



**Kenya Power & Lighting Company Ltd v Kesuna (Civil Appeal
E011 of 2022) [2024] KEHC 11968 (KLR) (30 September 2024) (Judgment)**

Neutral citation: [2024] KEHC 11968 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAROK
CIVIL APPEAL E011 OF 2022
F GIKONYO, J
SEPTEMBER 30, 2024**

BETWEEN

KENYA POWER & LIGHTING COMPANY LTD APPELLANT

AND

BERNARD PARIKEN KESUNA RESPONDENT

*(Being an appeal from the judgment and decree of Hon. G.N Wakabiu,
(CM) delivered on 13/04/2022 in Narok CMCC No. 120 of 2017)*

JUDGMENT

Impugned judgment

1. This appeal challenges the judgment of the Chief Magistrate’s Court at Narok in Civil Suit No. 120 of 2017 delivered on 13/04/2022 in which the trial court made the following awards: -
 - a. Burnt down house Kshs 1,000,000/=
 - b. Personal belongings Kshs 709,602 /=
Total Kshs 1,709,602/=
2. The memorandum of appeal dated 07/11/2022 cited seven (7) grounds of appeal which relate to; i) liability and ii) quantum of damages as follows;
 - a. That, the Learned Magistrate erred in Law and in fact in awarding the Respondent damages for burnt-down house in the sum of Kshs. 1,000,000.00 which lacked basis in the circumstances.
 - b. That, the Learned Magistrate erred in Law and in fact in awarding the Respondent damages for personal belongings in the sum of Kshs. 709,602.00 without basis and/or particulars of the same.



- c. That, the Learned Magistrate erred in Law and fact in holding that the Appellant liable for the cause of the accident subject matter of the primary suit.
- d. That, the Learned Magistrate erred in Law and fact in considering facts not proven by the Respondent in the primary suit in awarding liability and/or damages.
- e. That, the Learned Magistrate erred in Law and fact in failing to find that the suit was incompetent and bad in law.
- f. That, the Learned Magistrate erred in Law and fact in failing to consider the Appellant's evidence in his judgment.
- g. That, the Learned Magistrate erred in Law and fact in failing to find that there was no connection between the alleged fire and electricity connection to the house of the Respondent.

Background

3. The Respondent is a resident of Eor-Enkitok in Narok County. He had a house in that place connected with electric power. On the 15th day of May 2015, his house caught fire. He alleged that the fire was an electric fault that originated from the meter box. He estimated the house and households' loss and/or damage in the sum of Kshs. 3, 457, 705.00. He however did not pray for special damages but general damages. The Respondent was issued with police abstract showing that; the report made to the police was a house fire due to a suspected electrical fault thus burning household goods and personal documents.

Directions of the court

4. The appeal was canvassed by way of written submission.

Analysis And Determination

Duty of court

5. The appellate court shall have the same powers and shall perform nearly the same duties as are conferred and imposed by this Act on courts of original jurisdiction in respect of suits instituted herein (Section 78(2) of the *Civil Procedure Act*).
6. The first Appellate Court should, therefore, evaluate the evidence afresh and make any of its conclusions albeit it must bear in mind that it did not have the opportunity of seeing or hearing the witnesses firsthand. See the case of *Selle & Anor –Vs- Associate Motor Boat Co. Ltd* 1968 EA 123.

Issues

7. This appeal relates to liability and the quantum of damages.

Liability

8. The respondent submitted that the evidence of PW1, and PW3 show that there remained no dispute that there was a fire that gutted down the respondent's house causing loss and damage. The respondent relied on *Mitchell Cotts(K) Ltd V Musa Freighters* [2011] eKLR
9. The respondent in his evidence in chief stated that his house got burnt on 15/05/2015 at around 10 a.m. He suddenly saw sparks from the meter box as he was near the meter box. He got scared and



