

SUPREME COURT OF NIGERIA

29TH MAY, 1998. SC. 264/1991

**CORAM:- M. L. UWAIS CJN, A. B. WALI, E. O. OGWUEGBU,
U. MOHAMMED, S. U. ONU, JJSC.**

IGBINOVIA ORHUE APPELLANT
AND
NATIONAL ELECTRIC POWER AUTHORITY RESPONDENT

STATUTES - *Electricity Supply Regulation ss. 2, 26(1) and 27 - Safety measures directed thereunder where high tension cables are installed over metal roof - Was taken care of when the respondent earthed the house of the appellant.*

TORTS - *Negligence - Medical evidence - Installation of high tension cable over the appellants house - Averment that it had made him and his family to become emaciated - Can only be proved by the evidence of the medical doctor who examined them.*

TORTS - *Negligence - Duty of care - Liability could only be established if plaintiff proves that the defendant owed him a duty of care - And that he suffered damage in consequence of the defendant's failure to take care.*

TORTS - *Negligence - Burden of proof - Installation of high tension cable - Where the respondent took care to make the appellant's house safe - The appellant has failed to discharge the burden of proof of negligence against the respondent.*

FACTS

The plaintiff/appellant instituted an action against the defendant/respondent at the Benin High Court claiming the sum of N200,000.00 being compensation or damages for the unsafe condition he suffered from the energized wires of the respondent and the expenses of living in a rented accommodation for 12 months. The construction of high ten-

sion 330 KV overhead Benin - Onitsha Transmission line in 1966 was the cause of the action. The appellant complained that the transmission line was constructed directly over his house rendering his house and adjoining parcel of land unsafe for human habitation. As a result of electrical shocks appellant and the household suffered from whenever they came in contact with metallic objects in the house, the appellant and his entire household, upon expert advise, moved out of the premises to a rented accommodation where he has been staying since 1966.

At the conclusion of the trial, in a well considered judgment Akenzua J, found that the appellant has failed to prove his claim. The action was consequently dismissed. Aggrieved by this decision, the appellant appealed to the Court of Appeal, which dismissed the appeal. Dissatisfied, the appellant has finally appealed to the Supreme Court raising 3 issues but only issues 1 and 3 were adjudged relevant to the appeal.

ISSUES FOR DETERMINATION

"1. Whether the Court of Appeal Justices were right in holding that the plaintiff failed to discharge the onus of proof on him on the issue of negligence.

3. Whether upon proper construction, the Court of Appeal Justices were right in holding that the provisions of the Electricity Supply Regulations, 1958 were applicable in this case."

HELD (Unanimously dismissing the appeal per lead judgment of **MOHAMMED.JSC**)

Negligence - Medical evidence

1. Mr. Omamadaga, quite correctly, submitted that there is no law prohibiting the passage of energized electric lines over a building. The effect of such lines depends on how they are fitted or installed. Mr. Omamadaga submitted that since the appellant had given evidence that he was treated by a medical doctor for the degree of injuries he suffered his failure to produce medical evidence to prove such injuries is adverse to his claim. I quite agree. The learned trial judge, Akenzua J, considered the averments in paragraphs 7(a), 7(b), 7(c), 7(d), 7(e) and 7(f) of the Amended Statement of Claim and pointed out that the burden lies on the appellant to

prove what he asserted in those paragraphs. The learned trial judge concluded that the only evidence which can help the appellant to establish that the installation of high tension cable over his house had made him and members of his family to become emaciated should come from the medical doctor who examined him. The appellant had failed to call such evidence. I agree that the averment in paragraph 7(e) of the Statement of Claim could only be proved if the doctor who examined the appellant and members of his family had been called to testify on what the appellant asserted. (p. 1310 D)

Negligence - Duty of care

2. In considering the tort of negligence liability could only be established if plaintiff proves that the defendant owed him a duty of care, and that he suffered damage in consequence of the defendant's failure to take care. A person must take reasonable care to avoid acts or omissions which he can reasonably foresee would be likely to injure persons who are so closely and directly affected by his acts or omissions that he ought reasonably to have them in contemplation. See Agbonmagbe Bank Ltd. v. C.F.A.O. (1966) A.N.L.R. 130; Donoghue v. Stevenson (1932) A.C. 562 at 580 and Abusomwan v. Mercantile Bank Ltd. No. 2 (1987) 3 NWLR (Part 60) 208. (p. 1311 C)

