

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)
CIVIL SUIT NO. 469 OF 2017

SERUBIRI ANGELO

(Suing through his next friend Mike Katende)=====PLAINTIFF

VERSUS

UMEME LIMITED=====DEFENDANT

BEFORE: HON. MR. JUSTICE PHILLIP ODOKI

JUDGMENT

Introduction:

[1] Serubiri Angelo, a minor of seven years old (hereinafter referred to as “the Plaintiff”) instituted this suit, through his next friend Mike Katende, against Umeme Limited (hereinafter referred to as “the Defendant”) for the tort of negligence. The Plaintiff prayed that the Defendant should be ordered to pay him special, general and exemplary/punitive damages as a result of injuries he suffered upon being electrocuted by electricity transmission wires which is managed by the Defendant. In addition, the Plaintiff prayed that the Defendant be ordered to pay interest on the damages and the costs of the suit.

The Plaintiff’s case:

[2] The Plaintiff pleaded that on the 6th May 2017 while at his parent’s home in Kasange Ward, Kyengera Town Council, Wakiso District, he was electrocuted by a live electricity transmission wire which was hanging loose on an electric pole that fell. According to the Plaintiff, the Defendant had earlier been notified by the residents of the area about a loose hanging wire on a rotten pole, but the Defendant refused and/or ignored to replace the pole. The Plaintiff further pleaded that the Defendant in its routine inspection of its Yaka meters and equipment knew or ought to have known that the electricity pole was damaged and that it was probable that the loose live wire would fall and electrocute the residents of the area. As a result of being electrocuted, he suffered



head injuries and his left arm was amputated. According to the Plaintiff, the injuries he suffered were as a result of the negligence of the Defendant. The Plaintiff particularized the particulars of the negligence to be;

- i. Failure by the Defendant to replace a rotten pole carrying the live electric wires.
- ii. Failure by the Defendant to install insulated electricity cables to reduce the risk in case the pole fell.
- iii. Installing the electric pole near the Plaintiff's home.
- iv. Failure by the Defendant to carry out its distribution of electricity mandate in a safe way contrary to its undertaking under the concession agreement with the Government of Uganda.
- v. Failure by the Defendant to monitor its transmission pole and wire thereby injuring the Plaintiff.

The Defendant's case:

[3] The Defendant pleaded that it did not negligently cause the injuries which were suffered by the Plaintiff. The Defendant denied being notified of any electric pole which was rotten. According to the Defendant, the alleged electric pole was inspected, maintained and was still in good working condition to support the electric wires. The Defendant pleaded that it carries out its duties and operations in a lawful and professional manner to ensure public safety and it carries out regular maintenance and checks to ensure that all its electricity poles are in good working condition. The Defendant pleaded that the Plaintiff is not entitled to any damages.

Issues:

- [4] The issues for the determination of the court are;
- i. Whether the Defendant was negligent.
 - ii. What remedies are available to the parties.

Evidence presented:

[5] The Plaintiff adduced 2 witnesses. Mike Katende, the biological father of the Plaintiff and his next friend in this suit, testified as PW1. Dr. Ben Khingi, a consultant surgeon

who examined the Plaintiff testified as PW1. In addition, the Plaintiff adduced 27 documents which were admitted in evidence as exhibits. The Defendant did not call any witness but adduced 3 documents which were admitted in evidence as exhibits.

Legal representation and submissions:

[6] At the hearing, the Plaintiff was represented by Mr. David Kagwa, Mr. Aubrey Lukongwe and Ms. Sophie Kigozi. The Defendant on the other hand was represented by Mr. Alex Kabayo. Upon closure of the hearing, the Court gave counsel directives to file written submission, which directives were duly complied with. I have given the submissions the requisite consideration in the determination of the issues before the Court.

Burden and standard of proof:

[7] The burden of proof in civil matters lies upon the person who asserts or alleges. Any person who, wishes the court to believe the existence of any particular fact or desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he or she asserts, must prove that those facts exist. (**See section 101, 102 and 103 of the Evidence Act Cap 6 of the laws of Uganda**). The opposite part can only be called to dispute or rebut what has been proved by the other party (**See Sebuliba versus Co-operative Bank (1982) HCB 129**). The standard of proof required is on the balance of probabilities. In **Miller versus Minister of Pensions (1947)2 ALL ER 372** Lord Denning stated;

“That the degree is well settled. It must carry a reasonable degree of probability but not too high as is required in a criminal case. If the evidence is such that the tribunal can say, we think it is more probable than not, the burden of proof is discharged but if the probabilities are equal, it is not.”

Consideration and determination of the Court:

Issue 1: Whether the Defendant was negligent.

