THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPEAL NO. 38 OF 2013

1. SIMON APOLLO NANGIRO

2. MARY AGAN APUUN ..... APPELLANTS

VERSUS

UGANDA ELECTRICITY DISTRIBUTION COMPANY LTD (UEDCL)..... RESPONDENT

(Appeal from the Judgment of Hon. Justice Eldad Mwangusha of the High Court of Uganda delivered on 5th October, 2012 in High Court Civil Suit No. 489 of 2004).

CORAM: Hon. Mr. Justice Kenneth Kakuru, JA

Hon. Mr. Justice Geoffrey Kiryabwire, JA

Hon. Mr. Justice Christopher Madrama, JA

JUDGMENT OF JUSTICE KENNETH KAKURU, JA

This is a first appeal from the decision of Eldad Mwangusha, J (as he then was) in High Court *Civil Suit No. 489 of 2004* delivered on the 5thday of October 2012.

The brief background to this appeal as set out briefly by the learned appellate Judge is that, the appellants brought an action against the respondent company claiming for special damages of Ug. Shs. 171,000,000/= (One hundred and seventy one million shillings), general damages and punitive damages. The appellants alleged that, on the 13th day of February, 2004, staff from the respondent company went to their home to reconnect electricity which had been previously disconnected. They claimed that when the generator was switched on, their house caught fire and all their property was damaged. They alleged that, this was due to the mismanagement of the connection and negligence of the respondent, his servants and/or agents.

The respondent denied liability and averred that, there was no negligence on their part, they contended that the short circuit complained of occurred in the ceiling of the appellants' house and not from the respondent's facility. It was contended that the appellants were negligent when they failed to maintain good electrical wiring in their house. The learned trial Judge found that there was no negligence on part of the respondent thereby dismissing the suit with costs.

The appellants being dissatisfied with the decision of the learned trial Judge filed an appeal on the following grounds;-

1. *That the learned Judge erred in law and fact when he held that negligence on the defendant/respondent had not been established and hence dismissing the suit with costs.*
2. *That the learned Judge erred in law and fact when he failed to properly evaluate the evidence on record regarding the cause of fire leading him to arrive at a wrong conclusion that the appellant failed to prove the cause of fire.*
3. *That the learned trial Judge erred in fact when he totally failed to resolve other issues agreed for trial hence dismissing the suit.*
4. *The learned Judge erred in law and fact when he failed to properly evaluate the evidence on record hereby arriving at erroneous decisions.*

Representation

At the hearing of this appeal, *Mr. Augustine Idoot* learned Counsel holding brief for *Mr. Richard Omongole* learned Counsel appeared for the appellants, while *Mr. Fisher Kanyemebwa* learned Counsel appeared for the respondent. The parties sought and were granted leave to adopt their conferencing notes but were also permitted to make brief oral arguments. It is on the basis of the conferencing notes and the brief oral arguments that this appeal has been determined.

Appellants' submissions

Grounds 1, 2, 3 and 4 were argued together, it was submitted that, the learned trial Judge failed to properly evaluate all the evidence on record and as such he arrived at a wrong decision that the appellants failed to prove negligence on the part of the respondent. It was contended that, the absolute cause of the fire was the gross negligence of the respondent's workers who used a thick wire instead of a fuse when reconnecting the electricity at the appellants' premises. It was also submitted that, the fire was started by the respondent's servants who were on the electricity poles tampering with the electricity wires. The respondent's servants later turned on a generator outside the normal time during their repairs and the voltage was high hence the outbreak of the fire which started a few hours after turning it on. Counsel argued that the evidence on record clearly indicated that the fire was caused by the negligence of the respondent's servants and the learned trial Judge wrongly dismissed the suit having found that negligence on the part of the respondent had not been proved. Counsel asked Court to re-evaluate all the evidence on record and allow the appeal.

Respondent's Reply

In reply, Counsel argued grounds 1 and 2 together. It was submitted that the appellants failed to adduce evidence substantiating the allegations of negligence committed by the respondent's servants and as such the learned trial Judge rightly arrived at the conclusion he made. It was argued that, there was no evidence indicating that the respondent's servants used a thick wire as alleged by the appellants. The respondent's witness at the trial testified that the reconnection was done using a cartridge fuse of 60 amps.

It was submitted that, the reconnection was done by DW2 Achaye Eric, a District technician and an employee of the respondent not DW3 Odong Sam as contended by the appellants.

Counsel argued that, the appellants also failed to adduce evidence indicating that the respondent's employee tampered with the wires supplying power to the appellants' residence. They also failed to prove that the fire resulted out of a high voltage as contended. It was argued that the respondent's employee could not have supplied high voltage electricity to the appellants' residence without similarly supplying the same voltage to other houses in the neighbourhood in Moroto Town.

It was further argued that, that the reconnection of electricity done on 12th February, 2004 and electricity was received normally that the appellants' residence meant the said reconnection had nothing to do with the fire outbreak which occurred on 13th February, 2004.

