

UGANDA / JUDGMENT

## Nangiro and Another v Uganda Electricity Distribution Company Limited (Civil Suit No. 489 of 2004) [2012] UGHCCD 301 (5 October 2012) [2012] UGHCCD 301

COURT

HC: Civil Division (Uganda)

BEFORE

Mwangushya, J

CASE / FILE NUMBER

Civil Suit No. 489 of 2004

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**THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA CIVIL  
DIVISION**

**CIVIL SUIT NO. 489 OF 2004**

**\*05\* SIMON APOLLO NANGIRO**

**MARY AGAN APUUN PLAINTIFFS**

**VERSUS**

**UGANDA ELECTRICITY**

**DISTRIBUTION COMPANY LTD (UEDCL) DEFENDANT**

**BEFORE: HON JUSTICE ELDAD MWANGUSYA**

**JUDGMENT**

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The plaintiffs brought this action against the defendant company claiming special damages to the tune of 171million shillings, general damages; interest at 25% per annum (on the special and general damages) from the time cause of action arose until payment in full; punitive damages and costs for the suit arising from destruction of <sup>a</sup> residential house and other properties therein by a fire caused by an alleged electric fault.

ao been The plaintiffs allege in their pleadings that on or about the 13th February 2004, at about midday the staff from the defendant company went to their house and reconnected electricity which had previously disconnected. Later when the generator was



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switched to on, the said house caught fire allegedly due mismanagement of the connections. They also alleged that the fire and the damage occasioned to the property was caused by negligence of the defendant, his servants and or agents.

(O 0 5 Th<sup>e</sup> defendant however denied liability and averred that there was no negligence on their part as alleged. They avered that the short circuit complained of occurred in the ceiling of the plaintiffs' house and not the defendant's facility. It was their contention that the plaintiffs were negligent when they failed to maintain electrical wiring of the house in good working order which resulted in the short circuit in the ceiling of the said house.

were; During the trial, the plaintiff called 4 witnesses while the defendant called 3 witnesses. The issues that were raised for determination

- **IS 1. Whether the fire outbreak in the plaintiffs' house was caused by the defendant's negligence or that of it agents or servants**
- **2. Whether the plaintiffs suffered any loss as alleged**
- **3. Whether the plaintiffs are entitled to the remedies sought**

At the trial, PW1 who was the 2nd plaintiff testified that on 11/2/2004, she was informed by her house girl that UEB officials

had disconnected the electricity in the said house and that reconnection would only be effected after clearance of the outstanding bill. That the following day the bill was cleared and when the UEB staff reconnected the electricity and switched on the generator, the house was set ablaze and all the property in the house was . destroyed by the said fire.

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During cross examination, she stated that electricity is not usually switched on during the day except in instances when faults were being rectified and eventual reconnections when necessary.

IO re 1'5 On the other hand PW2, husband to PW1 and the first plaintiff in this case stated that, he was away (in UK) when the incident happened. He also testified that he had a lot of property in the said house including a video camera, a scanner, printer among others and had earlier on sent UGX 4.5 million to his wife. In examination, he stated that all his property was destroyed by the fire resulting from tampering with the electricity connected to his house.

PW3 testified that when he was leaving for work on the fateful day at about 9.00 am, he saw UEB workers on the lines that connect power to the house in issue, that he saw one of them had climbed the poles and that two hours later at about 11.am the house was in flames as <sup>a</sup> result of <sup>a</sup> short circuit. PW4 testified that the house was set ablaze the very day the generator was switched on by UEB

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staff. It was his testimony that he had earlier on got information that electrical repairs had been done in that area. He further stated that the investigation carried out showed that the cause of the fire was a short circuit/ electricity and not arson.

Io \ 6 DW2 the District technician stated that the premises had been disconnected for non payment. After payment of the outstanding bill a reconnection was immediately effected. The reconnection was done with a fuse he had got from their office. The power was supplied and the generator was thus switched on. He however got a report later on that the house he had reconnected had caught fire. He. responded by dispatching his staff, a one Odong Charles, to find out-what had happened. The meter was thus recovered by Odong Charles from the said house and the same was handed over to the Company Secretary of the defendant company for safe custody. The said meter was in good condition without sign of burning.

During, cross examination, he stated that he had reconnected only the house that had caught fire; although it was not his responsibility. It was his testimony that this was the duty of <sup>a</sup> meter reader and that he took responsibility because the meter reader was not present at the time as he had travelled to Soroti.

