

CIV/T/89/87

CIV/T/35/87

IN THE HIGH COURT OF LESOTHO

In the matter of :

LINEO MAPHATHE

Plaintiff

V

LESOTHO ELECTRICITY CORPORATION

Defendant

LIPOLOTIKI LEKHOABA

Plaintiff

V

LESOTHO ELECTRICITY CORPORATION

Defendant

REASONS FOR JUDGMENT

Filed by the Hon. Mr. Justice M.L. Lehohla  
on the 22nd day of January, 1989

Because plaintiffs are both represented by the same office of the Legal Aid and because the defendant is the same persona and is being sued for damages arising from more or less similar circumstances it was decided to consolidate the two actions into one for purposes of saving time and avoiding duplication of testimony.

Before evidence could be called parties' counsel agreed that in the event that defendant is held liable in the case of LEKHOABA reasonable quantum should be M20,853.40 made up as follows :

- (a) M103.40 medical expenses
- (b) M750.00 future medical expenses

/(c)

(c) M20,000.00 general damages for disfigurement.

In the case of MAPHATHE they agreed as follows should the defendant be held liable :-

M20,750 total quantum made up of  
M750.00 future medical expenses  
M20,000.00 general damages.

I was informed that defendant has paid actual medical expenses incurred so far.

It was agreed that medical reports could be handed over from the bar. It was further agreed to submit a memorandum dated 5.12.88 and signed on behalf of parties by their respective counsel.

Defendant's counsel confirmed the above arrangement save that should defendant be found to be negligent the question of plaintiffs' contributory negligence too would arise entitling the defendant to ask the court to find that plaintiffs were partly negligent.

It can thus be safely said that what appears to be an undisputed point of contention is the question whether defendant is liable for negligence.

The initial sum claimed by MAPHATHE in her summons was M525,187.90 broken down as follows :

Medical expenses	M387.90
Future Medical expenses	M124,800.00
Disfigurement	M 50,000.00
Pain shock and suffering	M150,000.00
Loss of general health and amenities of life	M200,000.00

She set out in her declaration that around 7th November 1982 at or near a place called Motsekuoa in the Mafeteng district she sustained severe electric burns and injuries resulting from contact with live wire which

/lay

lay loose above ground across a public foot path in the village.

She further set out that defendant knew or ought to have known of the fact that the electric line at the place was lying loose and posed danger to human life, particular regard being had to the fact that the Motsekuoa area is considerably populated and the electric line had been in that position for eight days following a lightning strike.

She maintained that it was defendant's duty to take reasonable precautions to avoid harm to other persons particularly in a thickly inhabited village, and demurs at the fact that defendant failed to discharge its duty reasonably with the result that plaintiff due to defendant's negligence suffered injuries and disabilities consisting of

- (a) disarticulation of the right upper arm at shoulder joint.
- (b) amputation of her leg below the right knee.
- (c) amputation of three toes from her left foot.
- (d) burns on her left hand, neck and trunk

Defendant denies liability grounded on the plaintiff's foregoing allegations and pleads in the alternative that if the court finds that defendant acted wrongfully and negligently as alleged, plaintiff contributed through her negligence to the causation of the damage suffered because

- (a) She touched the electric wire without ascertaining that it was safe to do so;
- (b) She reached up or forward in order to touch this wire when there was no reasonable cause for her to do so;
- (c) She failed to ascertain beforehand whether it was safe to touch the wire;
- (d) She failed to see and avoid the said damage (sic) when it was reasonably possible to do so.

/In

In respect of LEKHOABA the initial sum claimed was M343,349-40 made up as follows :

Medical expenses	M103-40
Future medical expenses	M2246-00
Disfigurement	M40000-00
Pain shock and suffering	M200000-00
Loss of general health and amenities of life	M100000-00

He claimed that around December 1976 at or near Maphohloane in the Mohale's Hoek district, he sustained severe electric burns and other injuries resulting from contact with live wire which lay loose on the ground in an arable land.

The rest of the allegations claimed to indicate defendant's negligence are as in Maphathe's case save that in LEKHOABA'S case it is alleged that the wires remained posing danger for about 24 hours following a lightning strike.

