

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL APPEAL NO.46 OF 2017

NABIGALI ANNE KIMBUGWE ::: APPELLANT

VERSUS

UMEME LIMITED::: RESPONDENT

BEFORE HON. JUSTICE SSEKAANA MUSA

JUDGMENT

BACKGROUND

This is an appeal from the decision of the Electricity Disputes Tribunal. The appellant filed a complaint before the tribunal seeking damages and costs for damage to her premises alleging that the cause of the fire was due to poor installation of the respondent's electricity power to the premises.

At the tribunal hearing, the appellant led three witnesses as well as other evidence to prove her case. The respondent on the other hand led one witness and led evidence denying liability for the damage to the appellant's premises.

The tribunal delivered judgment in favor of the respondent. It held that the cause of the fire was not electrical in nature and the respondent whose business is only to distribute electrical energy was not responsible for the fire outbreak at the complainant's premises.

The appellant was dissatisfied with the decision hence this appeal.

GROUND OF APPEAL

- 1. The Members of the Tribunal erred in law and in fact when they failed to properly evaluate the entire evidence on record thereby arriving at the wrong conclusion that the Respondent was not responsible for the fire outbreak at the Appellant's premises.**

- 2. The Members of the Tribunal erred in law and in fact when they held that the Appellant was not entitled to special and general damages the Respondent was not responsible for the fire outbreak.**

CONSIDERATION OF APPEAL

This being a first appeal, I will first of all remind myself of our duty as a first appellate court to re-evaluate evidence. Following the cases of **Pandya vs R (1957) EA 336; Kifamunte Henry vs Uganda Criminal Appeal No.10.1997, Bogere Moses and Another v Uganda Criminal Appeal No.1/1997**, the Supreme Court stated the duty of a first appellate court in **Father Nanensio Begumisa and 3 Others vs Eric Tiberaga SCCA 17/20 (22.6.04 at Mengo from CACA 47/2000 [2004] KALR 236**.

The court observed that the legal obligation on a 1st appellate court to re-appraise evidence is founded in Common Law, rather than the Rules of Procedure. The court went ahead and stated the legal position as follows:-

“It is a well-settled principle that on a first appeal, the parties are entitled to obtain from the appeal court its own decision on issues of fact as well as of law. Although in a case of conflicting evidence the appeal court has to make due allowance for the fact that it has neither seen nor heard the witnesses, it must weigh the conflicting evidence and draw its own inference and conclusions.”

I will therefore bear that principle in mind as I resolve the grounds of appeal in this case.

Ground 1

The Members of the Tribunal erred in law and in fact when they failed to properly evaluate the entire evidence on record thereby arriving at the wrong conclusion that the Respondent was not responsible for the fire outbreak at the Appellant’s premises.

The appellant testified and submitted that the respondent connected her to a one Mugerwa who did the connection that eventually resulted into the fire outbreak at her house. Appellant’s counsel hence submitted that Mugerwa was an agent of the respondent. The respondent on the other hand led evidence and submitted that Mugerwa was an independent contractor and not an employee of

the Respondent and further that the Appellant was put on notice that the Respondent was not liable for work done by Mugerwa.

The appellant also faulted the tribunal on their ruling on the evidence of the police report on the source of the fire. The summary of the police report was arrived at after investigating the matter and taking witness statements, those cannot be compared with the Respondent's evidence that he visited the crime scene and took pictures of the meter box and that was the basis for him to reject the claim. However counsel for the respondent submitted that the tribunal was right in holding that the police report (**CE11**) falls short of any analysis when it stated that "it is suspected that the case of fire was due to poor electricity installation by Umeme Company Contractors

I have carefully reviewed the evidence that was presented at the Electricity Disputes Tribunal hearing, submissions by both counsel as well as the decision of the tribunal hence my findings below.

The appellant claims that Mugerwa was an agent for the respondent but did not lead any evidence to prove the same and merely engaged in speculation as to his relationship with the respondent. The appellant ought to have proved to this court that Mugerwa held out as an agent of the respondent and preferably called him as a witness to prove her case which she did not do. The respondent as stressed out in the decision of the tribunal is not responsible for any consequences arising out of workmanship and materials used in installation/ wiring.

With regard to the source of the fire, the evidence of the police report presented by the appellant cannot be reliably relied on by this court. The report did not state the basis of the opinion as clearly noted by the tribunal in their decision. The report did not illustrate how the conclusion that the source of the fire was electrical was reached therefore this court accordingly rejects the same.

The appellant also submitted that the most reliable evidence as to the cause of the fire was the eye witnesses. I have perused the record and none of the witnesses was able to reliably inform the tribunal of the cause of the fire. The appellant herself (**CW1**) was absent when the fire broke out, **CW2** stated that he did not know the source of the fire whereas **CW3** came when the fire had started hence could not have witnessed the cause of the fire outbreak. The appellant only speculates that the cause of the fire was electrical. According to the case of **Sulaiman Muwonge Lubega vs AG Constitutional Appeal No. 7 of 2012**, as cited by counsel for the respondents; court held that

all that the applicant engaged in was mere speculations and a court of law does not act on such. I associate myself with the same. The appellant has up until this point only speculated on the cause of the fire but led no evidence to prove the same.

On that basis therefore, I concur entirely with the findings and analysis of the tribunal. This ground accordingly fails.

Ground 2

The Members of the Tribunal erred in law and in fact when they held that the Appellant was not entitled to special and general damages the Respondent was not responsible for the fire outbreak.

Having found as I have on ground 1, this ground also fails.

This appeal is therefore dismissed.

Each party bear its own costs.

It is so ordered.

SSEKAANA MUSA

JUDGE

28th June 2019