Negligence - Burden of proof

3. Both the High Court and the Court of Appeal analysed the evidence adduced by the appellant and the testimony of DW2 on the complaint of the appellant that he received electric shock whenever he touched metals in his house. The trial High Court disbelieved the appellant because there was no evidence direct or indirect led to establish such assertion. The Court of Appeal agreed with this finding. It is evidently clear, looking at the testimony of PW5 and DW2 that the house had been made safe when DW2 earthed it. The claim of the appellant that he suffered from shock and sundry health hazard when the respondent energized the over-head wires has therefore failed. I therefore affirm the decisions of the two lower courts that the appellant has failed to discharge the burden of proof

of negligence against the respondent in installing the high tension cable over his house. The appellant has therefore failed to convince me to resolve the question raised in issue 1 in his favour. (p. 1312 F)

B *Electricity Supply Regulation*

4. I agree with the submission of learned counsel for the respondent that the provisions of the Electricity (supply) Regulation, Cap. 57, Laws of the Federation 1958 which was then the law concerned with the installation of high tension cable or extra high pressure electric lines apply to the case in hand. The argument of learned counsel for the appellant that the Regulation of 1958 concerns only lines carrying not more than 6,600 volts is clearly wrong. The provisions of sections 2, 26 (1) and 27 of the Regulation are crystal clear that high tension cables carrying electric current above 6,600 volts had been provided for by the Regulation. The safety measures directed under the Regulation to be taken where high or extra-high tension cables are installed over a building with metal roof, like the house of the appellant, had been taken care of when the respondent earthed the house of the appellant. (p. 1314 B)

NOTABLE POINTS OF INTEREST

OGWUEGBU JSC

F 1. *There cannot be negligence in the abstract*

Electricity is a dangerous thing in itself and the totality of the evidence adduced at the trial showed that the appellant's house was not adversely affected by the transmission lines passing over it. The cardinal principle of liability is that the party complained of should owe to the party complaining a duty to take care, and that the party complaining should be able to prove that he has suffered damage in consequence of the breach of that duty. There is no such thing as negligence in the abstract. The appellant failed to prove that the respondent did not attain the standard of care prescribed by the law in the construction of the high-pressure electric lines over the building of the appellant. He did not also establish by evidence the damage which he alleged he and members of his family suffered. The averments contained in paragraphs 6(a), 7(a), 7(c), 7(d),

7(e) and 7(f) of the amended statement of claim not having been proved, the appellant's claim was rightly dismissed by the learned trial judge. The court below came to a correct decision when it affirmed the judgment of the learned trial judge. (1316 C)

B

ONU JSC

2. Ordinary principle of law on negligence

It was the further contention of the appellant that the Justices of Appeal were in error in adopting the ordinary principle of law on negligence as laid down in the case of DONOGHUE V. STEVENSON (1932) AC. 562. He cited other cases and argued that electricity falls within the categories of things dangerous in themselves and demands a peculiar duty to take precaution imposed on those who instal them that other parties will come within their proximity. With due respect, while it is conceded that electricity falls within the category of things dangerous in themselves, it is clear that the learned Justices of the court below did not confine themselves to the ordinary principles of law enunciated in DONOGHUE V. STEVENSON (supra). They indeed ably referred to a long list of authorities and after highlighting the principles enunciated therein vis a vis the facts, held as follows:-

"In this case it is not disputed that the energized transmission lines that pass over the appellant's house is a potential source of danger but whether the respondent failed to make (sic) step to protect those who like the appellant would come within the proximity of these lines is the issue that has to be resolved."

I cannot agree more. Consequently, the appellant, in my view, is wrong by contending that the learned Justices of the court below adopted the ordinary principles of law on negligence. (p. 1318 G)

3. Speculative possibility of pecuniary benefit

It is pertinent here to stress that as none of the people appellant mentioned as those injured testified and were indeed not called at all to do so in the trial court, it would certainly have been speculative to make any award or order compensation arising from any purported evidence in

appellant's favour. The law is settled that it is the duty of court to consider the evidence produced before it and never to proceed to indulge in speculation as to what might have happened; indeed a Judge should not substitute his own supposition for the testimony of witnesses given on oath before him. See Fawehinmi v. N.B.A. (No.1) (1989) 2 NWLR (Part 105) 494; Adelanwa v. The State (1972) 10 SC. 13 at 19. It has also been held that a mere speculative possibility of pecuniary benefit in an action for damages for the tort of negligence will be dismissed. See Barnet v. Cohen & Ors. (1921) 2 K.B. 461 and Ihewuzi v. Ekeanya (1989) 1 NWLR (Part 96) 239 at 248. Court will thus interfere to set speculation aside. What is more, the court not being a charitable organisation, will not, in the instant case, make any award or compensation gratuitously in the appellant's favour. See Etim Ekpenyong & ors. v. Inyang Effiong Nyong & Ors. (1975) 2 SC. 71 and Union Beverages Ltd. v. Owolabi (1988) 1 NWLR (Part 68) 128. (p. 1320 B)

