

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA**  
**AT GULU**  
**HIGH COURT CIVIL SUIT NUMBER 0013 – 2006**

**KOMAKECH GEOFFREY ::::::::::::::::::::PLAINTIFF**

**VERSUS**

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

**BEFORE: HON. JUSTICE REMMY K. KASULE**

**JUDGMENT**

The plaintiff claims from the defendant company special damages of shs. 16,509, 000/= being cost of a destroyed building and household property. He also claims general damages.

The claim arose as a result of an electric fire that burnt the plaintiff's house and personal properties at Ayul "B" ward, Kitgum Town Council, Kitgum District on 12.08.2005.

The defendant, a limited liability company, registered under the companies Act is being sued as the distributor and provider of the electricity to the plaintiff, as a customer, at the stated burnt plaintiff's premises.

At the scheduling conference four issues were framed for resolution by court.

1. Whether the defendant was negligent in providing electricity to the plaintiff's premises.
2. Whether the doctrine of **Res Ipsa Loquitur** applied to the plaintiff's case.
3. Whether plaintiff suffered any damages, and if so, what is the quantum.
4. What are the remedies available to the parties.

As to the first issue, the plaintiff testified that a qualified electrician carried out the electric wiring of his premises at Ayul "B" ward, Kitgum and that there after, on being satisfied

with the wiring, he was connected to and supplied with electricity. This was in April, 2003. He produced exhibits P1 and P2, being receipts of payments for connection, and exhibit P3, being certificate of completion of installation as proof that the wiring was proper and was approved. Otherwise there would never have been any connection of the electricity power supply to the suit premises.

Plaintiff's further testimony was that as from 2003 he had no problem with the electricity supply at his stated premises until the 12.08.2005. On that he had left his premises without any problem in the morning, then at about mid-day, while in Kitgum Town, he received a report that his house and properties were on fire. The fire had been caused by faulty electricity supply in Ayul wards "A" and "B", Kitgum Town. He rushed home, and while proceeding to his home in Ayul "B" ward, he saw electricity fire sparks on the electricity installations in the area. Residents were complaining of an electric fire problem in both Ayul "A" and "B" wards, Kitgum Town.

On arrival at his home in Ayul "B" ward, he found his house and personal properties inside burning. He made a report to the defendant's office and to the police in Kitgum Town. Representative from both Police and the Defendant came to the scene of the fire and carried out investigations. One Oryema owner of a bar in the area, was also affected by the faulty electricity and he too made a report to the defendant.

According to plaintiff, before the fire broke out, the electricity in the area, would become low and dim at a certain moment of the day, and then suddenly it would go to a high voltage at another moment. Plaintiff concluded from this that it was the transformer in the area that was faulty, possibly due to the increased number of consumers of the electricity in the area at that material time.

After the incident of 12.08.2005, the whole area had no power for about a month, a transformer was changed and a new one was provided by defendant and power restored.

In further proof of negligence on the part of defendant, PW2, Komakech Johnstone, an employee, on casual basis, with the defendant at the material time, who possessed an electrical certificate craft II, working with the defendant's linesmen putting new poles and replacing transformers, stated that on 12.08.2005, while at defendant's premises in Kitgum Town, two customers reported to defendant that electricity was faulty in Kitgum Town.

One was an hotel proprietor while the other operated a grinding mill. The complaint was that electricity power in their respective areas was fluctuating from high to low and vice versa. While still at the defendant's premises in Kitgum Town, a report was also brought in of the plaintiff's house and properties having caught fire due to faulty electricity supply in the area. This witness, together with other employees of the defendant, proceeded to check on the complaints which included visiting plaintiff's premises.

According to this witness the fault with the electricity supply in the area, at that material time, was that a neutron in the transformer had got broken and this had resulted in fires starting, including the one that burnt the house and properties of the plaintiff. The witness explained that fire had to happen because with the neutron being broken, the voltage of the electric current had to rise without being controlled.

In finding out what was wrong with the electricity supply system on that day, the witness was with the defendant's employees, the assistant faulty officer, one Ibigu Jimmy, and the Senior Linesman Grade II, amongst others.

As a holder of Electric craft II certificate, the witness was knowledgeable about wiring a building, motor-vehicles and understood what would happen if a neutron in the transformer got spoilt. The fire had to break out as the voltage rose without being controlled.

The witnesses, together with the rest of the inspection team of defendant, on inspecting the plaintiff's premises, after the fire, found that the fire started from the meter box and then entered the plaintiff's building.

