

Court of Appeal  
(Inferior Jurisdiction)

Mr. Justice Anthony Ellul

Appeal: 393/2009

**Lucia widow of Carmelo Schembri and her children Angela and Rita  
Schembri (appellant)**

**vs**

**Emeriziana Agius (respondent)**

16<sup>th</sup>, June 2017.

**The Court,**

**Having seen that:**

1. By means of a Notice of Claim filed on the 25th May 2009, the plaintiffs requested the Small Claims Tribunal to order the defendant to pay her damages, after same are liquidated, caused by her against the plaintiffs when abusively and in breach of the law, around August of the year 2007, she tore down television aerial communications and internet wires belonging to the plaintiffs as a result of which they had to pay for a TV service when the aerial service was sufficient for them as wireless transmission was free, and these damages also include the initial costs for re-communication for the service illegally severed and, this in the case of need, a prior declaration that the defendant alone was responsible for the tearing down of the said wires, and therefore of the service that up to that date they were receiving free of charge. With costs, including those that the plaintiffs had to make privately with their legal counsel, the defendant being referred to her oath. For the purposes of competence, the plaintiffs declared that the claimed damages do not exceed the sum of three thousand, four hundred and ninety-four euros (€3,494).
2. By means of a reply filed on the 15<sup>th</sup> June 2009 the defendant pleaded that the plaintiffs' request should be dismissed for the following reasons:
  - (i) Whereas the action lacks plaintiffs' juridical interest since they are not the owners of the said wires and services;

- (ii) Secondly, and without prejudice to the above, every wire removed by the respondent was effected with the plaintiffs' consent, as shall be proved during the examination of the case;
  - (iii) Whereas if the plaintiffs passed any wires this was done illegally, clandestinely and without the consent of the respondent and thus qualifies as an illegal cause;
  - (iv) Whereas on the merits, the claim is unfounded in fact and at law, and is exaggerated.
- 3. During the sitting of the 28th January 2010 the defendant was authorised to file a further reply in terms of which she pleaded lack of competence and jurisdiction of the Small Claims Tribunal since from the sittings previously held before the said Tribunal it had resulted that the principal merit of the case is about whether the plaintiffs enjoys the right to pass wires over the defendant's property and also because the claim as adduced is for liquidation and not for payment of a sum which is certain, liquid and due as requested by Sections 3 (2), (3) and (5) of Chapter 380 and Section 741 (b) of Chapter 12 of the Laws of Malta for which reason the defendant should be declared non-suited, with costs against the plaintiffs.
- 4. By means of a partial judgment delivered on the 28<sup>th</sup> September 2012<sup>1</sup> the Tribunal considered that by means of the present proceedings the plaintiffs are requesting payment from the defendant of a sum of money, allegedly incurred by the plaintiffs as damages since the defendant on various occasions severed their television, satellite and internet connection, not exceeding the Tribunal's competence, and not whether the plaintiffs have a right at law to pass wires through a common shaft. Consequently it rejected the plaintiffs' plea regarding its lack of competence *ratione materiae* and *ratione valoris* as well as the plea regarding the lack of juridical interest of the plaintiffs to file the present claim.
- 5. During the sitting of the 8th February, 2013, plaintiffs requested that proceedings be conducted in the English language. This request was granted during the sitting of the 15th February, 2013.
- 6. By means of a judgment delivered on the 26<sup>th</sup> June 2015, the Small Claims Tribunal, having heard the testimony of the parties, the witnesses produced

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<sup>1</sup> Fol. 115.

as well as the documentary evidence exhibited by them, made the following considerations:

*'the differences between parties arose in August 2008; the television connection to plaintiffs' apartment had been installed in 2004; plaintiffs experienced difficulties with the connection and service in August, 2007, whereupon they requested the intervention of Police, and police reports were duly filed and proceedings were instituted; in February, 2009 plaintiffs installed a satellite dish, however, the connection between the dish and television was executed in September, 2009. Subsequent to the installation of the satellite dish, plaintiffs attempted to have the aerial connected again to their television set, without success as defendant allegedly severed the connection again. In the meantime, the present lawsuit was filed on the 25th of May, 2009.*