4. *Sentiment has no place in judicial deliberations*

In the instant case, the appellant has not been able to show that the two lower courts' decisions are perverse on the totality of evidence adduced before them in the interpretation of the provisions of the Electricity (supply) Regulation Cap. 57 Laws of the Federation 1958. In fact, the only point the appellant has been able to show is that having regard to the current demand position as a result of rapid industrialisation, the minimum clearance that could render a house safe in respect of an overhead wire carrying 330 KV should be several times higher than that prescribed under the Regulations. This argument, as earlier pointed out, is speculative and sentimental and overlooks the factual situation on the ground. It has been held that sentiment has no place in judicial deliberations since cases must be decided on law and facts and not on sentiment. See Victor Emekoma Ukachukwu Ezeugo v. Nelson Commander Ohanyere (1978) 6 & 7 SC. 171 at 184. (p. 1322 B)

REPRESENTATION

Appellant not in court and not represented

C.C. Omamadaga for the respondent

CASES REFERRED TO

- Agbonmagbe Bank Ltd. v. C.F.A.O. (1966) A.N.L.R. 130
- Donoghue v. Stevenson (1932) A.C. 562 at 580 B
- Fawehinmi v. N.B.A. (No.1) (1989) 2 NWLR (Part 105) 494
- Adelanwa v. The State (1972) 10 SC. 13 at 19
- Barnet v. Cohen (1921) 2 K.B. 461
- Ihewuzi v. Ekeanya (1989) 1 NWLR (Part 96) 239 at 248 C
- Ekpenyong v. Nyong (1975) 2 SC. 71
- Union Beverages Ltd. v. Owolabi (1988) 1 NWLR (Part 68) 128.
- Iroegbu v. Okwordu (1990) 6 NWLR (Part 159) 643 at 659
- Are v. Ipaye (1990) 2 NWLR (Part 132) 298 at 308
- Ajuwon v. Adeoti (1990) 2 NWLR (Part 132) 271 D
- Olaloye v. Balogun (1990) 5 NWLR (Part 148) 24
- Ezeugo v. Ohanyere (1978) 6 & 7 SC. 171 at 184.
- Rylands v. Fletcher (1868) L.R. 3 H.L. 330
- Anns. v. Merton London Borough Council (1978) A.C. 728 E

STATUTE REFERRED TO

- Electricity (supply) Regulation, Cap. 57 Laws of the Federation, 1988,
ss. 2, 26 (1) and 27 F

LEAD JUDGMENT BY MOHAMMED JSC

The appellant in this appeal was Plaintiff at the Benin High Court. The construction of high-tension 330 KV overhead Benin - Onitsha Transmission line in 1966 was the cause of the suit filed in Benin High Court against the National Electric Power Authority, N.E.P.A., which is the respondent in this appeal. The appellant complained that the transmission line was constructed directly over his house rendering his house and the adjoining parcel of land unsafe for human habitation. As a result of electrical shocks the plaintiff and the household suffered from whenever they came in contact with metallic objects in the house, the appellant and his entire household, upon expert advise, moved out of the premises to a

rented accommodation where he has been staying since 1966.

The appellant therefore claimed N200,000.00 being compensation or damages for the unsafe condition he suffered from the energized wires of the respondent and the expenses of living in a rented accommodation for 12 months. The learned trial judge directed pleadings to be filed and exchanged. At the conclusion of the trial and, in a well considered judgment, Akenzua J, found that the appellant had failed to prove his claim. The action was consequently dismissed.

Aggrieved by this decision the appellant appealed to the Court of Appeal. The lower court carefully considered all the issues raised for the determination of the appeal and in a well considered judgment Ejiwunmi, JCA, delivering the lead judgment: concurred in by Uche Omo JCA (as he then was) and Salami, JCA, dismissed the appeal. It is against the judgment of the Court of Appeal that the appellant has finally appealed to this Court on two grounds of appeal.

Learned counsel on both sides filed their respective briefs of argument. The following three issues were formulated by the learned counsel for the appellant from the points raised in the two grounds of appeal:

"1. Whether the Court of Appeal Justices were right in holding that the plaintiff failed to discharge the onus of proof on him on the issue of negligence.

2. Whether the Court of Appeal Justices were right in not awarding (or making appropriate directions in that regard) the plaintiff reasonable compensation in the light of the quantum of evidence in support of the claim and none adduced in rebuttal.

3. Whether upon proper construction, the Court of Appeal Justices were right in holding that the provisions of the Electricity Supply Regulations, 1958 were applicable in this case."

I however agree with the learned counsel for the respondent that only issues 1 and 3 are relevant to the legal arguments put forward in the two grounds of appeal filed, for the prosecution of this appeal.

