

In the High Court of Fiji

At Suva

Civil Jurisdiction

Civil Action No. HBC 121 of 2019

Mursad Begum

Plaintiff

v.

Energy Fiji Limited

Defendant

Counsel: Ms S. Dutt with Mr Y. Kumar for the plaintiff

Mr N. Lajendra for the defendant

Date of hearing: 12th September, 2022

Date of Judgment: 12th April, 2023

Judgment

1. The plaintiff, the registered proprietor of Crown Lease No. 138981, Lot 88 on DP 4020 in Naitasiri complains that the defendant erected a power pole in her property without her consent. The statement of claim states that the power pole contains power lines with high voltage of electricity, which interferes with her use and enjoyment of the property. It imposes a high risk of electrocution, serious injuries and damage to her property. She seeks general damages for the use of her property by the defendant and a declaration that the power pole is causing a nuisance.

2. The statement of defence states that when the plaintiff bought the property in 2014, the power pole had been on the property for over 40 years. She is not entitled to damages.
3. The plaintiff, in her reply states that there was no easement registered on her title when she purchased the property.

The hearing

4. The plaintiff, (PW1) in evidence in chief said that power pole was already installed when she purchased the property. It provided a risk especially to her elderly mother and grandchildren, as there was a broken piece of timber on the pole. During Cyclone Winston, the electric wires fell down and they could not open their gate.
5. In cross-examination, PW1 said that the pole was slightly inside her fence. It transpired that there were no trees near the pole. She had not suffered any physical injuries as a result of the pole for the last 8 years, but her grandson got injured. A Telecom and EFL wire continue to cross her property after the defendant removed the pole. She agreed that the risk was the same if the wires were inside or outside the property.
6. In re-examination, she said that the power lines were damaged by a branch of a tree during Cyclone Winston.
7. DW1, (*Jitendra Kumar, General Manager, Network at defendant*) said the plaintiff, as new owner inherited the installations on the property. The pole was installed a few decades ago. It was a concrete, not a wooden pole and was a meter and half inside the plaintiff's property. The power lines are not high voltage lines. The power that from the pole is the same power that is transported to the plaintiff's property. The normal household voltage is 240 volts, which is the voltage on the power lines. The risk associated is the same. Prior to 2022, the defendant accessed the property 5 times to carry out maintenance works and thrice this year to remove the pole. The pole has a wooden cross arm. A power pole does not fall on its own. It would fall only when a vehicle is driven into it or as a result of a landslide.

The determination

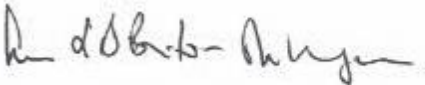
8. It is agreed that a power pole was installed in the plaintiff's property.
9. It transpired that the power pole was already installed in the plaintiff's property when she purchased the property, as testified by the plaintiff. It was slightly inside the property.
10. In the course of these proceedings, the pole was removed.
11. The plaintiff claims damages for the use of her property by the defendant and a declaration that the power pole caused a nuisance.
12. The plaintiff said that she did not suffer any injury, but her grandson did. There was no evidence provided on the alleged injury to her grandson nor on any damage caused when the electric wires fell when Cyclone Winston struck as alleged.
13. It is contended that the power lines pose a threat. This is at best speculative.
14. No evidence was provided of any instance of electrocution by the plaintiff and her family.
15. It was not disputed that the power lines on the power pole emanated the same voltage as the EFL AND Telecom lines which ran across the plaintiff's property.
16. The object of damages is to compensate a party for the loss he has suffered.
17. Lord Goddard CJ in **BONHAM- CARTER V. HYDE PARK HOTEL**, (1948) 64 TLR 177 declared:

Plaintiffs must understand that if they bring actions for damages it is for them to prove their damage; it is not enough to write down the particulars, and, so to speak, throw them at the head of the Court, saying: "This is what I have lost; I ask you to give me these damages." They have to prove it.

18. Viscount Jowitt in *Carslogie Steamship Co. Ltd v Royal Norwegian Government*, 1952 A.C. (H.L.)292 at 300 as referred to by Mr Lajendra, counsel for the defendant in his closing submissions stated:

... I think it is well to bear in mind the elementary principle that it is for the plaintiff in an action of damages to prove his case to the satisfaction of the Court. He has to show affirmatively that damages under any particular head have resulted from the wrongful act of the defendant, before he can recover those damages.

19. In my judgment, the plaintiff has not established that she suffered any damage during the period the power pole was in her property.
20. It emerged that the defendant's officers had gone to the property five times for maintenance works, before the pole was removed. Here again, the plaintiff did not establish the nuisance alleged to have been caused till the pole was removed.
21. The plaintiff's action is declined.
22. **Orders**
- a. The plaintiff's action is declined.
 - b. I make no order as to costs.


A.L.B. Brito-Mutunayagam
JUDGE
12th April , 2023

