Topic: Statutory Negligence/Death as a Cause of Action/Loss of Dependency in Occupiers Liability as a field in tort law, appropriate defenses & reliefs.

April, 2024

By: Kenedy Kushaba[1]

1.0. Sample; A drowning child.

1.1. The Scope of Application

1.2. The applicable law is that of Occupiers liability which is defined to mean and include; the liability of an occupier of premises for damage done to visitors to the premises. It generally refers to the duty imposed on land owners to those who come unto their land. However, the duty imposed on land can extend beyond simple land ownership and in some instances the land owners may transfer the duty to others, hence the term occupier rather than owner.

1.3. In principle, an Occupier is a person who has a sufficient degree of control over premises to put him under a duty of care towards those who come lawfully upon the premises. By implication, the status of the occupier is not dependent on ownership of the premises but rather is based on control over the premises.

1.4. Therefore, a person who has the immediate supervision and control of the premises and the power to admit and exclude the entry of others is without doubt an occupier.

1.5. Occupier's liability is perhaps a distinct form of negligence in that there must be a duty of care and the breach of duty, causing damage. As such, the rules of remoteness apply to occupier's liability in the exact same way that they apply to negligence claims. Liability can arise on occupiers for omissions since their relationship gives rise to duty to take action to ensure the reasonable safety of visitors.

1.6. Crux to note is that, at common law the duties of an occupier were cast in a descending scale to four different kinds of persons; the highest degree of care was owned by the occupier to one who entered in pursuance of a contract with him for example a guest in a hotel and for an invitee, licensee and Trespasser the Occupier has lower duty of care.

2.0. The Applicable Law;

2.1. In section 5 of the Law Reform Miscellaneous Provisions Act sets forth a statutory authority that he who brings death of another negligently shall be held liable and there shall not be such an excuse that a person was in course of duty/employment which was express or impliedly agreed upon by agreement.

2.2. The rationale of the Act is to help persons claim upon any deceased person for whom they expected returns at a future time for example in the circumstances where a young child aged 1 and a half years drowns in a pond the parents may plead that they had high expectations that their deceased child would have become a medical practitioner or lawyer in the future so as to allow court apply the multiplier effect and assume how many years the deceased would have lived to award compensations.

---

[1] *(LLM Uganda Christian University, LLB (1st Class Hons. KIU), Int. Law. (Leiden University), Dip. LP (LDC) 1st Class Hons), Advocate & Founding Partner Redmond Associated Advocates.*

2.3. The purported cause of action in the circumstances is similar to the tort of negligence but some elements differ for example whereas in negligence the victim knocked down goes ahead to claim for damages, in the Act herein the victim must have died and their relatives are bringing the action posthumous.

2.4. Section 6 of the Act grants locus standi to relatives of the deceased to institute an action in statutory negligence for loss of dependency. Most importantly, the damages are awarded to the beneficiaries and not the bereavement because death is certain what is not certain is the time of death of such a person so, the law provides that it shall not award for bereavement but to the beneficiaries.

2.5. The specific aspect that affects occupiers Liability is that of a Warning. In most cases a warning of the danger will be sufficient to enable the visitor to be reasonably safe and so amount to a discharge by the occupier by duty of care but, if for some reason the warning is not sufficient then the occupier remains liable. In light of this principle, each case merits its own peculiar facts; one needs to ascertain whether there was any warning in the circumstances.

2.6. Further, ***Halsbury's Laws of England, 3rd Edition, vol. 28:36*** states that default under this provision means "not doing what is reasonable in the circumstances" Therefore, the short title of the Law Reform Act indicates that the Act was intended to give effect to the Fatal Accidents Act of England 1846-1901 among other English statutes . Halsbury's definition of default is therefore relevant at all material times in light of related causes of action.

3.0. Considerations of Court

3.1. The theory of the Multiplicand/principle Formula of the Multiplicand. This was extensively laid down in the case of ***Agnes Masene versus Uganda Peoples Transport Co. (1997) ALLER*** where the court laid down how to compute the compensations in causes of action arising out of statutory negligence.

3.2. Family Background. Where the purported plaintiff (s) plead pecuniary benefits where they may state that they expected a child to become an important person in future and; may be in future she could have recouped back benefits in monetary terms for more development purposes. The courts as a matter of practice have developed a test of looking back to the family Background whether it was a well off family. This cannot be underestimated.

3.3. Loss of Life Expectancy. In ***Bentham versus Gambling (1941) ALLER vol. 1 page 7*** facts of a child aged two and a half years died in a road accident and the court on the proper assessment of such damages in the case where the prospects of the boy were particularly favourable, was 200 Euros. The Assessment of such damages is not to be made upon an actuarial basis; it is not the assessment of compensation for loss of years or for the loss of future pecuniary prospects, but it is the fixing upon common sense principles of a reasonable figure for the loss of prospective happiness.

4.0. The Burden of Proof

4.1. In such actions of statutory negligence when someone acts in a careless way and causes an injury to another person, under the legal principle of negligence, the careless person will be legally liable for any resulting harm. However, the burden of proof rests on the plaintiff as per section 101 of the Evidence Act cap 6. ***See. Miller versus Minister of Pensions (1947) ALLER***

4.2. In the circumstances, the purported plaintiff (s) are required to adduce sufficient evidence that the owners of the premises were absolutely negligent in the absence of which liability will not be established against the Defendant Company.

