

**IN THE HIGH COURT OF UGANDA AT KAMPALA  
(CIVIL DIVISION)  
CIVIL SUIT NO. 41 OF 2016**

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- 1. OKURA KEMISI**
- 2. NAMUSISI SHAMIM :::::::::::::::::::::::::::::::PLAINTIFFS**

**VERSUS**

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

**BEFORE HON. LADY JUSTICE H. WOLAYO**

15 **JUDGMENT**

**Introduction**

This suit is brought under Law Reform (Miscellaneous Provisions Act Cap 79) for compensation for unlawful death of the late Aisha Kiiza who was electrocuted to death and for the injuries sustained by the Second Plaintiff Namusisi, due to electric shock. The defendant denies liability and avers the deceased victim Kiiza Aisha contributed to her death through illegal connections to electricity supply and failure to appoint specialized persons to carry out professional wiring of the premises. Both counsel filed written submissions that I have carefully considered.

25 **Plaintiffs' case**

The Plaintiffs' case is that the Defendant's agents installed Yaka cables a week before the incident and the solidal was left rubbing on the iron sheets which cut the solidal causing it to energize the house and the hanging wire which was also connected to the house and which caused the electrocution and death of the late Aisha Kiiza and the injuries occasioned to the second Plaintiff.

According to PW1, Okura Kemisi, husband to the deceased, the wires that electrocuted the deceased were outside the house and brushed the iron sheets and that the same were supplied by Umeme. He was supported by PW2, Shamim Namusisi, who was an eye witness to the incident and who is also a daughter to the deceased. It was her evidence that the same Yaka wires  
5 supplied by umeme, were cut by the iron sheets and that they are the same wires that caused the electrocution. The evidence of PW3, Adam Juma, and Chairman of Kakungulu zone is that Umeme wires had caused the electrocution and that he received the news of the cause of death from the people who had been at the scene at the time of the incident.

10 The Plaintiffs also relied on the Police Report marked 'P15' which was tendered in by PW4, which stated that while investigating the cause of the electrocution, it was established by the Umeme officials that power was legally connected but the solidal wire was wrongly passed on the sharp iron sheet which resulted into the victim being electrocuted. It further stated that the solidal which connected power from the pole to the house was cut by the iron sheets which made  
15 the whole house to be affected including the wires on which the victim used to hang the clothes and it was during the process of hanging that the victims were electrocuted.

The Plaintiffs also relied on photographic evidence which was taken during the police investigation, part of which was the photographs of the damaged solidals which they relied on to  
20 prove that the electrocution was caused by the said damaged solidals.

### **Respondent's case**

The Defendant's case is that they were not negligent in any way and that the electrocution of the late Aisha Kiiza was a result of an illegal power connection to the Plaintiffs' house.  
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According to DW1, Yusuf Senteza, an engineer at Umeme Limited tendered in as ExD1, and relied on hearsay evidence that the sister to Jane, the one who was being rescued by the deceased, said that Jane slid and tried to get support from a nearby wooden TV antenna pole and came into contact with a bare electric wire that ran along the same pole to the meter box and that  
30 the deceased while attempting to rescue Jane off the pole, the pole gave way and leaned onto the

wash line energizing it and electrocuting Aisha who had been entangled with the wire during the fall. The Defence did not call Jane to testify.

The Defence did not call any other witnesses and only relied on the evidence of DW1 and the report he authored which had photographs of the alleged illegal wires and the wooden antennas which they contend caused the electrocution after they fell on a bare illegal wire.

### **Issues**

1. Whether the electrocution of Aisha was occasioned by the negligent acts of the Defendant's agents or the illegal power connections by the Plaintiffs
2. Whether the Defendant is liable for the incident
3. Remedies available to the parties.

### ***Resolution of the case***

**Issue No. one: whether the electrocution of Aisha Kiiza was occasioned by the negligent acts of the Defendant's Agents or illegal power connection by the Plaintiffs;**

**Issue No. 2: whether the Defendant is liable.**

These two issues will be handled together. In all civil matters, the Plaintiff bears the legal burden under section 101 of the Evidence Act to prove his/her case on a balance of probabilities while the evidential burden shifts depending on who wishes the court to believe the existence of a particular fact. Section 103 of the Evidence Act refers.

In this case therefore, the Plaintiff has to show that the Defendant's negligence was the cause of the electrocution of the deceased and injuries on the second Plaintiff.

The test to determine liability for injury due to negligent conduct or actions was settled by the famous case of **Donoghue v Stevenson [1932] AC 562** wherein Lord Atkin in his judgment stated:

“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.”

Therefore that class of people includes those who are close enough to be directly affected by the allegedly negligent act and close enough that the alleged tortfeasor should have had their interests in contemplation when acting as he or she did.

