

- i) *Payment of USD 147,516.84 being the value of the burnt Restaurant trade items.*
- ii) *UGX.102,594,575 being the value of burnt personal items.*
- iii) *General damages for loss of business.*
- iv) *Interest on any Pecuniary award at the rate of 24% p.a from the 22nd July, 2011 till payment in full.*
- v) *Costs of the suit.*

The 1st plaintiff's claim against the defendant is for recovery of UGX.520,590,015/= being the reinstatement cost for damage to her property comprised on plot 16 Acacia avenue, Kampala, Us \$ 60,000 being rentals from 1st August 2011 to date, mesne profits from the date hereof until payment in full, general damages, interest and costs of the suit.

The particulars of the negligence as stated by the plaintiff were;

- a) *Failure to keep the transformers in a sound and safe functioning condition.*
- b) *Failure to ensure proper handling of overhead electrical lines.*
- c) *Failure to maintain a monitoring system to check fire outbreaks.*
- d) *Failure to regulate the voltage of electricity being consumed.*
- e) *Failure to promptly and duly act and rectify the faulty system despite several notices and complaints.*

On the other hand, in their written statement of defence, the defendant pleaded that;

- i) *The defendant shall aver that the said alleged incident never took place and or without prejudice if it did take place it was not in the manner which it is*

alleged. That if the incident did take place it was caused by a fire that did not originate from the conductors but rather from the 1st plaintiff's premises themselves and any negligence could only have been as a result of the 1st plaintiff or third parties.

ii) The particulars of negligence in the plaint are denied and the 1st plaintiff shall be put to strict proof. In response the defendant shall aver that;

- It carries out its duties in a lawful and professional manner.*
- That the 1st plaintiff acquired the property in issue in 2007 which was long after the electricity line in issue had been installed.*
- That it never carelessly or negligently caused the fire that burnt the 1st plaintiff's property.*
- That it has never received any complaints from the plaintiff concerning the electricity wires being dangerously close to the roof of the plaintiff's property.*
- The 1st plaintiff's actions or inactions amount to contributory negligence.*

The particulars of contributory Negligence are that;

-Failing to prevent the fire that originated from the 1st plaintiff's premises from spreading to the electricity lines, wires and other infrastructure.

-Building houses right below the electricity wires and infrastructure without first consulting the defendant.

-Failing to put in place adequate safety measures.

iii) The defendants shall aver that it is not entitled to compensate the 1st plaintiff for any loss suffered as a result of her contributory negligence. Without prejudice to the afore mentioned the defendant shall aver that the loss alleged is over exaggerated, inflated, exorbitant and made in bad faith and as against a wrong party.

- iii) *The defendant shall aver that it is not entitled to compensate the 1st plaintiff for any loss suffered.*

At the scheduling conference, these were the issues for determination that were agreed upon by both counsel.

- a) *Whether the fire was due to the Negligence of the defendant?*
- b) *Whether the plaintiff was guilty of contributory negligent?*
- c) *What remedies are available and to whom?*

In their submissions, the 1st plaintiff submitted that the defendant had a statutory duty as a licensee to maintain, repair, improve, examine, alter or remove the electricity supply line that ran over the property of the plaintiff as provided by Section 68 (67 in the 2000 Edition) of the Electricity Act, 1999. That as shown by the evidence adduced in court, the defendant failed to discharge that statutory duty of care and thus the defendant is bound by law to ensure prompt payment of fair and adequate compensation to that person.

Learned Counsel for the 1st plaintiff cited the case of *Kiga Lane Hotel Limited Vs Uganda Electricity Distribution HCCS 557 of 2004* Justice Yorokamu Bamwine of the High court reviewed the law on Negligence and quoted from the authorities as follows;

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

That in this case, the defendant had disconnected the plaintiff for 35 days without cause and that the defendant was under a duty to take reasonable care to avoid acts or omissions which it could reasonably foresee would be likely to injure the interests of the plaintiff.