PW3: D.C. Ekolo Lawrence and PW4 D/Asp Okot David, both of Kitgum police station at the material time, confirmed that police investigations of the incident, showed that other people, in addition to the plaintiff, also reported the faulty electric power supply being responsible for causing damage to their respective premises, and that the area manager of the defendant confirmed that the transformer in the area was faulty, resulting in high voltage and thus the fires.

Defendant denied any negligence on his part. According to evidence of DW1, Ebong Bonny, a technical officer of defendant, with a diploma in electrical engineering, the cause of the fire at the plaintiff's premises was the faulty electrical engineering inside the plaintiff's house that got burnt.

This witness visited and inspected the plaintiff's premises after the fire and made a report, exhibit D1, dated 15.08.2005 whereby he found that the electric wiring at plaintiff's premises was improperly done as 2.5 mm<sup>2</sup> instead of 4 mm<sup>2</sup> cable had been used and the same had got burnt. There was also no proper earthing done to conduct excess current to the ground. The fire had started from inside the house spreading towards their main switch and meter Number, but the meter position was still intact and there was no sign of fire, even as at the time of the making of the report: i.e. 15.08.05. The report, though recommending further investigations to be carried out, concluded that the cause of the fire was not from UMEME side.

According to this witness, he was told that the wiring contractor had not issued to the plaintiff an installation certificate, and since the wiring contractor was a private contractor, he had to bear the blame, and not the defendant, for the faulty electric wiring.

Court notes that DW1 did not deny that PW2 was at the material time, an employee of the defendant and that he, PW2, did visit the scene of complaints, the plaintiff's premises inclusive. There are, therefore, two conflicting versions as to the cause of the fire, both versions, coming from witnesses who were employees of the defendant, at the material time. According to DW1: it was the faulty wiring inside the house, while according to PW2, it was the faulty transformer that caused the fire. Court has to resolve as to who of the two witnesses stated the truth to court.

DW1 offered no explanation as to why, since 2003, when the alleged faulty wiring was done; and connection to the main electricity power supply done, up to 2005 when the fire broke out, the plaintiff's premises had not been affected by faulty wiring all that time of DW1 also did not show court, cause any photograph of the inside of the metre box to be taken to show that it was not burnt inside. The photograph produced by the plaintiff exhibit P5 (b) shows a bundle of electric wires from the metre box disjoined from the electric wires going inside the house. It was not ruled out by any evidence that fire or high voltage of electricity could not have caused this. Further, DW1 contradicted himself by maintaining that the wiring was faulty, yet when challenged that an installation certificate exhibit P3, was issued to plaintiff showing that wiring was proper and that is why plaintiff was connected to the main supply, DW1 admitted that:-

***“ UEDCL/UMEME would only connect on being satisfied that the contractor has done a satisfactory job.***

***By virtue of the fact that a certificate was issued, then the installation is taken to be alright.”***

As one who worked with Uganda Electricity Board for 14 years, then 3 years with Uganda Electricity Distribution Company Limited and 2 years with the defendant, successor in title to the previous two companies as regards electricity distribution, DW1’s failure to give a straight forward explanation, coupled with his being contradictory as shown above show that he did not tell the whole truth to this court. Court saw the demeanour of the witnesses PW2, PW3, PW4 and DW1. PW2, PW3 and PW4 gave their evidence in a straight forward manner, without in any way being reluctant to answer any questions put to them. On the other hand, DW1 took long and was reluctant to give answers to some of the questions put to him under cross-examination, particular where the answers sought tendered to be against the case of the defendant.

Court prefers, on a balance of probabilities, to believe the evidence of plaintiff, PW2, PW3 and PW4, which was consistent and not contradictory, that the cause of the fire was the faulty transformer in the area and that other customers in the area, in addition to the plaintiff, were victims of this faulty electricity supply. The evidence of DW1 as to the issue of negligence is rejected as being not straight forward.

The defendant, as the authorized licensee to distribute electricity to the plaintiff, owed a duty of care to the plaintiff as defined by Lord Atkin in DONOGHUE VS STEVENSON (1932) AC 562:

***“You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour persons so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question”***

It was thus negligence in failing to ensure that a proper transformer – and indeed the whole system of distributing and providing electricity to the plaintiff, was in place.

