



IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG

CASE NO: 1092/06

In the matter between:-

MERCIA SEYFFRET

Plaintiff

and

SHAIDA LOCKHEART (née BHAMJEE)

First Defendant

EBRAHIM KHALIL AHNFO BHAMJEE

Second Defendant

DATE OF HEARING : 17 FEBRUARY 2014

DATE OF JUDGMENT : 13 MARCH 2014

COUNSEL FOR THE PLAINTIFF : ADV SCHOLTZ

COUNSEL FOR THE DEFENDANTS : ADV DESAI

CIVIL MATTER

JUDGMENT

HENDRICKS J

Introduction:-

[1] The Plaintiff instituted an action for damages against the Defendants, both in her personal capacity as well as in her capacity as natural parent and guardian of her two minor children. The First Defendant is the owner of a house which the Plaintiff leased. The Second Defendant is the [...] to the First Defendant and he signed the lease agreement ostensibly for and on behalf of the First Defendant. It is common cause that on the 01st November 2003 the [...] to the Plaintiff was electrocuted. Plaintiff's claim is for damages as a result of the untimely death of her late husband (deceased), who had contributed to the support of the Plaintiff and her two minor children.

[2] It is alleged that as the owner and/or lessor of the property leased, the Defendants owed a duty of care towards the occupants of the leased property, which duty included but is not limited to the following:-

- an obligation to ensure that the property would be fit and suitable for the purpose for which it was occupied;
- an obligation to ensure that the property, and in particular the electrical installations, be maintained in a proper state of

repair, and further to ensure that it complies with all relevant statutory requirements;

- an obligation to ensure that the occupants of the property would not be subjected to any dangerous circumstances whilst occupying the property and utilizing its electrical installations;

and

- an obligation to adhere to legitimate requests on behalf of the occupants to effect necessary repairs to the property, and in particular its electrical installations.

[3] The Plaintiff alleged that the death of the deceased was caused by the sole negligence of the Defendants who breached their aforementioned duty of care in the following manner:-

- they failed to maintain the electrical installations on the property in a proper state of repair, despite being requested by the Plaintiff on various occasions to rectify defects;
- they allowed the property to be occupied whilst the electricity installations thereof were defective and dangerous to the occupants due to the fact that the electrical wiring, earth leakage switch and circuit breaker were defective;
- they failed to comply with their statutory obligations imposed on them by virtue of the provisions of the Electrical Installations Regulations promulgated in terms of the Occupational Health and Safety Act 85 of 1993, as amended.

[4] In his opening address Adv Scholtz, acting on behalf of the Plaintiff, stated that the issues in dispute can be confined to the following questions:-

- whether the Defendants acted negligently;
- whether there was a legal duty on the Defendants` to ensure that the electrical installations on the property were safe;
- whether, ***inter partes***, the Plaintiff and the deceased maintained each other and their minor children.

The parties agreed that the merits and quantum be separated and that this Court should only decide the merits.

[5] The events on the day of the incident can be summarized as follows:-

The Plaintiff and the deceased had a family gathering at the house which they rented from the Defendant(s) for eleven (11) months. Some of them watched a rugby match on the television at the back of the house underneath a palm tree, whilst others were swimming and having a braai. After sunset the deceased asked his eldest son, who was by then eleven (11) years of age, to fetch the extension cord and floodlight in order to illuminate the area at the back of the house. The son plugged the extension cord in the kitchen. He then went to fetch the light which is depicted on the photographs as a floodlight mounted on an iron pole. This light and base was homemade by the deceased. When the

son plugged the light in, he cried and said that it was shocking him. This caused the Plaintiff to approach the child and to give him some attention. Immediately thereafter, the deceased turned around and proceeded to the light. When he touched it, the light shocked him. He fell and the light fell on top of his half naked body. He was only wearing a swimming shorts and had no shoes on his feet. The Plaintiff rushed to the deceased and when she touched him, she was also shocked. Chris, a relative, switched off and unplugged the extension cord and one André, took the light pole from the deceased. An ambulance was summoned but it was certified that the deceased had passed away. During his lifetime, the deceased was a motor vehicle mechanic and co-owner with the Plaintiff of a closed corporation called Fortima Motors. He used to support the Plaintiff and the two minor children.

- [6] Mr Gideon Venter, an accredited electrician by profession with more than 40 years of experience, inspected the premises shortly after the electrocution of the deceased. Several defects on the property were detected. Of the most serious is the fact that the earth leakage switch was bypassed and could not operate. He tested the white button but it was not working whilst all the neutrals in the distribution box (DB) were still running but were not connected to the earth leakage switch. This posed a considerable danger because should any fault occur, the earth leakage switch would not trip. He concluded that because of the many defects a certificate of compliance (COC) should not have been issued.

