

C.C. 157/2009

2009 .G. NO. 4

IN THE HIGH COURT OF SIERRA LEONE
(GENERAL CIVIL DIVISION)

BETWEEN: -

MICHAEL GOLLEY

- PLAINTIFF

AND

PLAN SIERRA LEONE

- 1ST DEFENDANT

AND

MOHAMED BANGURA

- 2ND DEFENDANT

R. Johnson Esq. for the Plaintiff

Miss. B. E. T. Cummings for Defendants

JUDGMENT DELIVERED THE 28th DAY OF September, 2012

The Plaintiff issued a writ of summons dated 11th May 2009 in which he claims against the Defendants jointly and severally the following reliefs

1. Damages for negligence arising out of a motor vehicle accident along Wilkinson Road Freetown on the 19th December 2008 whilst the said vehicle was in the control of the 2nd Defendant as servant or agent of the 1st Defendant.
2. Any further or other relief.
3. Costs.

In his particulars of claim the Plaintiff allege that he is a humanitarian officer employed by the Sierra Leone Red Cross Society and earning an average monthly salary of Le500,000. Further that the 1st Defendant is the registered owner of vehicle with registration No. ACJ 887.

He averred that the 2nd Defendant at all material times was the servant and/or agent of the 1st Defendant in charge of the operation of the said vehicle No. ACJ 887 and was at the time of the accident the person in control of the said vehicle. That on 19th December 2008 whilst the said 2nd Defendant was in control of the said vehicle No. ACJ 887 he drove the same along Wilkinson Road Freetown so recklessly and negligently that he hit and knocked down the Plaintiff who was a pedestrian along the said road.

He further averred that after hitting and knocking down the Plaintiff, the 2nd Defendant did not assist the Plaintiff but merely drove off abandoning the Plaintiff on the side of the road.

He then proceeded to give particulars of the negligence of the said 2nd Defendant and relied on the doctrine of *res ipsa loquitur*. He pleaded that by reason of the conduct of the said 2nd Defendant as servant and/or agent of the 1st Defendant the Plaintiff sustained severe personal injuries in respect of which he was hospitalised whereby he lost his earnings and has suffered disability, inconvenience, pain and suffering.

He further averred that at the time of the accident he was 38 years of age and gave particulars of his injuries as follows:

1. Multiple injuries of the bones and soft tissues of the left leg.
2. Extensive spiral fractures of the tibia involving three-fifths of the bones of the left leg.
3. Spiral fracture of the distal third of the fibula with gross displacement of the fragments of both fractures.

He stated that since the accident in December 2008 he has not been paid his salary and he gave further details of special damages he suffered in the form of expenditures on medicines, travelling and hospital bills. He therefore claimed damages for negligence and aggravated damages.

The Defendants entered appearance and filed a defence in which the 1st Defendant averred that it is not subject to the jurisdiction of the court by virtue of the Diplomatic Conventions Act 1961 and by virtue of the Status Agreement between the 1st Defendant and the Government of Sierra Leone signed on the 23rd February 2007. It relied in particular on Article III of the said Agreement in which the said Government granted the 1st Defendant immunity from every legal and administrative process.

The 1st Defendant therefore denied being liable to the Plaintiff in respect of any part or of the whole of his claim as contained in his said writ of summons.

The 2nd Defendant admitted that the said vehicle is owned by the 1st Defendant and that he was in charge thereof at the material time. He admitted driving the said vehicle along Wilkinson Road on the night of the 19th December 2008 but denied all the other averments made by the Plaintiff relating to the accident.

He averred that to the knowledge of the Plaintiff and his wife, MRS. **THELMA GOLLEY** it was another vehicle whose registration number the Plaintiff was unable to record that hit the Plaintiff. He stated that it was because his vehicle was parked by the kerbside in the vicinity that a passerby gave its registration number to the Plaintiff.

