Some houses were damaged by the bullets. The District Militia Advisor went to the village and promised to make follow-up of the incident. When cross

examined, in his view, the range was two kilometres away from the plaintiff's house.

PW3 sat next to the plaintiff in the coffee kiosk on 1st October 2015 when they heard several gun shots. They later heard something like a hail dropping on the houses and people started screaming. Many houses were shot with bullets including a church. As PW3 stood-up to call the hamlet chairman, he heard the plaintiff screaming; he was already wounded on the hand. The plaintiff was bleeding when the hamlet chairman went there. He participated in tying the plaintiff's hand. The Village Executive Officer instructed the plaintiff to be taken to the hospital for treatment. The hamlet chairman took the plaintiff to hospital. Also, villagers were instructed to collect bullets which dropped around their houses and they gathered about seventeen bullets which were handed-over to the village leaders.

The evidence of PW4 further confirms that the plaintiff owns a coffee kiosk. On the morning of 1st October 2015 while at Kafunjo village, they heard gun shots from the hill. PW4 was seated with the plaintiff when the bullet hit him (plaintiff) and screamed and they tried to stop the bleeding. The hamlet chairman, village chairman and Village Executive Officer went there and ordered the plaintiff to be taken to hospital for the bullet to be removed. He further stated that, there were many bullets and some houses were damaged within the village. He also collected some bullets and took them to the village office and the hamlet

chairman took the bullets to the Militia office. When cross examined, he insisted that villager started running away when the plaintiff was wounded as the bullets rained from the hill.

The Medical Doctor (PW5) appeared to confirm that on 15th October 2015 while at Nyakahanga District Hospital, he received the plaintiff who complained to have been wounded with a bullet. PW5 saw the wound which was in the process of healing after being treated at a Health Centre. The plaintiff was issued with a PF3 form and he took an X-ray examination. The X-ray film showed that the hand bone was not damaged. PW5 filled-in the PF3 form which was admitted as exhibit P1.

The plaintiff (PW6) who is the resident of Kafunjo village testified that, on 1st October 2015, he was seated at his coffee kiosk with Julius Silivery and flugence Clemence. They started hearing gun shots and he could hear people talking about the bullets dropping at their village centre. Thereafter, he was shot with a bullet which remained in the hand. He was assisted by Julius Silivery who also phoned the hamlet chairman who also phoned the Ward Executive Officer. The hamlet chairman came and tied his hand to prevent bleeding. The Ward Executive Officer gave instruction that he should be taken to Hospital. PW6 was ferried using a motorcycle to the Ward Executive Officer. He was later taken to Kamagambo Heath Centre where the bullet was removed from his hand. The hamlet chairman handed the bullet to the soldiers who camped at Kamagambo.

The Militia advisor refuted the allegation that they were responsible for the shooting. He went back to the office of the Ward Executive Officer. The bullets collected from the village were also handed over to the Military camp. When his hand condition worsened, he sought assistance from the District Militia Advisor for medical treatment. However, the militia advisor did not assist him rather than receiving threats. He took the matter to the District Commissioner. He was advised to seek medical treatment while waiting for further information from the Military. He sought a PF3 form from Nkwenda Police Station where he was denied and referred to Chabalisa Police Station with a letter. Later, he went back to Kafunjo village for another letter for introduction to the investigation officer. He handed the two letters to the investigation officer at Kayanga and he remained with the copies. He prayed to tender the copies of letters which were rejected. PW6 further testified that he was finally given the PF3 form and went to Nyakahanga District Hospital for medical treatment.

In 2016, he wrote a letter to the District Commissioner claiming for compensation for the medical expenses that he incurred. The District Commissioner wrote a letter to the Militia advisor. He prayed to tender his letter and the one from the District Commissioner which were admitted as exhibit P2 and P3. He took the matter to the Regional Commissioner still there was no assistance. He approached the office of the RPC and RCO where he also failed to get any support. He wrote a letter to the State Attorney who responded through a letter dated 28th December 2015. The letter was admitted as exhibit P4. He

finally lodged notice of intention to sue the government which was admitted as exhibit P5.

In this case, the defence relied on the testimony of three witnesses. In 2015, DW1 worked with Karagwe District and he also participated in training of militia at the Ward of Kamagambo. The range exercise was conducted on 1st October 2015 at an open field. DW1 testified that, the plaintiff went to the range exercise accompanied with another person as he is blind. Before the exercise, the military informed the Ward Executive Officer who also informed the residents not to go closer to the range. DW1 visited the range before the exercise to ensure the presence of barrier for bullets to travel far from the range. Normally a bullet goes distance of about 1,800 metres. The plaintiff's place of residence is about 3,000 metres away from the range. Human settlements were far beyond 1,800 metres from the range. Also, Major Mallya inspected the range before he exercise. In his testimony, DW1 suspected political reasons might have triggered this case as residents did not want the range exercise. He even wondered why only the plaintiff was injured. When cross examined, he insisted that the plaintiff went to range and they stopped the exercised when they saw him. They used SMG and SR for the range. However, he did not remember whether village leaders brought bullets to the military camp.