*That from a reading of the statement of claim, it results that plaintiffs' claim relates to damages sustained by plaintiffs as a consequence of the television connection having been severed. The Tribunal is sufficiently convinced that the defendant did sever some wires running through the shaft, and although the defendant alleged that she had only removed those wires which were no longer in service, nonetheless the Tribunal is of the opinion that, on a balance of probability, the defendant severed other wires hanging alongside her bathroom window inside the internal shaft, and not only those that were not in service. This conclusion is being reached on the basis of what was declared under oath by one of the workers, Charles Farrugia, who was carrying out the installation accompanied by an employee when one such incident took place.*

*That in spite of this conclusion, and on the basis of evidence produced by plaintiffs, the Tribunal is not in a position to liquidate damages sustained by plaintiff, because from the evidence produced by them, it does not result sufficiently clearly what expenses were incurred by them as additional costs as a consequence of defendant's actions ... therefore, and in the absence of clear proof, the Tribunal cannot reach such conclusions of its own initiative, and neither has it been sufficiently proven that all expenses incurred by plaintiffs were a direct consequence of any actions performed by defendant. Moreover, with reference to the CCTV unit, on the basis of the receipts exhibited in these acts it results that this was installed after the lawsuit was filed, and therefore, cannot be taken into account for the purposes of liquidation of damages allegedly incurred by plaintiffs pursuant to defendant's actions in August, 2007, apart from the fact that the Tribunal considers such installation to be a rather extreme measure taken by plaintiffs, especially in view of the fact that the wires and cables were eventually clipped onto the back part of the water and drainage pipes running through the shaft, and therefore out of sight and reach, which is were they should have been connected at the outset in order to avert all these outrageous differences between the parties to this lawsuit.'*

7. Based on the above reasons, the Small Claims Tribunal concluded that:

*'In view of these circumstances, and bearing in mind that the impetus that lead to this lawsuit being filed was excessive enmity between the parties, and not a solid, founded claim for damages sustained by plaintiffs, the Tribunal shall proceed to reject plaintiffs' claim.*

*Now therefore, whilst the Tribunal deems plaintiffs' claim for damages not sufficiently proven, it is hereby rejecting the claim advanced by plaintiffs against defendant.*

*Either party shall bear its own costs.'*

8. The plaintiffs appealed from this decision on the following grounds:

- *'while the Tribunal found that the defendant Emeriziana Agius did indeed cut the appellants service wires it did not liquidate the damages that were sustained by the appellants even though numerous receipts were presented during the proceedings before the Tribunal. Consequently whereas the Tribunal pronounced itself on the fact that the defendant did sever wires servicing the appellant's property, their claim was still ultimately rejected by the Tribunal. The Tribunal also rejected their claim to be reimbursed for legal fees incurred by themselves. In this respect and as will be explained below, the appellants humbly submit, that from the decision of the Tribunal it clearly results that the Tribunal incorrectly interpreted relevant documentation and understood incorrectly that the wires cut by the defendant had already been causing trouble to the appellants. It is felt, that this incorrect analysis of the Acts by the Tribunal has a strong negative impact on the outcome of the decision that has seriously prejudiced the appellants;*
- *The Tribunal decided that each party is to bear its own costs, notwithstanding that the defendant certainly gave rise to cutting off the appellants services, and spent a number of years doing her best to prohibit the appellants from having regular television / communication service. Notwithstanding the fact that defendant did indeed act abusively towards the appellants, they were still ordered to bear their own costs.'*

9. Appellant replied that the appeal should be rejected and the judgment confirmed.

**Considers that:**

10. In their first complaint the appellants claim that the Small Claims Tribunal was wrong when, notwithstanding that it rightly found that Emeriziana Agius did indeed cut the appellants' internet and television service, it failed to

liquidate the damages that they sustained even though numerous receipts were presented during the proceedings before the Tribunal.