He further averred that the Plaintiff's wife was not present at the scene of the accident but was called to the scene by her husband on a mobile phone. He went on to allege that the Plaintiff and wife concocted the whole story against him to extort the sum of Le 50 million from the 1st Defendant.

He admitted that there were correspondences between the Plaintiff's wife and the 1st Defendant as well as contacts between certain employees, representatives of the 1st Defendant and the Plaintiff

and wife based on the purported belief that the 2nd Defendant was responsible for the accident. He denied having any direct contact with the Plaintiff or his wife.

He further alleged that because the 1st Defendant refused to succumb to the extortionate demands of the Plaintiff and his wife, they resorted to make a report to the police and caused him to be charged to court. He denied being liable for any injury or damage the Plaintiff may have suffered.

The Plaintiff filed a Reply and thereafter sought directions of the court on the conduct of the trial. After due compliance with the court's directions the matter was entered for trial.

At the trial of the matter, the Plaintiff testified on his own behalf as PW1. He tendered his witness statement as Exh Z and it was used as part of his evidence -in- chief. All documents to be used at the trial had been tendered and marked Exh A – Y.

In his witness statement, Exh Z the Plaintiff stated that he was walking along Wilkinson Road together with his wife on the night of 19th December 2008. He said they were walking on the right side of the road towards their residence at Findlay Lane when his wife stopped to talk to a friend of hers, **ADAMA BENDU** and that he continued walking along the said road when he felt something hit his left foot from behind him and he fell to the ground.

He told the court that he was taken to Connaught Hospital and on the next day he was informed after an x-ray was taken of his left leg that it was fractured. He was later referred to a private clinic for specialist treatment where he was admitted and had surgery on the said leg. His receipts for the drugs he purchased and for his hospital treatment and taxi fares were all tendered in evidence.

The Plaintiff testified that in January 2009 he was at home when two men came to him and introduced themselves as **MR. DANIEL KARGBO**, the Senior Driver and **MR. MOHAMED BANGURA** both of Plan International. He said **MR. DANIEL KARGBO** told him that **MR. MOHAMED BANGURA** was the driver of the 1st Defendant's vehicle which had hit him and **MR. BANGURA** admitted same and pleaded with him not to take the matter to the police and assured him that his office will take responsibility for the accident. He stated that the 2nd Defendant then explained that he did not stop after hitting him with the vehicle because he was afraid that he would be harmed by the crowd of people who were chasing his vehicle. The Plaintiff stated that his sister, **MARY GOLLEY** was present at this meeting with **MR. DANIEL KARGBO** and the 2nd Defendant.

He further stated that a lawyer friend of theirs Mr. Gevao wrote to the Country Director of the 1st Defendant complaining about the accident and on the following day, 7th February 2009, **MR. IBRAHIM TURAY**,

the Administration Officer of the 1st Defendant came to the house and pleaded with him not to take the matter to court and again he assured him that the 1st Defendant would take responsibility for the accident. He said that on 8th February 2009 a **MR.KANU** and a **MRS. KAMARA** together with **MR. KARGBO** all from the 1st Defendant's office came to his house and assured him and his wife that the 1st Defendant will take care of him and also pleaded with him not to take the matter to court.

He further stated that on 5th March 2009 the Country Director came to his house together with the Finance Officer and Human Resources Officer. He said the Country Director then told him and his wife that she would investigate the accident and get back to them. She also explained that she only came to know about the accident when she received his wife's e-mail of 5th March 2009. The Country Director however never communicated back with them. He then had cause to institute the present action against the Defendants.

Under cross-examination, the Plaintiff he stated that when he was hit he noticed that it was a white vehicle but did not take note of its registration number. He confirmed that the said 2nd Defendant came to his house and denied that the first time he saw the said 2nd Defendant was at the police station. He admitted that he got the information about the registration number of the vehicle from his wife as he did not see it himself.