As a result of defendant's alleged negligence LEKHOABA claims that he suffered injuries and disabilities consisting of

- (a) Amputation of his left arm from shoulder level.
- (b) Claw-hand deformity of the right hand with diminished sensation on the ulna border of the hand and wasting of the small muscles of the hand resulting in weakness.
- (c) Severe deformity of the left foot. It has a large trophic ulcer over the lateral aspect.
- (d) Possible loss of left foot through the process of infection and sensitivity.
- (e) Deep scar on right foot due to original electric burn.

Defendant denies liability in respect of damages suffered by LEKHOABA adopts the line of defence similar to the one shown earlier in respect of MAPHATHE.

In evidence led Maphathe told me that she lives at Ha Raliopelo in the Mafeteng district and is aged 33.

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On 7-11-1982 she was at Motsekuoa. When she went past electric lines they burnt her. Consequently her right leg and arm and part of her left foot were amputated.

Referring to the manner that she sustained the burns she said the lines appeared to have been cut or loose for they were hanging and sagging towards the ground. She said she did not come into physical contact with them but they burnt her. She however says immediately she came near where they were she did not know what happened for she lost consciousness and only regained it at Scott Hospital. Morija.

It was when she was undergoing treatment at Scott Hospital that she got to know a boy called Malefetsane who was also undergoing some treatment there. She said she found this boy there.

Malefetsane testified that on 7-11-82 he was driving cattle when he observed that wires had fallen. It was when he was going to pass below a hanging electric wire that he did not know what had happened to him for after losing consciousness he regained it at Scott Hospital. He had gone to stop an ox from trespassing on land under wheat at about 8 a.m. when he met with this misfortune from electricity.

Under cross-examination Maphathe stated that she knew that electric wires were dangerous. On the day in question these wires were hanging just above her head. She was not aware of any leaflets or announcements made by the defendant about electric dangers.

Asked how she knew that it was dangerous to come near electric wires she said she did so when she was in hospital. When referred to the period before she came to hospital she said she thought that power had been cut off when she intended going past there.

I am satisfied that Maphathe knew and appreciated

/that

that it was dangerous to touch live electric wires.

It was also elicited in cross examination that she had seen people approach the wires from opposite direction when she was approaching them. But she said she was the first to go under them when she lost consciousness.

When told that surely some people must have gone under these wires earlier between 10 am and 11 am which is around when Maphathe was in the vicinity she answered that she believed they had; for Malefetsane P.W.2 came there and he got burnt.

Maphathe though conceding that the foot path she was following is usually busy, on the particular day it was not so, because it being a Sunday people who usually use that footpath for purposes of going to the mill were not there because the mill was closed.

She estimated that she was about 5 metres away from the lines when she got affected by the electricity.

She was adamant that she never touched the electricity wires. Thus she refuses to incline to the suggestion by the defendant's counsel that what could have caused the accident was that Maphathe walked up to where the wire was hanging and without thinking of any danger tried to lift it.

When referred to paragraph 3 of her declaration that she sustained injuries resulting from contact with live wire she said she touched it because it attracted her. Not that she touched it. Asked if it was possible that she could have pushed the wire upwards to clear it from her path she said she was not so tall as to find the wire an obstruction about her head.

She said she couldn't touch it even if she tried by stretching her arm towards it.

Malefetsane P.W.2 said he had seen the wire hanging loose on a Saturday a week before the Sunday

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that he got injured. He had seen cattle and people go safely under it that previous week. He also had gone safely under it as he uses that footpath for going to the veld.

P.W.3 'Manthati Putsoa who had remained sitting in Court throughout P.W.2's giving of evidence testified that P.W.2 is her uncles's son. She knew the place where P.W.2 got injured and that it was on Sunday when this occurred. However she had seen defendant's vehicle go to a place much below the spot where wires were cut off.

She however did not see who was driving that vehicle as she was some distance away. She testified that she saw one of the people who were in that vehicle going up a ladder and up the electric pole. She said that this fateful Sunday was the fifth day since she saw three people who were in the defendant's big truck.

She said it was defendant's truck because it is the one normally used when going to repair electric lines.