Counsel submitted that, the electric fire did not start from the respondent's installations. It was contended that, there was no fire at the meter box area. It was submitted that, the respondent's responsibility of power supply stops at the meter. It was the appellants responsible for the interior wiring of their house. It was also argued that, given the circumstances in which the fire outbreak occurred, the doctrine of *Res Ipsa Loquitor* was not applicable to the facts of the case. It was submitted that the learned trial Judge arrived at the right conclusion that the appellants had not proved negligence against the respondent. Counsel asked Court to dismiss the appeal with costs.

Resolution

I have carefully read the record of appeal and conferencing notes by the parties to this appeal. I have also read the authorities cited and relied upon by Counsel. This is a first appeal and as such this Court is required to re-evaluate the evidence and come up with its own inferences on issues of law and fact. In *Father Narsensio Begumisa and 3 others vs Eric Tibebaga, Supreme Court Civil No. 17 of 2002*, Court held 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. This principle has been consistently enforced, both before and after the slight change I have just alluded to. In Coghlan vs. Cumberland (1898) 1 Ch. 704, the Court of Appeal (of England) put the matter as follows -

"Even where, as in this case, the appeal turns on a question of fact, the Court of Appeal has to bear in mind that its duty is to rehear the case, and the court must reconsider the materials before the Judge with such other materials as it may have decided to admit. The court must then make up its own mind, not disregarding the judgment appealed from, but carefully weighing and considering it; and not shrinking from overruling it if on full consideration the court comes to the conclusion that the judgment is wrong .... When the question arises which witness is to be believed rather than another and that question turns on manner and demeanour, the Court of Appeal always is, and must be, guided by the impression made on the Judge who saw the witnesses. But there may obviously be other circumstances, quite apart from manner and demeanour, which may show whether a statement is credible or not; and these circumstances may warrant the court in differing from the Judge, even on a question of fact turning on the credibility of witnesses whom the Court has not seen."

In Pandya vs. R (1957) EA 336, the Court of Appeal for Eastern Africa quoted this passage with approval, observing that the principles declared therein are basic and applicable to all first appeals within its jurisdiction."

See also: *Rule 30(1)* of the Rules of this Court and *Ephraim Ongom Odongo vs Francis Binega Donge Supreme Court Civil Appeal No. 10 of 2008* (unreported).

I shall keep the above principles in mind while resolving the grounds of appeal.

The grounds of this appeal resolve around failure of the learned trial Judge to evaluate all the evidence of record. I have carefully read the judgment of the learned trial Judge, it is very clear that, he evaluated the evidence on record, he considered the testimonies of all parties who appeared before Court during the trial as well as the submissions by Counsel from pages 2-8 of his judgment. I have not found it pertinent to reproduce the excerpts from his judgment. After a careful analysis, he reached at a conclusion he made.

It is the appellants' contention that the respondent's servants were responsible for the fire outbreak at their residence due negligence while reconnecting electricity. The objective attitude of the courts to negligence as a tort is made clear in what Baron Alderson held in *Blyth vs Birmingham Water Works (1856) 11 EX. 781.* It was held that;-

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

The answer to any allegation of negligence depends on the amount of evidence adduced by a party having the legal burden to do so. See: *Sections 101, 120* and *103* of the Evidence Act Cap 6. In *H. Kateralwire vs Paul Lwanga [1989-90] HCB 56* three ingredients making up a case of negligence were established as follows;-

1. *There must exist a duty of care owed by the defendant to the plaintiff.*
2. *The defendant ought to have failed to exercise that duty of care.*
3. *That such failure must have resulted into injuries, loss or damage to the plaintiff.*

While resolving the issue of negligence, the learned trial Judge found that there was no sufficient evidence by the appellants, he held at page 8 of his judgement as follows;-

> *On the evidence available before this Court, the issue of the cause of fire that destroyed the plaintiff's property has not been sufficiently resolved. While the plaintiffs claim that the fire originated from the meter where a reconnection had been improperly made, the defendant's claim is that the disconnection of the power, the reconnection and the switching on of the generator were done in the normal course of their duties. I should add that it was merely a routine. It is inconsequential that the generator was switched in at an unusual time because as counsel for the defendant rightly submitted the time the generator was switched on was immaterial."*

I agree with the findings of the learned trial Judge, it was clearly upon the appellants to prove their case to the required standard. They failed to do so.