He also admitted that since he did not see the driver of the vehicle at the time it hit him it could have been any driver. He was however sure it was the 2nd Defendant who hit him with his vehicle.

The second witness for the Plaintiff was **ADAMA BENDU**. She tendered her witness statement as Exh AA and it was used as part of her evidence-in-chief. She explained that she is a friend of the Plaintiff's wife and she narrated the incident of the 19th December 2009. She stated that whilst she was talking with the Plaintiff's wife she saw a white Toyota Land Cruiser being driven at high speed and she saw it hit the Plaintiff and he fell down. She stated that she and the Plaintiff's wife then ran to the Plaintiff. She said the vehicle slowed down after hitting him and that she was at the scene until he was taken to hospital.

The witness was cross-examined on her testimony.

The third witness for the Plaintiff was **MRS. THELMA GOLLEY**, his wife PW3. She also tendered her witness statement as Exh BB. In the said witness statement she narrated what transpired on the night of the accident and stated that she saw the vehicle hit the Plaintiff and made a mental note of its registration number which she gave as ACJ 887. She said some people chased the vehicle which had slowed down after hitting the Plaintiff but that it took off thereafter.

She said she called her brother **MR. PAUL BINDI** who took her and the Plaintiff to the Connaught Hospital.

The witness PW3 testified that on 20th December 2008 she made a report at the Congo Cross Police Station and later was informed by the Police that the vehicle belonged to the 1st Defendant. She stated that on 30th December she went to the office of the 1st Defendant and made a report of the accident to **MR. IBRAHIM TURAY** the Administration Officer who called **MR. DANIEL KARGBO**, the Senior Driver. She said **MR. KARGBO** consulted a log book and informed her that the 2nd Defendant was the driver in charge of the vehicle on the day of the accident. She recalled that her husband told her that **MR. KARGBO** and the 2nd Defendant came to their house on 11th January, 2009.

The witness PW3 further testified about the letter their lawyer friend wrote to the Country Director complaining about the accident and of **MR. IBRAHIM TURAY'S** visit to them to plead with them not to take court action, assuring them that the 1st Defendant would take responsibility for the accident. She stated that **MR. TURAY** also asked the Plaintiff not to report the matter to the Country Director because if he did, the 2nd Defendant would lose his job. She also related a visit to their home of a **MR. KANU** and **MRS. KAMARA**

from the office of the 1st Defendant who also assured them that their office would take responsibility for the accident and again pleaded with them not to take the matter to court. This she said occurred on 8th February 2009.

She stated that on 10th February 2009 **MR. IBRAHIM TURAY** and **MR. DANIEL KARGBO** and herself met at her lawyer's chambers but the said lawyer insisted that the Country Director should be present for any negotiations to take place and a date was fixed for such a meeting but on the scheduled date no representative of the 1st Defendant turned up. She stated that on 5th March 2009 she sent an e-mail to the Country Director reporting the accident, Exh T1 and she got a reply on the same date from **MADAM FADIMATA ALAINCHAR**, the Country Director stating that she had not been informed of the accident and of all the steps taken in respect thereof and she promised to do a follow up on the report.

The witness stated that when there was no positive follow up by the Country Director, they instructed their solicitor to institute the present action against the Defendants.

The witness was cross-examined on her testimony and she told the court that **MR. IBRAHIM TURAY** on his visit to her house identified himself as an officer from the office of the 1st Defendant and showed her his ID card and she asserted that the said **MR. TURAY**

represented to her that he was from the 1st Defendant. She admitted that from the e-mail correspondence forwarded by the Country Director she did not offer to compensate the Plaintiff for the accident. On being shown the report on the said accident prepared by **MR. DANIEL KARGBO** dated 6th March 2009, Exh V, the witness PW3 admitted that the said **MR. KARGBO** had stated therein that the driver was not guilty. She also admitted that the 2nd Defendant did not offer to compensate the Plaintiff for the alleged accident. She further admitted that she did not see the 2nd Defendant on the day of the accident.

