

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL SUIT NO. 338 OF 2002

TURAGANISE GEORGE :::::::::::::::::::::::::::::: PLAINTIFF

VERSUS

ATTORNEY GENERAL]
LUKWAGO]
MUWANGA MOHAMMED] :::::::::::::::::::::::::::::: DEFENDANTS
MUKWAYA GEORGE]

BEFORE: THE HON. MR. JUSTICE R.O. OKUMU WENGI

JUDGEMENT:

The Plaintiff brought this suit for general damages among out of a night shooting incident in the Kazo area in Kampala. It is alleged that the Plaintiff was lawfully returning home after a nights drink at a local outfit when a band of LDUs or members of a paramilitary constabulary fell upon him and shot him. The Attorney General denied liability. The 2nd and 4th defendants filed written statements of defence. They both claimed that the Plaintiff invited his own injuries as he got shot while trying to disarm the LDUs engaged in foiling a carjack by the plaintiff. As it came to pass neither of them attended court to defend themselves or to testify. Their plea remained that of rogue men in arms who shoot at unarmed civilians and frame the victims of attempts to grab their sacred weapon. The 3rd defendant on his

part did not even file a defence. The trial therefore proceeded inter partes as between the plaintiff and the Attorney General, with five issues being framed namely;

1. Whether the shooting and injury of the plaintiff by the 3rd and 4th defendant was lawful or justified.
2. Whether the 3rd and 4th defendants were acting in the course of their employment at the material time.
3. Whether the first defendant is liable for the acts of the other defendants.
4. Whether the defendants are personally liable.
5. Remedies.

The Plaintiff called 4 witnesses including himself while the Attorney General opted not to call or rely on any other witness other than P.C Ojaba (PW3). The Plaintiff (PW1) told this court how he had been in the company of one Eric Bariyo PW4. They were from Christine's Bar near their homes when a Pajero UDK 393 driven by the 2nd defendant stopped on them. The second defendant fell upon them with a wheel spanner. The witness stated that Lukwago demanded to know why they had ignored to notice him. That having failed to make any impact, Lukwago went away only to come back with two LDUs and 2 policemen. At this point one of the LDUs (Mukwaya) cocked his gun and shot the Plaintiff through his cheeks. He was later taken to Mulago Hospital as he lost 5 teeth in the shooting. The Plaintiff tendered

a medical report as P.1. He also tendered medical receipts as P.3 totaling shs 800,000/=. He further testified that the shooting took place in his compound.

Dr William Nganwa an oral surgeon testified as PW2. He testified to attending to the Plaintiff for facial and oral injuries from October 2001. He told court that he found the plaintiff with jaws not united properly, hard of hearing, paralysis of lower lip, scars and four teeth eventually missing. He exhibited P.4 as his medical report. He assessed 25% permanent loss of lip function.

Ojaba Robert PW3 told court that he investigated the case first reported by Lukwago as a car robbery incident. He established that the fracas started as a fight that saw a defeated Lukwago call in LDUs. Bariyo Eric PW4 testified to support the Plaintiffs case.

From the evidence I am satisfied and find that the plaintiff was unlawfully and unjustifiably shot and injured by the LDUs. Secondly from the same evidence I find that the LDUs were brought to the scene by a report of a robbery incident as law keepers styled as the special constabulary force of the 1st defendant. The report was false and aimed at abusing the arms held by the LDUs for the 2nd defendants private remedy. That the LDU's went out of their way to open fire on the un armed Plaintiff is itself inexcusable. As such I find and hold that all the defendants are liable, the first defendant vicariously and the

others personally jointly and severally. PW3 P.C Ojaba told court that the LDUs bore arms issued to them by government. The fact that they got engaged in settling what turned from a robbery to be private scores is only evidence that they were engaged in the maintenance of law and order in the name of the state. They may have mismanaged or even exceeded their mandate but this does not excuse the 1st defendant from liability. In any case most governmental law and order interventions tend to touch on managing disputes between individuals. This does not automatically turn a public law employment or duty into a private transaction without any evidence as in this case. The LDUs called upon to face car jackers could easily have seen that the plaintiff and Bariyo were harmless villagers in their areas of operation. I have therefore answered all the 4 issues in favour of the plaintiff who is entitled to judgment against the defendants. The 1st defendant will be liable to the extent of 50% while the 2nd defendant will bear 30% and the third and fourth defendants will bear 10% of the burden. This is an attempt to apportion the burden of liability.

I have considered the evidence on the record, the injuries sustained by the Plaintiff and his permanent disability. I have also considered the circumstances of the acts. I award the Plaintiff as follows:

(a) Medical and transport costs	shs 1,558,000
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(b) Loss of earnings	Shs 1,810,000
(c) General damages	<u>Shs</u>
<u>30,000,000</u>	
Total	33,568,000 =====

Accordingly judgment is entered against the defendants in the sum of Shs 33,568,00/= with interest at 20% on the decretal sum from today till payment in full as well as costs of this suit.

R.O. Okumu Wengi
JUDGE
 21/9/2005.

5/10/2005

Plaintiff present

Mr Bamwite for plaintiff

Ms Nabakoza for 1st 2,3 and 4 absent.

Mr Bamwite:

This matter is for judgment.

Court: Judgment delivered.

Sgd by: Roy Byaruhanga
AG. D/REGISTRAR.

5/10/2005.