



**IN THE HIGH COURT OF SOUTH AFRICA,**  
**FREE STATE DIVISION, BLOEMFONTEIN**

<b>Reportable:</b>	<b>YES/NO</b>
<b>Of Interest to other Judges:</b>	<b>YES/NO</b>
<b>Circulate to Magistrates:</b>	<b>YES/NO</b>

Case number: 3967/2020

In the matter between:

**T. S. MOTLHOMI obo S. B. M**

Plaintiff

and

**ESKOM HOLDINGS LIMITED SOC**

Defendant

and

**LETSEMENG LOCAL MUNICIPALITY**

Third Party

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**HEARD ON:** 25 AUGUST 2023

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**JUDGEMENT BY:** LOUBSER, J

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**DELIVERED ON:** 31 AUGUST 2023

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- [1] In the action before this court, the plaintiff is claiming damages from the defendant arising from injuries sustained by her minor son when he came into contact with electrical powerlines, which contact caused electrical burns on his right hand and arm and on both his feet.

- [2] The plaintiff called five witnesses to testify in support of her claim. After the close of her case on the merits, an application was launched on behalf of the defendant for an order of absolution from the instance. This judgement pertains to that application.
- [3] The minor child who sustained the injuries, was one of the witnesses who gave testimony as to the occurrence of the incident. He testified that on the day of the incident, he went to look for his sister on a piece of open land where he had to duck under an overhead powerline that was hanging low. In doing so, he did not notice an electrical wire that was lying on the ground, and he inadvertently stepped on the wire and became burnt by an electrical shock.
- [4] It was contended on behalf of the defendant that there was no evidence of the precise location of the incident, with the result that there was no evidence that the electrical structures, poles and powerlines at the place of the incident belonged to the defendant. It was further contended that the evidence did not support the plaintiff's case on the pleadings, in that it was alleged in the particulars of claim that the minor child came into contact with electrical powerlines, which were suspended above the ground and supported by poles and/or pylons. In the plaintiff's response to a request for further particulars by the defendant, however, it was stated that the minor child had stepped on the electrical powerline with both feet.
- [5] The plaintiff handed in photographs of the place where the incident allegedly happened, and no electrical wires lying on the ground are visible on these photographs. The photographs also show the burns on the minor child's body, including the bandages covering the child's feet.
- [6] The defendant furthermore contends that there was no evidence showing who the owner of the land in question was, or whose electrical infrastructure existed on that land. In the plaintiff's particulars of claim, it is alleged that the defendant was the owner or was responsible for the powerlines on the premises where the accident occurred. There is no evidence supporting this allegation, it was contended on behalf of the defendant. In this respect it needs mentioning that the defendant has joined the Letsemeng Local Municipality as a third party to the action, claiming that the Municipality was in fact the registered owner of the

property and/or the powerlines concerned. On this basis, the defendant alleges that the negligence of the Municipality was the direct cause of the plaintiff's damages. It also needs mentioning that in its plea, the defendant admitted that it was a licensee as defined in section 1 of the Electricity Regulation Act.<sup>1</sup>

[7] Now when absolution of the instance is sought, the test is whether there is evidence upon which a court, applying its mind reasonably to such evidence, could or might (not should, or ought to) find for the plaintiff.<sup>2</sup>

[8] The evidence so far in this case is that the incident occurred on the farm land known as Rorichshoop, as alleged in the plaintiff's particulars of claim. The further evidence is that the minor child stepped on a powerline with both feet on that farm land, as alleged in the plaintiff's further particulars. The photographs handed in suggest injuries to both the feet of the minor child. While it is true that there is no evidence that the electrical infrastructure at that place belonged to the defendant, or that the defendant carried the responsibility for the powerlines on the farm land, I am nevertheless of the opinion that the plaintiff has reached the minimum threshold where a court, applying its mind reasonably, could or might find for the plaintiff.

[9] This is so, because the lack of evidence in respect of the ownership or the responsibility for the electrical infrastructure, is in my view to a large extent cured by the provisions of section 25 of the Act referred to above. Section 25 provides as follows:

"In any civil proceedings against a licensee arising out of damage or injury caused by induction or electrolysis or in any other manner by means of electricity generated, transmitted or distributed by a licensee, such damage or injury is deemed to have been caused by the negligence of the licensee, unless there is credible evidence to the contrary."

[10] In addition, the Appellate Division has held<sup>3</sup> that in a case where the defendants have denied liability and have pointed to one another as being the party responsible for the plaintiff's damages, the court should not grant an application for absolution at the suit of either defendant at the end of the plaintiff's case if

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<sup>1</sup> Act 4 of 2006

<sup>2</sup> For instance, *McCarthy Ltd vs Absa Bank Ltd 2010 (2) SA 321 (SCA)* at par [21]

<sup>3</sup> In *Mazibuko v Santam Insurance Co Ltd 1982 (3) SA 125 (A)* at 135 C-E

there is evidence upon which a court, applying its mind reasonably, could hold that either the one or the other defendant, or both of them, are legally liable. The present case no doubt falls within the same category. I am therefore of the view that it is in the interest of justice that the case should be decided on the evidence which all the parties might choose to place before the court. Consequently, the following order is made:

1. The defendant's application for absolution from the instance is dismissed, the defendant to pay the costs occasioned by the application.

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**P. J. LOUBSER, J**

For the Plaintiffs: Adv. H. E. De la Rey

Instructed by: Honey Attorneys  
Bloemfontein

For the Defendant: Adv. C. Snyman

Instructed by: Phatshoane Henney Attorneys  
Bloemfontein