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Critical Examination of the Doctrine and Practice of Res Gestae in the Courts of Uganda

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ABSTRACT

This research discusses the doctrine of Res Gestae as it is applied both under English law and Uganda's law of evidence, with specific reference to the Evidence Act Cap 6 of Uganda. The article revealed that the understanding of the doctrine of res gestae as it applies to Ugandan courts is confusing. In this light, the article calls for the evidence act to be amended and its provisions the doctrine of res gestae should be indicated clearly. The definition of res getsae should be given like any other legal term in the law of evidence. This will enhance the courts and scholars to understand the doctrine better than before. It is also recommended for official research which is carried out about the doctrine of res gestae in Uganda to be put online for accessibility by the scholars. This is due to those researchers being clearer with precise information about the doctrine. This will help to bridge the gap that most of the online information and textbooks available are based on English law.

Keywords: Res Gestae, Evidence Act, Uganda courts, Legal doctrine, Law of evidence

INTRODUCTION

Res Gestae is one of the principles of the law of evidence. The doctrine is not defined by the Evidence Act [1] as facts that are admissible in evidence as the surrounding circumstances of the event to be provided. It is a Latin phrase means that forming part of the same transaction (Things done). It means that the relevant portion of the event is connected with directly or indirectly with the main transaction of the event [2]. The declaration that is made at an event proves the event happened because the words were uttered upon witnessing the event or describe what is called the start to the end of a felony. In other words, the doctrine is used to connote acts, declarations, and circumstances constituting or explaining a fact or transaction in an issue or principle fact the principle fact and what constitutes res gestae are those other factors that are about the fact in the issue[3]. Fact in issue is defined by the Evidence Act, to mean and includes any fact either by itself or in connection with other facts; the existence, nonexistence, nature, or existence of any right, liability, or disability asserted or denied in any suit or proceedings necessarily follows[4]. It means things done or liberally speaking, the fact of the transaction, explanatory of an act or showing a motive for acting, a matter incidental to a main fact and explanatory of it; including acts and words which are so closely connected with a main fact as will constitute a part of it, and without knowledge of which the main fact might not be properly understood, even speaking for themselves though the instinctive words and acts of participants are not the words and acts of the participant when narrating the events, circumstance, facts, and declarations which grow out of the main fact, and contemporaneous with it and serve to illustrate its character or these circumstances which are the atomic and undersi$_{gn}$ed incidents of a particular litigated act and are admissible when n illustrative of such act [3]. The doctrine of Res Gestae is based on the assumption that every relevant part of the chain of events is considered before the final disposal by which disposal by the judiciary is under the criminal justice system so that no evidence can be discarded on the ground of irrelevant considerations even if some technicality is also deferring from case to case[5]. The reason behind this is the adoption of the doctrine of Res Gestae under criminal law as the necessity to prove some relevant facts. It may be proved by some other piece of evidence examined and titled as the doctrine of Res Gestae. Furthermore, it can be seen as "events with which the court is concerned or others contemporaneous with them"[6]. Under English common law, acts, declarations, and circumstances constituting, accompanying, or explaining a fact or transaction in issues are said to form part of res gestae, and evidence thereof is admissible. The classic formulation of the doctrine under the inclusionary common law doctrine is as follows; A fact or opinion which is so closely associated in time, place, and circumstances with some Actor event which is an issue that it can be said

to form a part of the same transaction as the act or event in issue, is itself admissible in evidence [7]. The justification given for the reception of such evidence is the light that it sends upon the Act or event in issue. In its absence and taken solely and exclusively, the transaction in question may not be fully or truly understood and may appear to be meaningless, inexplicable, and unintelligible. [10] The importance of the doctrine for present purposes is its provision for admissibility of statements relating to the performance, occurrence, or existence of some facts, events or state of affairs which is in issue. Such statements may be accepted or received by way of exception to the hearsay rule[8].

