



REPUBLIC OF MALAWI

IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
CIVIL REGISTRY

CIVIL CAUSE NUMBER 926 OF 2015

JOSEPH KAMANGA.....CLAIMANT

-AND-

ELECTRICITY SUPPLY CORPORATION (MALAWI) LTS.....DEFENDANT

CORUM: HONOURABLE R. M CHINANGWA JUDGE

Kadzakumanja

Counsel for the Claimant

Dossi / Karim

Counsel for the Defendants

Nyirenda

Court Clerk

JUDGEMENT

Introduction

1. The claimant seeks the sum of MK20,368,473.00 being value of properties; damages for loss of use of the properties to be assessed by the court; a sum representing the devaluation of the Malawi Kwacha and costs incidental to the action
2. The claims arise from an allegation that the defendant's negligence caused an erratic power supply thereby damaging the claimants' properties.
3. The claim is opposed by the defendants.
4. Both parties brought one witness each to support their and to enable the court arrive at a decision on a balance of probabilities. The evidence was given through witness statements and each witness was cross examined thereby allowing the court to save resources.

The Claimants Evidence

5. The claimant is the owner and occupier of the residential house on Plot Number 47/4/1071 in Lilongwe City, which he constructed in 2006.

6. In the year 2010 he began to notice fire sparks on the neighbouring electricity transformer, adjacent to his house. Immediately the defendants were notified. The defendants inspected the transformer and tried to fix the problem. However, the fire sparks continued for five years and each time the claimant notified the defendants they reacted in the same manner.
7. On 29th August 2011 at around 3 O'clock in the afternoon the claimant was informed that a fire had erupted in his house. On arrival he found his house and household effects burnt down. It is the claimant's strong belief that the fire erupted due to the negligence of the Defendants by failing to fix the problem that he used to complain about.
8. In addition, the claimant states that the figure of K20,368,473.00 represents the replacement value of the properties at that time, that is in 2011 but with the devaluation of the Malawi Kwacha he cannot replace the said items or renovate the house with the said amount. It is his prayer that the Court should take into account the devaluation of the Malawi Kwacha and award such a sum that will enable him to renovate his house and purchase all the household effects that he lost.

The Defendants Evidence

9. In defence MacDowell Kumatso, Customer Services Manager, for the Defendant stated that the claimant is the Defendant's customer.
10. On 29th August 2011, his house on plot number 47/4/1071 caught fire which resulted in damage to his house and household properties. The incident was reported on 30th August, 2011 at or about 16:06 hours and the Defendant sent a Faults team to disconnect supply to the building.
11. He added that in circumstances such as this the defendants react by: dispatching a team of technicians to isolate the burning property from the main supply to ensure safety of the personnel working to extinguish the fire and to allow safe rehabilitation works after the damage. In addition, the defendants inspect both its electrical installation and customer's installation to determine whether the cause is related to electricity supply in order to carry out a corrective action on the installation by the concerned party.
12. In the defendant's assessment the technicians found that that the service cable jumpers were already disconnected and the Claimant was not certain of who might have disconnected the cables. The defendant's team then proceeded to disconnect supply at the tapping pole. The defendants witness who was then District Engineer for the area at the time of the incident, visited the property to inspect the Defendant electrical

installation to determine whether the cause of fire was related to electricity supply. He discovered that at the meter board, the connections were tight and healthy and energy meter number 01329404386 was also in good order, however the distribution board, which is the Claimant's side of the electrical installation, was completely burnt so it was therefore difficult to make anything out of it. The Defendant's installation and supply at the premises and the surrounding area was normal at the time the faults team visited the Defendant's property to disconnect supply. The Defendant did not receive any complaints from the area and none of the defendant's personnel attended to any fault on the day of the incident in that area.