DW2 who was a militia at Karagwe District confirmed that the range exercise was conducted on 1st October 2015. They were assisted by the village chairman to

inspect the range. They chose the area which was secure and issue notices to residents around. After the exercise, another person came holding the plaintiff who complained to have been injured with a bullet. The plaintiff came from Kafunjo village which is far away from the range; it was a distance of about eight (8) kilometres away. The plaintiff was tied with a bandage on his hand. He further testified that, the targets were set a distance of 100 metres and ahead of the targets there was a hill of stones.

DW3 (Major Philibert Mathias) who was a Militia Advisor at Karagwe District testified that, on 16th October 2015, a person arrived at his office alleging that he was wounded with a bullet when the militia were having a range exercise. Though the complaint reached his office lately, it was an extra-ordinary incident in his life. He supervised the range exercise at Kafunjo; they issued notice about the range exercise to the Ward Executive Officer who communicated the notice to the village chairman. After receiving the complaint, he went to the range and it was about six kilometres away to the village. Professionally, before the range exercise, they always choose a place with a hill to act as an obstacle for the bullets. They choose a place with dead grounds (valleys) which act to pull down bullets through gravitational force. The range in this case had a dead ground and a hill and there was no human settlement at the area. He further stated that, before the militia training, there were security concerns within the area. Just as they went to inspect the area, nine people were murdered within the same place. Therefore, the training intended to improve security within the area. When

the plaintiff complained, they investigated and found out that other people from Kafunjo village owned guns and they reported the matter to the police. Furthermore, DW3 proposed the establishment of a military camp at Kashanda. He insisted that, the alleged injury to the plaintiff was doctored by un-scrupulous people because the longest distance to injure a person is 1,500 metres.

After the defence witnesses, the court visited the locus in quo on 05th March 2022 to ascertain some facts. The visiting of the *locus in quo* was attended by sixteen people including myself, J.S Rweyemamu (the counsel for the plaintiff), Lameck Butuntu (the learned State Attorney), Fulgence Clemence, Profil Protaz (witness), Nuru Abdul (witness), Maziwa Omary (witness), Mwesigwa Reverian (Plaintiff), Ramadhani Amaru (villager), Mohamed Karwani (villager), Helman Fidel (villager), Shamsi Siraji Kyelemile (villager), Vicent Masumbuko (villager), Renatus Kanyabuhura (villager), Badiru Kabendera (villager) and Jeremiah Anatory (villager). During the visit, the court observed the following facts which so far were agreed by the persons who attended the *locus in quo*:

1. *The range exercise was conducted at Hakitaba area (on a hill);*
2. *The exercise was conducted at a place which had a rocky obstacle;*
3. *A head of a rocky hill there is a huge valley which is professionally considered as a dead ground;*
4. *The militia trainees lied on a ridge pointing towards the targets;*
5. *The distance from the range to the place where the plaintiff was injured is about 3 kilometres or more;*
6. *The direction of the targets was different from the direction of plaintiff's village.*

The completion of the plaintiff's and defendants' evidence now moves me to consider the raised issues in this case. However, this being a civil claim, its proof is based on the balance of probability. Section 3(2) provides that:

'(2) A fact is said to be proved when-

(a) N/A

(b) in civil matters, including matrimonial causes and matters, its existence is established by a preponderance of probability.'

In the case of **Miller v. Minister of Pension [1947] ALL ER 372**, Lord Denning described the term probability that:

'If the evidence is such that the court can say we think it is more probable than not, the burden is discharged. But if the probabilities are equal, it is not.'

In this case therefore, the first issue was whether the plaintiff was shot with a gun on his right hand. The plaintiff's evidence intended to prove, at least, on the balance of probability that, he was injured with a bullet on his right hand by the militia trainees. To begin with his own evidence, he stated that, while seated with PW3 and PW4 at his coffee kiosk at the village centre, they heard gun shots coming from the range. Thereafter, his right hand was shot with an object. As he is blind, he could not immediately identify the object until he was informed by his friends. He was told that a bullet entered his flesh on the right hand. According to his testimony, the hand was bleeding; PW3 and PW4 tied the hand with a

cloth to prevent bleeding. PW1 who was in the office near the plaintiff's kiosk also heard the gun shots and was later informed about the injury sustained by the plaintiff. He walked out of the office and found the plaintiff bleeding and he was wounded on the right hand. The hamlet chairman, who is now deceased, took the plaintiff to hospital for the bullet to be removed from the hand. During the trial, the plaintiff showed the court the scar on the hand allegedly resulting from the gun shot. Furthermore, PW1, PW2, PW3 and PW4 testified that, villagers collected seventeen bullets which dropped in their village from the range. The bullet removed from the plaintiff's hand and those collected from the village were handed by the hamlet chairman to the military camp at Kamagambo. They confidently believed that the bullets came from the range as there was no any other source of bullets on that day rather than the range exercise. On the balance of probability, I find the plaintiff established that he was injured though not necessarily with a bullet from the range.