The doctrine of res gestae is incorporated in the evidence Act cap 6 from section 4 -15 of the law of Uganda. In the case of, [9], the accused had stabbed the brother of the deceased and had uttered threats against the deceased. Immediately afterwards, he was seen in the go-down of an immediate shop standing over the deceased holding a dagger. It was held that, the two circumstances were so interconnected, that the wounding or stabbing of the deceased's brother must be regarded as part of res gestae, in the trial of the accused in the murder of the deceased. Furthermore, this evidence was admissible even though it tended to lead to the commission of another offense. Makimli v R[10], the accused was convicted of the manslaughter of a boy by beating, and evidence of previous beating was held on appeal to be admissible under section 6 of the Evidence Act, in explanation to the substantiation of the cause of death which had been the blows in question acting on top of the blood clots caused by previous hemorrhages. On the other note, in the case of Oriental Fire and General Assurance v Govinder [11], the appellant sued the respondent seeking to avoid the motor vehicle policy that they had given to the respondent because the respondent had made a representation of the fact that they had been involved in the motor accident with a vehicle owned and driven by the first respondent. The issue was whether the statements made after the motor accident were part of res gestae. The court found that the statement was not part of res gestae because they were not made immediately after the occurrence of the accident. The Evidence Act[1] does not define the doctrine of Res Gestae. This leaves the doctrine unclear and confusing as it is not clearly defined by the law. This results in different interpretations of the doctrine by different scholars and authors, hence leaving the doctrine confusing. This creates a loophole in the law itself. However, there are some provisions in the law that provide for the circumstances of the doctrine of Res Gestae, this is from Section 4-15 of the Act, but still, most of the scholars could not appreciate the doctrine in its entirety due to the doctrine itself it's not well understood. In an event where those provisions of the Law are based on, the relevancy and admissibility of the doctrine, they also cause a dilemma as it's not well established whether the court based on those provisions of the Law, or the discretion is left to the Judges to decide on the admissibility of the fact. On the other hand, those provisions of the law cover unclear wide circumstances in terms of declarations, and statements made fall in the scope of the law framers. This leaves the question to be determined how and when the relevancy and admissibility of statements by the court. This article clears the intelligible and inexplicable of the doctrine of Res Gestae by giving a clear elaboration on the provisions of the law that provide for the doctrine of Res Gestae. It also sheds light on what the court considers the admissibility of the doctrine and expansion of it for an easy understanding of what the doctrine is all about.

The historical background of Res Gestae

The rule of Res Gestae first appeared in the year of 1693. The meaning of the doctrine seemed unclear and it was not defined. Thus in the case of, Thompson v. Trevanion [12], The case had to do with the statements made by the participants or observers of events. Thus, in this case, it was decided that what a wife said immediately upon the hurt was received, and before she had time to devise or continue anything for her advantage was held to be admissible in evidence. The court further stated that declarations accompanying an act are receivable in explanation thereof. In the year 1736, the court held that the declaration was admissible if concomitant with facts. The decision was made in the case of, Ambrose v Clendon [13]. Then the use of the doctrine of res gestae was in a brief discussion over a point of evidence in Home Tooke's trial for high treason. Nevertheless, the development of this doctrine did not begin until after Aveson v Lord Kinnaird [14] in 1805 when the phrase in question had begun to be freely used in connection with it. And only since the middle of the 1800s has been possible to say that, this exception was firmly established. R v Bedingfield [15], the principle of res gestae and the exception to the hearsay rule were discussed. Lord Justice Cockburn held that the statement was not admissible, since it was something stated by her after it was all over. He said that it was not part of the transaction; since it was said after the transaction was all over, being the cutting of the throat. Although the decision has been effectively overruled, it accurately illustrates the erstwhile principle used to define the Res Gestae exception, which resulted in unjust consequences. The decision of the Bedingfield case was too strict. However, this decision was overruled in the case of Ratten v R [16] Where under common law, the doctrine of res gestae was defined in liberal and wider terms. Lord Wilberforce said the evidence would have been admissible as part of the res gestae because, not only was there a close association in place and time between the statement and the shooting, but also how the statement came to be made, in a call for the police and the tone of voice used showed intrinsically that the statement was being forced from the wife by an overwhelming

pleasure of contemporary events.

Application of the doctrine of res gestae in Nigerian Courts

The application of the doctrine of res gestae as a rule of evidence in Nigerian courts has occurred on many occasions. Nigerian courts tend to follow the doctrine as it applies under English law. In some cases; decisions of courts have turned out contradictory. Some Nigerian cases will be considered. buttressing the position of Nigerian courts, The Court of Appeal, per Nikki Tobi, JCA, as he then was, stated in the case of Akpan v. State[17], although events may not always necessarily be strictly synchronous to make the doctrine applicable; there must be a clear and immediate approximation in terms of the same relative period and space.." in the case of R. v. Bang Weyeku [18], the accused was charged with murder and the only important evidence against him was the statement of the deceased person after he had been stabbed that, "Bang has shot me," which he made in the absence of the accused. It was held that this statement was inadmissible as a fanning part of the res gestae because the words were· uttered after the fact. Conversely, in Sule Salawu V. State [19], several persons one night heard the deceased cry "Sule is killing me" from a room. The witness rushed into the room at once and saw the deceased in a pool of blood. The Western State Court of Appeal held that the words "Sule is killing -me" were admissible · as res gestae, as those words were uttered contemporaneously with the act. The Court of Appeal in the case of Okoro v. State[20] admitted a statement made by the deceased shortly before he died as part of the res gestae, wherein the deceased had said that if he died, it was the gunshot injuries inflicted on him by Anthony Okoro, the defendant. The Court of Appeal admitted a declaration made by a deceased person as forming part of the res gestae. The deceased had said to another person, "I am dying, I am dying." In Momo Garba v. R [21], the court held admissible as part of res gestae the statement of the deceased which he had made to another person, stating that he was going to die. Similarly, in the case of Peter v. State [22] a gunshot was heard by a witness which attracted his attention. On getting to the scene, he saw the deceased on the floor shouting, "Igiri has killed me, lgiri has killed me." The court admitted the statement as fact forming part ofres gestae in the case.