10 The presumption of negligence (res ipso loquitor) as discussed in the Ugandan case of **Komakech Geoffrey v Umeme Ltd (Civil Suit No.13 Of 2006) ((Civil Suit No.13 Of 2006)** Hon. Justice Remmy K. Kasule who quoted **M.N. SHUKLA: The Law of Tort, 14<sup>th</sup> Edition, page 236** stating that;

15       *“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 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*

20       *order to succeed, must prove negligence on the part of the defendant.”*

The Plaintiffs also relied on the Police report which states that the Defendant’s agents confirmed to them while investigating the case that the solidal wire installed badly by the Defendant caused the electrocution as it was cut and got in touch with the iron sheets and therefore affected the entire house, which corroborated the photographic evidence.

Counsel for the defendant submitted that the report tendered by the PW4 Det. Corporal Jackson Higenyi was signed off by ASP Kemigisha Nusura and that he does not appear in the report as one of the detectives who visited the scene. The report indicates that a team of detectives visited the scene led by ASP Amubwine Innocent. The report is little evidential value for the reason the author did not testify and it was addressed to the legal department , Rwenzori House which begs

the question how the Okura PW1 had access to it. Nevertheless, in the absence of contrary evidence, I am satisfied Corp Higenyi visited the scene and observed the solidal passed via a sharp iron sheet.

5 DW1 Yusuf Senteza testified that the legal solidal that supplied the victim's house run over the iron roof and he found no cut on the insulated solidal wire .In his report, Senteza reported that the wash line was energized by the illegal bare electric wire that was on the wooden TV antenna pole that fell on it after the victim slid and tried to get support from it. However, DW1's testimony on how the incident occurred, was based on hearsay evidence from a one Jane who  
10 was not brought to corroborate this in court and the photographs used to explain were not clear enough to corroborate the Defence's theory of the bare wire.

**Sections 58 and 59 of the Evidence Act** provide the general rule on the admissibility of hearsay evidence. **Section 59** provides that oral evidence must in all cases be direct. Whatever that is not  
15 direct is hearsay and therefore not admissible as direct evidence is the best evidence. Since there were no exceptions in this case, that evidence based on hearsay is therefore inadmissible.

The wooden antenna which the defendants claim to have energized the hanging wire and which is also in close proximity with the hanging wire and always moved by those hanging clothes,  
20 defeats logic that it has been there all along and has not electrocuted anyone before.

By their own evidence, the defence inadvertently, admits negligence for not disconnecting an illegal connection when the engineers converted the power supply point to a Yaka meter in the premises on 30.5.2015, a fact corroborated by both plaintiffs Okura and Shamim Namusisi.

25 Two findings from the confidential report attached to the witness statement of Senteza are relevant in this regard.

- The Umeme team with police identified two supply points of both legal (A/C 200377683) and illegal underground connections supplying power to the victim's ten rented rooms and other nearby homes.
- The victim's power supply point was converted to Yaka meter No. 04243243617 on  
30 30.5.2015.

From analyzing the pictures provided and relied on by the defendant, these illegal wires are all in the same vicinity therefore ought to have been acted on by the Defendant's team at the time of installing the Yaka wire and they could have uninstalled them and or called in the inspection in  
5 regard of their expert knowledge of its dangers especially that they were uninsulated and therefore likely to harm.

Therefore, the defendant had a duty of care to the deceased to uninstall any illegal connection in the area prior to installation of Yaka meter and additionally defendant's agents would have  
10 breached their duty and would be negligent in failing to attend to the adjacent live wires that were visible and within reach when they were doing works on installation of Yaka cables at the Plaintiffs premises. At the same time, I find an element of contributory negligence on the part of the family on account of the illegal connections.

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The Defendant, as the authorized licensee to distribute electricity to the plaintiff, owed the Plaintiffs a duty to make sure the uninsulated wires in the area including the solidal were insulated and left in a safe condition, and therefore breached that duty of care to the plaintiff as defined by **Lord Atkin in Donoghue vs Stevenson (supra)**.

Having found that the defendant's agents installed Yaka to the premises only a week before the incident; the failure of the defendant's agents to uninstall illegal connections that potentially posed a danger to the occupants and to prosecute them; the proximity of this wire to the solidal; are facts that speak for themselves and lead to the conclusion the defendants breached their  
25 common law duty of care to the victim which in turn led to her death by electrocution as confirmed by the mortem report ( PE. 2).

I also find the deceased family contributed to the death of the deceased on account of the illegal connections. I assess this at 30% as the defendant failed in its statutory duty to remove the  
30 illegal connections at the time of installation of a Yaka meter.

## Remedies

The Plaintiff prayed for the following in the pleadings;

- a) Ugx 500,000,000/- being compensation to the beneficiaries of the late Aisha Kiiza. (loss of expectation of life)
- 5 b) Ugx 63,000/- for the police report
- c) Ugx 1,500,000/- being funeral expenses.
- d) Ugx 500,000/-being for medical treatment for second plaintiff.