She estimated that the distance of the vehicle to have been from her stand to the hospital (some 300 yards away).

P.W.3 was adamant that she had seen the defendant's truck on a Wednesday preceding the fateful Sunday. Asked if someone had been sent to report about the sagging wires to defendant she said "the man who went was the one who was sent on Saturday when electricity had shocked a student."

It was put to P.W.3 that after P.W.1 had been hurt electricity was turned off a few minutes after a report had been received. Apparently it was defendant's contention that with regard to the dangers posed by electric lines sagging at Motsekuoa no earlier report was received by defendant than the one which came after Maphetha had been injured.

With regard to Lekhoaba's case evidence was led by

/him

him showing that in December 1976 he was living at Ha Maphohloane in the Mohale's Hoek district.

On the fateful day in December that year he had gone to the fields for purposes of ploughing. He had occasion to chase after an ox which was absconding and wanted to stop it from going home. It was while pursuing this harmless diversion from his regular occupation of ploughing that day that he jumped over electric wires. He testified that he got "caught" by these wires and does not recall what happened afterwards. The only thing he remembers is that when he came to he realised that he was in hospital at Mohale's Hoek. He testified that the wires were lying down because they had been struck by lightening from the poles. He stated that he stepped on these wires as they lay on the ground. He told me that he is now 23 years old and was about 12 years old in December 1976.

He also informed me that he was seeing these wires for the first time when he jumped over them. It was when he regained consciousness at the hospital that he noticed that he had sustained injuries on his feet and that his arm had been amputated.

Lekhoaba said he never knew beforehand that electric wires are dangerous. He had not seen any at his original home at Thabana Morena. Nobody had told him about the dangers of electricity. Asked by Court where he grew up he said he grew up at Thabana Morena where apparently at that time no electricity lines had been installed or laid.

He denied defence counsel's statement that it is impossible for wires to lie on the ground.

He further denied the statement that if the wires are lying on the ground then the power gets cut off at Main Station and therefore it becomes impossible for wires to impart any shock or danger to anyone stepping on them.

It was put to this witness as follows :

/"Mr. Booth



"Mr. Booth the defence witness will say from your injuries i.e. losing your left arm and left foot getting injured can only be explained by saying you touched the wire with your hand and electricity got down to the foot - ?

I use my right hand since birth. If I used the right hand it should have been the one that got cut or injured.

Mr. Booth will say if it (wire) was hanging in the air it would have thrown you off not caught you to it if live - ?

It caught me and made me what I am now.

Mr. Booth will say when you get electric shock you lose control of your muscles. They contract and you get stuck to it - ?

I felt powerless. I felt it had caught me.

But if you step on it your foot cannot grasp it like the hand does, and if it is in air then you fall out - ?

I don't understand."

It was revealed through cross examination that the reference to "claw-hand" referred to in Lekhoaba's pleadings had nothing to do with injuries sustained through electricity for Lekhoaba got shot at in 1982 and sustained that injury on his right hand.

P.W.5 MATHABISO LEKHOABA testified that she lives at Thabana Morena in a village at Ha Ngoae. She said P.W.4 is her husband's brother. She was at Ha Ngoae in December 1976 when she received a report regarding P.W.4. She set out for defendant's local branch at Mohale's Hoek after being directed there by the chief of Ha Maphohloane who gave her a letter addressed to defendant's branch at Mohale's Hoek.

She handed this letter to defendant's employees

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working there. The workers confirmed to her that wires had come down the previous day. Defendant's branch in Mohale's Hoek gave her a letter which she in turn handed to Lekhoaba's lawyers after his release from hospital. The local branch further told her that it was not competent to deal with the matter but that the head office in Maseru was.

Under cross examination this witness said she didn't remember the person she saw at Lesotho Electricity Corporation nor did she know his position save that he was in the office.

From what one is able to make out from this witness's evidence it appears she only went to Mohale's Hoek and afterwards to Maseru in the company of P.W.4 as recently as 1986.

The medical report prepared by the consultant surgeon Mr. Siddique relating to Maphathe is to the effect that she sustained severe electric burn on 7-11-82 and was admitted at Scott Hospital, Morija. There she had disarticulation of right upper arm at shoulder joint, an amputation below the right knee and amputation of three toes from her left foot. She also had burns on her left hand, neck and trunk.