From the cases mentioned above, it is quite obvious that Nigerian courts follow the application of the doctrine under English law. What is sometimes slightly confusing is the notion of contemporaneity. As mentioned above, However, contemporaneity is ·imperative as far as section 4, and other ancillary sections of the Act are concerned. In this light, there is a need for consistency in the application of the provisions of the Act because they slightly vary with the English law doctrine. In a review of the doctrine in Uganda, legal scholars and jurists define 'evidence' as depending on the context of the use of the term. For instance, Bryan [23]· defines evidence as "something (including testimony, documents, and tangible objects) that tend to prove the existence of an alleged fact. In Uganda, the authoritative definition of evidence is found in the Statute. The Evidence Act [1] defines evidence as [Evidence] denotes how an alleged matter of fact, the truth of which is submitted to investigation is proved or disproved; and, without prejudice to the foregoing generality includes statements by accused persons, judicial notice, presumption of law, admissions and ocular observations by the court in its judicial capacity. The purpose of the rules of Evidence, together with the rules of procedure is to ensure a fair trial for each party. The Law of evidence concerns the inclusion of all the legal means exclusive of mere arguments, by which any matter of fact in dispute is proved or disproved. In Uganda, section 4-15 of the Evidence Act sets out parameters of relevance within which evidence may be admissible.

Can the offense be proved without similar facts or evidence?

What other purpose does the evidence serve other than to cause prejudice against the accused person?

Section 14 [1] provides for evidence of similar facts or occurrences. Under the section, all evidence that establishes whether or not a particular act was accidental is admissible. The section provides that when there is a question of whether an act was accidental or not or done with particular knowledge or intention, the fact that such act formed part of a series of similar occurrences in each of which the person doing the act was concerned is relevant. Evidence of similar fact helps to establish intention and it can also be used to rule out defense such as honest intention. Even then a Judge has the discretion to keep away evidence of similar facts if it is prejudicial to the accused person. The locus classic on evidence of similar facts is seen in the case of Makin V. AG [24], Makin and his wife were charged with murdering a child. It was shown that the child's mortal remains were found buried in the garden of the Makins. There was no evidence that they had killed the child but there was evidence that the Makins had adopted this child from the parents. There was also evidence that the Makins had also adopted other children who were unrelated to this one. They were being paid after they adopted the children. There was also evidence that the children were never again seen by their parents after being adopted by the Makins. The investigators had found mortal remains of children in the gardens of the houses that the Makins had lived in before. The question was, is this evidence of houses and backyards relevant in the trial for the murder Makins had killed the children? There was a substantial connection between the activities of the adoption of the other children and the one

under investigation. There were striking similarities between the cases and the Makins had the opportunity to murder the children but the evidence of their dealings with other children was taken into consideration because of the similarities that the investigators had found. In that case, 2 basic principles were established. The principles were as follows:-

> You cannot lead similar facts to evidence merely to show the accused disposition to commit an offense. Lord Herschell states as follows "It is undoubtedly not competent for the prosecution to adduce evidence tending to show that the accused has been guilty of criminal acts other than those covered by the indictment to lead to the conclusion that the accused is a person likely from his criminal conduct/character to have committed the offence for which he is being tried." Disposition should not be a motivation for leading similar facts and evidence. On the other hand, the mere fact that the evidence adduced tends to show the commission of other crimes does not render it inadmissible if it is relevant to an issue before the jury and it may be so relevant if it bears upon the question whether the acts alleged to constitute the crime charged in the indictment were designed or accidental or to rebut a defense which would otherwise be open to the accused. Essentially the Makin case established parameters for admitting evidence of similar facts. Similar facts and evidence cannot just be used to show disposition.

