

IN THE COURT OF APPEAL OF ZAMBIA

APPEAL NO. 148 OF 2022

HOLDEN AT KABWE

*(Civil Jurisdiction)*

BETWEEN:

19 JUN 2024

ZESCO LIMITED

APPELLANT

AND

SELLINAH MAFIKA  
WARREN PHIRI  
HONOR JANZA  
WANTEMWA SIMUTENDA  
RAPHAEL KUMWENDA

1<sup>ST</sup> RESPONDENT  
2<sup>ND</sup> RESPONDENT  
3<sup>RD</sup> RESPONDENT  
4<sup>TH</sup> RESPONDENT  
5<sup>TH</sup> RESPONDENT

CORAM: Chashi, Makungu and Sichinga, JJA

ON: 21<sup>st</sup> May and 19<sup>th</sup> June 2024

*For the Appellant: M.A Kambole -Ngutube (Mrs), Senior Legal Officer - In House Counsel*

*For the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents: M.C Hamachila, Messrs M.C. Hamachila Legal Practitioners*

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## JUDGMENT

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**CHASHI JA**, delivered the Judgment of the Court.

Cases referred to:

1. *Donoghue v Stevenson (1932) AC, 562*
2. *ZESCO Limited v Justine Chishimba - SCZ Appeal No. 131/2013, (2014) ZMSC, 90*

3. *ZESCO Limited v Laston Chipulu - SCZ Appeal No. 147 of 2013*
4. *Wilson Masauso Zulu v Avondale Housing Project Limited (1982) ZR, 172*

**Other works referred to:**

1. *Zambian Civil Procedure, Commentary and Cases, Patrick Matibini, Volume 2 – LexisNexis, 2017*

## **1.0 INTRODUCTION**

1.1 This appeal emanates from the Judgment of the High Court delivered by Honourable Justice Elita Phiri Mwikisa, on 3<sup>rd</sup> May 2022.

1.2 In the said Judgment, the learned Judge found the defendant, now the Appellant, liable for loss and damages suffered by the Respondents as a result of the Appellant's negligence.

## **2.0 BACKGROUND**

2.1 On 12<sup>th</sup> December 2018, the Respondents commenced an action by way of writ of summons. The reliefs sought were the cost of reconstruction of four (4) Flats (the Flats) that were burnt by a fire, allegedly due to the negligence of the Appellant. The other reliefs were for loss of rental income, loss of household goods, damages for inconvenience and loss of business.

2.2 According to the accompanying statement of claim, the Flats, situated at Plot No. 1723/M, main street, Ibex Hill, Lusaka, were owned by the 1<sup>st</sup> Respondent. The Flats were leased out to the other Respondents as follows:

**(i) 2<sup>nd</sup> Respondent: Flat 2**

**(ii) 3<sup>rd</sup> Respondent: Flat 4**

**(iii) 4<sup>th</sup> Respondent: Flat 1**

**(iv) 5<sup>th</sup> Respondent: Flat 3**

2.3 It was averred that on 10<sup>th</sup> September 2015, the Flats caught fire and got completely burnt resulting in total loss of household goods.

It was alleged that the fire was seen by some of the residents as having started on top of the roof of Flat 1, occupied by the 4<sup>th</sup> Respondent, where an electricity cable from the Appellant's pole supplying power to Flat 1, was in contact with the roof.

2.4 According to the 1<sup>st</sup> Respondent, the fire started as a result of the Appellant's negligence in the manner they had connected the power supply cable that supplied power to Flat 1. The particulars of the negligence stated that, there was failure on the part of the Appellant to properly connect the power supply cable to the Flats, which resulted in the Respondents suffering damage and loss.

2.5 The Appellant settled its defence on 19<sup>th</sup> December 2018, denying liability and averred that their investigation revealed that there was no separation in the roof between the Flats so as to act as bund wall in the event of a fire, which made it easy for the fire to spread quickly through the cluster of Flats within a short period. The Appellant further blamed the 1<sup>st</sup> Respondent's installation, claiming that it was compromised as it was found with very high earth resistance value.