The fourth witness for the Plaintiff was **MARY GOLLEY**, the Plaintiff's sister. The gist of her testimony was confirmation of the visit to the Plaintiff's home of Mr. Daniel Kargbo and the 2nd Defendant and that the latter admitted to having been the driver of the vehicle and further admitted that he had not stopped after the said vehicle.

The witness PW4 was cross-examined on her testimony.

That ended the case for the Plaintiff.

The 2nd Defendant was the first to testify for the defence. He tendered his witness statement as Exh DD which was used as part of his evidence-in-chief.

He recalled 19th December 2008 when he stated he was returning from a trip from Port Loko and had on board his vehicle No. ACJ 887 belonging to the 1st Defendant **MRS. MABINTY KAMARA** and **MR. SORIE BANGURA** both employees of the 1st Defendant. He further recalled travelling along Wilkinson Road Freetown on their way to drop off **MRS. MABINTY KAMARA** at Lumley. He stated that along Wilkinson Road they encountered heavy traffic and observed a huge crowd of people ahead of them but they had no idea what the commotion was about. That whilst the traffic was moving slowly **MR. SORIE BANGURA** asked him to let him down as he wanted to ease himself which he did and he then parked the vehicle by the side of the road to await **MR. BANGURA**.

He stated that whilst waiting for **MR. BANGURA** to join them he noticed a young man who had come from a pub nearby standing in front of the vehicle and jotting down something. He said he did not bother to find out what the young man was doing. They continued their journey after **MR. BANGURA** joined him.

The witness DW1 recalled 31st December 2008 when he was asked by **MR. DANIEL KARGBO** whether he had been involved in an accident on 19th December 2008 involving vehicle No ACJ 887. He replied in the negative and Mr. Kargbo told him that **MRS. GOLLEY** had reported the alleged accident. He stated that after that Mr. Kargbo told him on several occasions that he was going to see the Plaintiff as he had been assigned the task of investigating the report.

On one occasion the witness stated that Mr. Kargbo informed him that he had taken gifts of plantains and bags of coal to the Plaintiff on humanitarian grounds.

He denied ever going to the Plaintiff's house but recalled driving Mr. Kargbo once to the house when he went there to see the Plaintiff's wife. He stated that he did not enter the said house. He also informed the court that Mr. Kargbo told him of a meeting at the Plaintiff's lawyer's chambers and that he had gone there with **MR. IBRAHIM TURAY**. Later he was informed that the matter should be taken seriously as the Plaintiff was asking for Le50 million compensation.

The witness recalled that he was summoned to a meeting with the Country Director, the Finance Manager and the Human Resource Manager about the accident and he was asked to do a written report, Exh W in which he narrated his side of the story.

On the 22nd April 2009 he said he received an invitation to report at the Congo Cross Police Station which he did on the following day and made a statement. In May 2009 he was charged to court and appeared at a Magistrate Court in Freetown.

The 2nd Defendant was cross-examined and he again denied ever visiting the Plaintiff's home, but learnt that **MR. DANIEL KARGBO** visited him at his home.

He informed the court that he was charged with reckless driving and failing to report an accident as well as failing to take the victim to hospital. He maintained that the Police did not investigate the incident but that he was invited to attend at the scene of the accident and that the Police did an accident plan with his assistance. He stated that he did not take the vehicle for examination although he was given a vehicle examiner's form to complete.

MR.SORIE BANGURA, a cleaner at the office of the 1st Defendant was the Defendant's second witness. He was also a passenger in the vehicle at the time of the alleged accident. He tendered his witness statement as Exh EE and it was used as part of his evidence- in-chief. He recalled the 19th December 2008 when he travelled in the said vehicle ACJ 887 and he recounted what was alleged to have transpired along Wilkinson Road. He asserted that the 2nd Defendant was not involved in any accident involving the said vehicle.

