

IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(Civil Jurisdiction)

2013/HP/00185

BETWEEN:

LOVENESS KANGWA

JONATHAN KALALA

VS

ZESCO LIMITED



1ST PLAINTIFF

2ND PLAINTIFF

DEFENDANT

CORAM: HONORABLE JUSTICE MR. MWILA CHITABO, SC

*For the Plaintiffs: Mr. Francis Kapilikisha of Messrs FCK
Chambers*

For the Defendants: Mrs. Paul Mulenga – Principal Legal Officer

JUDGMENT

Cases Referred to:

- 1. Bolam v Friern Hospital Management Committee [1957] 2 All ER 118*
- 2. Continental Restaurant and Casino Limited v Arida Mercy Chula*
- 3. J.R. Munday Ltd v London C.C. (1916) 2KB*
- 4. Khalid Muhamed v The Attorney(1982) ZR 49*
- 5. Michael Chilufya Sata v Zambia Bottlers Limited*
- 6. Victor Namakando Zaza v ZESCO Ltd SCZ No. 18 of 2001*

Legislation:

1. *Government Gazette Notice No. 523 of 2012*

Works Referred to:

1. *Charlesworth and Percy, on Negligence 9th Edition*
2. *Winfield and Jolowicz on Tort, Tenth Edition.*

The Plaintiffs instituted this action against the Defendant by way of Writ of Summons accompanied by a Statement of Claim. The Plaintiff claimed the following reliefs:

1. *Payment of K300, 000 and K495, 000 for damages suffered by the 1st Plaintiff and damages to the electrical appliances and food respectively.*
2. *Interest.*
3. *Costs.*
4. *Any other reliefs that the Court may deem fit.*

The Plaintiffs' Statement of Claim revealed that the 1st Plaintiff was the beneficial owner of the premises situate at Plot 6396 in Libala Stage III popularly known as Kangwa Bar.

The 2nd Plaintiff was a tenant at the said premises which housed various electrical appliances and goods. It further revealed that the Defendant is a public body charged with the exclusive generation, supply and sale of electricity in Zambia.

It was revealed that on or about the early morning of the 4th of September, 2012 the shop in issue caught fire and was completely gutted and all the electrical appliances and goods therein destroyed.

According to the Statement of Claim the said fire was caused solely by the negligence of the Defendant, its servants or agents. The Plaintiffs contended that the Defendant failed to maintain the line/cable which supplied electricity to the shop resulting in sparks which eventually spread to the building and gutted it.

Further, that the said fault had been reported to the Defendant on 22nd September, 2011 but had not been properly rectified.

In its defence the Defendant denied being negligent as regards the Plaintiffs' installations so as to cause the fire that gutted the shop in issue. The Defendant further denied that there was ever a complaint as regards any fault on the material date but that the incident was actually reported by onlookers at the time of the fire.

The Defendant further contended that other customers were not affected with the supposed short circuit that resulted into the fire at the Plaintiffs' shop. It was revealed that the responsibility of the Defendant as regards power supply and installations end at the metering point. Consequently, the wiring or any other installations at the customer's premises beyond the metering point was the sole responsibility of the customer, the positions aptly provided for under the ZESCO Conditions of Supply of Electricity 2011.

The Defendant averred that the distribution box and supporting equipment of metering box were found intact after the fire and could therefore not have caused the fire. It denied any responsibility over the occurrence and hence refused to

compensate the Plaintiffs for the damage caused by the said fire. The Defendant further denied each and every allegation set out in the Statement of Claim.

At trial both the Plaintiffs gave sworn evidence and called one witness. **PW1** was **Loveness Kangwa**, the owner of Kangwa Bar. She testified that on 4th September, 2012 the 2nd Plaintiff was her tenant when she received a call that the place was on fire. She was unwell at the time and instructed her mother to go and see what was happening. When she came back she confirmed the building was on fire. Her mother then reported the matter to the Defendant.

She recalled that in 2011 the 2nd Plaintiff reported that there was a cable which had fallen down the matter was reported and rectified. In the current incidence her mother came with a complaint form which made provision for a list of damages. The said form was later submitted to the Defendant Company accompanied by a Valuation report from Mr. P.S Mulenga, a Police Report and a Report from the Fire Brigade. The said documents were shown to the Plaintiff from pages 1-8 of the Plaintiffs' Bundle of Documents.

She testified that when the said documents were submitted to Defendant she wanted them to find the source of the fire. She was informed that they would be making weekly follow ups. However, nothing happened and due to her health condition she instructed her lawyer to be following up on the matter.

