

IN THE MAGISTRATE'S COURT AT LABASA
CIVIL JURISDICTION

Civil Action No. 123 of 2008

BETWEEN : **MOHAMMED ARFAZ KHAN**

PLAINTIFF

AND : **FIJI ELECTRICITY AUTHORITY**

DEFENDANT

For the Plaintiff : **Mr Sen. A**

For the Defendant : **Mr Ratule. K**

Judgment : **10 November 2017**

JUDGMENT

1. The Plaintiff filed a writ of summon with a statement of claim on 3 October 2008.
2. The Defendant filed its intention to defend on 30 October 2008. The statement of defence was filed on 13 November 2008.
3. The Plaintiff filed reply to defence on 2 December 2008. A notice to proceed was filed by the Plaintiff on 16 June 2010.
4. The case was heard on 31 August 2015. The Plaintiff is the only witness for his case. After several adjournments the Defendant's case was heard on 9 August 2017. The Defendant called two witnesses. At the conclusion of the hearing, both

counsel wish to file closing submission. The Plaintiff filed his submission on 29 September 2017. The Defendant filed its closing submission on 2 October 2017.

5. According to the statement of claim, on 1 April 2007, the Plaintiff was erecting a temporary shed when the roofing iron that was in his possession touched the power lines causing him to be electrocuted where he suffered injuries. The Plaintiff claimed his injuries were caused by the negligence of the Defendant. The particulars of the negligence are;-
 - a. *Constructing high voltage power lines over residential dwellings.*
 - b. *Failing to provide precautions on overhead power lines.*
 - c. *Failing to provide fuses and switch gear and circuit breaker and isolating link to prevent danger on live wires.*
 - d. *Failure to provide minimum height clearance from ground and building structures as required under the Electricity Act.*
6. The particulars of the injuries and the treatment are provided in paragraph 7 of the claim. The Plaintiff is relying on the doctrine of *res ipsa loquitur* and claim for damages.
7. In the statement of defence, the Defendant denies the claim of negligence and stated;-
 - a. *that the Plaintiff's dwelling was constructed after the power lines were erected.*
 - b. *denies that the power lines were at a height that was dangerous to the Plaintiff.*
 - c. *denies that the power lines were erected in breach of the Electricity Act and Regulations.*
8. The Defendant further stated in their statement of defence that the doctrine of *res ipsa loquitur* does not apply. The Plaintiff injuries were caused or contributed by the negligence of the Plaintiff as follows;-
 - a. *Failing to take any adequate heed of the presence of the presence of the power lines, in particular, failing to ensure that the roofing iron did not come into contact with the power lines.*
 - b. *Failing to take any adequate care for his own safety when lifting the roofing iron.*
 - c. *Moving the roofing iron towards the power lines when it was clearly unsafe and obviously risky to do so.*

9. Since the Defendant is denying the claim of negligence, it is only proper that I first consider the issue of negligence. The Plaintiff's entitlement for damages from the Defendant will depend on the finding on negligence.
10. I will now look into the evidence of the Plaintiff that support his claim on the Defendant's negligence. On 1 April 2007, he was dismantling a temporary shed at his brother's house which is next to his house. The shed was used on his mother's funeral. He picked a long pipe and he is not aware of the power line on top and the pipe hit the power line and he was shocked. The pipe is about 18 feet long. He does not know the legal authority on FEA to put the power line above the land. The power line is not at the right height and if it was on the right height he would not get hurt, therefore, the Defendant is negligent. In cross-examination, it was put to the Plaintiff that the standard height of the power line is 19 feet and it complies with the FEA regulation. The Plaintiff did not agree or disagree with that but said if that was the height, how the pipe hit the wire. It was also put to the Plaintiff that the FEA line was erected in 1980, and the house of his brother was built later. The Plaintiff said he did not know. He tendered two photographs as exhibits - *PE1* and *PE2* which shows his brother's house where the incident occurred and the power line that run over the said property. These are the Plaintiff's evidence that are relevant to the issue of negligence.
11. I now look into the Defendant's evidence relating to the claim and denial of negligence. I will first consider the evidence of the second witness.
12. The Defendant second witness is Niranjana Prasad Sharma, the Defendant District Superintendent Northern. On 1 April 2007, around 8am he received a phone call from Wailevu that someone was shocked. He calls the standby senior technician for someone to attend to the scene. He also calls the Electrical Inspector Satrohan Lal. When he arrived at the scene the victim was taken to the hospital. They saw some burnt marks on a galvanised pipe. Satrohan Lal arrived at 8.40am and took the heights, the ground clearance, the length of the galvanised pipe, and prepares a report under *section 57* of the *Electricity Act*. I was there when the height of the power line was measured and it was 19 feet. Under *table 3 of regulation 27*, the

