



**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, MTHATHA)**

CASE NO.: 2323/23

Reportable	Yes/No
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In the matter between:

NOZUKILE MLONYENI

Plaintiff

and

ESKOM HOLDINGS SOC LIMITED

Defendant

JUDGMENT

Cengani-Mbakaza AJ

[1] The plaintiff instituted an action against Eskom Holdings SOC Limited (the defendant) for damage caused by an electric box that caused a deadly and uncontrollable fire that could not be prevented by the electric breakers.

[2] In the particulars of claim, the plaintiff specifically alleges that the defendant's negligence stems from several factors including:

- 2.1 Failure to display sufficient warning signs near the electric box meter;
- 2.2 Inadequate inspection and maintenance of electric poles and distribution cables, compromising public safety;

2.3 Failure to take reasonable steps to prevent harm or injury to the plaintiff and property;

2.4 Failure to prioritise and attend to emergency faults after being reported;

2.5 Failure to install mechanisms to prevent cables and electric meter boxes from posing a danger to the plaintiff's property and infrastructure, specifically her two houses.

[3] In its plea, the defendant denies that it breached its legal duty towards the plaintiff or that any such breach which caused the plaintiff's damages. The trial proceeded on the basis that there would be no separation of issues between the merits and quantum, in accordance with a pre-trial conference held on 14 February 2024.

[4] The plaintiff's home (the site) is situated in a rural area and comprises a large main house with multiple bedrooms as well as several rondavels located separately from the main house. It is common cause that on the day in question, the plaintiff's home caught fire causing the house to be reduced to ashes. Due to the wind, the fire spread to one of the rondavels also destroying it.

[5] The fire resulted in significant losses, notably destroying all the furniture in the main house, electric appliances and important documents. The cause of the fire is one of the principal issues in dispute in these proceedings.

[6] The plaintiff testified that she had returned from church and went straight to her bedroom to change into casual attire. While inside the room, she heard a loud bang coming from the direction of the electric meter box which was located in the kitchen. She immediately went outside and found that the fire had started to spread, causing the damage depicted in the photo album presented during the proceedings.

[7] She testified that one of the defendant's personnel arrived at her home soon thereafter to investigate the cause of the fire. She stated that she informed the defendant's personnel that the fire had originated from the bursting of the electric meter box.

[8] In contrast, a report compiled by Mr Ronaldo Same which was presented as evidence on behalf of the plaintiff during the trial noted that no one was present in the house when the fire occurred, and the cause of fire was unknown. In his conclusion, Mr Same indicated that it was impossible to determine the cause of fire due to lack of eyewitnesses. He noted however that strong winds on the day of the incident contributed to the fire spreading to a nearby rondavel, resulting in significant damage. He further noted that the Mineral Insulated Cable, referred to here as MCB did not suffer any stripping.

[9] After the plaintiff's case was closed, the defendant called Ms Ncebakazi Dyalvane (Dyalvane) to testify and refute the allegations of negligence against the defendant. Dyalvane, a senior technical official employed by the defendant testified that on 10 August 2020, she received a call reporting that a cable at KNRQ003 had been burnt resulting in a house fire. The cable burning was reported as a fault.

[10] She proceeded to the location where she observed a downed cable and assessed the damage to the site. During her investigations, she enquired about the circumstances surrounding the fire. The plaintiff informed her that no one was present at the site when the fire started. Dyalvane testified that according to the records the fire was reported on 10 August 2020.

[11] During cross-examination, Dyalvane's presence at the site was questioned. It was suggested that she did not attend the scene, and that a male person was the one who actually visited the site. Another contentious issue was whether the defendant's personnel visited the site on the same day or the following day after the incident. Dyalvane was adamant that to her knowledge, the visit took place on 10 August 2020. With this evidence, the defendant closed its case.

[12] The plaintiff's case hinges on the provisions of section 25 of the Electrical Regulation Act 4 of 2005 (the Act). The relevant provision reads:

'Liability of licensee for damage or injury

In any civil proceedings against a licensee arising out of damage or injury caused by the induction or electrolysis or in any other manner by means of

electricity generated, transmitted or distributed by a licensee, such a damage or injury is deemed to have been caused by the negligence of the licensee, unless there is credible evidence to the contrary.’

[13] Given the mutually destructive versions present in this matter, making credibility findings is essential. As previously noted, determining the cause of the fire is one of the principal issues. In terms of our law, the approach to mutually destructive versions is often guided by the case law. In *Stellenbosch Famer’s Winery Group Ltd and Another v Martell et Cie and Others*,¹ the court held that:

‘The technique generally employed by courts in resolving factual disputes of this nature may conveniently be summarised as follows. To come to a conclusion on the disputed issues a court must make findings on (a) the credibility of the various factual witnesses; (b) their reliability; and (c) the probabilities. As to (a), the court’s finding on the credibility of a particular witness will depend on its impression about the veracity of the witness. That in turn will depend on a variety of subsidiary factors, not necessarily in order of importance, such as (i) the witness’s candour and demeanour in the witness-box, (ii) his bias, latent and blatant, (iii) internal contradictions in his evidence, (iv) external contradictions with what was pleaded or put on his behalf, or with established fact or with his own extracurial statements or actions, (v) the probability or improbability of particular aspects of his version, (vi) the calibre and cogency of his performance compared to that of other witnesses testifying about the same incident or events. As to (b), a witness’s reliability will depend, apart from the factors mentioned under (a)(ii), (iv) and (v) above, on (i) the opportunities he had to experience or observe the event in question and (ii) the quality, integrity and independence of his recall thereof. As to (c), this necessitates an analysis and evaluation of the probability or improbability of each party’s version on each of the disputed issues. In the light of its assessment of (a), (b) and (c) the court will then, as a final step, determine whether the party burdened with the onus of proof has succeeded in discharging it. The hard case, which will doubtless be the rare one, occurs

¹ 2003 (1) SA 11 para 5.

when a court's credibility findings compel it in one direction and its evaluation of the general probabilities in another. The more convincing the former, the less convincing will be the latter. But when all factors are equipoised probabilities prevail.'