### **3.0 DECISION OF THE COURT BELOW**

3.1 After considering the evidence of the seven (7) Respondents' witnesses, two (2) Appellant's witnesses and the written submissions by both parties, the learned Judge formulated the issue for determination as follows:

***“Whether the plaintiffs herein had proved, on a balance of probability that the defendant was negligent in its conduct, resulting in the fire that destroyed the plaintiffs' property.”***

3.2 On the ingredients of negligence, the learned Judge relied on the celebrated English case of **Donoghue v Stevenson**<sup>1</sup>, where it was stated as follows:

***“The party complained against should owe to the party complaining, a duty of care, should show breach of***

***that duty and that he has as a consequence suffered damage as a result of that breach.”***

- 3.3 Relying on the cases of **ZESCO Limited v Justine Chishimba<sup>2</sup>** and **ZESCO Limited v Laston Chipulu<sup>3</sup>**, the learned Judge opined that the Appellant owed a duty to take reasonable care to avoid acts or omissions which it could reasonably foresee would likely injure persons.
- 3.4 In determining the issue, the learned Judge reviewed the evidence of PW2, Fitrigue Fidelis Chifwembe, who stayed in the same compound, where the Flats were situated. PW2 was an eye witness and a witness of fact. According to PW2, before he had seen sparks on the roof of the flats in question, he had in his residence, which was not part of the Flats, experienced power flickering on and off. According to the learned Judge, this evidence was not rebutted and was supported by PW7, the 4<sup>th</sup> Respondent who occupied Flat 1.
- 3.5 PW2, had further testified that when the sparks grew bigger and the Appellant's cable got fire, he went and alerted the 4<sup>th</sup> Respondent, as the cable that was burning was connected to his Flat. That he later noticed fire in the 4<sup>th</sup> Respondent's spare bedroom. According to the learned Judge, PW2 did not need to be

an electrical engineer for him to give evidence of what he saw happen on the material day.

- 3.6 The learned Judge on the other hand, observed that DW1, Gift Zimba, A Senior Safe Compliance Officer in the employ of the Appellant, had a different version of what caused the fire. According to him, he assumed that the fire started from the spare bedroom, because of the pressing iron that was found there, embedded in the ash. He explained that, when one considers the chemical reaction, the only cause of fire was the pressing iron, because fire cannot start without a source of heat and the only item in the spare bedroom that was a source of heat was the pressing iron.
- 3.7 The learned Judge was of the considered view that the scales of justice leaned towards PW2's evidence, because he was a witness of fact, who first experienced and saw flickering of power prior to observing the sparks from the cable and the sparks growing bigger and resulting into the fire. According to the learned Judge, if the fire started from the inside, there would not have been reason for PW2, who was the eye witness to go and alert the 4<sup>th</sup> Respondent, that there was fire on the service cable leading to his Flat.

3.8 The learned Judge found that the evidence of DW1 was based on an assumption that the only heating element in the spare bedroom was the pressing iron, which must have been the cause of the fire. That there was no evidence adduced to show that the said pressing iron was found connected to a socket, thus resulting in the fire. The learned Judge was of the view that, in the absence of such evidence, it was difficult for her to accept the evidence of DW1. She was of the considered view that, the fact that an iron was found in the ashes was not proof enough that it was the cause of the fire.

3.9 On the issue of the Appellant's witnesses, DW1 and DW2, Alan Chamata Kapeso, (the Regional Manager for the east) and an engineer in the employ of the Appellant argued that even though the cable was resting on the roof, it could not have caused the fire, the learned Judge noted that both witnesses conceded that it was bad practice for the Appellant to allow the service cable to rest on the roof. They however, testified that the service cable resting on the roof would only cause electrocution in instances where a person comes in contact with the iron sheets, but can not cause a fire.

3.10 The learned Judge took into consideration the Lusaka City Council, Fire Brigade, Fire Accident Report dated 17<sup>th</sup> September 2015, which stated that the cause of fire was suspected to be of electrical origin. Further, PW5, Edward Ngoma, a Fire Fighter, who authored the report, stated that he suspected the origin of the fire was from an electric source, which was on the roof, where the sparks were seen. That PW5 gave meaning to what electrical origin meant and that this was in tandem with what PW2 saw.

3.11 The learned Judge also considered the letter from ERB dated 7<sup>th</sup> January 2016, which stated that they could not conclusively determine the cause of the fire, from their investigations, although they observed the following:

***“The Flats had poor wiring, earthing and bonding which could have ignited the fire: Therefore, it is possible that an electrical fault in one of the Flats could have caused the fire. There was poor workmanship by Zesco regarding the termination of the service cable before the metre box which could have led to overheating, resulting in the fire.*”**



***Further, the service cable rested on the iron sheet roof which potentially could have caused a short circuit resulting in the fire.”***

3.12 The learned Judge took the view that as much as there were connectivity issues and substandard wiring in the Flats as testified by PW4, PW2's evidence that he saw sparks on the service cables resting on the roof which resulted in the fire, had been corroborated by the evidence of PW4, on how the cable resting on the roof could have caused the fire. That also, the letter by ERB that the service cables resting on the iron sheet roof could potentially have caused a short circuit resulting in the fire was backed up by PW2's evidence.

