



IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO. 237 OF 1990

BETWEEN:

D E KUMKWAWA.....PLAINTIFF

- and -

ELECTRICITY SUPPLY COMMISSION OF MALAWI.....DEFENDANT

CORAM: MTEGHA, J.

Mhone, of Counsel, for the Plaintiff
Chirwa, of Counsel, for the Defendant
Phiri, Court Reporter
Kaundama, Official Interpreter



J U D G M E N T

The plaintiff in this case brought this action against the defendant to recover the sum of K102,800.25, being the value of property which was destroyed when the plaintiff's house caught fire. He is alleging that the fire was caused by the defendant's negligence. The negligence was particularised as:

- (a) Failure to service the circuit breaker; and
- (b) Failure to properly maintain the electricity line to the house.

The defendant denies that it was negligent.

The plaintiff is an employee of the University of Malawi, Chancellor College, Zomba. Being an employee of the University, he was allocated a house by the University - House No. 40, Kalimbuka. The defendant, on the other hand, is a Statutory Corporation charged with the provision of electricity in the country.

The plaintiff's evidence is that on 27th April 1989, at about 6.30 pm, he and his wife left their house to attend a video show. Earlier during the day, he saw the defendant's employees working on a power line in the area. At about 10.00 pm, he was informed, at the video show, that his house had caught fire. He rushed to his house and he found his house completely destroyed together with all the property in it. The property which was destroyed and their prices were listed, and the value of the property allegedly destroyed amounted to K102,800.25. In cross-examination,



the plaintiff stated that it was the responsibility of the University to wire the inside of the house; that it was the responsibility of the University to service the circuit breaker, and, according to the agreement between the plaintiff and the defendant, there was nowhere where it stated that the defendant would service the circuit breaker.

The evidence of the second witness for the plaintiff was that on this material day, he went to the plaintiff's house to chat with the plaintiff's younger brother and to record some tapes, but they did not record the tapes because of lack of electricity. The defendant's servants were working on the electricity lines. At about 5.00 pm, he saw them wiring and at the same time he heard them debating whether they should connect electricity or not, or have the job completely done before they did so. He then left for his home without his tapes being recorded due to lack of electricity. He was later told that the house had caught fire.

The next witness for the plaintiff was the plaintiff's younger brother - Raphael Kumkwawa. It was his evidence that on 27th April 1989, he saw the defendant's servants working on electricity lines and they finished at about 5.00 pm. He said that he heard them saying: "just connect electricity because the time is over" and that they would continue the following day. They connected electricity. It was his evidence that he and the rest of the children went to bed at about 8.00 pm, and by this time his brother and his wife were not there. He noticed that the electricity was on and off. He thought it was the usual problems with ESCOM. He then heard an explosion; he woke up and noticed smoke in the bedroom. He opened the door; he noticed the corridor was full of smoke. He rushed to the children's bedroom and woke them up and they escaped through his bedroom window after cutting the burglar bars. The fire started from the sitting room going into the bedroom. After they were safely out, he went to Mr Mbuluma's house to phone the Fire Services, who arrived at the scene after the house was completely burnt down. They failed to rescue any property. He did not know where the fire started from. It was his evidence in cross-examination that the cooking was normally done on the electric cooker, and when they went to bed, no electrical appliance was left on.

The last witness for the plaintiff was his wife, who told the Court that when their house was burnt, she and her husband were away. However, apart from the furniture in the dining room and sitting room, there was no cooker in the sitting room; there was no fridge in the sitting room, no fan in the sitting room; there was no stereo equipment in the sitting room, nor was there any heater, and there was no other instrument in the sitting room which used electricity.

The defendant called three witnesses. The first one was Kenneth Wilson Chagwa. He is a Senior Fire Officer with the Lilongwe City Council, but between 1974 and 1990 he was based at Zomba Municipal Council as a Fire Officer, and he was the officer-in-charge of the Fire Services. It was his evidence that on 27th April 1989, a house in Kalimbuka caught fire. As a result, he submitted a report to the Town Clerk and copied it to the Police and Chancellor College. He was at the scene throughout.

On their arrival at the scene, they found the sitting room was engulfed in fire and the fire was going towards the bedrooms.

Property worth K36,000.00 was rescued, but the owner estimated that property worth over K100,000.00 was destroyed. It was his evidence that the fire might have been caused by a short circuit and unserviceability of the circuit breaker. According to this witness, most houses in Kalimbuka are old, and according to his observations, the fire must have started from the sitting room, and with fuels such as furniture, it quickly spread.

The second witness for the defendant was Jenala Kazembe, an employee of the defendant. He told the Court that on 27th April 1989, the plaintiff's house caught fire, and on this night he was on duty. When he heard that the house was on fire, they rushed there and removed the fuses and disconnected the cable from the roof. When he checked the cable, he found no fault with it. It was further his evidence that on this day, the other defendant's employees were replacing a rotten pole, a distance of a kilometre away, and if it was the fault of these people who were working on the pole, then a number of houses in the area would have been affected, since there were many houses in Kalimbuka area.

