

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CS 80/2016

[2018] SCSC 871

LISE CHURCH

Plaintiff

versus

PUBLIC UTILITIES CORPORATION

Defendant

Heard: 25th July 2018

Counsel: Mr. Camille for plaintiff

Mr. Rajasundaram for defendant

Delivered: 1st October 2018

JUDGMENT

Nunkoo J

[1] The Plaintiff is the owner of a plot of land, parcel V9064, on which stands her house. There is on that parcel of land a bare high voltage electricity line, which crosses her property to an extent of 50 metres. The Plaintiff has alleged that the electrical line poses a serious risk of harm to her as well to her employees and agents and therefore the maintenance of the lines amounts to a faute. The particulars of the faute are:

(i) Failed to relocate the electrical lines when knowing the same to be dangerous to public health and safety of Plaintiff, the Plaintiff's family, agents and/or employees

(ii) failed to take heed to Plaintiff's warning about the danger of the electrical at all

(iii) Failed to appropriately assess or evaluate the danger of the electricity lines crossing over the plaintiff's property or at all

(iv) failed to take heed to Plaintiff's health and safety at all

[2] Plaintiff is averring that as a result of the matters stated above she has been made to suffer loss, damage and prejudice and has particularised the loss and damages as follows:

Inconvenience, anxiety and distress:	Rs 50,000.00
Loss of full enjoyment and use of her property	Rs 100,000.00
Moral Damages	Rs 200,000.00

She is also praying from this Court for an order directing the Defendant to relocate the lines.

[3] The Plaintiff is alleging that at some time in the past the CEO of the PUC, who was a French national did effect a survey of the premises and having concluded that there were serious risks had agreed to relocate the lines.

[4] The Defendant is denying the above agreement.

[5] Plaintiff is alleging that one of her gardeners was electrocuted in 2013 and that despite several notices to the defendant to relocate the lines nothing has been done by the latter. It must be noted that the gardener was electrocuted whilst he had been trimming branches that were close to the electrical lines; also it is not explained exactly how he got electrocuted.

[6] At the very outset at the hearing of this case Counsel for Plaintiff made known that his client was not going to pursue her claim for damages. The Court therefore has to decide whether the electrical lines need to be removed and whether the Court should make such an order.

[7] On the first aspect the Plaintiff testified that the electrical lines constitute a risk to the health and safety of everyone there and she has pleaded that this constitutes a faute, which has been sufficiently particularised.

[8] She also testified that a previous CEO of the PUC, one Mr Laboudonniere, had given her the undertaking to remove the lines and therefore the PUC should remove them. Unfortunately there was no documentary evidence to support this. For the Plaintiff those electrical lines are a danger.

The PUC called one of their staff, Mr Hussein an Engineer qualified from the Manchester University, presently the Manager of Electricity distribution at the PUC,, who testified that PUC maintains a Vegetation Department, consisting of a Manager and three loppers whose job is to cut off branches and ensure that there is no power outage. He further testified that the poles found on the land of the Plaintiff are either 10 metres high metres from the ground and hence the wires do not pose any problem to human life or safety. He also testified that the Plaintiff does not cooperate in the maintenance of the vegetation by the PUC staff in that she does not allow them access; on occasions the PUC has had to resort to the Police. He maintained that if this exercise is done regularly there should be no problem to anybody and that normally the Plaintiff is notified in advance about the timing and the trees that would be cut.

The Court was also referred to a civil case entered by the Defendant, case No CS/18/15 wherein the Defendant had to go to court in order to obtain access to the property of the Plaintiff to cut the trees. It is the submission of Counsel for the Defendant that no relocation of the lines is necessary if the PUC is allowed to cut the trees and branches promptly. I have also been referred to the following provision of the Public Utilities Corporation Act:

that is Section 3 (1),

3.(1) Any employee of the Corporation, with such assistance as is necessary, may, at any reasonable time, enter upon any land or premises for the purpose of exercising the functions of the Corporation and may occupy such land to carry out thereon any prescribed operation.

(2) In this regulation “prescribed operation” means-

(a) in relation to the supply of electricity-

(i) erecting posts and other apparatus necessary for the purpose of installing a system of distribution of electrical energy and taking such other action as may be necessary to render the system so installed safe and efficient.

(ii) laying, placing or carrying electrical lines for the distribution of electrical energy and carrying out repairs and doing all things necessary for the maintenance of the electrical lines, posts and other apparatus;

Basing myself on the whole of the evidence and more specifically on the above provision of the Act I am of the view that Plaintiff has failed to prove her case.

The plaint is therefore dismissed with costs.

Signed, dated and delivered at Ile du Port on 1st October 2018.

S Nunkoo
Judge of the Supreme Court