Issue 1 relates to the claim for damages for negligence in the installation of high-tension cable over the house of the appellant and ener-

gizing the over-head wires. Learned Counsel for the appellant, in his submission, referred to the opinion of the Court of Appeal in its judgment that the onus of proof for the tort of negligence was on the appellant and that if the appellant failed to establish that the respondent was in breach of its duty of care the Corporation cannot be held liable. The lower Court B relied on the cases of the Rylands v. Fletcher (1868) L.R. 3 H.L. 330 and Anns. v. Merton London Borough Council (1978) A.C. 728. The Court of Appeal in its opinion agreed with the decision of the High Court that although electricity is something dangerous in itself, the totality of the evidence adduced showed that appellant's house was not adversely af- C fected by the transmission lines passing over it.

Mr. Orhewere, learned counsel for the appellant, in the appellant's brief, submitted that the Justices of the lower court misconceived the facts when they held that there was no evidence to show that the high D tension wire was negligently fitted over the appellant's house when the facts and issues canvassed before them were not that of negligence in the fitting of the wires over the appellant's house, but the effect of the energized wires passing over the house. Learned Counsel, while agree- E ing proof of injury is the basis of assessment of damages in a negligence claim, in this case the appellant's complaint against the respondent is electric shock and if the opinion of the lower court is to be upheld the death of the appellant by electric shock would be the only concrete proof F of injury. He supported his submission by reference to the case of Dominion Natural Gas Co. Ltd. v. Collins and Perkins (1909) A.C. 640 at 646 where Lord Dunedin held that electricity fell within "the category of things dangerous in themselves and demands a peculiar duty to take precau- G tion imposed on those who install them that other parties will come within their proximity".

Mr. Orhewere pointed in the brief to what he alleged was uncontroverted evidence of electric stock and its's effect on the appel- H lant, other members of his family and the carpenter he employed to mend the roof of his house. The admission of the uncontroverted evidence, counsel added, is enough proof of shock which the appellant suffered from the acts of the respondent.

In answer to the above submission, learned counsel for the respondent, Mr. Omamadaga, referred to sections 26 (1) and 27 of the Electricity (Supply) Regulation, cap. 57, Laws of the Federation, 1958 which read:

B "26(1). *Where high pressure electric lines cross over buildings they shall have a vertical clearance of not less than eight feet above the highest part of the building immediately under the lines and a horizontal clearance of not less than four feet between the lines and any part of the building*".

C Section 27:

"Where high or extra high pressure electric lines cross over a building with metal sides and metal roof, the roof shall be effectively bonded to the side of the building and such side shall be effectively
D earthed to ensure the operation of the protective devices in the event of contact being made between the electric lines and any metal part of the building".

**Mr. Omamadaga, quite correctly, submitted that there is
E no law prohibiting the passage of energized electric lines over a building. The effect of such lines depends on how they are fitted or installed. Mr. Omamadaga submitted that since the appellant had given evidence that he was treated by a medical doctor for the degree of injuries he suffered his failure to produce medical evidence
F to prove such injuries is adverse to his claim. I quite agree. In paragraph 7(e) of Amended Statement of Claim the appellant pleaded as follows:**

*"7e. The plaintiff further avers that himself and members of his
G family became emaciated after the over-head lines became energized and the house became unduly hot and inhabitable and that on noticing his adverse effect to his health the plaintiff and some members of his family consulted a Medical Doctor in the then General Hospital (now Central
H Hospital) who similarly advised the plaintiff to move out of the house after plaintiff had described the position of his house".*

The learned trial judge, Akenzua J, considered the averments in paragraphs 7(a), 7(b), 7(c), 7(d), 7(e) and 7(f) of the

Amended Statement of Claim and pointed out that the burden lies on the appellant to prove what he asserted in those paragraphs. The learned trial judge concluded that the only evidence which can help the appellant to establish that the installation of high tension cable over his house had made him and members of his family to become emaciated should come from the medical doctor who examined him. The appellant had failed to call such evidence. I agree that the averment in paragraph 7(e) of the Statement of Claim could only be proved if the doctor who examined the appellant and members of his family had been called to testify on what the appellant asserted. B
C

In considering the tort of negligence liability could only be established if plaintiff proves that the defendant owed him a duty of care, and that he suffered damage in consequence of the defendant's failure to take care. A person must take reasonable care to avoid acts or omissions which he can reasonably foresee would be likely to injure persons who are so closely and directly affected by his acts or omissions that he ought reasonably to have them in contemplation. See Agbonmagbe Bank Ltd. v. C.F.A.O. (1966) A.N.L.R. 130; Donoghue v. Stevenson (1932) A.C. 562 at 580 and Abusonmwan v. Mercantile Bank Ltd. No. 2 (1987) 3 NWLR (Part 60) 208. D
E

