

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION
CIVIL SUIT NO. 0177 OF 2020

KALULE MARVIN ::::::::::::::::::::::::::::::::::: PLAINTIFF

VERSUS

UMEME LIMITED ::::::::::::::::::::::::::::::::::: DEFENDANT

BEFORE: HON. JUSTICE SSEKAANA MUSA

JUDGMENT

The plaintiff who was a minor at the time of the incident filed this suit seeking for a declaration that the defendant's agents conduct of unprofessionally carrying out repair works resulting in one high voltage falling amounted to breach of duty of care towards the public in general and the plaintiff in particular and were consequently negligent, for a declaration that the defendant is vicariously liable for the negligence of her staff; an order against the defendant for compensation for permanent incapacity; general damages for psychological trauma and inconveniences suffered against the defendants in a sum of 500,000,000/= and costs of the suit.

The plaintiff claims that on the 3rd day of April, 2020 the defendant's agents carried out repairs by way of replacing an electricity pole in Bruno-Konge village and that in the course of the said repairs the defendant's agents loosely connected back the wires onto the new pole leading to one of the high voltage wires falling off and hanging in a manner that could spell danger to the public.

That on the 21st day of April, 2020 while the plaintiff was walking near the hanging live wire he got electrocuted. The plaintiff sustained severe injuries both on his left leg and right arm who in the course of his treatment the plaintiff's arm got amputated.

The defendant contended that there was no such negligence and at all material times its agents and or employees carried out duties and or activities in a lawful and professional manner and all its connections are fastened in accordance with its service standards and manuals.

The defendant denied knowledge of any communication of the presence of loosely connected wires either through the plaintiff or the local leadership or any stakeholder as claimed

The defendant denied the fact that its agents were negligent and stated that on the day the plaintiff claimed to have been electrocuted there was a power outage in the area and that the plaintiff was contributorily negligent.

The parties filed a joint scheduling memorandum with no agreed facts and documents save for the issues for determination.

ISSUES

1. *Whether the defendant is liable in negligence? And if so whether the defendant was contributorily negligent?*
2. *What are the remedies?*

DETERMINATION

Whether the defendant is liable in negligence? And if so whether the defendant was contributorily negligent?

The plaintiff's counsel submitted that negligence is a question of fact and it must depend on the circumstances of each case. The standard of care

expected is that of a reasonable person. The plaintiff also pleaded and relied on the doctrine of *Res Ipsa Loquitur*.

The plaintiff submitted that PW 2, PW3, & PW4 all led evidence to show that the defendant's workmen carried out repairs in form of replacement of an electric pole in Bruno-Konge village and part of the exhibits shows the pole being replaced. Additional evidence by way of photographs were taken by PW3 showing the defendant's workmen fixing a loosely connected high voltage.

The plaintiff submitted that the defendant owed a duty of care to the public at large and the plaintiff in particular, which duty the defendant failed to exercise resulting into the injury to the plaintiff. The particulars of the defendant's negligence according to the plaintiff were;

- *Erecting and connecting live high voltage loosely and unprofessionally resulting in one of the wires falling.*
- *Failing or refusing to attend and fix the hanging live wire in spite of being informed of the mishap.*
- *Failing and refusing to respond to the victim's treatment calls all through since hospitalization.*

The defendant's counsel submitted the defendant does not dispute the duty owed to the public at large. They rather maintained that at all material times their agents carried out their duties in a lawful and professional manner and ensures that all of its electrical installations are proper and safe condition to avoid any harm to the public.

The defendant's further contended that the principle of *Res Ipsa Loquitur* is not applicable in the circumstances and the plaintiff is still required to prove that according to the facts, the defendant was negligent.

In the alternative, the defendant submitted that if indeed there were loose wires in the area, the plaintiff did not take extra caution to avoid the incident considering he lives in the same community that was aware of the

hanging wires. The defendant averred that the plaintiff was contributorily negligent and was careless in taking care of his safety. He ought to have reasonably foreseen that walking to a live electricity wire might hurt him having known such an effect.