[8] In order for the Plaintiff to succeed in a case founded on the tort of negligence, he must prove three elements. First, that the Defendant owed him a duty of care. Secondly, that the Defendant breached that duty of care. Thirdly, that he suffered damage as a result of the breach of duty care by the Defendant.

Whether the Defendant owed the Plaintiff a duty of care.

[9] In the much-celebrated English case of *Donoghue v Stevenson [1932] AC 562* the House of Lords succinctly stated the duty of care required to be proved in the tort negligence. At page 580, Lord Atkinson stated 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.”

[10] In the instant case, the Annual Report of the Defendant which was admitted in evidence as P7, shows that the Defendant was licensed to distribute and supply electricity to customers by the Government of Uganda. The mandate of the Defendant involves; operations, maintenance and upgrade of electricity distribution infrastructure. In the execution of its mandate, the Defendant has to ensure that it evacuation electricity from transmission stations to the end users through an efficient, safe and reliable distribution network. This court takes judicial notice of the fact that live electricity wires, if it gets into contact with the human body can cause serious injury or even death. That explains why the live electricity distribution wires are mounted on poles far from human contact to ensure the safety of the public. The Defendant being a distributor of electricity was aware of the risk associated with live electricity distribution wire. The Defendant was reasonably expected to foresee that if it did something or failed to do something thereby causing its live electricity distribution wire to become loose, it would get into contact with any member of the public, such as the Plaintiff, thereby injuring him. I therefore find that the Defendant owed the Plaintiff a duty of care to ensure that

it did not leave its live electricity distribution wires loose thereby making it likely to electrocute him.

Whether the Defendant breached its duty of care to the Plaintiff.

[11] A breach of duty of care occurs when one party, who owes the other a duty of care, does something or fails to do something which he or she reasonably foresee would be likely to injure the other party. In order to be deemed as breaching the duty of care, the Defendant's actions must be proven to fall below the standard of care likely to be taken by a reasonable man having regard to all the circumstances of the case.

[12] In the instant case, the PW1 testified that there was a rotten electricity pole which was brought to the attention of the Defendant but the Defendant ignored the information. He further testified that the Defendant in its routine inspection of its Yaka meters and equipment knew or ought to have known that the electricity pole was damaged and that it was probable that the loose live wire would fall and electrocute the residents of the area. The pole consequently fell and the live electricity wires on the poles ended up electrocuting the Plaintiff.

[13] According to PW1, it is his neighbors who complained to the Defendant about the rotten pole 2 weeks before the pole fell. He mentioned the neighbors as being Mama Stella and Mama Mato. He stated that he was present on one occasion when Mama Mato complained to her relative who works with the Defendant concerning the electricity pole which was likely to fall down anytime. He stated that he could see the Defendants employees would come to do meter reading. PW1 testified that he took the picture of the rotten pole and if given opportunity he would produce the picture of the rotten pole. According to PW1, the Plaintiff was electrocuted near his home, at the back of his house about 56 meters away from his house. At the material time when the Plaintiff was electrocuted the Plaintiff was playing at the spot. The pole fell and the electric wires fell on the Plaintiff and he got electrocuted.

[14] The Defendant on the other hand presented an Internal Accident Inquiry Report which was admitted as DE3. The report indicated that George Ssozi, a technical officer

of the Defendant visited the scene and found a leaning pole with the electricity wires leaning at the height of approximately 2 meters. According to the report, the fall of the pole and the electricity wires was caused by vandalism of stay wires and digging the soil around the pole for brick laying thereby weakening the firmness of the pole.

[15] Counsel for the Defendant argued that the injuries which were suffered by the Plaintiff was not of the Defendant's making, but an intervention of third parties. Counsel further submitted that the alleged communication to the Defendant about the alleged loose electric wires does not have any probative value since Mama Mato who was mentioned by the PW1 was not called as a witness and the identity of the person she reported to of the alleged rotten pole was never disclosed. Counsel further argued that the space of time when the pole and the wire fell down was so short that as to infer sufficient probability to lead a reasonable man to anticipate danger or injury. According to counsel, in the circumstances, no step would have been taken by a reasonable man to avert the incident.

[16] I do agree with counsel for the Defendant that the Plaintiff did not adduce Mama Mato who would have shed light on her alleged relative, working with the Defendant, to whom she reported of the rotten pole. That notwithstanding, it is the duty of the Defendant to ensure that the electricity distribution infrastructure was well maintained at all times. The Defendant did not need to wait until it was informed that the pole was about to fall in order to come and fix it. Although the Defendant pleaded that it carries out its duties and operations in a lawful and professional manner to ensure public safety and that it carries out regular maintenance and checks to ensure that all its electricity poles are in good working condition, no evidence was adduced to support that pleading. The Defendant tendered in court Medium Voltage Line Inspection Summary Report as DE1. It shows that the last month of inspection was done in December 2016, five months before the incidence happened. I note from DE3, which was tendered in court by the Defendant, that the area where the alleged brick laying was taking place and which brick laying the Defendant alleged partly caused the pole to fall, has a big hip of bricks. In my view, this is an indication that the bricks were made over some reasonable

time. Therefore, if indeed the Defendant was doing any regular maintenance and checks of the electricity pole as alleged, it would have easily discovered the falling pole and electric wires and would have averted the injury that the Plaintiff suffered.

