

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT FORT PORTAL

HCT – 01 – CV – CA – 0010 OF 2023

**(ARISING FROM MISC. APPLICATION NO. 084 OF 2022 & CIVIL SUIT
NO. 090 OF 2020)**

UGANDA WILDLIFE AUTHORITY ::::::::::::::::::::::::::::::::::: APPELLANT

VERSUS

PETER OKELLO JABWELI ::::::::::::::::::::::::::::::::::: RESPONDENT

BEFORE: HON. JUSTICE VINCENT WAGONA

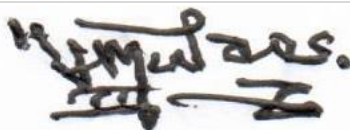
JUDGMENT

Introduction:

The appellant being aggrieved by the ruling of His Worship Kaggwa John Francis (Chief Magistrate) delivered by His Worship, Kule Moses Lubangula (Chief Magistrate) striking out her defense sought leave to appeal against the said ruling which was allowed. The appellant seeks orders of court that the appeal is allowed, that the decision of the lower court striking out her written statement of defense be set aside with costs in this court and in the court below.

Background:

That Respondent lodged civil claim No. 90 of 2020 against the appellant under the doctrine of vicarious liability seeking compensation for loss and injuries sustained from an accident involving motor vehicle Reg. No. UAU 175M and UAR 146Y



being property of the appellant. It was contended by the Respondent, that on the 10th of November 2018 at about 6:50pm, the Respondent while lawfully driving his motor vehicle UAU 175M while entering Fort-portal town along Kyenjojo Fort Portal road, the defendant's motor vehicle UAR 1467 rammed into the Respondent's car where he sustained injuries and loss and thus brought the suit against the appellant under the principle of vicarious liability.

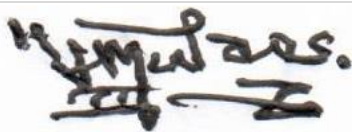
The appellant filed a written statement of defense where she denied liability. In the course of the trial, learned counsel for the Respondent raised a point of law under Order 6 rule 8 of the Civil Procedure Rules contending that the written statement of defense contained general denials as such ought to be struck out with costs. The learned Chief Magistrate agreed with the Respondent and struck out the written statement of defense with costs and fixed the main suit for formal proof. The appellant being aggrieved with the said finding lodged an appeal to this Court.

Grounds of appeal:

The appellant framed two grounds of appeal for consideration thus:

- 1. That the learned trial Chief Magistrate erred in law and fact when he did not properly evaluate the Appellant's Written Statement of Defense on record and struck it out.**
- 2. That the learned trial Chief Magistrate erred in law and fact and caused a miscarriage of justice to the appellant when he struck out the appellant's Written Statement of Defense without taking into consideration the peculiarity and circumstances as pleaded in the appellant's written statement of defense.**

Representation:



Abubakar Ibrahim of M/s Legal Department of Uganda Wildlife Authority appeared for the appellant while *Mr. Samuel Muhumuza* appeared for the Respondent. On a number of occasions counsel raised the excuse that the record was not ready but on perusal of the lower court, there is a signed copy of the ruling by His Kaggwa John Francis which the parties did not bother to certify. This being a simple and miscellaneous appeal with a consequential effect of causing the delay in hearing of Civil Suit No. 90 of 2020, I have deemed it in the interests of justice to dispose of the same without the input of counsel for both sides to avoid further delays.

10 **Duty of the first appellate Court:**

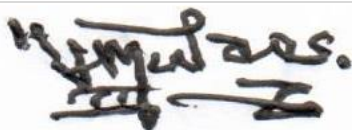
My duty as a first appellate court is to subject the evidence of the lower court to a fresh and exhaustive scrutiny and draw fresh and independent inferences and conclusions. (*See Panday Vs R (1967) E.A 336 and Narsensio Begumisa & 3 others Vs. Eric Kibebaga, SCCA NO. 17 of 2002*).

15 **Consideration of the appeal:**

I will resolve both grounds under one issue being - whether the learned trial Chief Magistrate properly evaluated the law and facts in striking out the written statement of defense filed by the appellants.

Order 6 rule 8 provides thus:

20 *“It shall not be sufficient for a defendant in his or her written statement to deny generally the grounds alleged by the statement of claim, or for the plaintiff in his or her written statement in reply to deny generally the grounds alleged in a defence by way of counterclaim, but each party must deal*



specifically with each allegation of fact of which he or she does not admit the truth, except damages.”