On transfer to Queen Elizabeth 11 Maseru on 14-1-83 she underwent multiple manipulations of joints to give them mobility and (a) below knee prosthesis was provided to the right leg. Having been discharged on 26-5-83 she was re-admitted from 6-8-83 to 7-9-83 and (this) has been followed up in the clinic on a regular basis.

She has suffered an extensive injury due to loss of her right arm and right leg and is totally disabled. She has also suffered intense pain and psychological trauma during her illness and needed multiple operations at Morija and at Queen Elizabeth 11 hospital.

The surgeon is of the opinion that Maphathe will need the right leg prosthesis for life. He estimates the cost of this at around M600.00 and says it lasts for four to six years. The prosthesis for the right arm

/will

will be more complicated and will cost around M3,000 lasting for a longer period. She will certainly need medical attention on and off for life.

I have not had benefit of a medical synopsis in respect of Lekhoaba but judging from the one provided in respect of Maphathe it would seem a more or less similar treatment would be required in his case too. This is an older incident and I am told records got misplaced with the passage of time. I do have regard to the fact that he was but a child when this tragedy befell him. The inordinate tardiness that accompanied his affair was not something of his making. He was a mere hireling and when this tragedy befell him he was not in the custody of his parents. This matter was dogged by his unfortunate station in life as an employee of ignorant peasants.

The only witness who was called on behalf of the defendant was one John Booth who said he is employed by the defendant as a development engineer.

He testified that he has access to the records of the defendant and that none of the records relating to the year 1976 was available. He however had those relating to 1982.

He referred me to safety rules pertaining to defendant and showed me a schematic diagram "AA2" which he said betokens the standard construction of the power lines in Lesotho carrying up to 33000 KV.

I was told that there are insulators to which power lines are attached and a cross pole to which wires are secured. The Court was told that the upright and cross poles comply to British Standards known as B.S. 1320 and applied world wide.

Main power is stored in Maseru and distributed to the main towns by means of the electric cables covering miles and miles throughout the land. These power lines are run on direct route basis but at the same time the defendant

/tries

tries to keep them as close to the road as possible for purposes of maintenance. The mountain areas however defy this attempt at keeping power lines close to the roads.

The witness further said that the months of November and December are notorious for thunder storms in Lesotho. He drew attention to the fact that Lesotho is the 2nd highest place favoured by lightening strikes in the world. He pointed out that during live period there, can be counted up to six strikes per hour on various parts of the electric system or at least two every day.

When lightening strikes it normally makes the insulator break from the cross-arm and consequently the line falls to the ground. On touching the ground power trips out for on reaching the ground the wire earths. This activates the safety devices the effect of which is to immediately cut off electricity on the line automatically.

The line on falling hits the ground because of its weight and bounces up again to about a metre above ground. It will hang about that distance above ground before stabilising depending on the tension of the wire.

If this happens defendant would not know about it of its own accord. It would not, because when line hits the ground the system trips in much the same way as when a healthy line is hit by lightening. This explains what happens when there is power outage. Something like four seconds after bouncing back to resume a sagging position above ground the line becomes live again.

The witness emphasised that it is not possible to distinguish between a situation where lightening strikes the pole and the wire trips on touching the ground only momentarily and the situation where the pole is struck without the wire hitting the ground.

He drew the court's attention to unfavourable economic implications which would follow if each time there is a power cut occasioned by lightening the entire country has to be in a black out until after repairs have

/been

been effected.

John Booth referring to "AA3" testified that the month of November 1982 marked an occasion when electric power was interrupted almost daily because of lightning storms. Usually reports of power lines dangling dangerously above ground are received from chiefs, police or members of the public happening to phone. He also said it would be impracticable to have L.E.C. employees checking the power lines all the time. Apart from being impossible to do so, it would no doubt be very costly.