- [7] Of critical importance to this case however is the conduct of the deceased on the day in question. It is clear from the evidence that the television was still on when the incident occurred. It may well be that the television was connected or plugged into a plug that was on a different circuit breaker than the one to which the extension cord and floodlight was plugged into. The complaint of the son that he felt electric shocks should have rang alarm bells. The deceased as an adult should have done what Chris did. He should have at least switched the extension cord off at the plug before fiddling with it. The fact that he touched the light that was connected and was complaint of that it shocked his son, amounts in my view to reckless behavior on his part. This led to his tragic and untimely death.
- [8] It was conceded by the Plaintiff that whilst they were staying there for eleven (11) months, they were in control of the DB. The previous occupant of the property, Mr Jurgens Potgieter, a qualified electrician, testified that he used to test the earth leakage switch on a regular basis whilst he was occupying the property. When plugs were worn out, he replaced it. According to him, when he moved out of that house, the electricity was in good working condition. This is borne out by the fact that the Plaintiff and her family stayed in the same house for approximately eleven (11) months without experiencing serious electrical problems.
- [9] As correctly and so eloquently pointed out by Mr Vincent McDonald, an electrical expert, that Mr Venter's report concentrated mostly on whether the electricity of the said house

was compliant with the regulations or not. According to him, Mr Venter should have concentrated more on the cause of the accident, namely the light. The said light, which was in possession of the police after the incident, was never inspected by either Mr Venter or Mr McDonald, nor was it handed in at court as an exhibit. Something that could have been done so easily, and which would have been the most prudent thing to do. Much criticism can be leveled against the Plaintiff for not doing so. It is highly probable that the said light was faulty which was the cause of the fatal accident. Mr McDonald testified that even if the earth leakage switch was bypassed, the circuit breaker as the primary protection device would nevertheless have tripped. The circuit breakers were not tested by Mr Venter.

[10] There is no evidence that the said circuit breaker in question was either dysfunctional, defective or bypassed. In Mr. McDonald's expert opinion, the extension cord or the flood light fitting caused the shock and not the fixed point (plug). The owners responsibility he said stop at the plug. The user is the one who used the electricity and not the lessor. Even if the electricity of the said house was not compliant but reasonably safe, it would not have led to the electrocution of a person according to Mr. McDonald.

[11] As far as the safety of the electricity is concerned, the First Defendant testified that this was indeed an old house which she bought. She doesn't know where the certificate of compliance (COC) was, or whether she indeed had one by then. She was also not aware that it was expected of her as a lessor to have the electricity checked and to obtain a COC every time the property

was leased. Even though there was a duty of care on the first Defendant as lessor to ensure that the electricity in the said house is safe, it cannot be found that she was negligent. It is common cause that the DB was closed and one could not see from the outside that the earth leakage switch was bypassed. It cannot be expected that the lessor should every time a lessee vacated the premises, caused each and every electrical wire to be inspected and each and every electrical device tested before the property can be leased again. That the electricity on the said property was on the face of it reasonably safe is beyond question. From the totality of the evidence tendered it cannot be said that the Defendants were negligent.

[12] Much has been made about the fact whether the Second Defendant signed the lease agreement for and on behalf of the First Defendant or not. It is clear from the document that there is no indication that he signed the said document in a representative capacity. However, not much turns on this because it could not be disputed that the First Defendant is the owner of the property in question, although the Second Defendant, as father to the First Defendant, appeared to be in control of the said property.

[13] The ultimate question is if the earth leakage was indeed bypassed, then who bypassed it. On the evidence of the first Defendant, when she resided in the house, she did not bypass it. The same applies to Mr Potgieter. The Plaintiff conceded that she and her late husband had control over the DB. She never pushed the earth leakage button to test whether it was working. She saw nothing wrong with the electricity. Although she testified that the

deceased did not work on the electricity, she could not do so convincingly. The deceased manufactured the said flood light himself. This serves as proof that he could and in fact did work with electricity. On the probabilities he might have worked on the electricity in the DB.

[14] However, I need not go to that extent. As already alluded to earlier on in this judgment, the actions of the deceased when he heard that his son has shocked, leaves much to be desired from a reasonable and responsible adult. To reiterate, he should have done what Chris ultimately did. He should have switched the electricity off at the plug or at the DB to make it safe, before he could tamper with the faulty extension cord or floodlight.

Conclusion:-

[15] In the premises, I find in favour of the Defendants. I find that the Plaintiff failed to prove on a balance of probabilities that the Defendants were negligent in leasing out the premises of which the electricity was unsafe, dangerous or hazardous. Plaintiff did not succeed to prove her claim against the Defendants.

Order:-

[16] Consequently, the following order is made:-

[i] Plaintiff's claim is dismissed with costs.

R D HENDRICKS

JUDGE OF THE HIGH COURT

**ATTORNEYS FOR THE PLAINTIFF:- F & F van der Walt c/o Van
Rooyen Tlhapi Wessels Inc**