Analysis

Negligence in law means omission or failure to do something which a reasonable man, under similar circumstances would do or that which a reasonable man would not do. If that failure results in injury, then there is a cause of action.

Negligence as a tort has been widely defined and understood through several court decisions. The Court in the decision of ***Blyth vs Birmingham Water Works (1856) 11 EX.78***, held that:-

“Negligence” is the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do.”

The court in the much celebrated decision of ***Donoghue vs Stevenson [1932] AC 562*** provided what I can refer to as the ingredients of negligence, as follows;

- a) The defendant owed the plaintiff, a duty care.
- b) The defendant breached that duty resulting into damage on or against the plaintiff.
- c) The defendant and no other, is liable for the breach of duty.

It is also the position of our law that in a cause of action based on negligence, the particulars of negligence must be pleaded. See; ***Mukasa –vs- Singh & Ors 7 [1969] EA 422***. It is a requirement that the plaintiff in the pleadings must state the facts upon which the defendant’s duty is founded and also show the precise breach of duty complained of as well as particulars of the damage sustained. This was satisfied in paragraph 6 and 12 of the plaint. The

defendant is then duty bound to rebut them. The Court of Appeal in the case of *Embu Public Road Services Ltd vs Riimi* [1968] EA 22 noted that where the circumstances of the accident give rise to the inference of negligence, then the defendant in order to escape liability has to show that there was a probable cause of the accident which does not connote negligence or that the explanation for the accident was consistent only with an absence of negligence.

The general rule is that in an action for negligence the burden of proof is on the person who complains of negligence. This is because negligence is a question of fact not law, and it is the duty on who asserts prove it. He must show that he was injured by an act of omission for which the defendant is liable. There must be proof of some duty owed by the defendant, breach of that duty and consequent damage to the plaintiff. Further the act or omission must be proximate cause of damage to the plaintiff. Where the balance is even as to which part is in fault, the one who relies on the negligence of the other is bound to turn the scale. The initial burden of making out a prima facie case of negligence against the defendant lies heavily on the plaintiff.

It therefore follows that the defendant must show that there was no negligence on their part which contributed to the incident, or that there was a probable cause of the accident which did not connote negligence on their agent's part or that the accident was due to circumstances beyond their control.

In this case, the plaintiff argued that the defendant's employees and agents were negligent in execution of their work when they left loose electric wires hanging and the plaintiff was electrocuted when he came in contact with the live wire. The defendant does not deny the fact that they owe a duty to public to ensure that the wires are properly and professionally fixed to avoid the same getting in contact with the public. The defendant attempted to deny there being any works in the area around the said period. I do not agree to their denial and it is baseless since the exhibits-photographs clearly show the defendant's staff working on the replacement of electric poles in the area.

The plaintiff's medical form clearly showed that he was treated for electric burns which resulted in amputation of his arm.

The plaintiff's counsel tried to plead the principle of *res ipsa loquitur* but with great respect I do not agree with his argument. The purport of the doctrine of *res ipsa loquitur* is to shift the onus on a defendant to disprove negligence. *Res Ipsa Loquitur* is a form of circumstantial evidence by which a plaintiff, in an appropriate case, establishes the defendant's negligence. It raises a rebuttable presumption of negligence by the defendant and presents a question of fact for the defendant to meet with an explanation.

The doctrine of *res ipsa loquitur* is applicable when, in the circumstance of a particular case, there are some evidence which, viewed not as a matter of conjecture, but of reasonable argument, makes it more probable that there was some negligence, upon the fact as shown and undisputed, that occurrence took place without negligence. In other words, the doctrine applies when the facts stand unexplained and therefore the natural and reasonable, not conjectural inference from the fact shows that what had happened reasonably to be attributed to some act of negligence, on the part of somebody.

The doctrine of *res ipsa loquitur* was not a rule of law; it merely described the state of evidence from which one might draw inference of negligence to enable justice to be done where the cause remains unknown. The cause of the incident in this case is known and has been explained in evidence by both parties as either negligence or total lack of negligence. The court has found that that indeed there was negligence on the part of the defendant when they left loose electric wires hanging and the same caused injury to the plaintiff.