In cross examination PW1 told the Court that she was at home at the time of the fire. She was at also not on site at the time the fire

was put out by the Fire Brigade and confirmed that she was not aware of what time the fire started and that the fire was started due to the negligence of Defendant. According to the particulars of the negligence as stated in the Statement of Claim the witness averred that the said fault had been reported earlier on 3rd September 2011.

She explained that the report made to ZESCO was relating to a cable snapping and not the cable having sparks. She also stated that the said problem was resolved. She confirmed that the first time she reported the fault it was attended to. She said she assumed that it could have been the same cable that fell as there was no one in the shop. She admitted that no one saw how the fire started but she was informed by an eye witness that they saw sparks from the pole to the shop.

She stated that the complaint was made after the fire had already started on the day her shop caught fire.

It was her assertion that according to the Fire Brigade Report, the cause of the fire was unknown. She said she did not know that the Defendant's obligation ended at the metering point of the supply. The witness stated that she was not aware of the Defendant's Conditions of Supply contained in the Government Gazette. She agreed that the responsibility of the Defendant as stated in Condition 13A ends at the metering point.

She added that her claim was based on what she thought happened in 2011 when the ZESCO cable snapped.

In re-examination, the witness told the Court that in addition to her assumption as to the 2011 incident were the reports from eye witnesses who said they saw sparks coming from ZESCO pole.

PW2 was **Brian Kagongwe** a taxi driver New Chilenje in Lusaka. He testified that he operated from Kangwa area in Libala Stage three when he is a taxi driver. He told the Court that he knew the 2nd Plaintiff but could not recall when the shop burnt down.

It was his testimony that on the material day he was working at night at Kangwa. In the morning at around 05:00hrs he went to park his taxi about 100metres away from the 2nd Plaintiff's shop when he heard the sound of a spark. When he heard the spark he got concerned and wanted to know where the spark was coming from. As he was looking around he looked at the 2nd Plaintiff's shop and then saw smoke coming from the shop. He said he heard the spark from the direction of the shops. He stated that there was a ZESCO pole located in the direction he heard the sound from.

He stated that he was very familiar with that place since he had worked in that location for some time. After seeing the smoke he saw some sparks coming from the electric cables on the pole. These cables were the three phase cables on the pole which connected from the pole to lines taking them to the shops. And shortly after the spark, he saw fire around the pole area. According to him the sparks were coming from the three phase cables.

When he saw the fire he started trying to contact the 2nd Plaintiff since he was a person well known to him. He called him and he

came after about 20 to 30 minutes. By the time the 2nd Plaintiff had come he found that the Fire Brigade had just put out the fire. He reported what exactly transpired to the 2nd Plaintiff. After the fire was extinguished the 2nd Plaintiff entered the shop and started inspecting it. He found burnt fridges and groceries and the building was badly burnt where there was the electricity pole.

In cross examination the witness confirmed that he did not see the sparks at first and merely heard the sparks. He stated that the sparks were coming from the area where the shops are located. He then saw smoke from the shop. As the smoke was coming out the sparks could be seen on the pole and the said pole was partially burnt. He stated that he did not climb the pole but he could see that the pole was burnt as it looked blackish. He stated that after the fire was quenched was when he saw that the pole had been burnt.

He stated that he did not witness any fire to the shop next to the Plaintiffs' shop which was also supplied by the same pole.

PW3 was **Jonathan Kalale**, the 2nd Plaintiff herein, who testified that the 1st Plaintiff was his Landlady at the premises situate at Kangwa's Bar. He said he lost his goods, equipment and all assets he was using for his business. According to him the shop in issue was burnt on 4th September, 2012 and this was reported to him by PW2 who was stationed at a nearby rank.

He narrated that when he arrived at the scene of the fire he found the Fire Brigade, police personnel and a lot of people. The Fire Brigade were attempting to put out the fire but the place was already gutted and all goods destroyed. He further stated that

there were the Defendant's personnel who were trying to quench the fire from the pole. He said that he assessed the damage and it was quantified as was presented on page 7 of the Defendant's bundle of documents giving a total of K495, 300. The matter was then reported to the Fire Brigade, City Council, Chilenje Police and to the Defendant at the Kabwata Centre.

In cross examination the witness told the Court that the fire was caused by the Defendant's negligence. When referred to page 6 of the Plaintiffs' bundle of documents which reflects an Incident Report, he stated that the officer who wrote the report was not at the scene.