- jumped over and fell. He then saw the house on fire. The fire began at the meter box. The defendant's officers visited the scene and the matter was reported to the police.
10. The respondent stated that he lost everything and his loss was about Kshs. 1,340,000/=. The respondent attributed the cause of the fire to an electrical fault because he saw the sparks from the meter box.
 11. PW2- Resianto Siameto, the respondent's wife testified that she did not witness the fire when it started but confirmed that the house was burnt by fire.
 12. PW3-Esther Wanjiru Githae, a neighbor to the respondent did not witness the fire when it started. She went to the respondent's home and found the house burning. She further stated that power was fluctuating and she switched off her meter box. She attributed the cause of the fire to an electrical fault. She stated that it started from the power line. On cross-examination, she changed her reason for the cause of the fire and stated that she was not there and could not say what caused it.
 13. The appellant called one witness. DW1-Moris Oketch. The witness adopted his written statement. He is an employee of the appellant who is duly qualified and has worked for the company since 1985, constructing overhead power lines and connecting the same to people's houses in the meter box.
 14. According to the witness the meter box has a cable and a cut-out. Cut out is where power first is installed into the meter box. The role of the cutout is to carry/ contain power in the house, the power that the house needs/requires.
 15. The cut-out is a fuse called cut-out fuse/cartridge fuse. In case of power from the house, the fuse blows up. The effect of that is that there will be no flow of power into the house.
 16. The customer division of the appellant installs a meter for each customer depending on their demand. Power is connected to the meter from the main switch. Power connection into the house is done from the main switch.
 17. The customer's main switch also has a fuse. A short circuit case in the customer's house is regulated/ controlled by the fuse by blowing up from the main switch. The transformers that transmit power into the customer's house have fuses.
 18. It is impossible for a house to catch fire because of a power connection in the customer's house.
 19. According to the appellant's witness the appellant checks the quality of the meter box and if they are defective they reject.
 20. The appellant contends that the respondent did not call an electrician to examine the meter box and file a report to authenticate the allegation.
 21. According to the appellant, its expert witness demonstrated that even if there was a problem with the power supply, then, the fuse both at the transformer and meter box would blow hence stopping transmission of power. It was established that there were no problems with the fuses in the meter box and transformer.
 22. The appellant contends that the respondent ought to have engaged an electrical expert to examine the meter box and file a report. The respondent was not familiar with the workings of power and therefore failed to establish the cause of fire in his house.
 23. The respondent attributed the cause of the fire to an electrical fault because he saw sparks from the meter box.



24. The respondent submitted that flowing from the finding on the cause of the fire the appellant was responsible as it was the supplier of the meters and electricity to the respondent's premises.
25. Upon evaluation of the evidence on record and the evidence of the four witnesses, it was proved that a fire gutted down the respondent's house causing loss and damage. The appellant pleaded a lesser compensation in the alternative to denial of the occurrence in its defense. The evidence by the appellant does not explain the sparks which emanated from the meter box. Other than stating that they ordinarily examine meter boxes before installation to confirm they are fit for installation, they did not produce any such certification report of the particular meter installed. Nor, did they produce reports of examination of the meter after the accident. Their defense remains unsubstantiated. The respondent's evidence proved the fire started from the meter box.
26. This court finds the appellant 100% liable for the fire.

Quantum

27. An appellate court will only interfere with the trial court's discretion in the assessment of damages where; i) there is an error in principle; and or ii) the award of damages is so inordinately high or low as to represent an entirely erroneous estimate (*Bashir Ahmed Butt vs. Uwais Ahmed Khan (1982-88) KAR*).
28. The appellant submitted that the trial magistrate misapplied the provisions of section 52 of the [Energy Act](#), no. 12 of 2016 as compensation to the occupier of premises only arises when loss or damage is occasioned while execution of duties is being undertaken or when there is a defect in the power supply line.
29. The appellant contends that the power lines were properly secured with fuses which secure transmission lines and which line of evidence by the appellant was not controverted.
30. The appellant instructed McLaren's Independent Adjusters(K) Ltd who carried out a loss assessment of the property of the respondent.
31. The loss on the building was assessed in the sum of Kshs. 570,640.00 while loss of clothing and fabrics, electrical/electrical appliances, furniture, fittings and fixtures, utensils, and all their items in the sum of Kshs. 709,602.00 hence the total sum of Kshs. 1,280,242.00
32. The respondent in his evidence in-chief approximated his loss at Kshs. 1,340,000. The respondent mitigated the loss of Kshs. 1,340,000.00 through a funds drive which raised Kshs. 500,000.00
33. The appellant contends that the fire occurred on 25/05/2015 and the respondent testified on 26/03/2019 by which time he ought to have had actual costs of reconstruction of the property.
34. The appellant contends that the trial magistrate ought to have factored in his judgment the sum of Kshs. 500,000.000 the respondent received from the funds drive by either having the same deducted from the sum of Kshs. 1,280,242.00 arrived by the loss adjuster- McLaren or factor in the same in considering inflation alluded to in his judgment. Hence the net sum of Kshs. 780,242.00
35. The respondent tabulated all the losses which the appellant had told him to do. The amount he tabulated was approximately Kshs. 1,340,000/= . He informed the court that the receipts got burned in the house.
36. The respondent submitted that the appellant ought to be compensated the pre-accident value of the house and or the cost of building a new house. The respondent cannot be faulted for failing to ascertain the value of the burnt house or the actual cost of the reconstructed house. The respondent relied on