5.0. Possible Defenses to the defendant

5.1 Contributory Evidence. The Plea is to the effect that a plaintiff was equally at fault and therefore reduces on the defendant's liability as to the quantum of damages the court would reward to the plaintiff(s). The principle here is that the adult person can't recover full damages it simply helps court in determining the quantum of damages but minors can succeed if the same defence is pleaded in their favour. It therefore, follows that if the party pleading contributory negligence is an adult person/defendant; he/she will not succeed save for helping court on determining the quantum of damages to award. ***See. Yosefu Musisi versus National Water and Sewerage Corporation HCCS No. 149/1973***

5.2 Voluntary Assumption of Risk/ Volenti Non Fit Injuria. This defence is premised on the argument that when a person engages in an activity, by which they accept and are aware of the risks inherent in it, they cannot later complain if they sustain an injury during the activity**. *See. Ocaye versus Saracen (Uganda) Limited and Others (2020) UGHC***. They also cannot seek compensation for that injury.

5.3 The idea is that if a plaintiff has assumed the risk, the defendant does not owe any legal duty to the plaintiff. Thus, the duty element of a negligence claim would not be met, and the plaintiff cannot recover for injuries caused either by risks inherent in the situation or dangers created by the defendant's negligence. In order to establish this defence, the onus is on the defendant to prove that the plaintiff expressly or impliedly agreed to incur such risk voluntarily, with full knowledge of the nature of the extent of the risk. The defendant must show that the plaintiff fully comprehended the risk of injury that materialized and freely chose to accept it.

5.4 Thus, in order to disqualify the plaintiff from all redress, the plaintiff must be shown to have consented to run that risk at his or her own expense so that the plaintiff, and not the negligent defendant, should bear the loss in the event of accident. The test of whether the plaintiff was aware of a risk is whether he or she was aware of the type or kind of risk and not its precise nature, extent or manner of occurrence.

5.5 Therefore, the three elements of the defence of Volenti non fit injuria that must be proved by the defendant in such cases are; - That the plaintiff perceived the existence of danger or risk, that he or she fully appreciated it and, that he or she voluntarily agreed to accept the risk.

5.6 Furthermore, the defendant must prove that the plaintiff had actual knowledge of the risk and fully appreciated the danger. The risk that a plaintiff must have an awareness of is not a generalized risk of injury; the defendant must prove that the plaintiff appreciated the risk of the defendant's breach of duty. The extent of knowledge must correlate with the risk. The defendant must prove that the plaintiff fully comprehended the extent of the risk and freely chose to accept or ignore it, thus voluntarily assuming the risk. ***See; Monie versus Common Wealth of Australia, (2007) NSWCA 230.***

5.7 What may not be clear in certain facts is whether Volenti can be pleaded where the victim of circumstances is a child within the meaning of the law or whether the same can be pleaded in favour of the defendant against the parents of the child under the doctrine of parental responsibility.

5.8 Intervening Natural Act/ Inevitable Accident. A person invoking the defence must show that something happened over which he or she had no control, and the effect of which could not have been prevented by using great skill and care. To succeed, the defendant is required to prove that the act causing the injury could not have been avoided by the exercise of the greatest care and skill. To escape liability, the defendant must show one of two things; i). The cause, and the result of the cause were inevitable; ii) the result and the cause not have been avoided. The defence is unlikely to prevail if the person seeking to invoke it caused or contributed in any way to the emergency situation or any situation of some sort.

6.0. Possible Reliefs

i. Damages (Special or General Damages)
ii. Damages for loss of services if any that the child used to offer. (The Plaintiff should not be speculative on this otherwise court will not be moved on such suppositions)
iii. Damages may also be pleaded in respect of loss of life expectancy/Funeral Services.
iv. Prospective and Pecuniary benefits….Among others.

7.0. Recommendations

7.1. Under Common Law Duty of Care the Plaintiff can go ahead and sue. The common law duty of care owed to all visitors as well as an entrant on contract with implied terms is defined as a duty such care as in all the circumstances of the case is reasonable to see that the visitor will be reasonably safe in using the premises for the purpose he or she is permitted to be there.

7.2. The Occupiers Liability Act at common law gives some guidance in applying the common law duty of care; a). An occupier must be prepared for children to be less careful than adults and; b). An occupier may expect that a person in the exercise of his calling will appreciate and guard against any special risks ordinarily incident to it, so far as the occupier leaves him free to do so. As to (a) above, it will be reasonable for the Occupier to expect children on his premises unaccompanied but the law is still as was stated before the Act, by ***Delvin J in Phipps versus Rochester Corporation, (1955) Vol. 1 QBD*** namely that some of the circumstances which be take into account in measuring the occupiers obligation is the degree of care for their children's safety which the occupier may assume will be exercised by the parents.

7.3. It is on the above novel decision that the plaintiff can go ahead and sue for the defendant can plead the defence of parental responsibility in as much as the duty of care for a parent is lower compared to that of the owner of the premises.

Kenedy Kushaba.

Disclaimer: No legal information contained in this paper should be construed as legal advice from the author nor is it intended to be a substitute for legal counsel on any subject matter.