He further asserted that the persons who are alleged to have said that they saw sparks and later saw smoke coming from the shop in issue had not been named. He conceded that the report did not state the cause of the fire and that the cause was unknown. Further, that the Report did not show that the fire started from the ZESCO pole.

He said he had receipts of all the property he bought which were damaged in the fire but that he did not bring the said receipts to court. He averred that while he did not have evidence of the value of the property lost, the people who witnessed the fire would attest to the fact that he lost items in the fire. He said he these items were not insured and that he was not the one who first reported the matter.

The Plaintiffs closed their case and the Defendant elected to call one witness. **DW1** was **Abison Bwembya**, an Electrical Engineer at the Defendant Company. He testified that his duty at the

Defendant Company was to ensure uninterrupted power supply to customers. He narrated that in 2012 he received a report of a fire incidence at Kangwa Shopping Mall in Libala Stage 3. He then instructed faults men on duty to report to the site and instructed them to isolate the port affected by the circuit.

He further narrated that when he reported for work that very day he constituted a team who accompanied him to go and see the extent of the damage and issue a technical report as per company policy. When he got to the site he discovered that the service cables feeding or connected to the shop in issue were correctly isolated as instructed. He said he discovered that the service cables were exactly where the roof of the gutted shop was burnt.

He testified that the said cables passed above the shop and the portion which was burnt halfway was what connects to the shop that had goods. He stated that they inspected the metering point and it was intact and not affected by the fire and the distributor was also intact. He added that the part of the building where the distributor was and meter boxes were was unaffected by the fire and neither were the stock items that were there except that they were covered in soot from the burning substance. The fire was concentrated where the fridge was.

It was his testimony that after the visual inspection a report was compiled which report was on pages 1-5 of the Defendant's bundle of documents. According to the Report other customers fed from the same pole and phases were not affected during the incidence which meant that the fault was internal. In his view, if

the fault was caused by the Defendant, other customers would have been affected especially the fact that the shop in question was fed by a 3 phase which is a medium voltage line.

According to the Report, it was concluded that the direct cause of the fire was an internal short circuit. He explained when a customer applies for electricity they are advised to engage a private electrician to do the wiring up to where the metering point would be.

He stated that the supply of electricity by the Defendant is up to the meter point and that is where their responsibility ends. Anything after that is the responsibility of the customer. He stated that the customers were advised to do periodic checking of wiring of installations every after 15 years.

The witness stated that the Defendant was not negligent especially that other customers from the same circuit were not affected and the fault was not on the Defendant's line.

In cross examination the witness explained that there were two types of maintenance done by the Defendant; collective maintenance and routine maintenance. Under routine maintenance they send people in the field to check the Defendant's Installations to check broken cross arms, line insulators and all the defects can be found on the line. He admitted that cross arms and line insulators could cause faults and that was why periodic inspection was carried out.

He explained that there were no cross arms or line insulators at the point where power is drained to the metering point. He said he was aware of one fault in respect of some pole referred to in

the questionnaire which occurred a year earlier than the present incidence in this matter.

The witness further explained that when a fire occurred a customer was advised to lodge in an official complaint and a fire report would subsequently be done. He acknowledged that in the present case a complaint was lodged according to page 1 of the Plaintiff's bundle of documents. He disagreed that the nature of the fault reported on 22nd November, 2011 and the fault which resulted in the fire were the same. He said the earlier report was lodged in by the owner of African Braai which was a neighbouring shop sharing the same supply.

He confirmed that as regards the fire, he sent a faults man, Derrick Mwila to the scene in the early hours of the morning. He said that later on the same day, between 09:00 and 10:00 the witness conducted an inspection on the site. He emphasized that the metering box was inside and when inspected they found that they were in a closed state.

He stated that the valuation report did not stated the position of the breakers. He however noted that he made a conclusion after inspection that the cables and breakers used had long been phased out as they were old and had not been replaced. He told the Court that he did not know when this was installed nor was he aware of when the said building was constructed.

The Defence witness maintained that the breakers on the distribution box were intact when he inspected them. He asserted that it was the customers' responsibility to buy breakers for the distributor. He admitted to being a part of the people who

prepared the technical report. He admitted that the fact that the 2nd Plaintiff was present during the inspection was not reflecting in the said report and that it was important for purposes of transparency to show that the owners of the building were present when inspection was made out. He denied that the report was based on what Mr. Derrick Mwila told him.