11. The court reviewed the evidence and notes:

- appellants' television aerial was installed in 2004 on Johann Cassar's roof<sup>2</sup> at the cost of Lm140 (Lm83 + Lm57) [€326]<sup>3</sup> whereas the internet connection was installed in June 2007 (Lm15 for crane services)<sup>4</sup> on the defendant's roof with her permission although she requested to be informed of the date scheduled for the installation. Respondent testified that she was not informed of the date when the works were going to be carried out.<sup>5</sup> After encountering difficulties with the service, which the appellants attribute to the defendant although no tangible evidence was produced, the latter was re-connected through another route later that month.
- the defendant testified that she had met Johann Cassar outside the building and asked him when the technicians were due to repair the connection who in turn told her that they had just been to the roof and done whatever they had to do and that Rita Schembri informed him that he could remove the aerial because she had no further use for it.<sup>6</sup> She had therefore removed the wiring on her roof and claims to have done so with the consent of the appellants.<sup>7</sup>
- In August 2007 the appellants complained of an interruption of their TV and internet services and contend that defendant cut the wires, that had been routed through a common shaft, following an unrelated argument regarding her son. The defendant denies this and reiterated many times that she never severed or even touched the wires passing through the shaft but only the ones on her roof.<sup>8</sup>
- appellants subsequently tried to fix the aerial connection but they were stopped by the Police after reports filed by the defendant.

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<sup>2</sup> the neighbour living in the maisonette between the property of the plaintiffs and the defendant.

<sup>3</sup> Fol. 171.

<sup>4</sup> Non-fiscal receipt at fol. 46.

<sup>5</sup> Evidence of the 3rd December 2014.

<sup>6</sup> Evidence of the 3rd December 2014.

<sup>7</sup> Fol. 121.

<sup>8</sup> Fol. 122.

- appellants installed a satellite dish on the roof of Johann Cassar on the 21<sup>st</sup> February 2009 at the cost of €300<sup>9</sup> but it couldn't be connected to the appellants' television set since the defendant objected to the wires being routed through the common shaft.
- the wiring of the satellite and the aerial was eventually installed on the 22<sup>nd</sup> September 2009 at the cost of €100.<sup>10</sup>
- Lucia Schembri claims that she found the aerial wired severed again on the 23rd of September 2009. She claims that only the defendant could have done this since she's the only one who had access to the wiring from her bathroom window. However, this incident occurred after after the plaintiffs had already filed the lawsuit.
- in November 2009 appellants faced fresh obstacles when they tried to connect the aerial with the television, following police reports filed by the defendant.
- on the 9<sup>th</sup> January 2010 appellants fixed the wiring once more at the cost of €60 and installed cameras at the cost of €442.<sup>11</sup> Same had to be fixed again on the 11th January 2010 at the cost of €29.50.<sup>12</sup> Appellants also exhibited a fiscal receipt for CCTV night vision installation at €158<sup>13</sup> carried out on the same day;
- Charles Farruiga, who installed the satellite testified<sup>14</sup> that on the first occasion when he went to install the satellite dish he couldn't do so since the person who was supposed to give him access to the roof, did not turn up. Eventually he was given access and the work was completed. Once this had been done he went downstairs to the appellants' residence to install the decoder and his colleague threw the satellite cable down the shaft to the appellants' property on ground floor level. It was then that he saw the cable being cut by '*one of the neighbours*'. However, on being asked which of the neighbours cut the wire, he replied: '*it was not the one under the roof because there was yet another floor, it was the one in between ... in the property above that of the plaintiff*'.

<sup>9</sup> According to Lucia Schembri's affidavit at fol. 15. She refers to non-fiscal receipts at fol. 44 – 45.

<sup>10</sup> According to Lucia Schembri's affidavit at fol. 15. She refers to fiscal receipt at fol. 46.

<sup>11</sup> Fol. 47 – both fiscal receipts.

<sup>12</sup> Fol.173.

<sup>13</sup> Fol. 224.

<sup>14</sup> Fol. 241 et. seq.

- Rita Schembri and Lucia Schembri both testified that on the 9th January 2010 they were present when Charles Farrugia and his employee (Malcolm Mifsud) were installing the satellite dish and they saw the defendant giving orders to her son to cut the wire which Malcolm Mifsud had placed in the shaft.<sup>15</sup>

12. The Tribunal concluded:

*'The Tribunal is sufficiently convinced that the defendant did sever some wires running through the shaft, and although the defendant alleged that she had only removed those wires which were no longer in service, nonetheless the Tribunal is of the opinion that, on a balance of probability, the defendant severed other wires hanging alongside her bathroom window inside the internal shaft, and not only those that were not in service. This conclusion is being reached on the basis of what was declared under oath by one of the workers, Charles Farrugia, who was carrying out the installation accompanied by an employee when one such incident took place.*