[14] Although the plaintiff relies on the provisions of section 25 of the Act, it remains relevant to assess the reliability and credibility of the plaintiff as a single witness in particular on factual issues. Furthermore, the plaintiff's version should be evaluated in light of her burden of proof.²

[15] The plaintiff, an elderly lady, testified about the events that occurred five years ago. The report was compiled immediately after the incident. Therefore, it would be unreasonable to assume that she intentionally provided a false testimony.

[16] However, it is possible that she may have made a mistake in her narrative, particularly when compared to the technical investigation officer's account. However, that mistake does not favour her case. The contradictions in the defendant's evidence relate to the gender of the person who visited the site and whether the visit occurred on the same day as the incident. Despite these contradictions, the essential elements required to establish the core issues remain unaffected. Therefore, this discrepancy is immaterial. Notably, the defendant's personnel reported that the cause of fire was unknown and that no one witnessed the incident. Therefore, this technical corroboration is compelling and hard to dismiss.

² *National Employers General Insurance Limited v Jagers* 1984 (4) SA 437 (E) at 440 D-G, the court held:

'[I]t seems to me with respect, that in any civil case, as in criminal case, the onus can ordinarily only be discharged by adducing credible evidence to support the case of the party on whom the onus rests. In a civil case the onus is obviously not as heavy as it is in a criminal case, but nevertheless where the onus rests on the plaintiff as in the present case, and where there are two mutually destructive stories, he can only succeed if he satisfies the court on a preponderance of probabilities that his version is true and accurate and therefore acceptable, and that the other version advanced by the defendant is therefore false or mistaken and falls to be rejected. In deciding whether the evidence is true or not, the court will weigh up and test the plaintiff's allegations against general probabilities. The estimate of the credibility of a witness will therefore be inextricably bound up with a consideration of the probabilities of the case and, if the balance of probabilities are evenly balanced in the sense that they do not favour the plaintiff's case any more than they do the defendant's, the plaintiff can only succeed if the court nevertheless believes him and is satisfied that his evidence is true and that the defendant's version is false.'

[17] Since the cause of fire was unknown, it was imperative to conduct a thorough investigation. Objectively, a technical report from the experts with requisite expertise to investigate the cause of fire would have been highly valuable in these proceedings. The use of the word “fault” for reporting purposes does not necessarily establish on a balance of probabilities that the actual fault was located in the meter box as alleged by the plaintiff.

[18] The determination of negligence is evaluated based on the reasonable person standard. *Kruger v Coetzee*³, at 430E-G Holmes J described the test as follows:

‘For purposes of liability culpa arise if-

(a) A *diligens paterfamilias* in the position of the defendant-

(i) would foresee the reasonable possibility of his conduct injuring another in his person

or property and causing him patrimonial loss; and

(ii) would take reasonable steps to guard against such occurrence.

(b) the defendant failed to take such steps. This has been constantly stated by the court for some 50 years. Requirement (a) is sometimes overlooked. Whether a *diligens paterfamilias* in the position of the person concerned would take any guarding steps at all, and if so, what steps would be reasonable, must always depend upon the particular circumstances of each case.’

[19] Given the evidence presented before this court, the presumption in section 25 of the Act is rebutted. The evidence failed to demonstrate that the defendant neglected to display adequate warning signs near the electric box as alleged in the particulars of claim. It lacked sufficient detail to establish that the defendant failed to maintain the electric poles, take reasonable steps to prevent harm or prioritize and respond adequately to the emergency fault after being notified.

³ 1966 (2) SA 428 (A).

[20] There was no evidence presented to establish on a balance of probabilities that the defendant failed to install adequate mechanisms to prevent cables and electric meter boxes from posing a danger to the plaintiff's property. In contrast, the evidence suggests that the cause of the fire was unknown and that the MCB's failure to strip indicates that the cable integrity in the meter box was well maintained. Therefore, the plaintiff's claim cannot be sustained.

[21] Regarding the issue of costs, a debate arose concerning the wasted costs of 09 April 2025. The defendant's counsel suggested that the plaintiff's counsel should be liable for costs *de bonis propriis*. While it is true that the plaintiff's counsel arrived in court very late leading to the delay in the proceedings, his explanation which I find valid was thoroughly placed on record. The logistical arrangements which he never anticipated placed him in a difficult position. Consequently, in the exercise of my discretion, I do not find sufficient reason to take the drastic step of awarding costs *de bonis propriis*. Furthermore, although the defendant won the case, the circumstances do not warrant an award of costs.

Order

1. The plaintiff's claim is dismissed.
2. Each party shall pay its own costs.

N CENGANI-MBAKAZA
ACTING JUDGE OF THE HIGH COURT

APPEARANCES:

Counsel for the Plaintiff : Adv SY Malunga
Instructed by : Mr N Titi
Mthatha

Counsel for the Defendant : Adv WJ Botha
Instructed by : Norman Hornby Inc.
C/o Smith Tabata Attorneys

Heard on : 10 April 2025
Judgment Delivered on : 31 July 2025