The lower court considered this essential requirement in a claim on negligence and held that the energized transmission line that passed over the house of the appellant is a potential source of danger, but whether the respondent failed to take necessary steps to protect those who would come within the proximity of those lines is the issue to be resolved. The learned Justice Ejiwunmi, JCA, quite correctly, referred to the evidence of both PW5 and DW2 which gave answer to the question posed above. Both witnesses gave expert evidence on the effect of earthing a building to protect it from the flow of electric current from a high tension cable above it. PW5, a witness called by the appellant, testified inter alia thus: F
G
H

"I inspected the site. I went to the site with Avo Metre Meggar we could not make use of Avo Metre or Meggar. On physical

examination of the building we noticed that the roof of the building was earthed by an earth wire connected from the roof to the earth Earthing is provided for a building to remove any source of high voltage from any area that would be dangerous to human beings. When a roof is earthed it is presumed that there is a voltage greater than zero voltage The earthing of the building was perfect and effective".

When asked by the learned trial judge what the witness meant by "perfect" he explained;

"By being perfect as to the earthing of the building, I mean that there is no more electrification of any part of the building and no such part will produce shock any more when touched by any person".

DW2, Mr. Francis Echefu, an electrical engineer working for over 25 years with the NEPA told the trial court that he visited the house of the appellant following the appellant's complaint to NEPA. He then earthed the house in order to alleviate the fear of the appellant and not because the house was capable of transmitting any current. He went further in his evidence and explained as follows:

"DW2: Even if a human touches the object that was earthed which has now come in contact with electric fold, as long as the human stands on earth, he will not be shocked. At the time I visited the building, the roof has been earthed. Assuming that the house was in contact with the overhead power transmission, I would not have received shock because of the earthing".

Both the High Court and the Court of Appeal analysed the evidence adduced by the appellant and the testimony of DW2 on the complaint of the appellant that he received electric shock whenever he touched metals in his house. The trial High Court disbelieved the appellant because there was no evidence direct or indirect led to establish such assertion. The Court of Appeal agreed with this finding. It is evidently clear, looking at the testimony of PW5 and DW2 that the house had been made safe when DW2 earthed it. The claim of the appellant that he suffered from shock and sundry health hazard when the respondent energized the overhead wires has therefore failed. I therefore affirm the decisions of

the two lower courts that the appellant has failed to discharge the burden of proof of negligence against the respondent in installing the high tension cable over his house. The appellant has therefore failed to convince me to resolve the question raised in issue 1 in his favour.

The submission of the learned counsel for the appellant on issue 3 is that the provisions of the Electricity (supply) Regulation, Cap. 57, Laws of the Federation, 1958, are not applicable to this case. His argument is that the Regulation is dealing with wires carrying not more than 6,600 volts or (6.6 Kilovolts). The minimum clearance specified in the Regulation are inapplicable to the Benin-Onitsha line which passed over the house of appellant carrying 330,000 volts (330 kilovolts). Counsel went further and argued that the minimum clearance that will render a house safe in respect of an overhead line carrying 330,000 volts should be several times higher than that required in respect of a line carrying 6,600 volts of electricity. Learned counsel submitted that the respondent's failure to comply with minimum requirements of the 1958 Regulations in respect of minimum clearance amounted to negligence.

Mr. Omamadaga, in reply to the above, referred to the provisions of sections 26(1) and 27 of the Electricity (Supply) Regulation, Cap. 57, Laws of the Federation, 1958 reproduced above, in this judgment. The clearance required in installing high pressure and extra high pressure electric lines has been specified in those provisions of the Regulation. Mr. Omamadaga referred also to section 2 of the regulation which defines high pressure and extra high pressure as follows:

"Pressure-high means any pressure between conductors or phases over 650 volts but not in excess of 6,600 volts".

"Pressure -extra-high means any pressure between conductors or phases in excess of 6,600 volts".

Learned counsel submitted that both sections 26(1) and 27 of the Regulation clearly show that causing extra high pressure electric lines to pass over a building is not prohibited. All that is required by the law is for the respondent to ensure that the minimum clearances between the conductors and the highest part of the building are maintained and the

building effectively earthed. Learned counsel emphasised that as soon as the requirement is complied with, such building becomes safe for human habitation and the respondent cannot be guilty of breach of its duty of care to the occupier or owner of such building.

B I agree with the submission of learned counsel for the respondent that the provisions of the Electricity (supply) Regulation, Cap. 57, Laws of the Federation 1958 which was then the law concerned with the installation of high tension cable or extra high pressure electric lines apply to the case in hand. The argument of learned
C counsel for the appellant that the Regulation of 1958 concerns only lines carrying not more than 6,600 volts is clearly wrong. The provisions of sections 2, 26 (1) and 27 of the Regulation are crystal clear that high tension cables carrying electric current above 6,600
D volts had been provided for by the Regulation. The safety measures directed under the Regulation to be taken where high or extra-high tension cables are installed over a building with metal roof, like the house of the appellant, had been taken care of when the
E respondent earthed the house of the appellant.