*That in spite of this conclusion, and on the basis of evidence produced by plaintiffs, the Tribunal is not in a position to liquidate damages sustained by plaintiff, because from the evidence produced by them, it does not result sufficiently clearly what expenses were incurred by them as additional costs as a consequence of defendant's actions. This is being stated in view of the fact that it would seem that plaintiffs were utilising On-vol service, but they were already experiencing difficulties with this service prior to the incidents that arose with defendant, and intended to remove this service. The Tribunal reiterates what has been stated previously, that in spite of the fact that various receipts were exhibited by plaintiffs, it does not result which of these expenses were **additional** costs and expenses incurred by plaintiffs as a consequence of defendant's actions; therefore, and in the absence of clear proof, the Tribunal cannot reach such conclusions of its own initiative, and neither has it been sufficiently proven that all expenses incurred by plaintiffs were a direct consequence of any actions performed by defendant. Moreover, with reference to the CCTV unit, on the basis of the receipts exhibited in these acts it results that this was installed after the lawsuit was filed, and therefore, cannot be taken into account for the purposes of liquidation of damages allegedly incurred by plaintiffs pursuant to defendant's actions in August, 2007, apart from the fact that the Tribunal considers such installation to be a rather extreme measure ...'*

13. Appellants felt aggrieved by the fact that in its considerations the Tribunal held that on the basis of evidence produced it would seem that the appellants were experiencing trouble with their internet service prior to August 2007 when the alleged incidents with the neighbour took place. They claim that

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<sup>15</sup> Fol. 249 et seq.

such incorrect observation resulted in an unreasonable appreciation of facts which have seriously prejudiced their position.

14. The appellants are right in contending that the connectivity problems they complained of were attributed to the incident with the defendant in August 2007. The court emphasizes that the lawsuit filed by the plaintiffs deals specifically with the incident that occurred in August 2007 (vide notice of claim). Any other incidents do not form part of the merits of this case. What is left to be seen is whether plaintiff incurred additional expenses as a result of defendant's doing.
15. The plaintiffs had the onus of proving the *quantum* of damages incurred following the August 2007 incident. Plaintiffs produced no evidence to substantiate their claim. The court agrees with the Tribunal that up to that time, ***"... the impetus that lead to this lawsuit being filed was excessive enmity between the parties, and not a solid, found claim for damages sustained by plaintiffs...."***
16. Furthermore, both the television aerial and the satellite were installed on the roof of Johann Cassar<sup>16</sup> and **the wire connecting both devices to the appellants' television was routed through the common shaft of all three overlying properties.** This leads to the conclusion that there is no evidence which substantiates appellants' declaration that she installed the satellite dish simply because the defendant cut the wire of plaintiffs aerial. Therefore plaintiffs' claim for the payment of €300 is totally unjustified.
17. Moreover, this Court does not concur with the appellants grievance that she is entitled to the reimbursement of costs made for the purchase of the aerial and satellite dish. There is no claim or proof that these items were in damaged.
18. Regarding the other invoices exhibited by plaintiffs, the court concurs with the Tribunal's conclusion that the incidents to which they refer **all** took place after the filing of the present lawsuit. This is crystal clear from the documentation and plaintiff's affidavit<sup>17</sup>. Therefore, they do not form part of the merits of this case and cannot be taken into account for the purpose of liquidation of damages.

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<sup>16</sup> Fol. 210.

<sup>17</sup> Fol. 15-16.



19. Neither have any receipts been filed in relation to legal fees incurred in relation to '**Dok X7**' and '**Dok X8**' at fol. 177 - 181.
20. In view of the above, this Court rejects this complaint.
21. The appellants second complaint refers to that part of the judgment dealing with judicial costs. The Tribunal ordered: "*Either party shall bear its own costs*".
22. In view of the aforementioned reasons the Courts finds no basis for overturning this part of the judgment. Had the plaintiff succeeded in all her claims, her complaint would be justified. However, although the Tribunal concluded that the defendant "... *did sever some wires running through the shaft...*", there were no damages to liquidate. This means that the case instituted by the plaintiff was futile.

**For these reasons the Court rejects the appeal with costs against the plaintiffs.**

Anthony Ellul.