He was cross-examined on his testimony.
That ended the case for the Defendants.

The Plaintiff's case is primarily for damages for negligence arising out of a motor accident, as a result of which he suffered injuries. His counsel submitted that if the 2nd Defendant is found liable in damages for negligence then such liability should be imputed on the 1st Defendant as the master or employer of the 2nd Defendant.

He urged that it is not in dispute that at the time of the said accident the 2nd Defendant was acting in the course of his employment. He also submitted that there is abundant evidence to show that the Plaintiff suffered injuries as a result of the accident. The issue to be determined however is, was the 2nd Defendant responsible for the said accident?

The Plaintiff and his witnesses all say that it was the vehicle ACJ 887 of which the 2nd Defendant was the driver that hit the Plaintiff. The 2nd Defendant and his witness have denied ever hitting him or being involved in an accident on the said night.

It is therefore necessary to examine the evidence before the court to establish which party's evidence is the more credible. Counsel for the Plaintiff pointed out that there are inconsistencies in the testimony of DW1, the Defendant and **DW2, SORIE BANGURA**. What is quite evident is that the said vehicle was in the vicinity at the time of the accident. Counsel for the Defendants has laid heavy emphasis on the fact that the Plaintiff did not see the registration number of the vehicle which hit him but got the information from his wife who she submitted could have got the information wrong. Counsel further pointed out that the said wife PW3 did not actually see the driver of the vehicle.

Counsel for the Defendant strongly relies on the reports of **MR. DANIEL KARGBO** Exh U which gives a summary of the whole story as told to him by the 2nd Defendant and that of **SORIE BANGURA, DW2**. Since the versions of the incident as told by both sides are divergent, I believe there is a need to examine the behaviour of those concerned after the accident.

The Plaintiff and his witnesses have testified to a number of visits to their home by officials of the 1st Defendant. Only the 2nd Defendant denied ever visiting the Plaintiff but he admitted driving Mr. Kargbo to the said house.

The Defendants case is that the 2nd Defendant was not involved in any accident and that it was not his vehicle which hit the Plaintiff. The 2nd Defendant testified that it was on 31st December 2008 that Mr. Daniel Kargbo asked him whether he was involved in any accident involving the said vehicle. This is consistent with Mrs. Golley's testimony PW3 that she made a report of the accident at the office of the 1st Defendant to one **MR. IBRAHIM TURAY** who called Mr. Kargbo who in turn informed him that the 2nd Defendant was the driver of the vehicle involved.

The 2nd Defendant's testimony is that he was not the driver or in control of the vehicle which hit the Plaintiff. He said that he made this known to Mr. Kargbo who was investigating the matter.

Yet we have evidence that **MR. IBRAHIM TURAY**, the Administration Officer, **MR. DANIEL KARGBO**, a **MR. KANU** and a **MRS. KAMARA** all employees of the 1st Defendant turned up at the house of the Plaintiff at various times allegedly to plead with him not to report the matter or take it to court. The question is, why should all these officers take it upon themselves to visit the Plaintiff after the 2nd Defendant had clearly told them he was not in anyway involved in any accident with the Plaintiff? The evidence of the visit of these officials has not been controverted. Indeed the report written by **MR. DANIEL KARGBO** Exh V supports the said evidence. Let me quote his report on the issue as follows

“Madam, whatever transpired between me and the family is referred to as gift between me and the family out of humanitarian feeling but not in representing the organisation.”

The reference to gifts to the family evidently supports the 2nd Defendant's testimony that Mr. Kargbo informed him that on one occasion he bought bags of coal and plantains for the Plaintiff and his family.

This conduct of Mr. Kargbo and the visits of the employees of the 1st Defendant to my mind support the Plaintiff's story that they tried to appeal to him not to take the matter to court and that the 1st Defendant would take responsibility for the accident.