In sum, both issues canvassed by the appellant for the prosecution of this appeal are resolved in favour of the respondent. The appeal has therefore failed and it is dismissed. The judgment of the Court of
F Appeal affirming the decision of the trial High Court is hereby affirmed. I assess N10,000.00 costs in favour of the respondent.

UWAIS CJN

G I have had the opportunity of reading in draft the judgment read by my learned brother Mohammed, J.S.C. I entirely agree with the reasoning and conclusion therein. I have nothing more to add.

Accordingly, I too hereby dismissed the appeal with N10,000.00
H costs to the Respondent.

WALI JSC

I have read in advance the lead judgment of my learned brother Uthman Mohammed, JSC and I agree with the reasons given therein for dismissing the appeal.

The appellant had woefully failed to prove his case and both the trial court and the Court of appeal were right in dismissing his claim. And reasons stated in the lead judgment, I also hereby dismiss the appeal with N10,000.00 costs to the respondent.

OGWUEGBU JSC

I have had the privilege of a preview of the lead judgment just delivered by my learned brother Mohammed, J.S.C. I agree with him that the appeal should be dismissed and I therefore adopt his arguments and conclusions as mine.

The gist of the appellant's complaint was the injurious effect of the high tension lines on himself, members of his family and property. The issue as rightly found by the courts below became that of damages for negligence. The Court of Appeal rightly observed as follows in its judgment:

"Before discussing the issues raised, it is proper to consider whether in any event the respondent owes the appellant a duty of care and whether the respondent was in breach of that duty. This question is pertinent as it seems clear from the pleadings that the appellant's claim before the trial court is one for an action for damages for negligence. It is therefore clear that for the appellant to succeed, he has to prove the alleged negligence and also the injuries that he claimed and that his family and himself suffered in his house and which caused him to move himself and his family out of the said house."

The conclusion reached by the learned trial judge cannot be faulted having regard to the evidence before him. He said:

"I do not believe the evidence of the plaintiff that he received electrical shock from his building at No. 6, Umelu Village, or from any metallic items in the said building as there is no evidence, direct or indi-

rect, led to establish thus (sic). P.W.1 and P.W.5 who said that they were experts in the field of electricity only gave evidence about possible effect on human body of high tension electric power lines when carried over and above buildings. That the plaintiff really suffered as a result of the current passing through these transmission wires, no medical evidence of that was given. Possibilities of these hazards are there, no doubt, but provisions for clearance had been laid down by law as to minimum and maximum clearance to be given to such transmission lines. I also believe that, even if for one moment the plaintiff believed that he was living underneath such a danger, from the evidence of the P.W.5, there will be no basis for such apprehension."

Electricity is a dangerous thing in itself and the totality of the evidence adduced at the trial showed that the appellant's house was not adversely affected by the transmission lines passing over it. The cardinal principle of liability is that the party complained of should owe to the party complaining a duty to take care, and that the party complaining should be able to prove that he has suffered damage in consequence of the breach of that duty. There is no such thing as negligence in the abstract. The appellant failed to prove that the respondent did not attain the standard of care prescribed by the law in the construction of the high-pressure electric lines over the building of the appellant. He did not also establish by evidence the damage which he alleged he and members of his family suffered. The averments contained in paragraphs 6(a), 7(a), 7(c), 7(d), 7(e) and 7(f) of the amended statement of claim not having been proved, the appellant's claim was rightly dismissed by the learned trial judge. The court below came to a correct decision when it affirmed the judgment of the learned trial judge.

I will also dismiss the appeal and endorse the order as to costs contained in the lead judgment of my learned brother, Mohammed J.S.C.

H

ONU JSC

I had the privilege to read before now the judgment just delivered by my learned brother Mohammed, JSC. I unhesitatingly agree to

dismiss it as lacking in merit.

The facts of the case which admit of no controversy as well as the law applicable thereto have been so elaborately considered by my learned brother in this appeal as to preclude me from repeating a review of same here.

Suffice it to say, that at the end of the day, the two of three issues, namely Issues 1 and 3 which arose for our determination at the appellant's instance are:

1. Whether the Court of Appeal Justices were right in holding that the plaintiff failed to discharge the onus of proof on him on the issue of negligence.

3. Whether upon proper construction, the Court of Appeal Justices were right in holding that the provisions of the Electricity (supply) Regulations Cap. 57 Laws of the Federation were applicable.

Considering the two issues together, it is appellant's contention firstly, that the learned Justices of the Court of Appeal (hereinafter referred to as the court below) misconceived the facts when they held that there was no evidence to show that the overhead wires were negligently fitted over the appellant's house. Secondly, that the issues before the trial court were not that of negligence in the fitting of the wires over appellant's house but that of the effect of the energized wires passing over the appellants' house.