The policy of the L.E.C. (the defendant) is that when a power line is reported to have come down it is immediately disconnected. This disconnection is done at the outside within a minute after the report. The witness stressed that in fact a delay of a minute would represent the worst case of delay in attending to the problem reported. It makes no difference what time of the day the report comes; it is attended to immediately because defendant has men on stand-by twenty four hours a day. The man on stand-by switches the line off and informs the operator who in turn contacts the engineer on stand by. This engineer would then decide whether to go and fix the line there and then or wait until 6 am. if the report came at night.

Illustrating how electricity is conducted Booth said like water it follows the easiest path i.e. the path offering the least resistance to earth. If one is holding a wire it will jump to that (wire) to reach one rather than through air to earth.

If the line is lying on the ground then power will trip as electricity will go right into ground through points of contact between the wire and earth. The effect of this is to operate the safety devices and it would remain inactive for a second or so and try to come live again but in doing so would affect the devices at the station with the result that those manning the station would be alerted so that they may go and put the line on

/manually.

manually. If power is back on and the electric wire is clear of the ground but someone touches that wire with his hand then electricity will travel through the hand, arm body and feet and flow into the earth.

Anyone touching the wire with his hand would have the muscles of the hand involuntarily grasping firmly on that wire. But if he touches it with the stomach it throws him away from the line.

If it was possible for electricity to still flow in a wire lying on the ground then anybody touching it with his feet would be thrown off it. There would be no damage to the arm in such a situation, only the feet would sustain it, for whichever point touches the earth will be burnt.

Maphathe's case was put to Booth who responded by saying a person who got injured by wire hanging above head level must have grabbed the line with that hand and electricity travelled through it, through the arm body and to the feet. He stressed that the line could never have attracted her like would magnet attract another magnetic object of a comparable size and weight.

He told the court that a safety distance from a 33 KV line by workers is four feet. Getting closer than the four feet would give one a tingling sensation from the live wire. If this is ignored and one gets nearer still then one gets electrocuted. In that occasion electricity would have travelled through the air to electrocute the party who failed to observe the safety distance. This operates in much the same way as when lightning travelling through the air strikes an object on the ground.

Referring to "AA3" D.W.1 said when it was learnt that the line was down at Motsekuoa defendant switched the line off or opened the circuit. This was to ensure that no power was going from Maseru along the Mohale's Hoek line that passes through Motsekuoa.

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In respect of 7th November 1982 it appears from "AA3" that at 15.34 an entry was made reading: RESET AND HOLD. AND MR. MOJELA OPENED MAFETENG LINE BECAUSE H.T. CONDUCTOR IS DOWN AT MOTSEKUA.

There is also an entry on that date showing that at 14-30 a report had been received relating to Matsieng Transformer being either faulty or having been struck by lightning.

Referring to November 6th 1982 D.W.1 says there was "no recording of any problem in that area of Mafeteng to Mohale's Hoek." Whatever he meant by this sentence a look at AA3 for the date 6-11-82 shows that at 23.30 an entry was made reading: "Mohale's Hoek Power station reported power back "on", Phoned Morija charge office and confirmed."

Regard being had to the testimony of D.W.1 that a problem is usually attended to as soon after the report has been received as possible and that if a report is received say at 2 a.m. then the stand by engineer may prefer to attend to it at 6 a.m. I cannot see what the significance of the expression "Power back "on"" as reported by Mohale's Hoek power station on 6-11-82 at 23.30 except that at least some four or so hours earlier than a start was made to attend to it by switching the line off a report must have been received that there was some fault somewhere with regard to power supposed to be distributed in that area.

Why a report was not received by the head office regarding whatever had occasioned the restoration of power along the Mohale's Hoek line on 6-11-82 may be accounted for by this witness's statement in his evidence in chief that

"It is possible that a report may have been made but the person reported to ignored it. But that is highly improbable because men are trained that any report of line coming down should be attended to by switching off that line. If they don't switch it off they face dismissal."

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I am of the view that this is more likely than not what happened in the events that led to Maphathe's wretched fortune.

I find it difficult to accept D.W.1's evidence that says because no record was made of the L.E.C. vehicle in the Corporation's record books it is therefore doubtful that such a vehicle was in the area referred to by an eye witness who said she saw it on a Wednesday preceding the Sunday of the incident.