The general principle was stated by the Privy Council in the following terms in the case of R v Smith [25], The accused was charged with the murder of a woman who was found drowned in a bathtub. It was made to look as if the woman died in an epileptic fit but evidence on record showed that the accused had, just before the woman's death, encouraged her to make financial arrangements in his favor. He denied the charge claiming that her death was accidental arising from a fit of epilepsy. Evidence was admitted that two other women had died in similar circumstances after the accused had gone through forms of marriage with them in turn and after each of them had made financial arrangements in his favor. He · challenged the admission of this evidence and on appeal, the issue was whether evidence of the other two deaths was rightly admitted. It was held that evidence of similar acts was admissible to show the guilty intent of the accused and to rebut the defense of the accident. The challenged evidence was admissible both to show that what happened in the case of the first woman was not an accident and also to show the intention with which the accused did what he did. The same issue was discussed in John Makindi v R [26] It was held that the evidence of previous beatings was relevant and admissible to explain· and substantiate the cause of death and to show the motive of the appellant for revenge on the deceased i.e. it was relevant to rebut the defense of accident which the appellant had put up.

Similar facts are evidence to identify the perpetrator or doer of an act

Where it is shown that a particular act has been done but nobody knows for sure who did it, if it so happens that other acts of distinctive similarity with the one under consideration have occurred and a particular person has been involved, then an inference may be drawn that he was the doer of the act under consideration. It is notable however that for this inference to be drawn the similarity must be very distinct to ensure propensity on its own should not be used to judge a person. For example, if handbags disappear and it is known that they disappear during the break and this time a person is caught walking out with a handbag and then it is discovered that this person never comes back to class after the break and a modus operandi is drawn that this person has been taking the handbags and the person has a liking for a particular kind of ·handbag. Essentially you are looking for similarities. In the case of, R V. Straffen [27], a young girl was found strangled by the roadside and it was clear from examining her that there had been no attempt at sexual assault on her person. Straffen had been seen around the scene of crime but there was no evidence that he was directly or indirectly connected with the murder. It was established as a fact that Straffen had strangled two girls at a different place two months earlier and had also left their bodies by the roadside. It was also clear that there had been no attempt at sexual assault on these girls. Straffen had been committed to a mental hospital for the offense and at the time the girl whose murder was under consideration had been killed; Straffen had escaped from the mental hospital and was at large. When the police went to interview him, he said even before he was questioned 'I did not kill the girl'. He was convicted based on the evidence of the other two girls. Again, it was established that he had had the opportunity to murder the girl having escaped from the mental hospital and the fact that he had been seen near the scene he had the opportunity and the propensity was so distinct.

Similarly in the case of Thompson v R.[28], Thompson had carnal knowledge of two boys and he gave them a date 3 days later. He described the place of the date as a street outside a public toilet. Thompson met the two boys at the appointed hour. On noticing the presence of strangers, Thompson gave the boys some money and asked them to go away. It turned out that these strange people were police and when they approached Thompson, he told them that they had got the wrong man. On being searched Thompson was found in possession of a few bottles of chemicals and a further search of his house yielded photos of naked boys. The judges relied on this evidence and its use as alleged by the boys. The boys said what the chemical had been used for. In the words of the court, being gay had

easily recognizable characteristics. It elicited a distinct propensity and was therefore a reliable means of identification.

Similar fact evidence can be led to prove the commission of an act

This applies in situations where it is not clear whether the act was done or it happened miraculously. If it is shown that a similar act has occurred caused by human intervention, this is a good ground for inferring that a particular act was done as opposed to it just happening miraculously. This is normally in situations where if you look at the acts in isolation, you can dismiss human acts and attribute them to nature but when you look at the acts together you can see they had help. In R. V. Smith [25], Smith married his first wife. He took out an insurance policy on her life in his favour. He made representation to his doctor that his wife was epileptic, a few months later his wife's dead body was found floating in the bathtub and a few months later the insurance was paid. Smith proceeded to marry another woman, took out an insurance policy on her in his favour, and made assertions that she was epileptic and she too was found dead in the tub he proceeded to collect insurance and married yet another one whose body was also found dead. He was charged with murdering wife no. 1 based on the subsequent deaths of wives 2 and 3 in similar circumstances. In the words of the court the coincidence was too fantastic to be credible and this of course ruled out the possibility that the drowning of the women in the bath was an accident. In the words of the court, the act was done by human hands and the motive was clear so it was not an act of God.

