

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case Number: 29591/21

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED.

DATE: **31/08/2023**

SIGNATURE

In the matter between:

P[...] M[...] obo O[...] M[...]

Plaintiff

and

ESKOM HOLDINGS LIMITED

Defendant

JUDGEMENT

MNGQIBISA-THUSI J

- [1] The plaintiff has instituted an action, in her representative capacity as mother and guardian of the minor child, O[...] M[...], against the defendant in which she claims damages for loss suffered as a result of injuries the minor child sustained as a result of being electrocuted by a electricity cable after touching

it on 28 October 2020 in Trust Location, Machubeni A/A, Lady Frere. At the time the minor child was electrocuted he was herding goats.

[2] After the accident the defendant was contacted and it dispatched its employees to the scene.

[3] As a result of being electrocuted the minor child is permanently disabled and suffers from:

2.1 left foot decreased sensation to level above ankle;

2.2 left-hand decreased sensation to mid forearm, swollen to level of shoulder;

2.3 debridement of the left hand and left transmetatarsal amputation;

2.4 left elbow amputation, guillotine with shortened bones;

2.5 full thickness burns on the left hand;

2.6 auto -amputation of the middle toes and partly little toe and big toe; and

2.7 septic dead left hand and wrist with sepsis extending to the forearm.

[4] The parties agreed to the separation of issue of liability and quantum. A ruling was made in terms of Rule 33(1) whereby liability and quantum were separated and quantum was postponed *sine die*.

[5] The defendant, Eskom Holdings Limited, is a state owned company, incorporated in terms of the company laws of the Republic of South Africa and is largely responsible for the provision of electricity to the South African community at large and owns the infrastructure for supplying electricity and in particular in this case, powerline pole spanning CAR/FRM 641 and MHR/SNHL/55, located in Trust Location, Machubeni A/A, Lady Frere

[6] It is the plaintiff's contention that the minor child sustained his injuries as a result of the negligence of the defendant in that it owed a duty of care to members of the public coming near any of its electrical powerlines and/or cabling and/or wiring and has the duty to ensure that the electrical powerlines and/or cabling and/or wiring is not exposed as to be a danger or cause harm to members of the public. In particular, that the defendant has the duty to ensure that all live electrical power lines and/or cabling and/or electrical wires and/or uncovered electrical wires are, *inter alia*, not left unattended, are properly maintained and/or inspected; not left at any place where it is within the reach of members of the public and/or accessible to members of the public; are disconnected from the electrical power supply and properly secured and that there is adequate warning about the dangers of live and/or uncovered electrical power lines and/or cabling and/or electrical wires and/or power lines; and takes reasonable steps to avoid any person being injured.

[7] It was submitted on behalf of the plaintiff that the defendant was negligent in failing to ensure that:

6.1 to ensure that the minor child was not exposed to a live wire;

6.2 to ensure that live electric wiring was maintained and inspected regularly;

6.3 the live wire was secured; and

6.4 live electrical wiring was not left at any place it was accessible or within the reach of the minor child.

[8] In its plea the defendant admits its duty towards members of the public but denies liability for the loss suffered by the minor child and pleads that the accident was caused solely through the negligence of the minor child in that the minor child:

- 7.1 failed to keep a proper lookout;
- 7.2 consented to the risk involved in touching the live wire by ignoring warnings from a certain Iviwe Mangina not to touch the wire;
- 7.3 failed to exercise reasonable care in order to avoid touching the live wire; and
- 7.4 that the minor child was aware or ought to have been aware or was negligent in not being aware in the risk of touching a live wire.

- [9] In the alternative, the defendant pleads that, should a finding be made that the defendant's negligence contributed to the damage suffered by the minor child or that the minor child did not voluntarily assume the risk of harm by touching the live powerline, the minor child's negligence contributed to the injuries he sustained and that an apportionment in terms of Apportionment of Damages Act 34 of 1956, as amended.
- [10] Furthermore, in the alternative it was pleaded that the minor child ought to have been aware of the risk involved in coming into contact with the live powerline and despite such knowledge and awareness and appreciation of the risks, the minor child nevertheless chose to be in contact with the power line.
- [11] The defendant prays for the action be dismissed and in the alternative that the amount of damages to be awarded to the plaintiff as damages should be apportioned and further in the alternative, that the court make an order that is just and equitable.
- [12] The initial issue to be determined was were the onus lay and should have the duty to begin.

[13] On behalf of the plaintiff it was submitted that on the issue of negligence, the onus lay with the defendant in light of the provisions section 26 of the Electricity Act 41 of 1987 which provides that:

“In any civil proceedings against an undertaker arising out of damage or injury caused by induction or electrolysis or in any other manner by means of electricity generated or transmitted by or leaking from the plant or machinery of any undertaker, such damage or injury shall be presumed to have been caused by the negligence of the undertaker, unless the contrary is proved.”

[14] It is not in dispute that the defendant is an ‘undertaker’ as envisaged in the Act. In clause x111 of the Definition section of the Act, an undertaker is defined as:

“any person authorised under this Act or any other law to carry on an undertaking which sells at least one gigawatt hour of electricity per annum.”

[15] Therefore, there cannot be any dispute, and in fact it was not disputed by counsel for the defendant that the onus was on the defendant to present evidence on a balance of probabilities that there was no negligence on its part which contributed to the loss suffered by the minor child.

[16] In his address, counsel for the defendant submitted that it had no witnesses to call, including calling the witness it alleges warned the minor child not to touch the powerline. Thereafter the defendant closed its case.

[17] In argument, counsel for the defence submitted that the defendant stood by the averments it made in its plea.

[18] On behalf of the plaintiff it was argued that in the absence of any evidence from the defendant showing that its negligence did not cause the injuries sustained by the minor child or how the minor child’s negligence contributed to

the damage he suffered, the defendant should be held liable for all the loss suffered by the minor child and that no apportionment should be applied.

[19] It is common cause that the minor child sustained his injuries after coming into contact with a hanging electrical live wire belonging to the defendant. Taking into account the age of the minor child and probably the fact that he was unsophisticated when it comes to issues of electricity and the danger it poses if one comes into contact with. I am of the view that it could not reasonably be expected that the minor child was:

18.1 aware that the powerline was on;

18.2 aware of the risks involved; and

18.3 That he would reasonably have assumed the risk of being electrocuted by touching the live wire.

[20] Under the circumstances I am satisfied that the defendant failed to satisfy the onus lying on him and that from the facts, it is clear that the defendant was negligent in its duty to prevent the accident from occurring by not taking reasonable steps to prevent members of the public, in particular children from coming into contact with a live wire by securing it or putting visible signs of the danger posed by the live powerline.

[21] In the result the following order is made:

1. The defendant is liable to compensate the plaintiff for 100% of the agreed or proven damages.
2. The defendant to pay the agreed or taxed High Court costs as between party and party, such costs to include the costs of counsel.
3. The issue of quantum is postponed *sine die*.

N P MNGQIBISA-THUSI
Judge of the High Court

Date of hearing : 01 February 2023

Date of Judgment : 31 August 2023

Appearances:

For plaintiff: Adv W Binase (instructed by Mduzulwana Attorneys.)

For defendant: Adv M.I.E Ismail (instructed by Molefe Dlepu Attorneys)