the court of appeal in Kenya Industrial Estates Limited V Lee Enterprises Limited [2009] Eklr, Kenya Tourist Development Corporation V Sundowner Lodge Limited [2018] eKLR, Patrick Wambugu Gitahi T/A Wambugu Garage V Kenya Power & Lighting Company Ltd.

37. The respondent submitted that the trial court fell into no error of principle or appreciation of the evidence and law applicable in awarding Kshs. 1,000,000.00 for the value of the burnt-down house and Kshs. 709, 602/= for the value of personal belongings as the trial court cited the case of Wambua Vs Patel & Another [1980] KLR cited with approval in Kimatu Mbuvi & Bros Vs Augustine Munyao Kioko C. A No. 203/2001 and further considered the standard of living at the time of the incident; the market rates; fair compensation and was guided by the expert report in the evidence. The respondent relied on Kenya Power & Lighting Company V Umaz Ali Swaleh [2017] eKLR, and Patrick Wambugu Gitahi T/A Wambugu Garage V Kenya Power & Lighting Co. Ltd [2010] eKLR.
38. The respondent urged this court to find that the awards of Kshs. 1,000,000/= for the costs of rebuilding the house and Kshs. 709,602/= for the loose assets (personal belongings were well grounded and should not be disturbed).
39. The respondent submitted that the Mclarens report with an adjustment of Kshs. 1,280,242/= had been proved by the testimony of the defendant.
40. Proof of special damages is not necessarily upon receipts. Such other cogent evidence-oral and documentary-, for instance, professional valuation and assessment, suffices in proof thereof. See Garissa Maize Millers Ltd v Attorney General & 3 Others, [2016] eKLR, the court stated that; -

“Proof of special damages does not necessarily need to be on documents, but there has to be cogent evidence to establish that the loss quantified in terms of money has been established, and that the loss was visited upon the plaintiff by the defendant.”
41. Similarly, in Mitchell Cotts (K) Ltd v Musa Freighters (2011) eKLR, the court expressed itself thus:

“.... In the light of the above and in the circumstances we cannot fault the superior court which accepted the only evidence which was tendered to the court on the issue, the appellant having failed to give any evidence on the value of the tyres it had conceded it could not deliver to the respondent when called upon to do so. In this country civil cases are decided on the basis of a balance of probabilities. In the circumstances, the respondent had obviously put something on their side of the scales whereas the appellant had failed to do so resulting in the balance tilting in favour of the respondent on the critical issue of the value of the uncollected tyres. The court did its best and cannot be faulted. In addition, the loss was specially pleaded in paragraph 4 of the plaint. In view of the admission by the respondent, the critical issues for consideration were whether the special damages were pleaded and if so whether they were proved. In our view, the respondent has proved both issues and for this reason, our inclination is not to disturb the judgment of the superior court.”
42. The loss of the house and household items were specifically pleaded in paragraph 9(a) of the plaint dated 01/09/2017.
43. This court finds and holds that the trial court fell into no error of principle or appreciation of the evidence and law applicable in awarding Kshs. 1,000,000 for the Burnt down house and Kshs 709,602 for personal belongings. This court finds that determination to have been sound and grounded in evidence, and upholds it.
44. In the premises, the appeal is dismissed with cost.



45. Orders accordingly

**DATED, SIGNED, AND DELIVERED AT NAROK THROUGH THE TEAMS APPLICATION,
THIS 30TH DAY OF SEPTEMBER, 2024.**

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F. GIKONYO M

JUDGE

In the presence of: -

1. Ojuok for Modi for appellant
2. Kambo for respondent
3. Otolu C/A