In this case, the court is hesitant to believe whether the injury was caused with a bullet shot from the range. **First**, the Medical Doctor who removed the bullet from the plaintiff's hand was not called to testify. Any way, he/she might have shifted the place of work rendering impossible to appeal before the court. **Second**, there was no PF3 form to prove whether the object removed from the plaintiff's hand was actually a bullet or any other object. The tendered PF3 form (exhibit P1) was secured fifteen days after the injury. The same form was filled-in by a Medical Doctor from Nyakahanga DDH Hospital while the alleged bullet

was removed at Kamagambo Health Centre. The PF3 form at hand does not specifically state whether a bullet was removed from the plaintiff's hand. On the form, the Doctor simply recorded that "claim to have been hit by a bullet shot to his hand". Certainly, the doctor who tendered the PF3 form was not the one who removed the bullet from the plaintiff. In absence of medical report from the Doctor who removed the bullet, it is hard to believe whether the plaintiff was actually shot with a bullet at his hand. **Third**, the bullet allegedly removed from the plaintiff's hand was not tendered in court. **Fourth**, the range was surrounded with a rocky obstacle making it impossible for a bullet to penetrate and travel towards the plaintiff's village. **Fifth**, the targets were fixed on the South East direction while the plaintiff's village was on the south. I found no possibility for the bullet to turn and travel a distance beyond three kilometres. **Sixth**, the distance from the range to the plaintiff's village is not less than three kilometres making it suspicious whether at such a distance a bullet can cause injury. The plaintiff might have been shot with an object but it is another issue whether it was a bullet from the range. In a case where the defence alleged insecurity within the area to the extent of setting up a nearby military camp, such important information cannot just be jettisoned. Furthermore, tendering of the bullet would have resolved a number of questions in this case because the court could have even summoned an expert to opine whether such kind of a bullet could be used in hand guns used for militia range.

The second issue is whether the militia advisor took necessary steps before conducting the range exercise. The defence witness testified on how the environmental scanning was done before the range exercise. According to DW1, they informed the Ward Executive Officer who also informed the villagers about the range exercise. Villagers were warned not to go closer to the range. The range was far from human settlements; he estimated that, villagers lived far beyond 1,800 metres from the range. In his opinion, a bullet cannot travel beyond the distance of 1,800 metres. DW2 further insisted that, they chose an area which was secure; the range was surrounded with an obstruction of stones to prevent bullets from going beyond the range area. To insure further security to the villagers, they issued notices which were communicated to villages around the range.

DW3 who supervised the range exercise in that village also confirmed that, they issued notices to the village chairman. Even when he received the plaintiff's complaint, he could not believe because, despite all the necessary precautions, the plaintiff's village was located far away from the range. The range was surrounded with obstacles to prevent the bullets from going far and had dead grounds to pull down bullets due to gravitational force. Also, the Ward Executive Officer (PW2) confirmed that they received notices about the range exercise which, as a leader, he communicated it to village leaders. It is therefore evident that the District Militia Advisor took the necessary steps before the range

exercise. In my view, the District Militia Advisor did what was necessary to ensure that villagers around the range were safe.

The third issue is whether the plaintiff was injured as the result of the negligence caused by the defendants. I have already stated that, before the range exercise, the District Military Advisor took all the necessary steps to insure that the villages around were safe. They chose the area which was far from the village. When the court visited the *locus in quo*, the parties and other people who attended confirmed that, the distance from the range to the place where the plaintiff was injured was more than three kilometres away. The court also observed that, the area was surrounded with an obstacle of rocks which prevented bullets from going far beyond the targets. For security reasons, the targets were fixed on South East direction whereas the plaintiff's village was on the South. In my view, there could be no possibility of the bullet changing direction and travel a distance of more than three kilometres. Furthermore, when shooting on the targets, the trainees lied on the ridge to avoid the possibility of the bullets going ahead of the rocky obstacle. At the *locus in quo*, we could still see the remains of the ridge which was created for the shooting. Both the plaintiff's and defence evidence further shows that, the military issued notices to villages around and they fixed red flags around the area to signal danger around that place. In my conclusion on this issue, the District Military Advisor cannot be blamed for negligence in this case. He did what was necessary to prevent any injury to the villagers.

On the fourth issue on what reliefs are the parties entitled, having answered all the above issues in negative, the plaintiff has no recourse against the defendants. The plaintiff might have been injured but there is no concrete evidence to prove whether the injury was a result of a bullet from the range. I hereby dismiss the plaintiff's claim it. No order as to costs. Order accordingly.

Dated at Bukoba this 12th Day of August 2022.





Ntemi N. Kilekamajenga.
JUDGE
12/08/2022

Court:

Judgment delivered this 12th August 2022 in the presence of the learned State Attorney, Mr. Gerald Njoka and the counsel for the plaintiff, Miss Gisera Rugemarila. Right of appeal explained to the parties.




Ntemi N. Kilekamajenga.
JUDGE
12/08/2022