IGNATIUS RUVINGA

versus

ZIMBABWE ELECTRICITY TRANSMISSION & DISTRIBUTION COMPANY

HIGH COURT OF ZIMBABWE,

ZHOU J

HARARE, 1 August & 10 October 2012

ZHOU J: This is an unopposed claim for damages. After I had heard submissions I reserved judgment in order to consider the submissions made by the Plaintiff.

The Plaintiff is a farmer by occupation. He carries on his farming operations at Subdivision 38 of *Exwick Farm* in Chegutu. In June 2002 the Plaintiff and the Defendant entered into an agreement in terms of which the Plaintiff was to pay to the defendant a sum of US$217 655.80 for electricity to be connected to his farm. In terms of the same agreement the Defendant was obliged to connect, and did connect, electricity to the Plaintiff’s farm. The Defendant also supplied a 100KV transformer. Sometime in 2008 the Defendant without the knowledge and consent of the Plaintiff connected other farms to the Plaintiff’s point of supply. That increased the load beyond the capacity of the transformer and caused a fall in the voltage and damage to the electric motors. As a consequence of the damage to the electric motors the Plaintiff could not irrigate his crops.

The Plaintiff’s case is that as a result of the failure of his irrigation he lost his crops, as a result of which he has suffered damages as set out in the declaration. The loss falls under three heads. A sum of US$208 849.00 is claimed in respect of the lost crops as the value thereof. US$9 800.00 is the reasonable cost of replacing the damaged electric motors. The Plaintiff also claims a sum of US$200 000.00 as damages for mental anguish, anxiety and depression.

I have no difficulty with the sum of US$208 849.00 for the value of the lost crop. The affidavits and documents attached show that to be the reasonable value of the crops lost by the Plaintiff as a result of the conduct of the Defendant. I equally have no difficulty with the claim for the loss suffered in respect of the destruction of the electric motor in the sum of US$9 800.00. I do, however, wish to consider the claim for a sum of two hundred thousand United States dollars in respect of damages “for mental anguish, anxiety and depression”.

The issue of whether that loss was caused by the conduct of the Defendant arises. For the Defendant to be held liable to pay the damages claimed it must be shown that its conduct not only factually caused the loss in the sense of the loss having ensued as a consequence of the conduct complained of, but also that the loss suffered is sufficiently connected to the conduct of the Defendant to justify making it liable for such loss. The latter stage is what is referred to as legal causation. In the case of *International Shipping Co (Pvt) Ltd v Bentley 1990 (1) SA 680(A) at 700* the Court stated as follows:

“Demonstration that the wrongful act was a *causa sine qua non* of the loss does not necessarily result in legal liability. The second enquiry, viz whether the wrongful act is linked sufficiently closely or directly to the loss for legal liability to ensue or whether, as it is said, the loss is too remote. This is basically a juridical problem in the solution of which considerations of policy play a part. This is sometimes called ‘legal causation’.”

See also *Ocean Accident and Guarantee Corp v Koch 1963 (4) SA147(A); Tuck v Commissioner for Inland Revenue 1988 (3) SA 819(A) at 832; Standard Chartered Bank of Canada v Nedperm Bank Ltd 1994 (4) SA 747(A) at 763;Gibson v Berkowitz 1996 (4) SA 1029(W) at 1039-1040*.

In our jurisdiction the test for determining legal causation is that of reasonable foreseeability. See *United Bottlers (Pvt) Ltd v Shambawamedza 2002 (1) ZLR 341(S).* A wrongdoer is held liable only for the reasonably foreseeable consequences of his or her conduct. The moment of causing damage is the relevant one in determining reasonable foreseeability. *Visser &* *Potgieter,* in Law of Damages 2nd Ed. p. 274, state the following:

“The reasonable foreseeability test….limits liability to those factual consequences which a reasonable person in the position of the defendant would reasonably have foreseen. It is not necessary that all the consequences of the defendant’s conduct should have been foreseen: only the general nature or the kind of harm which actually occurred must have been reasonably foreseeable. The exact extent or precise manner of occurrence need not have been reasonably foreseeable. However, the risk of harm must have been a real risk, which a reasonable person would not have brushed aside as being far-fetched…. Van Rensburg ……suggests the following test: ‘Was the consequence, as well as the causal progression between the act and the consequence, at the time of the act foreseeable with such a degree of probability that the consequence can, in the light of the circumstances, reasonably be imputed to the alleged wrongdoer?’”

See also *Smit v Abrahams 1992 (3) SA 158(C ) at 165; The Wagon Mount (No. 2) (Overseas Tankships) (UK) Ltd v Miller Steamship Co (Pty0 Ltd 1966 (2) ALL ER 709(PC)*.

I understand the above test to mean that the loss suffered must be sufficiently connected to the conduct of the wrongdoer that a reasonable person in the position of the wrongdoer would not consider such loss to be far-fetched. If the loss would be brushed aside as far-fetched by a reasonable person in the position of the defendant then the loss should be considered to be too remote to be imputed to the defendant, even if the defendant’s conduct was the condition *sine qua non* for the loss concerned.

In my view the loss caused by the anguish, anxiety and depression is so remotely connected to the conduct of the defendant thatthe defendant cannot be held liable for it. Such loss could not be reasonably foreseeable as a consequence of the connection by the defendant of other farmers to the point of supply of electricity to which the plaintiff’s farm was connected.The case of *Media 24 Ltd & Anor v Grobler* Supreme Court of Appeal (SA) 301/04 does not support the plaintiff’s claim in the instant case. In that case the psychological harm was directly caused by the sexual harassment which was the conduct complained of by the affected employees. Accordingly, the plaintiff’s claim for damages in the sum of US$200 000.00 in respect of “mental anguish, anxiety and depression” cannot succeed.

In the result, judgment is hereby given in favour of the plaintiff against the defendant for:

1. Payment of the sum of US$218 649, together with interest thereon at the prescribed rate from the date of service of the summons to the date of payment.
2. Costs of suit.