He further stated that he had earlier said that the MCB had not tripped because they were not in good condition. This was obviously contrary to the evidence that the MCB could not trip due to old age. He stated that a breaker could not break when there was a fault then the breaker was not in good condition. He further admitted that the MCB was not tested for sensitivity and operating mechanism failure. It was further admitted that the fact that the meter never tripped was sufficient evidence that the breakers were not in good condition.

In reexamination the witness clarified that whenever a fault occurred on the Defendant's system, regardless of the position, the faulty current always flowed back to the source. He further clarified that power was given at 11,000 volts from a power station. That was where they had cross arms, pin insulators and conductors on the line. It is then taken down to 400 volts which is what is supplied to a 3 phase. He said it was at this point that they use real insulators and PG clamps.

At the close of the case parties agreed to file written submissions. The Plaintiffs' in their submissions cited the case of ***Konkola Copper Mines Plc. V James Nyasulu and Others Appeal No. 1/2012*** where the Supreme Court laid out the requirements of a

tort of negligence. The Plaintiffs contended that there was a duty of care that existed on the Defendant's part to ensure that the electricity line in question was maintained to eliminate the kind of fault in question. They argued that a fault which must have been a short circuit constituted a breach of the duty of care owed by the Defendant to the Plaintiffs.

They further cited the case of ***Victor Nmakando Zaza v Zesco Ltd.***⁶ **SCZ No. 18 of 2001** where it was held that the supplier's duty has, in some respect, to be co-existent with the customer's own duty. Further, the Court held that it would be wholly unrealistic to expect the supplier to guarantee that it would never fail or it would not fluctuate or it would cut off electricity completely.

They argued that in the present case the act complained of was lack of maintenance of a line which short circuited was different from those circumstances that existed in the *Zaza* case. They contended that in that case the consumer could have protected himself by installing surge protectors while in the present case, the Plaintiffs had installed MCBs both at the Distribution board and the Metre box which were found to be intact at the time of the fire.

They further argued that the Defendant could not rely on the provisions of the Government Gazette Notice No. 543 of 2012 where the Plaintiffs were alleging that the fault occurred before the Distribution/Metre board.

In Response the Defendant submitted that where the Plaintiff alleged Negligence, it was for them to show:

- i. *That there was a duty of care*
- ii. *The duty was breached*
- iii. *That it resulted in damages*

The Defendant conceded that they had a duty to maintain the electricity line but contended that the Plaintiff failed to adduce evidence suggesting what the maintenance routine of the line in issue should have been.

The Defendant submitted that the Plaintiffs failed to prove that the Defendant did in fact breach its duty to service the line in question. According to the Defence the Plaintiffs produced no technical evidence to show that the lines were in fact faulty. They argued that the Plaintiffs alluded to a complaint made in 2011 but failed to bring an electrician to shed more light on the alleged fault.

The Defendant submitted that even though DW1 admitted that there was a possibility for a fault to occur on the Defendant's installations, he did not state that there was a fault on any Zesco installations at the time of the fire.

It was their argument that the Plaintiffs brought no believable evidence to demonstrate that the Defendant's overhead line was faulty. It was contended that as DW1 alluded to, the problem which resulted in the fire was as a result of the Plaintiffs' installations because the line provided power to many other customers who were not affected.

The Defendants disputed the police report as being inconclusive because the evidence of PW2 revealed that the police officers who drew up the said report were not present at the time of the fire.

Further that the said report did not exhibit any photos of the infernal pointing to the Defendant's faulty installation. It was the Defendant's contention that the Fire Report compiled by the Fire Brigade stated the cause of the fire as unknown. In view of this the Defendant strongly contended that there was insufficient proof to show that the Defendant breached its duty of care.

With regard to the damages the Defendant cited the case of ***Michael Chilufya Sata v Zambia Bottlers Lt. SCZ No. 1 of 2003***⁵ where it was held to the effect that for a claim for negligence to be successful, there must be damages that result from a breach of duty. The Defendant disputed that the fire which resulted in the burnt building can be attributed to negligence on its part.

They argued that the 1st Plaintiff could further not be expected to benefit from the this Judgment assuming it were in its favour because the owner of the property is Light Kangwa and no evidence has been led to show that there was a transfer of the property from Light Kangwa to the 1st Plaintiff. Further, that there was no evidence that the items that were burnt in fact belonged to him.