[17] I therefore do not agree with the submissions of counsel for the Defendant that the space of time when the pole and the wire fell down was so short that as to infer sufficient probability to lead a reasonable man to anticipate danger or injury. Clearly, the electricity pole took some time before it gave way. Had the Defendant carried out its distribution of electricity mandate in a safe way and monitored its transmission pole and wires, the Plaintiff would not have been injured. I therefore find that the Defendant failed in its duty towards the Plaintiff to ensure that the electricity pole did not fall and the electricity wires did not become loose, thereby electrocuting the Plaintiff. Issue 1 is accordingly resolved in the affirmative.

Whether the Plaintiff suffered any damages as a result of the negligence of the Defendant.

[18] PW1 testified that as a result of the electrocution, the Plaintiff was flanged several times in the air. He hit his head on the ground several times. As a result, the Plaintiff suffering trauma and grievous bodily harm on various parts of his body, which included sustaining grievous harm on his scalp head and his left dominant arm being most affected. The evidence of PW1 was corroborated by the medical report of Dr. Mukasa Micheal (PE4), which indicated that the Plaintiff suffered electric burns on his left upper limb, trunk and the scalp as a result of getting into contact with a loose idle high voltage electric wire. The evidence of PW1 was further corroborated by the evidence of PW2 who examined the Plaintiff in June 2017 and found that he examined the Plaintiff and found that he suffered severe electrical burns which caused his left arm to be amputated at the shoulder, he had a scalp (head) burn reaching right to the born. He also had other multiple areas which had healed and he was traumatized. The same information was in his medical report which was admitted in evidence as PE20. In their submissions, counsel for the Defendant submitted that it was not in issue that the Plaintiff sustained

injuries. Their only contention was that PE4 indicated that the Plaintiff suffered incapacity of 20% while PE20 put the incapacity at 60%.

[20] In my view, the evidence presented by the Plaintiff clearly proves that the injuries suffered by the Plaintiff were as a result of being electrocuted. I have already found that Defendant was negligent when it failed to ensure that the electricity transmission wire did become loose, thereby electrocuting the Plaintiff. The argument of counsel for the Defendant that PE4 indicated that the Plaintiff suffered incapacity of 20% while PE20 put the incapacity at 60% does not in any way change the fact that the Plaintiff suffered injuries as a result of the negligence of the Defendant. Issue 2 is therefore resolved in the affirmative.

Issue 3: What remedies are available to the parties.

[21] The Plaintiff prayed that the Defendant should be ordered to pay him special, general, exemplary and punitive damages as a result of injuries he suffered upon being electrocuted by electricity transmission wires which is managed by the Defendant. In addition, the Plaintiff prayed that the Defendant be ordered to pay interest at 25% per annum from the 6th May 2017 until payment in full and the costs of the suit.

Special damages:

[22] Special damages are the actual or reasonably apprehended financial losses. They have to be specifically pleaded and proved. In **Uganda Telecom Ltd Versus Tanzanite Corporation, [2005] 2 EA 341**, Oder, JSC at page 341 held that;

“‘Special damage’ is the damage in fact caused by wrong. It is trite law that this form of damages cannot be recovered unless it has been specifically claimed and proved or unless the best available particulars or details have before trial have been communicated to the party against whom it is claimed.”

[13] In the instant case, the Plaintiff pleaded that he will need a complete prosthetic arm which according to a medical website <http://heath.costhelper.com/prosthetic-arms.html> costs US\$ 100,000 each. According to the Plaintiff, he will need to change to a new

prosthetic arm as he grows. He will need 4 different arms until he attains maturity. This brings the total cost of the prosthetic arm to US\$ 400,000. In his evidence in chief, PW1 repeated the same claim. In cross-examination, PW1 testified that the figure of the US\$ 400,000 was arrived at by after speaking to the Plaintiff's lawyers who came up with the computation. He did not know how they arrived at the figure. According to PW1, it is the Plaintiff's lawyers who can give the breakdown. In their submissions, counsel for the Defendant submitted that the Plaintiff did not expend the US\$ 400,000.