It was further the appellants' contention that the doctrine of *Res Ipsa Loquitor* was applicable to their case. *Res Ipsa Loquitor* is a maxim applicable to a situation where all facts leading to the accident are unknown and helps the plaintiff thereby to discharge the onus upon him to prove negligence. The conditions for this maxim were aptly put by Sir William C.J in *Scott Vs London & St Katherine Dock (1865) 3 H&C 596* at page 601 as follows:-

> *"There must be reasonable evidence of negligence but where the thing is shown to be under the management of the defendant or his servant and the accident is such that in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by the defendant, that the accident arose from want of care".*

In *Royi Nanziri & Another vs Joseph Kambaza (1978) HCB 304*, it was held that;

"The rule of Res Ipsa Loquitor is merely a rule of evidence and not a rule of law enabling the plaintiff to plead facts of the accident and thereby establish a breach of the duty of care on the part of the defendant without proving the particulars of negligence".

See also: *Uganda Motors Limited vs Wavah Holdings Limited, Supreme Court Civil Appeal No. 19 of 1991* and *Sentongo & Another vs Uganda Railways Corporation [1994] KALR 57.*

The learned trial Judge in his Judgment discussed that applicability of the maxim of *Res Ipsa Loquitor* to the facts before him and held as follows at pages 8 and 9 of his Judgment;-

"An independent investigation with the cause of fire would have resolved the issue as to whether the fire started at the meter in which case the defendant would be responsible for the fire or that it started beyond the meter in which case the plaintiffs would take responsibility. It is for this reason that the principle of res ipsa loquitor is not applicable. The conditions for the application is aptly stated by the learned authors of Winfred & Jolowicz on Tort Tenth Edith at page 74 as follows;-

> *"Conditions for application. The principle requirement is that the mere fact that the accident having happened should tell its own story and raise the inference of negligence so as to establish a prima facie case against the defendant. The story must be clear and unambiguous, if it may tell one of the half a dozen stories the maxim is inapplicable. The single requirement is however commonly divided into two on the basis of Erle C.J's famous statement in Scott London St Katherine Docks Co. "There must be reasonable evidence of negligence. But where the thing is shown to be under the defendant or his servants, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by the defendants, that the accident arose from want of care." The two requirements are thus (i) that the "thing" causing the damage be under the control of the defendant and (ii) that the*

accident must be such as would not in the ordinary course of things have happened without negligence." (Underling provided)

The story in this case is ambiguous. The ambiguity is created by the fact that as I have already stated no investigation were carried out as to the source of the fire because one of the requirements of the above principle is control. The defendant's control of Electricity supply stops at the meter and the rest is under the control of the occupant of the house and unless a short circuit as result of a fault in the wiring is ruled out the defendant cannot be held liable for the break out of the fire.

In the circumstances Court finds that negligence on the part of the defendant has not been established..."

From the above excerpt and the judgment as a whole, I find that, the learned trial Judge carefully weighed up the evidence and properly considered applicability of the doctrine of *Res Ipsa Loquitor* to the facts before him. He found that it was not applicable. The evidence adduced before him was insufficient to sustain the claim on a balance of probabilities. Having re-evaluated the evidence, I have arrived at the same conclusion. I find no reason to fault the learned trial Judge having arrived at the conclusion that he did. I therefore uphold his decision.

This appeal has no merit and is hereby dismissed with costs to the respondent here and the lower Court

It is so ordered.

Dated at **Kampala** this 14th day of October 2020.

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Kenneth Kakuru

Justice of Appeal

THE REPUBLIC OF UGANDA

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VERSUS

UGANDA ELECTRICITY

DISTRIBUTION COMPANY LTD (UEDCL) ==========RESPONDENT

(CORAM: KAKURU, KIRYABWIRE, MADRAMA)

JUDGMENT OF JUSTICE GEOFFREY KIRYABWIRE, JA

JUDGMENT

I have had the opportunity of reading the draft Judgment of my Brother Hon. Mr. Justice Kenneth Kakuru, JA in draft and I agree with the findings and final decisions and orders and have nothing more useful to add.

Dated at Kampala this 14th day of Oct 2020.

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HON. MR. JUSTICE GEOFFREY KIRYABWIRE

JUSTICE OF APPEAL

THE REPUBLIC OF UGANDA,

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPEAL NO 38 OF 2013

(CORAM: KAKURU, KIRYABWIRE, MADRAMA JJA)

1. **SIMON APOLLO NANGIRO}**
2. **MARY AGAN APUUN} .....APPELLANTS**

VERSUS

UGANDA ELECTRICITY DISTRIBUTION COMPANY LTD} RESPONDENT

(Appeal from the judgment of the High Court of Uganda before Hon. Mr. Justice Eldad Mwangusha dated 5th October 2012 in High Court Civil Suit No 489 of 2004)

JUDGMENT OF CHRISTOPHER MADRAMA, JA

I have had the benefit of reading in draft the judgment of my learned brother Hon. Mr. Justice Kenneth Kakuru, JA.

I concur with the judgment of my learned brother Hon. Mr. Justice Kenneth Kakuru, JA that the appeal be dismissed with the order he has proposed and for the reasons he has set out in his judgment and I have nothing useful to add.

Dated at Kampala the 14th day of Oct 2020

Christopher Madrama

Justice of Appeal