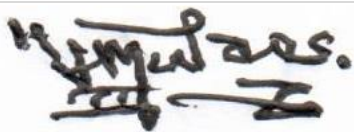
Rule 10 adds that:

5 *When a party in any pleading denies an allegation of fact in the previous
pleading of the opposite party, he or she must not do so evasively, but answer
the point of substance. Thus, if it is alleged that he or she received a certain
sum of money, it shall not be sufficient to deny that he or she received that
particular amount, but he or she must deny that he or she received that sum
or any part of it, or else set out how much he or she received. If the allegation
10 is made with diverse circumstances, it shall not be sufficient to deny it along
with those circumstances.*

Rule 30 (1) further posits that;

15 *“The court may, upon application, order any pleading to be struck out on the
ground that it discloses no reasonable cause of action or answer and, in any
such case, or in case of the suit or defence being shown by the pleadings to be
frivolous or vexatious, may order the suit to be stayed or dismissed or
judgment to be 20 entered accordingly, as may be just.”*

20 Therefore a written statement of defense must constitute a reply to the contents of
the claim/plaint in a specific manner. The responses should be intelligible, clear, and
precise, linked to the claim by the plaintiff and should give an answer to an allegation
by the claimant. A general or evasive denial renders the defense incurably defective
and liable to be struck out and not even article 126 (2) (e) can save such. (See:
**Byaruhanga Africano v Uganda Electricity Distribution Co. Ltd (UEDCL),
HCMA No. 067 of 2022**).

A handwritten signature in black ink, appearing to read 'Byaruhanga Africano', is written over a horizontal line.

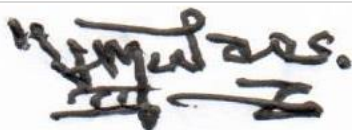
In *MHK Engineering Services (U) Ltd vs Macdowell Limited* the Hon Justice Wamala cited a passage from *Odgers Principles of Pleading and Practice, 22nd 5 Edition, at page 136* that provides useful guidance on the test for evasive defences and general denial. The principle is laid down as follows:

5 *"It is not sufficient for a defendant in his defence to deny generally the allegations in the statement of claim ... Each party must traverse specifically each allegation of fact, which he does not intend to admit. The party pleading must make it clear how much of his opponent's case he disputes."*

10 Further *Asbury, J., in Weinberger V. Inglis (1916-17) All E.R. Rep. 843*, noted in relation to the issue I am investigating thus:

15 *"As a general rule, the court never orders a defendant to give particulars of facts and matters which the plaintiff has to prove in order to succeed, and this is especially the case where a defendant has confined himself to putting the plaintiff to the proof of allegations in the statement of claim, the onus of establishing which lies upon him."*

20 *SPRY, J.A in Namadashanker Manishanker Joshi Vs. Uganda Sugar Factory Ltd, Civil Appeal No 16 of 1968*, observed that what is expected of the defendant is to furnish particulars where he is making a positive averment and to plead facts on which he seeks to defend himself to avoid surprises during trial. In the Indian case of *Balinda Prasad Vs. United Bank of India Limited and others, AIR 1962 Pat 153*, it was observed that the defendant is expected to respond to the main allegations which form the foundation of the suit and not every fact pleaded by the plaintiff.

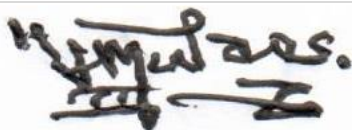


What the defendant is supposed to do is to put up a defense requiring the plaintiff to prove his case. He or she is not under any legal obligation to plead facts. As long as he denies the plaintiff's claim as not being true, that is sufficient to put the plaintiff to the task to prove his claim. (Byaruhanga Africano v Uganda Electricity
5 Distribution Co. Ltd (UEDCL), HCMA No. 067 of 2022).

The appellant in the present suit denied the allegations by the Respondent in the plaint. She indicated under paragraphs 9, that she was not aware of the events where the plaintiff was involved in an accident. Further under paragraph 10, she stated that,
10 '.... the plaintiff shall plead that its car Registration No. UAR 146Y has never been involved in any motor car accident on the date and location stated in the plaint.'

In my analysis, since the claim by the Respondent was largely concerning an accident which was denied by the appellant, the defense by the appellant that her motor vehicle in issue was never involved in any accident on the date and location alleged by the Respondent was a defense requiring the Respondent to prove his
15 claim. It is not required to respond or state facts in response to each allegation.

I find that the defense put forward by the appellant was not evasive and did not contain general denials as found by the trial Chief Magistrate. The defendant made a response to the gist of the claim by the Respondent. If the learned trial Magistrate had evaluated the contents of the written statement of defense and the claim by the
20 Respondent, he would have arrived at the conclusion that indeed the defense was proper. Therefore his holding that the defense was not proper was erroneous and ought to be set aside. Therefore grounds one and two of the appeals succeed and so is the entire appeal with the following orders:



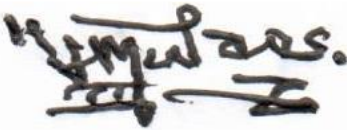
1. That the order by the learned trial Chief Magistrate striking out the appellant's written statement of defense in Civil Suit No. 90 of 2020 is hereby set aside.

2. The written statement of defense filed by the appellant is hereby validated.

3. Each party shall bear own costs in this court and in the court below in respect of all proceedings in relation to the issue under this appeal.

4. The Deputy Registrar of this court is directed to transfer the lower court file back to the Chief Magistrate for further management.

I so order.



Vincent Wagana
High Court Judge
FORT-PORTAL

DATE: 27/03/2024