3.13 Furthermore, the learned Judge was of the view that although PW4 and ERB's letter gave possible cause of fire such as connection issues i.e joints between the live cables, wiring, touching of the service cable on the roof and all these possible causes of fire, only the service cable on the roof was corroborated by the eyewitness, PW2.

3.14 The learned Judge found that the fire started from the roof. She was of the view that had the fire come from the inside, there would not have been any need for PW2 to alert the 4<sup>th</sup> Respondent.

3.15 In concluding, the learned Judge had this to say:

*“All in all, I am of the considered view that the defendant herein owed the plaintiff a duty of care. The defendant ought to have taken reasonable care to avoid acts, such as resting the service cable on the roof, which it could reasonably foresee would be likely to injure persons who are closely and directly affected as was in casu...That there was nothing on record to show that the plaintiffs’ act resulted in the cause of the fire on that day. There is however evidence showing that the fire started on the roof as demonstrated. Even though the plaintiffs did not bring a forensic expert to determine the exact cause of fire, from the evidence before me, I am satisfied that on a balance of probability, the fire was as a result of the defendant’s service cable causing sparks thereby resulting in the fire. Further, the defendant later corrected the service*

***cable from touching the roofs of the Flats after the fire incident.”***

3.16 The learned Judge, based on the facts of the case, found the Appellant liable for loss and damages suffered by the Respondents due to the Appellant's negligence. The matter was referred to the Deputy Registrar for assessment of damages.

#### **4.0 THE APPEAL**

4.1 Disenchanted with the Judgment, the Appellant has appealed to this Court on the following six (6) grounds:

***(i) The learned Judge having delivered full Judgment in favour of the plaintiffs for damages for negligence, she erred in both law and fact by preferring the testimony of PW2, who is a businessman by profession, disregarding the testimony of DW1, an electrical technologist and DW2, an electrical engineer who are professionally competent to state the ramifications of sparks on the cable and whether the sparks on a cable can permeate the roof of a structure thereby causing fire;***

- (ii) *The learned trial Judge in the court below erred in fact and law by disregarding PW2's testimony that on the material date, he did not experience any power cuts in comparison to other previous mornings, a position material of the status of power supply in the compound on the material day;*
- (iii) *The learned trial Judge in the court below erred in fact and law by disregarding DW1 and DW2's evidence that stated that the effect would be electrocution as opposed to a fire considering that the plaintiffs did not rebut that position or confirm whether or not there was an incident of electrocution;*
- (iv) *The learned trial Judge in the court below erred in fact and law by only relying on PW5 testimony that stated that the cause of the fire was from the roof, disregarding what he admitted in cross examination that the source of the fire was inside the building and that his evidence was based on hearsay. Further that the learned Judge disregarded*

*PW5's testimony that confirmed that where there is fire, everything within reach would melt the cable inclusive if made out of material that would melt, a position critical to the state of that cable after the fire;*

- (v) The learned trial Judge in the court below erred in fact and law by finding that the testimony of PW2 and PW4 firmly collaborated on how the cable resting on the roof could cause fire, when in actual fact PW5 was the author of the Energy Regulation Report relied on by the plaintiff that actually showed that the investigations could not conclusively state the cause of the fire, a position contradictory to his latter testimony; and*
- (vi) The learned trial Judge in the court below erred in fact and law when it disregarded PW5's report that instructed the plaintiffs to seek an independent competent forensic report in supporting the claim but instead still relied on PW1's testimony in finding that the fire started from the roof when PW1 is not a competent*

*witness in matters that are electrical in nature so as to establish the actual cause of the fire. By being incompetent in the field of electricity, his evidence therefore was insufficient to constitute a pinnacle of the Judgment.*

## **5.0 ARGUMENTS IN SUPPORT OF THE APPEAL**

- 5.1 At the hearing, Counsel for the Appellant entirely relied on the Appellant's heads of argument, which were filed into Court on 11<sup>th</sup> July 2022.
- 5.2 In arguing the first ground of appeal, it was submitted that PW2 as a businessman was not competent in the electrical field, as to speak to the possible cause or consequences of sparks on the cable, and therefore could not be relied on as a material witness. According to the Appellant, the evidence of PW2 was not conclusive, so as to instruct the Judgment of the court.
- 5.3 It was submitted that PW2 failed to prove how the sparks he alleges to have seen could have caused fire inside the 4<sup>th</sup> Respondent's spare bedroom, as he lacked the prerequisite competence in the electrical field. That, his testimony was flawed to prove that the alleged sparks caused the fire that gutted the Flats.

