

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KABALE**

**HCT CIVIL SUIT NO. 085 OF 2010**

MWESIGYE GEOFREY :::PLAINTIFF

**VERSUS**

BOARD OF GOVERNORS

KIGEZI COLLEGE BUTOBERE:::DEFENDANT

**BEFORE HON. MR. JUSTICE J.W. KWESIGA**

**J U D G M E N T**

The Plaintiff, Geoffrey Mwesigye, the father of Tumwine Brian a deceased student of Kigezi College Butobere, the Defendant, sued the Defendant seeking damages of 103,400,000/= arising from the death of the said Brian Tumwine who died under un clear circumstances where he sustained a fatal closed head injury away from school when he was supposed to be in school on the night of 6<sup>th</sup> April, 2010.

Mr. Ngaruye, the Plaintiff's Advocate and Mr. Murumba, the Defendant's Advocates held a scheduling conference which did not disclose the material facts that were uncontested. Each party called one witness and closed respective cases and with leave of court each party filed written submissions and left the matter for this court to Judge. The case is so short that the background to the suit are summarized as follows:-

The Plaintiff's son called Brian Tumwine was admitted to Senior One in the Defendant School on or about 31<sup>st</sup> January, 2010. The Admission Letter was admitted as Plaintiffs **exhibit P.E.1**. On admission, the Plaintiff and the child received and accepted school Rules and Regulations admitted as Defence **exhibit D.E. 1**.

The school rules, inter alia, prohibit escaping from school and being out of bounds except where students are supervised. On or about the 6<sup>th</sup> day of April Brian Tumwine got injured outside the school at night and he died on 8<sup>th</sup> April, 2010 at Mbarara University teaching university where he had been transferred from Kabale Hospital. The death certificate, Plaintiffs **exhibit P.E.II** shows he died of

closed head injury. Dr. Mande Araali observed multiple skull fractures and brain damage.

The agreed issues for determination are:-

- 1. Whether the Defendant is responsible for deceaseds death.**
- 2. Whether the Plaintiff is entitled to the remedies sought in the Plaintiff.**

The Plaintiff (PW 1) testified the deceased was a boarding student. By the time he found him at Kabale Hospital, the deceased could no longer talk. The Headmaster informed him the deceased escaped from school at night and he met the fatal injuries away from school. Under cross-examination he said he was informed the deceased, contrary to the school rules, escaped out of school at midnight. The Defence evidence is that the deceased illegally went out of school when he was supposed to be in bed. On the fateful night DW, Mr. Bashungwa, the Headmaster and school authorities carried out a role call at 9:00 p.m and the deceased was in school. The Headmaster retired to sleep at about 11:00 p.m when the deceased was in school. He set out the administration precautions put in

place to ensure safety of all the students. These included erection of a fence around the school and employment of Security guards. Defence **Exhibit 'D2'** indicated that on 6<sup>th</sup> April, 2010 some students from Kigezi College Butobere attacked Kigezi High School 6 kilometers away. A number of injuries were sustained on both sides. The deceased was injured in this chaos. This report stands not contradicted by any evidence from the Plaintiff or the Defence. It remains the only plausible and most probable explanation pointing to the circumstances under which the deceased was fatally injured. Was the Defendant responsible for the death? The Plaintiff contended that the Defendant owed the Plaintiff a duty of care. That if death of any person is caused by any wrong act, negligence or default the injured person would have a cause of action to recover damages. There is no doubt that Tumwine Brian was a son of the Plaintiff. The Medical report and the other circumstantial evidence prove that the death was caused unlawfully. The multiple skull injuries must have resulted from multiple infliction of trauma on the deceased's head. Mr. Ngaruye Advocate for the Plaintiff submitted that the death was caused by the servants and agents of the Defendant. This submission is not supported by the evidence on record. The circumstantial evidence available shows that the

deceased was engaged with other un identified culprits in attacking another school 6 kilometers from the jurisdiction of the Defendant. He was on the balance of probabilities injured in execution of an unlawful adventure which has not been proved to have been authorized by the school, known by the school or fore seeable by the school and the school neglected the duty to prevent the occurrence. There is no doubt, in my view, the school authorities have a duty of care over the students admitted in the school. They take over this duty of care from the parents. This duty of care cannot be overstretched to areas out of control of the school when the students illegally and voluntarily withdraw from the jurisdiction of the school administration in violation of the school regulations. The schools are not expected to guard students with similar security strength as expected of prisons where Criminals are kept. This court takes Judicial notice that not all schools have fences as means to keep students within bounds of the school. The school set out regulations that depict the proximity or boundaries covered by their duty to care for and protect students. It is far-fetched to expect the school authority to keep 24 hours watch on each and every student who is in school. The precautions of a role-call that took place at 9:00 p.m and the head teacher going to bed at 11:00

p.m after ensuring that the students, including the deceased, were securely and safely in bed is evidence of reasonable care expected of the school authority in a boarding school keeping hundreds of students.

The deceased voluntarily assumed risks under which he was fatally injured and the Plaintiff has no basis for blaming the school authorities from whose care the son escaped in violation of the school rules that the Plaintiff accepted on admission of the son to the school. The duty to prove that the Defendant is liable in negligence, the Plaintiff must prove an Act or an Omission committed which the Defendant ought to have reasonably foreseen to be likely to cause injury to the students. With due respect to the Plaintiffs Advocate, the principles of Law settled in the case **DONAGHUE VS STEVENSON (1932) E.C 562** were misapplied to the facts and circumstances of the instant case because there was no foreseeability of the dangers and the defendant did not do anything injurious to the Plaintiff.

I accept Mr. Murumba's contention for the Defendant that the school authority's duty of care has limits. The duty of care does not extend to students who are in places and doing what is against the school sanctioned activities. I accept the position settled in the case **JAMEO NASSIMBA VS MUBENDE DISTRICT ADMINISTRATION (1978) HCB 203**. The duty to take reasonable care pre-supposes a foreseeable danger to be guarded against. It would be too much to expect the school authorities to protect students against unforeseeable or unanticipated danger.

One wonders whether the parents should be held negligent and answerable for the injuries that may befall by their children who escape from home when parents are asleep in the deep nights and the children go to night clubs and they get beaten there? The parents' duty, in my view would have stopped at making sure that the children have come home in time, they have had a meal, they have safely gone into their beds, the house doors are securely closed and the parents confidently retire to bed. If by mischief unknown to the parents the child escapes through the windows and die in nightclubs the parents will suffer the loss but will be absolved

of negligence or any other blame. I agree with the Defence Advocates submission that there is no cause of action proved against the Defendant. It follows that the Plaintiff is not entitled to the reliefs he seeks.

The Plaintiff's suit is dismissed. I appreciate the agony the Plaintiff has suffered due to the loss of the child and now unsuccessful litigation. Looking at the case as a whole if he had been properly advised he would have avoided the legal gumble and belief that he is entitled to damages of Sh.100,000,000/= without proof for its Justification. For these consideration I will not condemn him to any costs. Let each party be responsible for his costs.

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**J.W. KWESIGA**

**JUDGE**

**13-3-2012**

Read in the presence of:-