Though not specifically pleaded, DW1 testified, and it was submitted, that the defendant is not liable because according to the lease exhibit D3, that obtains between the

defendant and Uganda Electricity Distribution Company Limited, the predecessor to the defendant in the distribution and supply of electricity in Uganda, the defendant only took over the assets, and did not take over the liabilities of the predecessor company, i.e. UEDCL.

As already stated the defendant never pleaded in the written statement of defence that there is no liability by reason of the terms of the lease agreement, exhibit D3. What defendant pleaded was denial of negligence and that the doctrine of *res Ipsa Loquitur* does not apply to the facts of this case.

Be that as it may be, this court is unable to conclude from the list of “**Leased Assets**” on page 7 of the lease: exhibit D3, that liabilities like those of the plaintiff, are not the responsibility of the defendant. The mere listing of “**Leased assets**” cannot on its own alone mean that the defendant is not liable for the acts or omissions of the predecessor company.

Further, on the evidence of PW1, PW2, PW3 and PW4, which court, for reasons already given, has preferred to that of DW1, the negligence complained of by the plaintiff is of acts and omissions of April, 2005, when the defendant was directly responsible for distributing electricity and supply electric power to consumers, including the plaintiff. The negligence that this court has found as established is that on 12.08.2005, or there about, the defendant failed to put in place necessary proper equipments to ensure the safety of consumers, plaintiff inclusive, while distributing electricity and supplying electric power, to the plaintiffs premises in Ayul “B” ward, Kitgum Town, Kitgum District.

Finally, the terms and conditions of the Lease Agreement, the defendant is trying to rely on, are matters specially within the knowledge of the defendant, the lease agreement being a private arrangement between the defendant and the Uganda Electricity Distribution Company Limited. The arrangement is not a matter of public knowledge, for the plaintiff to have had access to and knowledge of such terms and conditions. The burden therefore was on the defendant to add to this suit the Uganda Electricity Distribution Company Limited, or whoever the defendant took to be liable on the basis of the alleged private arrangement to avoid liability as contained in exhibit D3. The defendant did not only plead the issue in defence, but also took no steps to add to the suit the one he regarded to be liable.

This court, on the reasons stated above, rejects the defendant contention that he is not liable for the plaintiff for the negligence complained of. The answer to the first issue is that the defendant was negligent to the plaintiff.

The second issue is whether the doctrine of **Res Ipsa Loquitor** applies to this case.

The essential requirements for the applicability of the doctrine of **res Ipsa loquitor** are first that: the event causing the accident or damage must have been under the sole control and management of the one, or an authorized agent or representative, the doctrine is being applied against second, the occurrence of the event must be such that it could not have happened without negligence. Third, must be no evidence or explanation as to how or why the occurrence took place: See **Roy Nanziri & Another vs Joseph Kambaza: (1978) HCB at 304, Odoki Ag. J.** as he then was.

The doctrine of **Res Ipsa Loquitor** therefore applies when the cause of what is complained of lies solely within the defendant's or defendant's servant or agent's knowledge, control and management. The doctrine does not create a legal irrebuttable presumption of negligence, but rather a rebuttable one. The plaintiff is required to prove only the occurrence of the event complained of in the first instance, and then the defendant can show that the event could reasonably have occurred without negligence on the defendant's part or of those for whom defendant is responsible. Then the plaintiff, in order to succeed, must prove negligence on the part of the defendant: See **M.N. SHUKLA: The Law of Tort, 14<sup>th</sup> Edition, page 236.**

In the case, the subject of this judgment, the defendant was, as distributor and supplier of electricity, in sole control and management of the equipment and the whole system of the distributing and supplying electricity to the plaintiff.

The evidence of both the plaintiff and his witnesses as well as that of the defendant's witness, establish that the breaking out of the fire on the plaintiff's premises in Ayul "B" ward, Kitgum Town, could not have happened without negligence.

On the facts of the case however, it cannot be correct to assert that there was no evidence or explanation as to how or why the fire broke out. According to evidence and explanation for the occurrence of the fire, the transformer of the defendant was faulty, thus allowing a high voltage of electricity to go to the plaintiff's premises and in the process causing the fire. On the other hand, the defendant's evidence and explanation is that it is the faulty wiring in the inside of the plaintiff's premises that was the cause of the fire.

Therefore both plaintiff and defendant had evidence and explanation as to the cause of the fire and as such the last test of the applicability of the doctrine of **Res Ipsa Loquitor**, is not satisfied.