Contributory negligence

Contributory negligence is negligence in not avoiding the consequences arising from the defendant's negligence, when the plaintiff has means and opportunity to do so. In fact, it is the non-exercise by the plaintiff of such

ordinary care, diligence, and skill, as would have avoided the consequences of the defendant's negligence.

The rule of contributory negligence is based on the maxim '*in pari delicto potior est conditio defendantis*' which means where both parties are equally to blame, neither can hold the other liable. But the question arises where both the parties are not equally at fault then what is the criteria of holding the defendant liable?

The doctrine of contributory negligence serves only as a partial defence to reduce the plaintiff's claim for damages and must be specifically pleaded. See *Pitts v Hunt* [1991] 1 QB 24

Whether the plaintiff was contributorily negligence can be drawn from the facts as present surrounding the circumstances of the entire case. The plaintiff in his pleadings stated that he got electrocuted while he was walking near the hanging live wire on 21st day of April, 2020.

PW1 who was among the doctors who attended to the plaintiff stated that the inpatient discharge form showed that the plaintiff was admitted with electric burns and reported that while moving his arm got into contact with live wires which were hanging. He stated that the plaintiff sustained approximately 17 percent TBSA third degree electric burn.

PWII stated that he stays near the electric poles which had a hanging wire and when he was sent to the market at Kasanga, he was using a short cut route and not the main road. PWIII stated that he was going through with a small path and she does not know why the plaintiff touched a hanging wire.

Contributory Negligence of Children.

The doctrine of contributory negligence does not always apply to children. It is no defence to say that the child itself was negligent, for, negligence is a state of mind and children have not sufficient mind to judge quickly as an adult.

The rule of contributory negligence will, therefore, not inflexibly apply in cases where the young children are concerned. The rule is more difficult to make out in case of a child than in the case of an adult. When the plaintiff is a child, allowance must be made for his inexperience and infirmity of judgment. The category of the minor will be a major factor in applying the principle of contributory negligence.

An infant cannot be negligent but a minor of tender years may be able to exercise a sense of judgment and thus be liable for contributory negligence.

The plaintiff who was aged 16 years during cross examination stated that he understands the effect of getting in contact with a live electricity wires prior to the incident and he was well aware. It is clear from the evidence on record that he was walking and his arm got into contact with the live electric wire. He was contributorily negligent on the incident and is partly to blame for the unfortunate incident.

What are the remedies?

The plaintiff prayed for an order for compensation for permanent incapacity sustained by the plaintiff and general damages for psychological trauma and inconvenience against the defendant to the tune of 500,000,000/=.

Analysis

The plaintiff's permanent incapacity was sustained partly due to his contributory negligence when he touched or got in contact with electric power line. He was aware of the consequences of his actions and this resulted in serious electrocution. The plaintiff was using a short cut or small path instead of normal or ordinary road which would have been avoided if he has used the main road.

General damages.

General damages are awarded at the discretion of court. Damages are awarded to compensate the aggrieved, fairly for the inconveniences accrued as a result of the actions of the defendant.

In other words, the whole process of assessing damages where they are “at large” is essentially a matter of impression and not addition. Per Lord Hailsham, LC in *Cassell v Broome* [1972] 1 All ER 801 at 825

Secondly, general damages for personal injuries do not take into account the possibility that the plaintiff may suffer further harm in future as a result of the incident which gave rise to his action.

The plaintiff suffered severe injuries that led to the amputation of his arm as a result of the negligence of the defendant.

Since the plaintiff has been found to have contributed to the accident or incident, this court awards general damages against the defendant in a sum of 50,000,000/=.

Interest on the general damages at the rate of 15% per annum from the date of judgment until payment in full.

The plaintiff is also awarded 50% of the costs of the suit.

I so order.

Ssekaana Musa

Judge

15th September 2023