

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL APPEAL NO. 09 OF 2015
ARISING FROM CIVIL SUIT NO.1058 OF 2009**

OTHIENO PETER :: APPELLANT

VERSUS

SEYANI BROTHERS & CO. LTD AND

LAXMANBHAI CONSTRUCTION ‘JV’ LTD :: RESPONDENT

BEFORE: LADY JUSTICE LYDIA MUGAMBE

JUDGMENT

a) Introduction

1. This judgment is in the appeal from the decision of Her Worship Nambatya Irene at Mengo Chief Magistrates Court. In her ruling of 26th September 2014, the trial Magistrate dismissed Civil Suit No. 1058 of 2009 in which the Appellant had sought compensation for the injuries and suffering occasioned on him after being electrocuted while working at the Respondent’s building site, special and general damages, interest and costs.
2. The Appellant is represented by Mr. Zack Olowo of M/s. Agaba & Co. Advocates and the Respondent is represented by Mr. Herbert Kiggundu Mugerwa of M/s. Kabayiza, Mugerwa & Ali Advocates.
3. Based on the memorandum of appeal, the grounds of appeal are:

- i. The learned trial magistrate erred in law and fact when she held that the Appellant was not an employee of the Respondent at the time of the accident.
 - ii. The learned trial magistrate erred in law and fact when she held that the Respondent was not negligent.
 - iii. The learned trial magistrate erred in law and fact when she held that the Appellant was not entitled to any relief sought.
 - iv. The learned trial magistrate erred in law and fact when she held that the claim for special damages was never proved.
 - v. The learned trial magistrate erred in law and fact when she failed to evaluate the evidence on the record as a whole thus reaching a wrong conclusion.
4. The Appellant filed civil suit No. 1058 of 2009 seeking compensation for the injuries and suffering occasioned on him after being electrocuted while working at the Respondent's building site along Yusuf Lule road, special and general damages, interest and costs. It was the Appellant's case at trial that on 25th April 2009 at around 6:30pm while working as a mason at the Respondent's construction site in the course of his employment, the light provided was dim and was not lighting the spot he was working on. The Appellant tried to adjust the bulb so that he could see.
5. When he held the bulb, he was electrocuted and he fell with the wire. As a result of the electrocution, he fell on a pile of timber and remained unconscious for about 30 minutes. He regained consciousness while at Nsambya hospital. The Appellant averred that as his employer, the Respondent was negligent as far as they failed to provide protective gear to him during his employment.
6. At trial, the Respondent denied the Appellant's claims except that he was electrocuted at its building site. The Respondent explained that the Appellant was not its employee but was an employee of one of its subcontractors. The said negligence was his own and not attributable to the Respondent.

7. In her judgment of 26th September 2014, Her Worship Nambatya found that the Appellant was not an employee of the Respondent thus the Respondent could not be negligent to a person it did not employ as it was not duty bound to provide protective gear to persons that were not directly under its employment and dismissed the Appellant's suit. The Appellant was dissatisfied with the finding hence this appeal.

Applicable law

8. The Supreme Court in **Father Nanensio Begumisa and 3 Ors v. Eric Tiberaga SCCA No. 17 of 2004** observed that the legal obligation of the first appellate court is to re-appraise evidence and is founded in common law, rather than rules of procedure. 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 never seen or heard the witnesses, it must weigh the conflicting evidence and draw its own inference and conclusions. (Also see **F.K. Zabwe v. Orient bank and others SCCA No. 4 of 2006.**) I will adopt this standard in my assessment in this appeal.
9. Section 2 of the Employment Act defines an employee as “any person who has entered into a contract of service or an apprenticeship contract, including, without limitation, any person who is employed by or for the Government of Uganda, including the Uganda Public Service, a local authority or a parastatal organisation but excludes a member of the Uganda Peoples’ Defence Forces.”
10. Section 13 (1) of the Occupational Safety and Health Act provides that “It is the responsibility of an employer— (a) to take, as far as is reasonably practicable, all measures for the protection of his or her workers and the general public from the dangerous aspects of the employer’s undertaking at his or her own cost; (b) to ensure, as far as is reasonably practicable, that the working environment is kept free from any hazard due to pollution by— (i) employing technical measures, applied to new plant or processes in design or installation,

or added to existing plant or processes; or (ii) employing supplementary organisational measures.” Subsection (2) provides that “Without prejudice to the generality of an employer’s duty in subsection (1), the matters to which the duty extends shall include in particular- (g) “the provision, where necessary, of adequate personal protective equipment to prevent, as far as is reasonably practicable, the risks of accidents or of adverse effects on health.”

11. Section 48 provides that “(1) Suitable lighting, whether natural or artificial, shall be secured and maintained in every part of a workplace in which any person works or passes.(2) All glazed windows and skylights used for lighting workrooms shall, so far as is practicable, be kept clean on both the inner and outer surfaces and free from obstruction, except in cases of whitewashing or shading of windows and skylights, for the purpose of mitigating heat or glare. (3) All apparatus provided for producing artificial lighting shall be properly maintained.”

12. In **George Paul Emenyu & Anor v. Attorney General [1994] KALR 109**, it was held that “Person is guilty of contributory negligence if he ought reasonably to have foreseen that if he did not act as a reasonable prudent man, he might hurt himself and he must take into account that others may be careless”

Analysis

13. I have considered all the pleadings and submissions of the parties. For starters for a grown man like the Appellant to reach a bulb that is switched on, to pull it without any kind of insulation was gross contributory negligence.

14. Having said that, just like in the lower court, the Appellant fails miserably to demonstrate to my satisfaction that he was an employee of the Respondent at the material time. What seems to come out is that the Appellant was often hired by a one Simon who worked on different projects of the Respondent. This would give the Appellant a cause of action against the said Simon and not the Respondent. I therefore find no basis of the Appellant’s claim against the Respondent.

15. If the Respondent sub contracted the said Simon who then hired the Appellant at the site in issue, it was for the said Simon to ensure the safety of his workers. The Appellant’s action

for negligence due to the failure to provide protective gear can only stand against the said Simon.

16. Based on the above, ground 1,2,3,4 and 5 are disallowed. The appeal is dismissed with costs. The lower court's decision is upheld in its entirety.

I so order.

Lydia Mugambe.
Judge.
11 June 2020.