

IN THE HIGH COURT OF KIRIBATI 2016

CIVIL CASE NO. 81 OF 2013

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|---------|------------------------------------|---------------------------|
| | [ARETAAKE IENTAAKE | PLAINTIFF |
| | [| |
| BETWEEN | [AND | |
| | [| |
| | [TENEA TENEA | 1 ST DEFENDANT |
| | [ATTORNEY GENERAL IRO COMMISSIONER | |
| | [OF POLICE | 2 ND DEFENDANT |

Before: The Hon Chief Justice Sir John Muria

3 September & 16 November 2015 (submissions from plaintiff)

Ms Kiata Kabure for the Plaintiff

Ms Taaira Timeon for the 2nd Defendant

JUDGMENT

Muria, CJ: This case has all the hall-marks of bad pleadings. So much so that when one reads the Statement of Claim, it is not clear what the plaintiff is claiming damages for.

2. Having narrated the alleged actions of the first defendant done to the plaintiff, the Statement of Claim simply states:

“WHEREFORE the plaintiff claims –

1. General damages.

2. Interests on such damages at such rate and for such period as may be just;
3. Costs of this action”.

3. Despite such deficiency in the plaintiff’s claim, the defendant has not taken any steps required under the Rules to ask for further and better particulars of the claim pursuant to O.21 r.7 of the *High Court (Civil Procedure) Rules*. The defendants simply filed a defence and wait for the trial. Without proper particulars of the damages claimed, the Court is left in a difficult position to properly consider the plaintiff’s claim.

4. The plaintiff, in the present case, pleaded no actual damages but simply claims “General damages” and “Interest on such damages at such rate and for such period as may be just” without stating what the general damages claimed are for. The case for the plaintiff, as evidenced from the submission by Ms Kabure of Counsel for the plaintiff is that the second defendant is vicariously liable for the actions of the first defendant.

5. The actions of the first defendant complained of by the plaintiff can be best described as a series of altercations between the first defendant and the plaintiff on 9 July 2013. Paragraphs 5 to 14 of the Statement of Claim contain the plaintiff’s allegations of what had happened on that day in question:

“5. At approximately 10.30am on 9 July 2013, the Plaintiff drove to KNYC maneaba to drop off his son who took part in the youth games. At the site there were no road signs blocking the vicinity.

6. Before the Plaintiff entered the entrance to the KNYC maneaba road, he stopped since there was a truck blocking the way. The truck parked

to where the Plaintiff will go and offloading its cargoes for their stall. The Plaintiff had to wait for while awaiting the truck to pass by.

7. Whilst waiting, the Plaintiff heard a loud voice coming towards his direction. As he turned around he saw the first Defendant walking towards him and abused him.

Particulars

The first Defendant vigorously asked the Plaintiff whether he has a brain or not and who told him to enter the said road whilst blocked by road signs.

8. The Plaintiff was offended by the first Defendant's approach and replied back by telling him that there were no police officers trafficking the road as well as road signs.
9. The first Defendant kept on arguing as to why he entered that road and as soon as he was near the Plaintiff's car he forced himself to confiscate the Plaintiff's car keys where he ended up scratching the Plaintiff's right hand. The Plaintiff pleads the medical report and will rely on this document at the trial of the suit.
10. The first Defendant then opened the Plaintiff's car at the driver's side and tried to pull the Plaintiff out of his car. The Plaintiff resisted him, closed his door and winded up his window as he was threatened by the first Defendant's attitude. As soon as the window winded up, the first Defendant hit the window and demanded the Plaintiff to step out of the car. At the time people started to approach the scene. The Plaintiff refused to step out of the car and drove away since he did not want to make a scene.

11. As the Plaintiff was driving towards Nanikaai, the first Defendant came along on a police truck took over the Plaintiff's car and shouted to him to pull over. The Plaintiff pulled over and the first Defendant again vigorously approached the Plaintiff and demanded him to go back to the Bairiki Station for interrogation. The Plaintiff demanded explanations as to why he has to go for interrogation when he told him that he was a police officer and he better do what he was told without questioning.
 12. The Plaintiff told the first Defendant that he needed to go to the hospital to get his arm checked due to his assault. The first Defendant replied by saying that if the Plaintiff filed a complaint then he was a poofter.
 13. During this argument police officers came on another truck and informed the first Defendant to remove his truck off the road since he's blocking the road. Another police officer called James Bakati approached the Plaintiff and the first Defendant where he told the first Defendant to let the Plaintiff go.
 14. The Plaintiff was humiliated and felt unsecured with police officers through the first Defendant's actions".
6. At the end of the pleadings, the issue agreed to by both Counsel is "whether the second defendant will be held vicariously liable for the unlawful actions of the first defendant or not". What those unlawful actions were, it is unclear.
7. The claim of vicarious liability of the second defendant is not expressly pleaded in the plaintiff's Statement of Claim. However, paragraph 15 of the

Statement of Claim states that the plaintiff instituted the action against the defendants jointly and severally. The implication one can read into paragraph 15 of the claim is that the plaintiff has brought the action against both defendants, so that in the event the claim against the first defendant succeeds, the second defendant would be made to be answerable for the first defendant's action.

8. For the second defendant to be vicariously liable for the action of the first defendant, the plaintiff has to establish the first defendant was the employee of the second defendant at the time of the incident and that he was acting in the course of his duty. However in the present case, I do not need to go so far to consider those aspects of the case.

9. In the Court's view, the plaintiff must give particulars of the nature of the damage claimed. This is important in order to ascertain the question of causation. The particulars of the claim is very relevant to identify the nature of the damage sought and the cause of the damage claimed.

10. It must also be pointed out that there has been no evidence to demonstrate the issue of causation arising from the alleged action of the first defendant as complained of in paragraphs 5 to 14 above and none has been pleaded.

11. This case demonstrates the pitfall all too often experienced in claims of the nature made in this case, that litigants often assume that they can claim general damages as a result of some actions of the defendant without any real need of proof that they have occurred. Evidence to show some form of loss has occurred is required, so that unless such evidence is presented to the Court, the chances of the Court refusing to award general damages is very high.

12. The position taken by the Courts in a claim such as the present one, where particularity is lacking, is pointed out in *Telsa Motors –v- BBC* [2011] EWHC 2760 (QB). In that case, the claimant, after setting out the Statement of Claim, simply claim **“damages calculated to cause pecuniary damage”**. No particulars have been given. The Court held that as no agreement by the parties to remedy the situation by amending the Statement of Claim to give particulars of the damages, the Court struck out the claimant’s claim. The Court held that the claim for damages is **“so lacking in particularity, it cannot be allowed to proceed. Unless it is capable of remedy, it must be struck out”**.

13. In my judgment, the damages claimed by the plaintiff in this case lacks particularity and as such it cannot be allowed to stand. See *Telsa Motors –v- BBC* [2011] EWHC 2760 (QB).

14. There is nothing before the Court to suggest that the defendants would consent to any amendment to the claim for damages and there has certainly been no application before the Court for leave to amend the claim for damages in this case. That being the position in this case, the plaintiff’s claim must be struck out.

Dated the 5th day of August 2016



[This Judgment had been prepared several months ago but not delivered due to the file and draft judgment in it being misplaced].