5.4 In arguing the second ground, it was submitted that the learned Judge overlooked the state and quality of power supply in the neighbourhood on the material day. According to the Appellant, the evidence by PW2 that there would usually be power cuts at 06:00hours in the morning, but on that particular morning there was no power cut, only goes to confirm that on the material day, power supply was not marred with interruptions. It was submitted that the learned Judge should not have disregarded this evidence as it confirmed that the Appellants network was in sound form and therefore could not have caused a fault, that could have given rise to the fire incident.

5.5 As regards the third ground, it was submitted that the evidence of DW1 and DW2 was never rebutted by the Respondents, a confirmation that an electric cable hanging on the roof of a structure cannot give rise to a fire incident, but electrocution or severe shocks. Further that, at the transformer, there is protection of breakers and fuses, such that in the event of a problem in the network, the fuse will blow up and the customers fed on the same transformer will not be affected. According to the Appellant, the

learned Judge should not have disregarded that evidence, as DW1 and DW2 were competent in the electrical field.

- 5.6 In respect to the fourth ground, it was submitted that, based on PW5 confirming that his evidence was based on hearsay, the same should not have instructed the Judgment of the court.
- 5.7 In arguing the fifth ground, it was submitted that the evidence of PW4 weighted more on showing that the cause of fire could not have been the cable, but the poor wiring and walls that were built below standard, thereby having a Flat that had localized fire spreading to other Flats. According to the appellant, the learned Judge should not have disregarded that evidence.
- 5.8 As regards the sixth ground, the evidence by PW4 that the 1<sup>st</sup> Respondent was instructed to seek an independent competent forensic report, forms a position that the investigation done by Energy Regulation Board (ERB) and Lusaka City Council (LCC) under the department of fire brigade confirmed that the cause of fire could not conclusively be ascertained.



5.9 It was the Appellant's submission in conclusion that the learned Judge clearly erred in law and fact and as such, the appeal has merit and should be allowed with costs to the Appellant.

## 6.0 RESPONDENTS' HEADS OF ARGUMENT

6.1 In response to the first ground, it was submitted that PW2 testified as an eye witness to the fire incident. That he testified as a witness of fact who witnessed the fire incident. According to the Respondents, the learned trial Judge did not err when she relied on the testimony of PW2 and not that of DW1 and DW2. The Respondents placed reliance on the learned authors of **Zambian Civil Procedure: Commentary and Cases**,<sup>1</sup> at page 1058, where it is stated as follows:

*"It is therefore not for the witness to draw inferences from the facts and form opinions; that is the function of the courts. Rather, witnesses must confine themselves to informing the court of what transpired."*

6.2 In response to the second ground, it was submitted that the learned Judge did not disregard the evidence regarding the power cuts in the area at the material time. Our attention was drawn to

the evidence of PW2, at page J37, page 42 of the record of appeal (the record). That from the evidence on record, the learned Judge did properly consider the evidence and made a finding that prior to PW2 observing the sparks on top of Flat 1, there was flickering of power in the compound, thereby establishing that there was a general problem with the power supply at the material time.

6.3 In respect to the third ground, it was submitted that the learned Judge did not disregard the evidence of DW1 and DW2 in respect of their expert opinion as to the possibility of there being electrocution as a result of the fact that the electric cables were touching the roof. It was submitted that DW1 did not interview any eye witness. According to the Respondents, the court properly considered the totality of the evidence of DW1 and DW2. That based on the evidence on record, the trial court properly addressed itself to the expert evidence as provided by DW1 and DW2.

6.4 In response to ground four, it was submitted that the trial court did not err when it relied on the testimony of PW5, when it found that the cause of fire was from the roof, disregarding what he said in cross examination that the fire was inside the building and that his general information was premised on hearsay. It was further

submitted that PW5's evidence was confirmed by the evidence of PW2.

6.5 In response to the fifth ground, it was submitted that the learned Judge did not err in finding that the testimony of PW2 and PW4 firmly corroborated on how the cable resting on the roof could cause the fire. That PW4 testified that he investigated the fire incident on behalf of ERB. That he visited the site and there was evidence that clearly showed that the service cables were touching the roof of the Flats. There is also evidence that the Appellant was directed to reroute the cables and that was done. It was contended that the cause of fire in this matter was as a result of the service cables that were resting on the roof of the Flats.