Learned Counsel for the plaintiff stated that the 1st plaintiff had six witnesses to prove her case and that those witnesses gave cogent and truthful testimony sufficient to discharge the burden and standard of proof that lay on the 1st plaintiff. Counsel also stated that those were also independent witnesses none of whom were employees of the 1st plaintiff and that the totality of their evidence proved more than on a balance of probabilities that the cause of the fire at the suit property was as a result of the defendant to properly maintain and repair the electric supply line.

Having looked at the submissions of the 1st plaintiff I will go ahead and resolve these issues since the defendant did not file written submissions.

Issue one: *Whether the fire was due to the Negligence of the defendant?*

It is important to first mention that the plaintiff's claim is founded on the tort of breach of a statutory duty of care and of Negligence. Counsel for the 1st plaintiff states that the defendant's failure by the defendant to properly maintain, repair, improve an electric supply line resulted into the cause of the fire.

Negligence was defined in the case of *Blyth Vs Birmingham water works (1856) 11 EX 781* as;

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

A plaintiff who alleged negligence has to prove that;

- i) *The defendant owed him a duty of care.***
- ii) *The defendant broke that duty***

iii) ***The plaintiff suffered a loss.***

How far the courts are prepared to extend this “**duty of care**” was decided in part in the leading case of *Donogue Vs Stevenson(19327 AC 562)* where Lord Atkin contented himself with pointing out that in English Law there must be, and is, some general conception of relations giving rise to a duty of care of which the particular cases found in the books are but instances. He went on to lay down the basis of the present law in the doctrine of the Neighbour principle in this much quoted passage;

“The rule that you are to love your neighbour becomes in law, you must not injure your neighbour; and the lawyers’ question, who is my neighbour? Receives a restricted reply. You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. Who, then, in law, is my neighbour? The answer seems to be – persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I was directing my mind to the acts or omissions which are called in question”.

The 1st plaintiff called six witnesses to prove her case. The evidence of the different witnesses will be analysed by this court.

PW2 was Godfrey Ajal a security guard who was on duty the night the fire gutted the suit property. In his witness statement, he states that;

“the fire was started as a result of high winds which caused the electric cables, which were loose, to crash into each other thereby creating violent electric sparks. He further testified that one of the cables which were crashing into each other broke off and landed on the roof of the property thereby setting it on fire. He also testified that his colleague PW6 Abdu Omoding had on several occasions complained about the loose cables to the defendant’s employees but nothing was ever done about this”.

PW6 Abdu Omoding corroborated this in his witness statement when he testified that;

“this did not come as a surprise to me because on previous occasions I had personally witnessed those wires being blown when there was heavy winds and crashing each other. I do recall telephoning Umeme offices and telling them of the problem those wires were likely to cause since they were very loose. I also remember bringing the matter to the attention of Umeme employees who used to come to check the electricity meters for billing purposes but I never saw any Umeme people coming to rectify the problem”.

PW1 who was Engineer Dr. Vincent B.A Kasangaki a registered Engineer with over 30 years experience in Electrical Engineering gave evidence as an expert . He testified at paragraphs 10 to 12 that;

“from my professional qualification and experience I do know that when live conductors at different levels of voltage touch each other short circuits are caused and this can easily result in sparks.

That on the Umeme Ltd system, the voltage between the neutral and any of the three phases is 240 volts and therefore the sparking caused by the touching of conductors of any two phases would be more intense than that between the neutral and any of the three phases. Sparking between live electric conductors on the 240/415 volts low voltage distribution line can generate heat of temperatures between 160 and 300 degrees centigrade. This heat could very easily set some materials on fire if such materials are adjacent to the fire and their ignition points are equal or below the temperature generated by the sparks”.