/18

It seems to me from the evidence of both parties that the said employees tried to settle the matter amicably without the knowledge of the Country Director and their efforts failed when the Plaintiff and his wife demanded Le 50 million as compensation from them. It was then that the Plaintiff's wife forwarded the e-mail correspondence, Exh T1 on 5th March 2009 to the Country Director.

Furthermore there is evidence that the 2nd Defendant was charged to court with several offences in respect of the said accident. Surely the Police must have had sufficient evidence of his involvement in the accident for him to be charged to court.

In my judgment, the version of the Plaintiff and his witnesses is more credible than that of the 2nd Defendant. The 2nd Defendant is therefore found liable in damages for negligence.

Now counsel for the Plaintiff has urged that the 2nd Defendant's liability should be imputed on the 1st Defendant as the employer of the 2nd Defendant. The 1st Defendant however contends that it is not subject to the jurisdiction of the court by virtue of the Diplomatic Conventions Act 1961 and by virtue of the status Agreement made between the 1st Defendant and the Government of Sierra Leone dated 23rd February 2001, Exh U, granting the said 1st Defendant immunity from every legal and administrative process.

/19

Counsel for the Plaintiff has referred the court to the provisions of s. 11 of the Diplomatic Immunities and Privileges Act, 1961 which deals with immunities and privileges of international organisations and persons connected therewith. He has also relied on s. 20 of the said Act which provides that all Orders and regulations made under the Act shall be laid before Parliament within 14 days after the date of making thereof and that failure to so comply shall render the Order or regulation void. He submitted that Exh U is not in the form of an Order and even if considered an Order, it did not go through the parliamentary process described in s. 20 of the said Diplomatic Immunities and Privileges Act 1961. He contended that on that basis the document is void. He also relied on the provisions of s. 34 of the Interpretation Act 1971.

It is my view that Exh U is a Status Agreement entered into between the Sierra Leone Government and Plan International signed and sealed by both parties and in the case of the Sierra Leone Government signed by the then Minister of Foreign Affairs and International Cooperation. It is clearly not an Order or regulation within the meaning of the Diplomatic Immunities and Privileges Act 1961. Nowhere in the Agreement is there any reference to the provisions of the said Act as the authority under which it is made. In the circumstance it is an agreement which can be enforced by law and since there is no evidence that it is no longer in force it is therefore valid and its terms are still operative.

Article III of the said Agreement provides that –

“PLAN, its property and assets, wherever located and by whomsoever held, shall enjoy immunity from every legal and administrative process except in so far as in any particular case PLAN has expressly waived its immunity.”

The 1st Defendant therefore by the said Status Agreement enjoys diplomatic immunity and is immune from every legal process in Sierra Leone. In the circumstance the 1st Defendant has raised a valid defence that it is not subject to the jurisdiction of the court, and therefore cannot be held vicariously liable for the negligence of its servant the 2nd Defendant.

The 2nd Defendant is held liable for the injuries and damages suffered by the Plaintiff, who has produced receipts of payments for drugs, medical fees and transport fares in support of his claim for special damages. He is entitled to be reimbursed for such expenditures as listed in his writ of summons.

He has prayed for damages for loss of earnings at Le500,000 per month from 1st December 2008. At the date he was testifying before the court on 5th May 2010 he was still unemployed. I shall award damages for loss of earnings up to May 2010, a total of 18 months since he is under an obligation to mitigate his loss.

/21

He is entitled to Le 9 million for loss of earnings. General damages assessed at Le 15 million.

In sum judgment is given in favour of the Plaintiff against the 2nd Defendant and damages awarded as follows:

1. Reimbursement of all his expenditures in respect of drugs and other medical fees, transport fares as itemised in his writ of summons.
2. Loss of earnings amounting to Le 9, 000,000.
3. General damages assessed at Le 15,000.000.
4. Costs to the Plaintiff agreed at Le 4 million.

A. Showers
A. SHOWERS
JUSTICE OF COURT OF APPEAL

28/9/2012