As regards the Defendant's liability, it was submitted that according to section 13 (a) of the ZESCO Conditions of Supply, Gazette Notice 543 of 2012 states that:

"The Company's responsibility for equipment and faults arising there from ends at the metering point where it delivers electricity to the customer"

The Defendant argued that there was no concrete evidence to show that the Defendant had not maintained its line nor was there evidence to show that the earlier complaint was established to have been a fault on any of the Defendant's installations.

They also cited the case of **Victor Namakando Zaza v ZESCO Ltd.**⁶ on installing protective equipment. They further cited section 14 (a) of the ZESCO Conditions of Supply, Gazette Notice 543 of 2012 which states that:

"The customer shall be responsible for the safe keeping of meters, service lines, fittings and other electricity apparatus belonging to the Company placed on his premises and shall be liable for any damages caused by them."

It was their final submission that the two authorities showed the Customer's liability in this respect.

I have carefully considered the evidence on record and the submissions by both parties.

The Plaintiffs' case is mainly that the Defendant was negligent when it failed to maintain the faulty line that eventually led to the fire that swept through the 1st Plaintiff's shop being rented by the 2nd Plaintiff at the time.

The Defendant denied liability and contended that the Defendant was only in charge of providing supply up to the metering point and there after it was the Plaintiffs' responsibility to maintain any lines after the Metering or Distribution box.

The starting point is the definition of negligence. The learned author of **Winfield and Jolowicz on Tort, Tenth Edition, at Page 45²** defined negligence as follows:

“... Negligence as a tort is a breach of a legal duty to take care, which results in damage, undesired by the defendant, to the plaintiff. The ingredients necessary to prove negligence are stated as (a) A legal duty on the part of A towards B to exercise care in such conduct of A as falls within the scope of duty; (b) Breach of that duty; (c) consequential damage to B. The three ingredients, according to the learned author, cannot always be kept apart in their application as they are simply three different ways of looking at one and the same problem.”

There are three requirements that are relevant to establish negligence were also discussed by the learned author of **Charlesworth and Percy, On Negligence 9th Edition at page 16¹**, where it was stated that;

- i. There must be a duty of care owed to the Defendant by the Plaintiff;*
- ii. There must be a breach of the duty owed to the Plaintiff by the Defendant and;*
- iii. The Plaintiff must suffer damage as a result of such breach by the Defendant.*

The Supreme Court also gave further guidance on how you prove negligence in the cases of **Michael Chilufya Sata Vs. Zambia Bottlers Limited⁵** and **Continental Restaurant and Casino Limited V Arida Mercy Chula²**. In these cases the Supreme

Court discussed instances when an award of damages arising from negligence may be awarded and the emphasis placed on the requirement for the Plaintiff to prove damage or injury by way of medical evidence.

Further, in the case of **J.R. Munday Ltd V London C.C. (1916) 2KB³** where Lord Reading opined as follows;

“Negligence alone does not give a cause of action, damage alone does not give a cause of action, and the two must co-exist”

Having outlined the law relating to negligence I will now address the facts in issue. In order to establish a case against the Defendant it has to be shown that a duty of care was owed by the Defendant to the Plaintiff, that the duty was breached and damages resulted from that breach.

It is not in dispute that the Defendant owes a duty of care to the Plaintiffs to supply power to them. What is in dispute is whether that duty was in fact breached by the Defendant. The facts on record are that the fire broke out in the 2nd Plaintiff's shop. The evidence of the Defendant is that the metre box was intact and this evidence was not disputed by the Plaintiffs. The Plaintiffs further alleged that the fire was as a result of negligence on the Defendant's part for failing to maintain the cables that supply the electricity.

The Defendant totally rejected this argument and stated that the Plaintiff did not adduce any evidence showing that the fire started from either the pole or the metering box. They emphasized that if

the problem was with the pole other shops fed by the same pole would have been affected.

The evidence on record is that the Plaintiffs were not present when there was DW1 or its agents were inspecting the meter box and MCB. The Defendant admitted that it would have shown transparency if the report showed that the complainants were present at inspection.

It must be stated that the failure by the Defendant to ensure that the complainants were present at the time of inspection as is shown in the report which document is conclusive then doctrine of contraproferentum must apply against them that in fact they did not call the complaints. I therefore reject the evidence that the Plaintiffs were present when the inspection was conducted.

There was also evidence from the Plaintiffs' witness that he saw sparks from the pole before he saw smoke coming from the shop. However when cross examined he said that he heard the spark and then saw smoke coming from the burning shop. If assuming that the evidence of PW2 was admitted that the pole was burnt and challenging the evidence of DW1 that the metre box was intact when it was inspected. There will be two conflicting situations.