Mr. Kanyemibwa sought leave of court to call another witness, DW3 from an insurance company, UAP who testified that he received instructions from the claims manager, UAP to proceed to Moroto and assess <sup>a</sup> claim that had arisen concerning <sup>a</sup> house that had got burnt. It was his testimony that he carried out the investigation and

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made a report thereto. He further testified that after interviewing a number of people, his conclusion and observation was that the house was burnt and property damaged though he could not ascertain the exact value of the said house. That the cause of the of fire did not start from the meter but it was as a result of a short circuit in the house

In his submission, Mr. Omongole Richard, counsel for the plaintiffs contended that causation is an important factor in establishing the aspect of negligence from the facts before this court. He cited a number of authorities for the proposition that causation is concerned <sup>10</sup> with physical connection which links the defendant's negligence with the plaintiff's damage. The Principle applied is the 'but for test' to determine whether the connection has been established on the fact in issue in any a particular case. If the harm to the plaintiff would not have occurred but for the defendants negligence, then the negligence is the cause of the harm. Counsel thus stated that if it was not for the defendant's work on the power lines and the eventual switching on of the generator outside normal time, the fire would not have been caused in the plaintiffs' premises. He drew the attention of this court to the testimony of PW3 and PW4 and 20. submitted that the wiring of the house was intact; the fire was caused by the defendant's staff who did not put a fuse when they reconnected the power as confirmed by DW1 <sup>3</sup>

He further contended that the defendant was negligent when they employed an unqualified person to handle electrical connections

<sup>5</sup> <sup>1</sup> IS which required <sup>a</sup> lot of expertise, reasonable skill and care. It was his opinion that by using an unqualified personnel, the defendant had fallen short of the standard of care expected in this field. He additionally asked court to rely on the principle of res ipsa loquitur and stated that the mere fact that the accident occurred tells its own story and raises an inference of negligence to establish a prima facie case against the defendant. For this doctrine to succeed, it must be proved that the thing causing the damage must be under the control of the defendant or his servants and that the accident must be such as would not in the ordinary course of things would have happened without negligence: **SCOTT V LONDON & ST KATHERINE DOCKS CO.** [1865] 3 <sup>H</sup> & <sup>C</sup> at pg 595. It was thus his contention that the outbreak of the fire was caused by the defendant's negligence.

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5 be granted As to whether the plaintiff suffered any damage, Mr. Omongole invited court to look at PW1 and PW2's testimonies and concluded that the plaintiffs should be the remedies sought accordingly.

issue, In reply to the 1st issue, Mr. Kanyemibwa submitted that the plaintiffs had failed to adduce any evidence of negligence against the defendant. Although counsel conceded that on the said date, the generator was switched on after repairs, the plaintiffs did not adduce any expert evidence to connect the repairs that were being conducted by the defendant's staff to the fire outbreak in the plaintiffs' house and neither did they adduce any evidence to

connect the switching on of the generator during day time outside normal scheduled hours with the fire outbreak at the plaintiffs' residence only and nowhere else. He further stated that the testimony of the plaintiffs' witnesses that the defendant used <sup>a</sup> thick wire instead of a fuse should be disregarded by court as there was no pro'of of the same.

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Counsel -stated that the defendant was not duty bound to do the wiring before the provision of electricity, their duty is limited to supplying power up to the meter and before power is supplied, it is a legal requirement that there is proper wiring of the premises. That since the house in question had been receiving normal power supply before the reconnection, then the defendant rightly supplied power to the.said house.

He further contended that the doctrine of res ipsa loquitor was not applicable. There was no evidence adduced by the plaintiff that would shift the burden on the defendant under the doctrine. He opined that the calamity that befell the plaintiffs at the exclusion of other residences in the same locality was due to poor wiring in the plaintiffs' premises independent of the defendant's action.

On the issue of special damages counsel contended that they must not only be pleaded but also be proved. During the trial no evidence was adduced as to the prices to be attached to any of the items that were lost, while for general damages, he submitted that since the

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plaintiffs'failed to prove that the defendants were negligent, the suit had been proved and he invited court to dismiss it with costs.

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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 routine.<sup>a</sup> It is inconsequential that the generator was switched in at an unusual time because as counsel for defendant rightly submitted the time the generator was switched on was immaterial. An independent investigation with the cause of the 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 loquitur* is not applicable. The conditions for the application is aptly stated by the learned authors of Winfield & Jolowicz on Tort Tenth Edition 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 half a dozen stories\*

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\*the maxim is inapplicable. This single requirement is however commonly divided into two on the basis of Erie C. J's famous statement in *Scott London and St Katherine Docks Co.* "These must be reasonable evidence of negligence. But where the thing is shown to be under the control of 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."\* (underlining provided).

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I The story in this case is ambiguous. The ambiguity is created by the fact that as I have already stated no investigations were carried out as to the source of the fire because one of the requirements of the 2-0 above principle is control. The defendant's control of the 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 a 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 and this suit is dismissed with costs to the defendant

Eldad Mwangusya <sup>1</sup>

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