required height is 19 feet and height of the power line at the time of the incident was in accordance to their regulation. They also measured the galvanised pipe which was 20 feet long. The power line was commissioned on 20 October 1980, and during that time there was no house or residential dwelling at the place of the incident as it was all cane. They are also not required to put any notice as claimed because *regulation 27* only requires them to abide by the ground clearance. The power line that runs over the said property in which the incident occurs is 11,000 volt. There are many places in Fiji where such power line run over residential property and this is not the only property.

13. The first witness is Shailendra Kumar, Electrical Installation Inspector for the Defendant. He refers to the *section 57* report that was prepared by Satrohan Lal relating to the electrical shock of the Plaintiff. He tendered the report as exhibit *DE1*. He stated that the standard or required height for high voltage line is 19 feet from the ground. According to the report (*DE1*) the high voltage line is 19 feet and in compliance with the FEA regulation.
14. I proceed to consider the evidence on negligence and in doing so, I have considered the pleadings and submission filed by the parties and the evidence adduced at the hearing. I also considered the relevant and applicable laws and case authorities.
15. The burden of proof is on the Plaintiff to prove his case on the balance of probabilities.
16. *PE1* and *PE2* shows the power line over the property where the incident happens. The Defendant is not disputing the 11,000 volt power line that runs over the property in *PE 1* and *2*. There was no clear evidence from the Plaintiff that the residential dwelling of his brother was already there before the Defendant put the power line over the said property. This was clarified by the Defendant second witness that the power line was commissioned in 1980, and at that time there was no residential house at the place of the incident as it was all cane farms. In the pleading the Plaintiff state that they were erecting shed and he was carrying a roofing iron which touches the power line. In his evidence he stated that they were

dismantling the shed and he was carrying a pipe that touched the power line. The evidence does not support the pleading on this fact. There was no evidence from the Plaintiff to show that the Defendant is required to do what is claimed in paragraph 7(ii) and (iii) of the claim. There was also no evidence to show that the Defendant failed in fulfilling those requirements if there was any. This was clarified by the Defendant second witness that they are not required to give any notice, all they are required under *regulation 27* of the *Electricity Act* is to clear the ground. The Plaintiff did not give any evidence on the required height of the power line and fail to show evidence that the height of the power line at the time of the incident is not in accordance with the *Electricity Act*. This was clarified by the Defendant second witness that he was present when they measured the height of the power line from the ground, it was 19 feet and that is the standard height required under *regulation 27* of the *Electricity Act*. That was also supported by the report (*DW1*) prepared by Satrohan Lal under *section 57* of the *Electricity Act*. The length of the galvanised pipe was confirmed by both the Defendant witnesses as 20 feet.

17. In assessing the evidence adduced in this case in its totality, on the balance of probabilities, I find that the Plaintiff failed to establish and prove that the Defendant was negligent. The height of the power line was 19 feet at the time of the incident and that is the standard height. The Plaintiff failed in his obligation to prove the particulars of negligence he listed in his claim.
18. Accordingly, I find that the Plaintiff was negligent in not taking proper care when he was dismantling the shed and the injuries he suffered were solely due to his own negligence. I will not accept his evidence that he did not see or not aware of the power line as his house was next to his brother's house where the incident occurred and he was attending his mother's funeral and gathering in the same shed few days before they dismantling the shed.
19. At this juncture, I do not see fit to further consider the issue of damages as the Defendant is not negligent and therefore not liable for the damages claimed by the Plaintiff.

20. In my judgment, I find that the Defendant is not negligent and the injuries suffered by the Plaintiff were due to his own careless and negligent. Accordingly, I dismiss the Plaintiff's claim and no order for costs as it was not pleaded by the Defendant.

28 days to appeal



C. M. Tuberi
RESIDENT MAGISTRATE