It might also be mentioned here that the Court went to visit the scene, and this witness showed the Court what he did and he also showed the Court the place where his colleagues were working. It was noted that the distance from the plaintiff's house to this place was about 1 kilometre, and it is the place where there is a transformer.

The last witness for the defendant was Mr Alex Hayes Likoya. He is employed by the defendant as an engineer and he is based at Zomba.

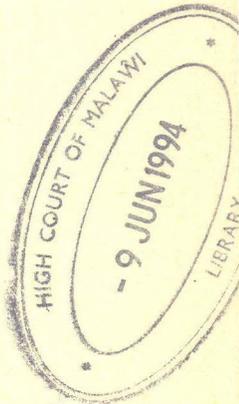
It was Mr Likoya's evidence that his duties include the supply and distribution of electricity; as such, the defendant's responsibility in the provision of electricity terminates at the metering point. Therefore, the circuit breaker is the responsibility of the consumer. The consumer has to service it. Furthermore, any electrical installation beyond the metering point is the responsibility of the

consumer. It was his evidence that short circuit is when wires carrying electricity come into contact. According to this witness, a short circuit will reflect back to the source, but not beyond the point where it occurs. By the same application, if the defendant's cable carrying electricity to the plaintiff's house was damaged, and there was a short circuit, the reflection would have been toward the source, and not to the house. Again, if there was high voltage, the electric apparatus would have been affected, depending on how high the voltage was; and again, high voltage would not only affect one house, but several houses. It was again his evidence that according to the defendant's engineers, the cause of the fire was that a fire was lit below the fuses, which were above the boiler, in order to heat water, and the fuses got burnt. It was further his evidence in cross-examination that although electricity is reflected back to the source, if there is a short circuit, the point where there is short circuit might ignite if there is flammable material. It is not, therefore, possible for a house to start burning on top of a roof where power is connected, because it will be reflected to the transformer; never has he seen fire from a transformer to a house.

From this evidence, it is clear that the plaintiff did occupy House No. 40, Kalimbuka, which caught fire on 27th April 1989. It is also not disputed that some considerable property was destroyed in the fire. It has been argued by Mr Mhone, Counsel for the plaintiff, that according to the evidence, the fire was caused by the defendant's negligence, and the particulars of negligence have been set out earlier on in this judgment.

"The burden of proving negligence is on the plaintiff who alleges it...; it is not for the doer to excuse himself by proving that the accident was inevitable and due to no negligence on his part; it is for the person who suffers the harm to prove affirmatively that it was due to the negligence of him who caused it. Unless the plaintiff produces reasonable evidence, there is no case to go to the jury and it is the duty of the Judge to enter judgment for the defendant" - *Salmon on Torts*, 13th Edn., p445.

It has been argued by Mr Mhone that there is evidence from PW2 and PW3 that on this material day there was no supply of electricity because the defendant's servants were working on the pole which supplied electricity to the plaintiff's house and at the end of the day they debated as to whether they should connect power to the house or not, since they had not finished the work they were doing. By debating whether or not they should connect the power, it means they were not sure that the line was good; therefore, they were negligent in carrying out the work. As a result, the house caught fire. He has further submitted that since the defendant's Secretary was not aware of the incident by



19th April 1990, while the Zomba office should have made a report in accordance with the requirements of section 38 of the Electricity Act, it means that the defendants' servants knew that they were at fault. The defendant was, therefore, negligent.

On the other hand, it has been conceded by the defendant that indeed it was its duty to maintain the electricity cable to the house in question; the question is whether the defendants failed to do so. I do not think that the evidence has disclosed negligence. It is not correct that the defendant's personnel were working on the line that supplied electricity to the house of the plaintiff only; the Court was shown where they were working; it was about 1 km away, and had the employees been negligent, according to the evidence of Likoya, all the houses would have been affected. I do not think that this particular negligence has been proved to the requisite standard.

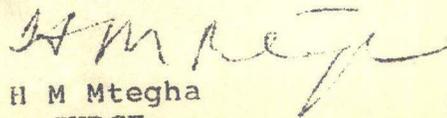
It has also been argued that the fire was caused by failure, on the part of the defendants, to service the circuit breaker. Mr Mhone's argument stems from the report which the officer-in-charge of the Fire Brigade made. In that report, he said:

"I have no doubt to conclude that the fire might have readily started in the sitting room through short circuit and the unserviceability of the circuit breaker - there are strong indications to prove this - for example - the considerable damage done to the sitting room walls and the excessive damage done to the roof structure of the sitting room."

From the evidence which is before me, I cannot believe that the circuit breaker was unserviceable. There is no evidence to show that the defendant failed to properly maintain the circuit breaker. In fact, it was clearly the defendant's case that it is not responsible for the maintenance of the circuit breaker. The plaintiff himself conceded that it was the duty of the University to service the circuit breaker.

All in all, I do not think that the plaintiff has proved his case to the requisite standard. This action must, therefore, fail. It is dismissed with costs.

PRONOUNCED in open Court this 1th day of May 1994, at Blantyre.


H M Mtegha
JUDGE

HIGH COURT
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