I am of the firm view that these contentions are misconceived having regard to the facts on the record. Under the enabling statute, the Electricity (Supply) Regulations, Cap. 57 Laws of the Federation, 1958, Section 26(1) and 27 provide as follows:-

"Where high electric lines cross over buildings they shall have a vertical clearance of not less than eight feet above the highest part of the building immediately under the lines and a horizontal clearance of not less than four feet between the lines and any part of the building."

Section 27 -

"Where high or extra-high pressure electric lines cross over a building with metal sides and metal roof, the roof shall be effectively bonded to the side of the building and such side shall be effectively

earthed to ensure the operation of the protective devices in the event of contact being made between the electric lines and any metal part of the building."

Thus, as there is no law prohibiting the passage of energized electric lines over a building, the effect of such electric lines depends on how they are fitted or installed. Where they are fitted or installed in breach of the provisions of the Regulations, the effect will be injurious but where they are not, as in appellant's case, the effect will not be adverse to the building or to those who will come within the proximity. As the gravamen of appellant's complaint in this case is that of the injurious effect on his property and himself, the issue boils down to that of negligence whose particulars are as alleged by him in particulars of negligence at paragraphs 6(a), 7(a), (b), (c), (d), (e) and 14 of the Amended Statement of Claim. Hence, the learned Justices of the court below held rightly, in my view, as follows:-

"Before discussing the issues raised, I think it is proper to consider whether in any event the respondent owed the appellant a duty of care and whether the respondent was in breach of that duty. This question, is in my view, pertinent as it seems clear from the pleadings that the appellant's claim before the trial court is one for an action for damages for negligence. The appellant's amended statement of claim in support of the writ of summons distinctly at paragraphs 6(a), 7(b), (c), (d), (e) and 14 pleaded the particulars of alleged negligence. The respondent at paragraphs 7, 8, 9, 10, and 31 of its statement of defence denied the allegations of negligence. It is therefore clear that for the appellant to succeed, he has to prove the alleged negligence, and also the injuries that he claimed and that his family and himself suffered in his house and which caused him to move himself and his family out of the said house."

It was the further contention of the appellant that the Justices of Appeal were in error in adopting the ordinary principle of law on negligence as laid down in the case of DONOGHUE V. STEVENSON (1932) AC.562.

He cited other cases and argued that electricity falls within the categories of things dangerous in themselves and demands a peculiar duty to take precaution imposed on those who instal them that other parties will come

within their proximity. With due respect, while it is conceded that electricity falls within the category of things dangerous in themselves, it is clear that the learned Justices of the court below did not confine themselves to the ordinary principles of law enunciated in DONOGHUE V. STEVENSON (supra). They indeed ably referred to a long list of authorities and after highlighting the principles enunciated therein vis a vis the facts, held as follows:-

"In this case it is not disputed that the energized transmission lines that pass over the appellant's house is a potential source of danger but whether the respondent failed to make (sic) step to protect those who like the appellant would come within the proximity of these lines is the issue that has to be resolved."

I cannot agree more. Consequently, the appellant, in my view, is wrong by contending that the learned Justices of the court below adopted the ordinary principles of law on negligence. Thus, it is equally untrue that the learned trial Judge whose decision the court below affirmed, believed the two purported experts, PW1 and PW5. In fact the learned trial Judge had found:

"The mere fact that high tension transmission lines are inherent with danger does not mean that the plaintiff and members of his family have become emaciated by reason of the transmission wires being energized and the house became hot and uninhabitable or by that reason the house was producing electric shock whenever metallic objects or the house itself are touched." (Underlining is mine for emphasis).

From the foregoing, I take the firm view that since the appellant conceded firstly, that the claim is one for damages for negligence in the fitting of energized wires over his house by the respondent and secondly, that in negligence cases, proof of injury is the basis of assessment of damages to be awarded but argued that proof of electric shock cannot be measured medically except in severe cases where death occurs, cannot be tenable. The contention therefore that medical evidence is not necessary to prove injury cannot, in my opinion, be sustained on the grounds that:

- (a) The appellant having found himself in the hands of a medical

Doctor who treated him for the degree of injury he claimed he suffered as a result, the medical evidence became necessary to prove the injury moreso, when it was pleaded by him.

(b) P.W.1 and P.W.5, two experts (the latter an electrical engineer) both of whom testified that they did not experience electric shock during their inspection of the appellant's building did not help to proved appellant's case on the balance of probabilities.