Firstly, if the pole was burnt it could lead to an inference that the Defendant would be liable or that the sparks were as a result of the fire coming from the shop that burnt the cables right above the roof.

However, the Plaintiff did not show adequate proof of this fact by showing pictures of the pole to show that the said pole was in

fact burnt because the conflicting evidence from the Defendant was that there was no fault whatsoever. This is the pronouncement in the **Zaza** case when the Court of final resort held that "*there cannot be faultless liability*"

The law is very clear as to where the onus of proof in civil cases lies and the case of **Khalid Mohamed v The attorney General**⁴ was clear which holding was restated in **Wilson Masauso V Avondale Housing**, which have been cited by the Defendant, that:

"An unqualified proposition that a Plaintiff should succeed automatically whenever a defence has failed is unacceptable to me. A Plaintiff must prove his case and if he fails to do so the mere failure of the opponent's defence does not entitle him to Judgment. I would not accept a proposition that even if a Plaintiff's case has collapsed of its inanition or some reason or other, Judgment should nevertheless be given to him on the ground that a defence set up by the opponent has also collapsed. Quite clearly a defendant in such circumstances would not even need a defence."

In the present case while it is clear that there was an earlier fault that had been reported pertaining to a cable that had snapped, there has been no evidence that has been adduced to show that the fire was as a result of this recurring fault. Further, the undisputed evidence on record shows that the metering box was actually closed and unaffected by the fire and neither were the items near the metering box.

The evidence in the Plaintiff's bundle of documents is made up of an Incidence Report from the Fire Brigade which clearly states that the cause of the fire was unknown. The Report from the Police said that the people around saw a spark from the Zesco Pole which was consistent with initial evidence of PW2.

However, PW2 under cross examination said he heard a spark and then saw smoke coming from the Plaintiffs' shop. There was also a valuation report that showed the damage that had occurred and the value of the items that were in the fire.

The Defendant in rebutting this evidence cited Government Gazette Notice No. 523 which is very clear as has already been outlined earlier. The Defendant's responsibility only ends up to the metering point. In the absence of concrete evidence to show that the fire is as a result of a fault on the line, it is difficult to find the Defendant liable.

The Defendant had strongly contended that had the fault been on the Zesco line, other shops that are under the same connection would have been affected but there was no report that any other customer was affected by the alleged fault. In the present case, there was no evidence produced by the Plaintiff to support that the fire was as a result of a fault at the Meter or Distribution board.

Further, the Plaintiff did not call an independent electrician to verify that the wiring was not faulty and could not have caused the said fire. The Plaintiffs' argument that this was a recurring fault did not assist them because there was no evidence that was led as to the exact nature of the earlier report and exactly how

the same was rectified by producing an earlier complaint or resolution form from the Defendant.

As clearly stated in the case of ***Khalid Mohamed V Attorney General***⁴, the onus is on the Plaintiff to prove its case on a balance of probability. I have found that the Plaintiff has not discharged this burden of proof.

Based on the conclusion that there is insufficient evidence to support the allegation that the Defendant was in breach of its duty of care, I am left without a choice but dismiss the action for negligence. It is regrettable that the plaintiffs undoubtedly suffered loss and damage, but this is moral consideration. Liability has to be proved.

It is worth mentioning that in the event that it were to be said that I am wrong on issue of liability, there was no evidence on the value of the damage suffered for purposes of awarding damages, the matter could still be referred to the learned Deputy Registrar for assessment and therefore the Defendant's argument that there were no receipts presented for valuation of the damages would not assist them if liability is said to have been established..

On the issue of costs, it is trite that the successful litigant should not be deprived to harvest the costs of his or her or its litigation. The costs however are in the judicious discretion of the Court.

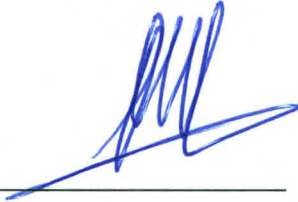
The evidence on record reveals that legislation laying down conditions of supply and that liability of the Defendant in the event of a fault or negligence ends at the metering was

published in a Government Gazette of 31st August, 2012 four days before the fateful fire. The effect of which was to depart from the common law doctrine of strict liability laid down.

The justice of the case is that I make no Order as to costs. Put differently parties have to bear their costs.

Leave to appeal is granted.

30th
**Delivered under my hand and seal this day of October,
2017**



**Mwila Chitabo, S.C.
Judge**