PW4 was SP Hassan Kihanda who held the post of Acting Deputy Commissioner Disaster and Rescue in the directorate of Fire and Rescue Services of the Uganda Police. He was part

of the team that responded to the fire alert at the suit property and helped put it out after many hours of fire fighting. He stated that;

“Upon further investigations at the scene of the fire we were able to establish that the cause of the fire were sparks originating from overhead electrical wires, which passed over the roof of the building, that crashed into one another, fell on the grass-thatch roof and ignited a fire that spread over the entire roof due to the prevailing winds of the early morning”.

Upon perusal of the above evidence, elements of negligence are glaring. As noted above one of the witnesses testified that his colleague PW6 Abdu Omoding had on several occasions complained about the loose cables to the defendant’s employees but nothing was ever done about this. Another witness recalls telephoning Umeme offices and telling them of the problem those wires were likely to cause since they were very loose but nothing was ever done by the defendant to avert the situation. All this shows that the defendant owed a duty of care to the defendant but broke that duty towards the plaintiff.

This is further corroborated by the evidence of the witness for the defendant DW1 Joseph Kimuli who conceded that although they are supposed to inspect their electricity networks annually this particular part of their network had not been inspected in a long while.

This collaborates the evidence for the plaintiff that the electricity site where the suit premise was were never maintained in a good condition and yet it was reasonably foreseeable that the hanging wires would cause harm to the plaintiff. The defendant was under a duty to take reasonable care to avoid acts or omissions which it could reasonably foresee would be likely to injure the interests of the plaintiff.

In the case of ***Mwananchi services Station & Another Vs Minga (1973) E.A 305***, the court of Appeal for East Africa held that;

“You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. Who, then, in law is my neighbour? The answer seems to be persons who are 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” .

This case is in line with section 67 of the Electricity Act which provides that;

“A licensee authorised by the Authority either generally or on a particular occasion may place and maintain electric supply lines in, over or upon any land and for that purpose it shall be lawful, upon written authorisation by the Authority, for the licensee or his representative”.

From the above provision, the defendant failed in his statutory duty as a licensee to maintain, repair and improve the electricity supply line that ran over the property of the 1st plaintiff hence causing a fire. This court finds that the fire was due to the Negligence of the defendant.

Issue 2:

Whether the plaintiff was contributory negligent.

IN their written statement of defence, the defendant set out the following particulars of contributory negligence against the second plaintiff.

- a) *Failing to prevent the fire that originated from the plaintiff’s premises from spreading to the electricity lines, wires and other infrastructure.*
- b) *Building right below the electricity wires and infrastructure without consulting the defendant.*
- c) *Failing to put in place adequate safety measures.*

As stated by counsel for the second plaintiff, according to Black's Law Dictionary Contributory negligence refers to:

“a plaintiff's own negligence that played a part in causing the plaintiff's injury”.

As a general rule, the burden of proof lies on the defendant to prove that there was contributory negligence.

Throughout the testimony of the only witness for the defendant, contradictory information was given which further weakened the defence case. The defendant's only witness Mr. Joseph Kimuli testified that he had never been to the said premises prior to the incident to be able to prove the allegation of contributory negligence. In his witness statement he states that;

“The fire that gutted the plaintiff's structure must have been caused by a fire which started from the plaintiff's own premises/ kitchen and not from the broken pole or overhead conductors as is alleged in the plaintiff's claim”

During cross examination, when tasked to illustrate through a sketch plan the location of the kitchen of the restaurant, the witness placed the kitchen near the electric pole yet in fact the said kitchen was not gutted by fire.

The defendant's witness also testified that the defendant had never warned the second plaintiff against the alleged construction of the premises below the line. This shows that the allegation by the defendant that the second plaintiff's building right below the electricity wires and infrastructure without consulting the defendant never amounted to non compliance of safety measures. Counsel for the second plaintiff illustrated this by citing Regulation 5.4 of the Electricity regulations which provide that;

“Notwithstanding clause 5.3, a consumer is deemed to comply with this code unless such consumer is expressly informed by the licensee of non-compliance or otherwise becomes aware of the non-compliance”.