I find it impossible to prefer the evidence of a man who has doubts about a thing to that of a witness who is positive about what she saw. This witness i.e. P.W.3 even volunteered evidence when being cross-examined that a man had been sent to report not only about the sagging wires but about the fact that the sagging wires had injured a student on a Saturday preceding the Sunday on which Maphathe and P.W.2 Malefetsane got injured. This adverse answer has been left to stand at the cross-examiner's peril for he did not seek to undo it or water it down by further cross examination.

D.W.1 understandably made much of the costs likely to be involved if greater safety measures are provided against dangerous consequences resulting from lightning storms, but I find it illogical that a country which is reckoned to be the second highest lightning attraction in the world should compare with the least likely to be affected by lightning as far as precautionary measures against this danger are concerned. While considering this aspect of the matter I could not help thinking about the damning remarks made by the commission of inquiry, regarding the underground railway station fire that cost many lives due to British Railway company's reluctance to maintain proper safety standards against fire because of that company's eagerness to maximise profits at all costs.

No satisfactory answer was provided by the defence as to what would prevent installations of projecting devices attached to the poles some three feet below the

/cross-poles



cross-poles for purposes of catching and containing the wires in case they fall off from the cross poles due to lightening, especially in busy areas and foot paths.

On a balance of probabilities it seems the version is not unfounded that with regard to Maphathe's case the wires remained hanging for more than four days. Although she knew it to her cost it could not be said she was unreasonable in her attitude to think that power had been cut off from electric lines seen hanging loose for about four days before they injured her. Furthermore D.W.1 did mention that beyond certain safety distance electricity can jump to its victim. Knowing witnesses who time and again come to testify about distances it is a matter of no surprise to me if Maphathe with her standard of education sees no difference between four feet and five metres. I say this because not so long ago did I have occasion to deal with police investigators whose evidence revealed their lack of appreciation of dimensions of a donga 24 feet deep and their estimation of it which was only 3 to 3½ feet deep. See CRI/T/3/86 Rex vs. Mafole Bematlane (unreported) at pp. 14 and 15.

If defendant appreciates that Lesotho is more prone to lightening strikes than all electrified countries but one then it would perhaps be viewed with some favour if defendant could show that the precautionary measures it has taken on this score are surpassed by only ten or five countries let alone one. See Colman vs Dunbar 1933 AD, at 157 where Wessels C.J. said

"If the circumstances are such that a person of common sense who has the custody or control of a certain thing could recognise that it is likely to be a danger to others, then it is his duty to take reasonable care to avoid such injury ..... Therefore the general practice of the trade is good evidence to show that in the ordinary experience of men no danger results from what has been done."

I was also referred to Mckerron's Law of Delict 6th edition at page 235. The reading of this lends support, to the view expressed above.

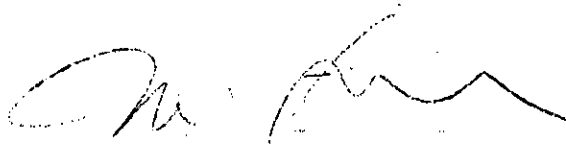
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I am satisfied with the evidence that live electric wires can hurt anyone if they are floating in the air and he touches them. That evidence has not precluded a possibility that in the event of lines struck from the poles by lightning they can float in the air half a centimetre above ground in view of the fact that the terrain above which they run suspended is not regular but rugged. If these lines happen to be floating a short distance above ground and they are live, there is no suggestion that the current in them cannot hurt a child such as Lekhoaba who steps on them thinking they are lying on the ground.

With regard to Lekhoaba it is clear that due to his age at the time, he could not have been negligent. This much Mr. Hoffman for defendant conceded. As for Maphathe I have formed an opinion that she contributed some part in the negligence of which I find defendant liable.

For these reasons judgment was entered for Lekhoaba in the amount of M20,853-40 plus costs save that wasted costs for the date 7-12-88 were awarded to defendant.

In respect of Maphathe an award of M20,750 less 10% was made to plaintiff with costs save that wasted costs for the date 7-12-88 were awarded to defendant.



J U D G E.

22nd January, 1989.

For Plaintiff : Mr. Moorosi  
For Defendant : Mr. Hoffman.