6.7 In response to the sixth ground, it was submitted that the ERB report that instructed the 1<sup>st</sup> Respondent to seek an independent forensic report was not disregarded. That it is clear from the ERB report that the recommendations were as a result of the role ERB played in the hearing of the complaint made by the 1<sup>st</sup> Respondent (PW1). That the evidence by PW4 was the independent evidence that was provided in the matter and was properly addressed by the trial court in determining the cause of fire.

6.8 We were urged to dismiss the appeal with costs as it lacked merit.

## 7.0 OUR ANALYSIS AND DECISION

7.1 After considering the Judgment being impugned and the arguments by the parties, we have noted that all the six (6) grounds of appeal are challenging the learned Judge's findings of fact and asking us to upset the same. The starting point is the case of **Wilson Masauso Zulu v Avondale Housing Project Limited**<sup>4</sup> where it was held *inter alia* as follows:

***“The appellate court will only reverse findings of fact made by a trial court if it is satisfied that the findings in question were either perverse or made in the absence of any relevant evidence or upon a misapprehension of the fact.”***

7.2 The Appellant has argued all the six grounds separately. We will address grounds one, two and three together as they are related and speak to the issue *“whether the Respondents had proved on a balance of probability that the Appellant was negligent in its conduct, resulting in the fire that destroyed the Respondents' property.”* The Appellant attacks the learned Judge for preferring the testimony of

PW2, a businessman, instead of DW1 an electrical engineer, professionally competent to state the ramifications of sparks on the cable and whether the sparks on a cable can permeate the roof of a structure, thereby causing fire.

7.3 As earlier alluded to, at the core of the issue for determination by the learned Judge was what caused the fire. We have gone to length to recap the evaluation of witnesses' evidence by the learned Judge and in particular PW2 and DW1, so as to understand, the reason why the learned Judge preferred the evidence of PW2 to that of DW1.

7.4 PW2, was as identified by the learned Judge a witness who was independent and was not affected by the fire. Furthermore, he was, as observed by the trial court, consistent in his evidence. The evidence by PW2 was factual in that it pertained to what he perceived with his sight on the material date. He did not adduce evidence as an expert witness and therefore did not need to be an electric engineer to give the evidence he did. In determining the issue, the learned Judge did not solely rely on the evidence of PW2, but drew in support from the LCC fire brigade report, ERB report and also the

evidence of PW4, PW5 and to a certain extent the admissions by DW1 and DW2.

- 7.5 On the other hand, DW1, although he was an electric engineer, his evidence seems to have been more tilted to defend the Appellant's position not to accept liability for the fire. His evidence does not only seem to be superfluous, but was also an afterthought and not probable. It is unimaginable how a pressing iron, not connected to power can be a source of heat and cause sparks and a fire on the roof. The report from the Appellant at page 72 of the record of appeal states as follows:

***“The fire started from the spare bedroom, where there was an electric iron, ironing board and books.”***

- 7.6 The report then goes on to make a very unprofessional assumption at page 73 of the record as follows:

***“The fire started from the spare bedroom in Flat 2 (sic) where there was an electric iron, ironing board and books. Being in the morning at around 06:00 hours, AM the tenant could have been ironing and forgot to switch off and unplug the appliance.”***

- 7.7 The explanation by DW1 on what might have transpired was not factual and supported by the evidence. This also explains why the Appellant refused to share its report with the 1<sup>st</sup> Respondent. What adds a more damning complexion to the Appellant's case, was that if the electric iron was the cause of the fire, why was it not pleaded in their defence as it was supposed to be the gist of their defence.
- 7.8 We find no basis on which to fault the learned Judge as she was accurate in her evaluation of the witnesses' evidence.
- 7.9 The fourth and fifth grounds attack the learned Judge's finding that the testimony of PW2 and PW4 firmly corroborated on how the cable resting on the roof could cause fire, when in fact PW4 was the one who inspected the premises and authored the ERB report, relied upon by the Respondents, that actually showed that the investigations could not conclusively state the cause of the fire. According to the Appellant, the trial Judge's finding that PW2's evidence corroborated PW4's evidence, whilst disregarding the ERB report that was authored by PW4 was contradictory.
- 7.10 According to the letter from ERB to the 1<sup>st</sup> Respondent, dated 3<sup>rd</sup> May 2016, appearing at page 159 of the record, ERB advised as follows:

- “(i) ZESCO have reiterated that they are not liable for the damage caused to your property;**
- (ii) ZESCO owed a duty of care to you as a customer to supply power of acceptable quality and maintain any distribution equipment in good state; and**
- (iii) In view of the evidence of the Technical Report submitted by ZESCO, the Verification Inspection Report of ERB and submissions made during the hearing, it is our considered view that the electric fault may have ignited the fire that caused damage to your property.”**

7.11 ERB went on state that they were however constrained by the fact that the law does not allow or compel a licensee to accept liability for damages caused to property. They then advised the 1<sup>st</sup> Respondent to seek redress through the courts of law.

7.12 Our understanding is that, the 1<sup>st</sup> Respondent lodged a complaint to ERB dated 16<sup>th</sup> September 2015, as a result of which ERB convened a meeting, at which the parties and their witnesses were present. ERB then considered the evidence, the report from the Appellant and their own report. ERB were of the view that even



though the Appellant was denying liability, their considered view was that an electric fault may have ignited the fire. Even though they were not specific about the electric fault, we are of the view that they were responding to the complaint by the 1<sup>st</sup> Respondent, who alleged that the fire was ignited by the service cable on the roof. PW4 in his evidence did state that it was not ERB's mandate to state the cause of the fire.

7.13 It is also worth noting that, PW4 was an expert witness. In adducing his evidence, he did not solely rely on the ERB report. He also rendered his own opinion. In doing so, he stated the following:

***“I visited the site between October/November 2015. The length of those service cables were too long to a point that infrastructure of 4 Flats 2 Flats opposite each (sic). The roof was heaped and the service cable was touching the roof... By good industry practice, the service cable should not touch the iron roofing sheets. It should have been anchored on a pole to the shackle to avoid contact with iron sheets.... when I looked at their service cable, I noticed that it was burnt...”***

7.14 PW4 then went on to state as follows:

***“Then part of the breakers in the distribution box which have handles and when I looked at them, I could see that there was no electrical fire there. So the cables were not burnt, so the fire did not start from the distribution box, but that fire started from elsewhere. At that stage, I recalled what I saw outside, the service cable burning the roof which made the fire start due to heat. In my opinion, I suspected that contact was a possible cause of fire.”***

7.15 Ground six attacks the learned Judges alleged disregard of PW4’s assertion that ERB had instructed the Respondents’ to seek an independent forensic report. According to the Appellant, this forms a position that the investigations done by ERB and LCC (fire brigade) confirmed that the cause of fire could not be ascertained.

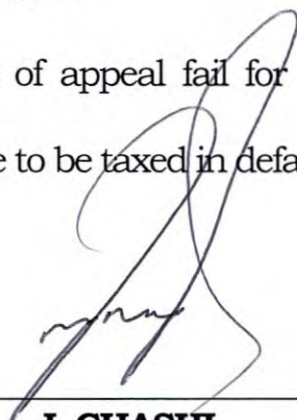
7.16 At page J42 of the Judgment which appears at page 47 of the record, the learned Judge noted that ERB had advised the 1<sup>st</sup> Respondent to seek an independent opinion from a competent forensic fire expert, which she did not do. The Judge was of the view that, be that as it may, on a balance of probability, the fire started on top of the roof as testified by the eye witness PW2. This

statement should not be seen in isolation. The learned Judge had earlier in the Judgment stated that, that finding was supported by the evidence of PW4 and PW5. We see no basis on which to fault the learned Judge.

## 8.0 CONCLUSION

8.1 Our view is that the appeal does not meet the threshold set out in the **Wilson Masauso Zulu** case for us to interfere with the findings of fact of the court below.

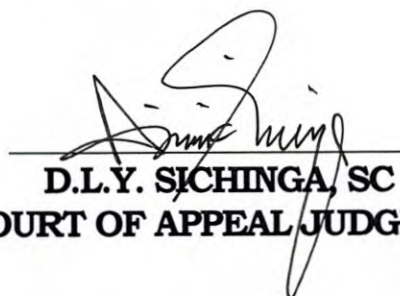
8.2 All six (6) grounds of appeal fail for lack of merit. Costs to the Respondents. Same to be taxed in default of agreement.



**J. CHASHI**  
**COURT OF APPEAL JUDGE**



**C.K. MAKUNGU**  
**COURT OF APPEAL JUDGE**



**D.L.Y. SICHINGA, SC**  
**COURT OF APPEAL JUDGE**