The doctrine therefore does not apply to the facts of this case.

The plaintiff had, to prove his case on the basis of establishing negligence on the part of the defendant. Court has already held, while resolving the first issue, that plaintiff has, on a balance of probabilities, established negligence on the part of the defendant, for the happening of the fire.

The third issue is whether the plaintiff suffered any damages, and if so what is the quantum.

Court is satisfied from the evidence of PW1, PW2, PW3, Pw4 and DW1 that the plaintiff's residential premises in Ayul "B" ward, Kitgum Town, got burnt on 12.08.05. There was damage to the building and personal moveable properties also got burnt and destroyed in the process.

Where an article is destroyed by negligence, the owner of the article is entitled to recover from the one who negligently caused the destruction of the article, the market value of the article as at the time or immediately after the destruction: See **EAP & TC V DR. LODHIA: EACA CIVIL APPEAL No. 52 OF 1974.**

In his evidence, plaintiff testified that he recorded the items of the moveable items which were inside the house that got burnt and were destroyed in the process. He also ascertained their values, and where necessary, in consultation with the traders in Kitgum Town, who deal in those items. The list was admitted in evidence as exhibit P4. Photographs of the plaintiff, inside the burnt house, with the destroyed items of the personal properties being displayed, were also tendered in court as exhibit P5( c) (e) (g) (J) and (k). DW1 did not deny that the plaintiff's premises and moveables were destroyed by the fire.

Court accepts the plaintiff's evidence that his moveable properties and premises as itemized in exhibit P4 were destroyed by the fire caused due to the negligence of the defendant.

Plaintiff is thus entitled to the market value of the destroyed moveable properties, the market value being as at 12.08.05, the date the fire occurred or soon thereafter.



According to the plaintiff the values of the moveable items destroyed were ascertained soon after the fire had happened. Court has examined the values of the moveable articles put up in respect of each item in exhibit P4. Defendant did not adduce any evidence that any of the values is exaggerated or unreasonable. Be that as it may, court is conscious of the fact that it is not possible to be exact in assessing the value of each item. Some allowance must be given for an over-assessing of an item here and there. Doing the best in the circumstances, and making allowance for any over assessment, court awards to plaintiff shs 7,509,000/= instead of the claimed shs. 8,509,000/= as the value of the moveable properties destroyed by the fire on 12.08.05.

Plaintiff claims shs 8,000,000/= as item number 59: “ **Burnt House**” in exhibit P4. No valuation report, and no valuer testified to court as to the cost of the damage to the plaintiff’s house. There was no evidence as to the building items bought for purposes of repair of the house, or whether or not any repairs had been carried out at all, and at what cost.

However, the evidence that damage was done to the plaintiff’s house by the fire, is overwhelming: PW1, PW2, PW3 and PW4 all testify to this damage. DW1, both in his evidence to court and in his written report, exhibit D1, acknowledges damage having been done to plaintiff’s house. The photographs: Exhibit P5 (a), (b) (e) (f) (g) (h) and (i) show damage to the house by way of cracks in the walls, burnt electric wires and timber and smoke blackened part of a roof.

Since plaintiff has not adduced evidence to justify shs 8,000,000/- as being the value of the damage to the house, this court, on the basis of the evidence availed to it, awards a sum of shs. 4,000,000/= under this item.

As to general damages, the plaintiff and his family members, were put in inconvenience by having the house, which was home, and properties for every day use, destroyed by the fire, due to the negligence of the defendant. Though the matter of the fire and destruction of property was brought to the attention of the defendant immediately it occurred, nothing was done by the defendant to come to the rescue of the plaintiff and his family. Court therefore awards to the plaintiff shs 2,000,000/= general damages in the premises.

The last issue, as to what remedies, are available to the plaintiff, has been resolved while disposing of the third issue.

In conclusion judgment is entered for the plaintiff against the defendant for:-

- (a) Shs 7,509,000/= the value of the plaintiff's moveable properties destroyed.
- (b) Shs 4,000,000/= cost of the damage to plaintiff's house,
- (c) Shs 2,000,000/= general damages.
- (d) The sums awarded above are to carry interest at 15% p.a. from 12.08.2005 the date the fire occurred, in respect of the sums in (a) and (b) above; and from the date of Judgment in respect of the sum in (c) above, till payment in full.

The plaintiff is awarded the costs of this suit.

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Remmy K. Kasule  
Judge  
05<sup>th</sup> September, 2008