13. At the time of the inspection, the Claimant informed him that he was not around at the time of fire but that his daughter was bathing within the house and noticed smoke and flames of fire from the roof. He also reported that his neighbour told him that his TV went on and off around the same time the house was on fire and suspected that the fire had something to do with electricity. The claimant and his neighbour are both connected on yellow phase. The power surge allegedly experienced by the neighbour may have been as a result of the short circuit within the burning house.
14. He added that the Defendant's responsibility ends at the metering point as it is provided in agreement for the supply of electricity under clause Number 8. There was no trace of defect on the Defendant's side of the electrical installation. If there was any fault on the Defendant's side, they could have expected a number of customers within the area to experience the same problem. They believe that the cause of the damage to the Claimant's properties could not have been the Defendant's fault but if it was electricity related, it could be due to an internal fault on the installation or equipment in use at the time, which is out of the Defendant's jurisdiction.

Issue for Determination

15. This court has to determine whether the negligence of the defendants caused the claimants to lose property. If the answer is in the affirmative then damages would be as a matter of course.

Analysis of Law and Evidence

16. In *Kalolo v National Bank of Malawi* [1997] 1 MLR 421 (HC) it was held that to prove an action for negligence, the plaintiff had to prove that the defendant negligently

performed or omitted to perform his duty, and that such negligence was the effective cause of the injury or damage to the plaintiff.

17. In the claimants' skeletal arguments, the claimant argues that the defendant was negligent by supplying excessive power; failing to check or control the power supply. In the alternative the claimant pleads the doctrine of *res ipsa loquitur*.
18. It is a legal principle in civil matters that he who alleges must prove the allegation. The claimant states that the defendant supplied excessive power and failed to check or control the power supply. The claimant in evidence only explains that there were sparks which he noticed on the transformer near his house. This went on for 5 years. The next thing was his house was gutted down. It is this courts view that the claimant has not shown and proved in his evidence that indeed the defendant supplied excessive power and that the defendants failed to control the power supply. The claimants had to show first what was the duty of the defendant; did they do what they were supposed to do or omit what they were supposed to do? It is not in dispute that the fire took place. The question is how can one link the fire to a failure or an act of the defendant. There was need for additional evidence to explain this point. This is said in relation to the evidence given by the defendants. They state that they are not liable because their liability ends at the metering point and the fire according to their investigations was caused due to an internal fault on the installation or equipment in use at the time. Now this part of the defendant's evidence has not been contradicted by the claimants. This could only have been done by an expert report which would have shown cause and effect. The other startling feature which questions the claimant's evidence on cause and effect is if the sparks went on for 5 years, would it not be possible that the fire was caused by something else. This is said if the spark was as a direct cause of the fire, then the first spark should have caused the fire.
19. On the other hand, the claimants seek redress through the doctrine of *res ipsa loquitur*. **In Selemani and another v Advanx (Blantyre) Ltd [1995] 1 MLR 262 (HC).** The doctrine of *res ipsa loquitur* applies where the cause of the thing that caused damage was under the sole management and control of the defendant and that the occurrence could not have happened without negligence on the part of the defendant but there is no evidence as to why or how the occurrence took place. From the evidence which was given by the defendants, they state that they manage and control the electricity up to the meter. Now to infer the doctrine herein it means that the claimant had to show that there was no fault on his end. This part of the evidence did not come out clearly from

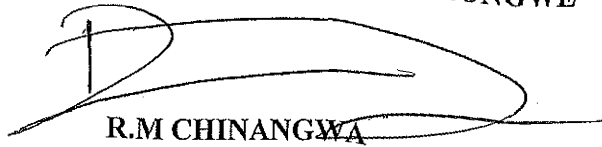
the claimants. If the same was proved then the doctrine would clearly apply as there would be no other explanation.

20. On the above premise this court finds that the claimant's evidence was insufficient to prove negligence.

Finding

21. The applicant's claim is dismissed. Each party will bear their own costs.

Pronounced on 10th September 2021 at LILONGWE



R.M CHINANGWA

JUDGE