It is pertinent here to stress that as none of the people appellant mentioned as those injured testified and were indeed not called at all to do so in the trial court, it would certainly have been speculative to make any award or order compensation arising from any purported evidence in appellant's favour. The law is settled that it is the duty of court to consider the evidence produced before it and never to proceed to indulge in speculation as to what might have happened; indeed a Judge should not substitute his own supposition for the testimony of witnesses given on oath before him. See Fawehinmi v. N.B.A. (No.1) (1989) 2 NWLR (Part 105) 494; Adelanwa v. The State (1972) 10 SC. 13 at 19. It has also been held that a mere speculative possibility of pecuniary benefit in an action for damages for the tort of negligence will be dismissed. See Barnet v. Cohen & Ors. (1921) 2 K.B. 461 and Ihewuzi v. Ekeanya (1989) 1 NWLR (Part 96) 239 at 248. Court will thus interfere to set speculation aside. What is more, the court not being a charitable organisation, will not, in the instant case, make any award or compensation gratuitously in the appellant's favour. See Etim Ekpenyong & ors. v. Inyang Effiong Nyong & Ors. (1975) 2 SC. 71 and Union Beverages Ltd. v. Owolabi (1988) 1 NWLR (Part 68) 128.

Secondly, the appellant at page 11 in his brief has contended in one breath that the Respondent was in breach of the provisions of the Electricity (supply) Regulations Cap. 57 Laws of the Federation 1958 by installing the transmission wires over his house. Yet in another breath he argued that the provisions of the same Regulations were no longer applicable to his own case and that the Justices of the court below were wrong in holding that the said Regulations applied to his case. Thus, when at the same page 11 at the last but one paragraph of his brief, the

appellant argued as follows:-

"We respectfully submit further that on a proper interpretation of the Electricity Supply Regulation, 1958, the respondent was clearly negligent in installing the said lines over the appellant's house without taking adequate precautions to remove or substantially reduce the dangers inherent in transmitting electricity current of that magnitude over the appellant (sic) house through naked and exposed wire."

the issue of negligence no longer arose in as much as the respondent had effectively earthed the wires alleged to constitute the danger. See the evidence of PW5 in which he admitted under cross-examination that the appellant's house was adequately and effectively earthed by the respondent and that there would be no electrification of any part of the building and no such part would produce shock when touched by any person. See also the evidence of DW2 to the effect that the clearance between the conductors and the highest part of the appellant's house was more than that prescribed under the Regulation. The appellant's contention that electricity demand situation in 1958 could not be equated to the current demand position having regard to the rapid post-independence industrialisation and oil wealth or that the minimum clearance that could render a house safe in respect of an overhead line carrying 330KV should be several times higher than that required in respect of a line carrying 6,600 Volts of electricity, are all but speculative in nature and lack merit.

The learned Justices of the court below, in my firm view, were perfectly right when they held from the facts, as did the trial court, that the provisions of the Electricity (supply) Regulations Cap. 57 Laws of the Federation, 1958 applied to the appellant's case. They were also, in my view, perfectly right when they found as a fact, as did the trial court, that the respondent was not in breach of its duty of care to the appellant having regard to the provisions of the Regulation.

It is trite law that in order to justify the interference with concurrent findings of the two lower courts by the Supreme Court such as these, the appellant must show special circumstances such as the violation of some principle of law or procedure arising from erroneous proposition of law that if that proposition be corrected, the finding cannot

stand. See Iroegbu v. Okwordu (1990) 6 NWLR (Part 159) 643 at 659; Are v. Ipaye (1990) 2 NWLR (Part 132) 298 at 308; 316 - 320; Ajuwon v. Adeoti (1990) 2 NWLR (Part 132) 271; Buraimoh v. Esa (1990) 2 NWLR (Part 133) 406 at 419; Olaloye v. Balogun (1990) 5 NWLR (Part 148) 24
B and Animashaun v. Olojo (1990) 6 NWLR (Part 154) 111 at 121 - 122.
In the instant case, the appellant has not been able to show that the two lower courts' decisions are perverse on the totality of evidence adduced before them in the interpretation of the provisions of the Electricity (supply) Regulation Cap.57 Laws of the Federation 1958. In fact, the only
C point the appellant has been able to show is that having regard to the current demand position as a result of rapid industrialisation, the minimum clearance that could render a house safe in respect of an overhead wire carrying 330 KV should be several times higher than that prescribed
D under the Regulations. This argument, as earlier pointed out, is speculative and sentimental and overlooks the factual situation on the ground. It has been held that sentiment has no place in judicial deliberations since cases must be decided on law and facts and not on sentiment. See Victor E Emekoma Ukachukwu Ezeugo v. Nelson Commander Ohanyere (1978)
E 6 & 7 SC. 171 at 184.

For the reasons given by me and the fuller ones contained in the leading judgment of my learned brother Mohammed, JSC I too dismiss
F this appeal. I abide by the consequential orders made therein.

G

H