Total sum being Ugx 502,563,000/-

## 10 Special damages

The general principle on special damages as held in **Gapco (U) Ltd Vs A.S. Transporters (U) Ltd CACA No. 18/2004 and Haji Asuman Mutekanga Vs Equator Growers (U) Ltd, SCCA No.7/1995** is;

15 *“Special damages must be specifically pleaded and proved, but that strictly proving does not mean that proof must always be documentary evidence. Special damages can also be proved by direct evidence; for example by evidence of a person who received or paid or testimonies of experts conversant with the matters”.*

The Defendants contend that the defendant’s claim is not supported with documentary evidence.

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## Medical expenses

The Plaintiffs provided receipts of medical expenses of Shamim, the second Plaintiff, amounting to Ugx 400,000/-. The medical expenses incurred on Shamim, have been proven since she was a party to the suit and order 1 rule 1 of the civil procedure rules provide for joinder of parties if  
25 the facts relied on are the same. A sum of 500,000/ is awarded as special damages for medical expenses.

## Police report

The receipt for the police report which confirms the plea of Ugx 63,000/. Proof payment for the  
30 police report has been availed. A sum of 63,000/ is awarded as special damages for the police report.

### **Burial expenses**

The Plaintiff also contends that the burial expenses were Ugx 1,500,000/- which burial expenses may be hard to document given their nature and therefore as directed by the principle above, this court shall refer to the evidence of the Plaintiff who incurred these costs.

**Section 10 of the Law Reform Act** permits damages to be awarded for funeral expenses.

In the circumstances, I am satisfied the plaintiffs incurred funeral expenses. A sum of 1,500,000/ is awarded as special damages for funeral expenses.

### **10 Damages for loss of dependency and expectation of life**

While assessing damages for loss of expectation of life, the court in **Otim Vs Nsereko & Anor (HCCS. NO. 275 OF 2014)** held that;

“The practice of the High Court has been to apply the multiplier principle in arriving at the quantum of damages for loss of dependency. **Hon. Mulengani (supra)** and **HCCS No. 112 of 15 2009 Kabunga Grace v Kisambira Sentamu Ismail Salmond (supra)** states that the multiplier is the estimate of the probable length of the deceased’s earning period. The amount earned is subjected to deductions like the sums that would have been spent by the deceased on himself. The uncertainty of farming and business had the deceased lived, the prospects of re-marriage by the surviving spouse are all taken into account after the multiplier is determined. **Salmond 20 (supra page 585), citing Daniel v Jones (1961) 1 W.L.R 115** makes the point that

*‘At the end of the day, arithmetic may have to be mitigated by common sense, for it is an assessment and not a calculation which is being made.’*

The deceased was a breadwinner of the family and a wife to the 1<sup>st</sup> plaintiff Okura, a fact that has been proved by a marriage certificate that shows their marriage was celebrated at Lulembo Jamia mosque, Kampala. She was a business woman and although there was a discrepancy about the license name, the plaintiffs in their sworn evidence testified that she owned the salon and the Defence did not call the person whose name was on the certificate to prove otherwise. Although I accept the evidence of plaintiffs, the deceased operated a salon, they provided no inkling on the income from that salon but doing the best I can, I shall place a value of 200,000/ as monthly income from the saloon.

As a mother and wife, she cared for the family which means the family has to hire house help to perform household chores. I will therefore monetize the care the deceased would have given to her family at 130,000/ per month, being the wage the house help would earn per month.

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The deceased was aged 44 years as indicated in the police report marked B and given that life expectancy in Uganda is 60 years and other unexpected occurrences, I will place the total income she would have earned annually is 130,000/ x 12 months plus 200,000/ x 12 months which totals 3,960,000/ annually. I deduct 1,000,000/ she would have spent on herself which leaves  
10 2,960,000/ as annual income multiplied by 16 years brings the total income to 47,360,000/ less 30% for contributory negligence which brings the general damages awarded for loss of expectation of life to 33,152,000/

I award 15,000, 000/ to the widower who has lost the care of his wife and is now single  
15 handedly going to look after the children and the home.

The two children according to the birth certificate and testimonies in court, Namusisi Shamim and Shakira Kemisi, will share equally 18,152, 000/.

20 In the result, I allow the plaintiff's claim and make the following orders.

1. A sum of 33,152,000/ general damages is awarded as loss of dependency and loss of expectation of life broken down as follows:
  - a. 15, 000,000 for the widower Okura Kemisi
  - b. 18,152,000/ for the two children of the deceased (Namusisi and Shakira) to be shared  
25 equally.
2. 1,500,000/- special damages spent on funeral expenses.
3. 63,000/- special damages spent on police report.
4. 500,000/ -medical expenses incurred by Namusisi
5. Interest on the awards above at the rate of 8% p.a from the date of judgment until the  
30 payment in full.
6. Costs of the suit to the plaintiff.

**DATED AT KAMPALA THIS 2<sup>ND</sup> DAY OF MAY 2019.**

**HON. LADY JUSTICE H. WOLAYO**

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cc. Kajeke, Maguru & Co. Advocates for the plaintiffs

cc. Shonubi, Musoke & Co. Advocates for the defendants.