State of Mind or Bodily Feeling

A person may bring about particular acts or may commit a particular crime because of the state of his mind. The mental element in crime, tort, and other legal conceptions often becomes a relevant fact in the issue. In certain crimes, for example, it may be necessary to prove *mens rea* while in certain torts, it may be necessary to prove knowledge or negligence [29]. Section 13 of the Evidence Act [1] provides that facts showing the existence of any state of mind or showing the existence of any state of mind or bodily feeling are relevant when the existence of any such state of mind or body or bodily feeling is in issue or relevant. State of mind under the section can include intention or sanity, knowledge for example that particular actions will result in particular consequences, good or bad faith, and rashness or negligence. Under the section therefore, all evidence which may disclose any of the above is relevant. The accused may admit that he committed an act but his state of mind is not discernible. Looking at the evidence it is overwhelming that the accused committed the crime but it is not clear what his state of mind was. Under this circumstance, it may be the case that he had no intention to do what he did. E.g. a person could have killed a human being but the case could be that he killed the human being thinking it to be an animal. If the accused person had done similar actions where the state of mind was clear, then it can be inferred that the present act was done with the same state of mind as the previous ones. If, however, the state of mind in previous actions is unclear, the very nature of those acts conceded along with the present one may lead to an inference as to what the state of mind was. For instance, if a student were to be caught during the exams copying from the Evidence Act and in defense says that he did not know that he was wrong to copy from the Act if there is evidence that such a student has been previously caught in another subject doing the same and has been reprimanded for it, then the evidence would go to show that he is not innocent, the Evidence can be used to infer R v Francis [30] Francis was charged with attempting to obtain money from another person by presenting a certain ring to be a diamond ring. He said that he did not know that the ring he was purporting to sell was not a diamond ring and was worthless. There was evidence that he had previously approached other persons who had refused to give him money for the ring when they realized that the ring was not a diamond ring. The question was whether the Evidence of a previous transaction with other persons where these people had refused to give him money for the ring by realizing that the ring was worthless relevant. The court held that it was relevant to rebut the defense of lack of knowledge. The evidence of Francis's experience with other people was relevant to rebut lack of knowledge. The evidence of Francis with other persons was relevant here to rebut the lack of knowledge. In John Makindi V. R [23], evidence of a similar fact in John Makindi was admitted on the ground that it illustrated-· the hostility and ill-will between John Makindi and his foster child. On the state of mind, one of the findings explained the cause of the loss of blood and the other evidence showed that he had been previously taken to court and had threatened the child with further beating on account of having sent him to prison. Similar evidence can be used to show the intention in which an act was done. You can pin the act on a person because they admitted but you may be unable to establish what the state of their mind was. You use similar factual evidence to illustrate that a person had fraudulent intentions.

In R v. Bond [31], Dr. Bond was charged with using some instruments on a woman with the intent to procure an abortion. He denied the intent, he said that he was not using the instrument to procure an abortion but the instruments were to examine the woman. The prosecution however sought to lead evidence that the doctor had used the same instruments on another woman occasioning an abortion and the girl on whom he was being accused of using the instruments testified that the doctor had told her words to the effect that he had made dozens of girls happy and could do the same to her. The defense objected to this evidence because it was prejudicial and irrelevant

but it was admitted because it showed the doctor's intention in purporting to examine the woman and rebutted the doctor's assertion that he was using it to examine the woman. R V. Mortimer[32], Mortimer was charged with murdering a woman cyclist by knocking her down. He claimed that it was an inevitable accident. The prosecution however adduced evidence that Mortimer had on previous occasions knocked down other female cyclists. It was held that this evidence of the previous incident was admissible to show that he intended what he had done. It was not an accident. The nature of the event as a whole ruled out coincidence and the conclusion were gleaned from looking at the transaction as a whole. However, a state of mind must be shown to exist about a particular state of things or activity. In other words, that state of mind must be specific to a particular activity. The section explains that a fact that is relevant as showing the existence of a state of mind must show that the state ofmind exists not generally but about a particular matter in question.

CONCLUSION

The research engaged in discussions on the doctrine of res gestae and its application in both English and the Law of Uganda. Discussions have progressed further to examining both criticisms of the doctrine and certain instances where Ugandan courts have admitted statements forming part of res gestae. However, because this concept has been criticized in some aspects and observed by many commentators as sometimes a confusing concept, there is a need to have a to holistically approach necessary reforms needed to improve on the doctrine. In this light, the article calls for the evidence act to be amended and its provisions the doctrine of res gestae should be indicated clearly. The definition of res getsae should be given like any other legal term in the law of evidence. This will enhance the courts and scholars to understand the doctrine better than before. It is also recommended that official research that is carried out about the doctrine of res gestae in Uganda be put online for accessibility by scholars. This is due to those researchers being clearer with precise information about the doctrine. This will help to bridge the gap that most of the online information and textbooks available are based on English law.

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