The evidence above shows that the second plaintiff did not receive any warning that the premises were constructed in the wrong place and therefore this court assumes that he had complied with the statutory measure for safety. It is the finding of this court that on a balance of probabilities, the defendant failed to discharge the burden of proof of contributory negligence against the second plaintiff and the above issue is answered in the affirmative.

Issue 3: What remedies are available and to whom?

The 1st Plaintiff prayed for the following in the pleadings:

- a) *UGX.520,590,015/= being the cost of restoration of the suit property as at the time of filing the suit.*
- b) *Us \$ 60,000/= being lost rent from the first month after the fire until the date of filing this suit.*
- c) *Mesne profits at the rate of US\$ 7,000 per month from the 1st day of August 2012 until the date of Judgement.*
- d) *General damages in the sum of UGX.500,000,000/= for anguish and mental torture as well as to partially compensate for the loss of value of money.*

The second plaintiff also prayed for;

- a) *Payment of Us \$147,516.84 being the value of the burnt restaurant trade items.*
- b) *UGX.102,594,575/= being the value of the improvements on the burnt restaurant building.*
- c) *Us\$ 9,346.72 being the value of the burnt personal items.*

d) *General damages of UGX.700,000,000/=.*

On the other hand, the defendants averred that it is not entitled to compensate the 1st plaintiff for any loss suffered as a result of her contributory negligence.

That without prejudice to the afore mentioned the defendant shall aver that the loss alleged is over exaggerated, inflated, exorbitant and made in bad faith and as against a wrong party.

In the witness statement of PW5 Peter Mukyetema the Technical Quantity Surveyor presented a valuation report Exhibit "PEX2" showing what it would cost the 1st plaintiff to have the suit property restored to its pre-fire condition. The total cost amounted to UGX.520,590,015/= being the cost of restoration of the suit premises. This information was never rebutted.

This court awards UGX.520,590,015/= as amount of total cost for restoration of the suit property.

According to the tenancy agreement, annexure "A1" the 1st plaintiff used to receive \$ 5,000 as rent per month from the suit premises. If this rent is computed from the day the suit premises caught fire on 22nd July 2011 to 27th August 2012 when the suit was filed is approximately one year. This brings it to \$ 60,000 being lost rent for the plaintiff. This court awards the same for the lost rent.

The 1st plaintiff also prayed for General damages. General damages are damages which the law implies or presumes naturally to flow from the wrongful act and may be recovered without proof of any amount. This court finds a sum of UGX.30m/= (Thirty million) as an appropriate amount for general damages to the 1st plaintiff.

On the other hand, annexure “G” shows that the total sum of Us \$147,516.84 is the value of the burnt restaurant trade items. However this court finds that it is quite exorbitant since there are no receipts attached for the above items. This court awards US \$ 52,755 for all the equipments prayed for.

The 2nd plaintiff also prayed for UGX.102,594,575/= (*one hundred two million five hundred ninety four thousand, five hundred seventy five only*) being the value of the improvements on the burnt building. This still is on the higher side and this court awards UGX.40,000,000/= (*forty million only*) as value for the improvements of the burnt building.

The 2nd plaintiff prayed for general damages of UGX.700,000,000/= (*seven hundred million only*). General damages are awarded at the discretion of court. Following the general principles of awarding general damages because of mental torture as well as loss of money value, this court finds an award of UGX.50,000,000/= (*fifty million only*) as appropriate for award as general damages

The costs of the suit are awarded to the plaintiffs.

Stephen Musota

J U D G E

15.11.2017

15.11.2017:-

Mr. Kagoro Friday Robert assisted by Ms. Anne Kalungi for 2nd plaintiff is in court.

1st plaintiff is in court.

2nd plait is in court.

Mr. Kagoro:-

I am holding brief for Didas Nkurunziza for the 1st plaintiff.

Jackie Court Clerk.

Court:-

Judgment delivered

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Joy Bahinguza Kabagye
ASSISTANT REGISTRAR

15.11.2017