[14] In my view, the Plaintiff did not specifically prove the alleged special damage which was pleaded. PW1 who was the only witness who made mention of the US\$ 400,000 did not know how it was arrived at. The website referred to in the plaint, when crosschecked by the court does not even exist. Although I am persuaded that the Plaintiff needs a prosthetic arm, there is no evidence presented to the court to prove its cost. The claim for special damage of US\$ 400,000 is accordingly denied.

General damages:

[15] General damages are a monetary recovery in a lawsuit for injuries suffered such as pain, suffering, inability to perform certain functions for which there is no exact value which can be calculated. These damages are traceable to and are the probable and necessary result of the injury complained of or which are presumed by or implied in law to have resulted therefrom (See **Bagenda Dyabe Tommy versus Pioneer Easy Bus Limited HCCS No. 36 of 2016**).

[16] In the instant case, the Plaintiff pleaded that he has undergone untold suffering as a result of the Defendant's negligence. He pleaded that he has suffered and continue to suffer mental distress to accept his condition. He cannot effectively write since his dominant arm was amputated and he has to learn to use the right arm. He prayed that he be paid compensation of UGX 6,000,000,000/=. In his evidence in chief, PW1 repeated the same claim. In cross-examination, PW1 testified that the Plaintiff has been rendered useless as the result of the electrocution. He needs support which requires money. There is a lot that he cannot do on his own and his fellow students tease him.

[17] I have considered the fact that as a result of the electrocution, the Plaintiff was flung several times in the air, he hit his head on the ground several times, he suffered trauma and grievous bodily harm on various parts of his body, which included sustaining grievous harm on his scalp (head) and his left dominant arm was amputated at the shoulder. Although the physical injuries healed, the Plaintiff will continue to suffer mental distress for the rest of his life and he will not be able to do certain things on his own. I therefore consider that general damages of UGX 500,000,000/= (Uganda Shillings Five Hundred Million) is appropriate in the circumstances.

Exemplary/punitive damages:

[18] These are damages requested for and awarded when the defendant's willful acts were malicious, violent, oppressive, fraudulent, wanton or grossly reckless. The rationale is not to enrich the plaintiff, but to punish the defendant and deter him or her from repeating similar conduct (See *Dorothy Tuma v. Elizabeth Muller & Anor C.S No. 229 of 2011*). The punishment imposed must not exceed what would be likely to have been imposed in criminal proceedings, if the conduct were criminal (See *Obongo v. Municipal Council of Kisumu [1971] EA 91*). All circumstances of the case must be taken into account, including the behavior of the plaintiff and whether the defendant had been provoked. (See *O'Connor v. Hewston [1979] Crim. LR 46 CA; Archer Brown [1985] QB 401*).

[19] I have not found any evidence in this case to support the award of punitive/exemplary damages. This prayer is accordingly denied.

Interest:

[20] Interest is awarded at the discretion of court. Section 26 (2) of the Civil Procedure Act Cap 71 provides that:

“(2) Where and insofar as the decree is for the payment of money, the court may, in the decree, order interest at such a rate as the court deems reasonable to be paid on the principle sum adjudged from the date of the suit to the date of the

decree, in addition to any interest adjudged on such principle sum for any period prior to the institution of the suit, with further interest at such rate as the court deems reasonable on the aggregate sum so adjudged from the date of the decree to the date of payment or to such earlier date as the court thinks fit.”

[21] In this case the Plaintiff prayed that the Defendant should be ordered to pay interest at 25% per annum from the 16th May 2017 until payment in full. In my view, the interest of 25% is excessive. I instead consider that the interest of 15% per annum is appropriate. In addition, I consider that to order that the interest should run from the 16th May 2017 until payment in full would be unjustified. I instead consider that the interest should run from the date of judgement.

Costs of the suit:

[22] Section 27 of the Civil Procedure Act provides that:

“27. Costs

(1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incident to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent those costs are to be paid, and to give all necessary directions for the purposes aforesaid.

(2) The fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of the powers in subsection (1); but the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.

(3) The court or judge may give interest on costs at any rate not exceeding 6 percent per year, and the interest shall be added to the costs and shall be recoverable as such.”

[23] The general rule is therefore that costs should follow the events and a successful party should not be deprived of costs except for good cause. I have not found any good cause in this case why I should deny the Plaintiff the costs in this matter.

[24] In the end, the following orders are hereby made.

- i. The Defendant is hereby ordered to pay the Plaintiff general damages of UGX 500,000,000/= (Uganda Shillings Five Hundred Million).
- ii. The general damages will attract interest of 15% from the date of judgement, till payment in full.
- iii. The Defendant is ordered to pay the Plaintiff the costs of this suit.
- iv. The costs shall attract interest of 6% per annum from the date it is taxed till payment in full.

I so order.

Dated and delivered by email this 6th day of September 2023.



Phillip Odoki

JUDGE

