



REPUBLIC OF KENYA



KENYA LAW
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**Odero v Flutterwave Payment Technologies Limited (Civil Appeal E197 of 2020)
[2024] KEHC 11790 (KLR) (Civ) (27 September 2024) (Judgment)**

Neutral citation: [2024] KEHC 11790 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL
CIVIL APPEAL E197 OF 2020**

**AM MUTETI, J
SEPTEMBER 27, 2024**

BETWEEN

CLARA WANJIKU ODERO APPELLANT

AND

FLUTTERWAVE PAYMENT TECHNOLOGIES LIMITED RESPONDENT

*(Being an appeal from the judgement and decree of Honourable E.M. KANGONI
P.M delivered on 11th August 2020 Milimani CM's Civil Suit No. 4157 of 2019)*

JUDGMENT

Introduction

1. The appeal arises out of the judgement rendered on Milimani CMCC No. 4157 of 2019 in which the learned Honourable Mr. E.Kagoni P.M made the following orders:-
 - a. A declaration that the defendant's failure to remove the plaintiff's details as the contact person for their aggregate pay bill account after she left its employment was negligent and unlawful.
 - b. The plaintiff is awarded Ksh. 100, 000 as general damages for emotional distress.
 - c. The plaintiff is awarded Ksh. 150,000 as aggravated damages.
 - d. The claim for special damages is dismissed
 - e. The plaintiff is awarded costs of the suit together with interest on damages awarded from date of judgement until payment in full.
2. The appellant aggrieved by the decision has appealed in the following grounds; -



- i. The learned Magistrate erred in fact and in law in finding that the Plaintiff's emotional distress as a result of being linked to an alleged sex party was not directly caused the Defendant's negligence in failing to remove her as a contact person for the Defendant's pay bill number.
 - ii. The learned Magistrate erred in fact and in law by failing to award special damages to the Plaintiff as prayed.
 - iii. The learned Magistrate erred in fact and in law by failing to consider the evidence placed before him.
 - iv. The learned Magistrate erred in fact and in law by awarding damages that were manifestly low in the circumstances of the case.
3. The issues that arise in this appeal are whether:-
- a. The learned Honourable Magistrate was correct in finding that the plaintiff's distress as a result of being linked to an alleged sex party was not directly caused by the defendant's negligence in failing to remove her as a contact person for the defendant's pay bill number.
 - b. Whether the failure by the learned Honourable magistrate to award special damages in the matter was proper.
 - c. Whether the learned magistrate considered the evidence before him in arriving at the decision he did.
 - d. Whether the damages awarded by the Court were manifestly low.
4. The parties to the Appeal have all filed written submissions in support of their respective position in regard to the Appeal, which I have duly considered.

Appellant's Case

5. The appellant urges this Court to find that the Respondent's failure to remove her name from the records held by Safaricom in respect to their pay bill was negligent and unlawful since she had already left the employment with the Respondent company.
6. The appellant contends that the Magistrate's decision that there was no causal link between the emotional distress suffered by her and the Respondent's failure to remove her name from the records in connection with the pay bill number used to organize the sex party, was erroneous and not backed by evidence.
7. The appellant had testified that the respondents had failed to remove her name as the contact person in their Mpesa pay bill number after she left employment. It is this pay bill according to her that was used to organize the sex party leading to her being summoned by the police. At the time of the summon she testified that she was out of the country.
8. Further , the appellant contends that being a person working in the financial sector her reputation is key.
9. The appellant went on to state that she had to cut short a foreign trip to return to the country and attend to the issue. She produced documents of proof of such travel.
10. The appellant demonstrated to the Court that she had given express instructions to the Respondent to remove her name as the contact person.



11. She tendered emails and messages as proof of that communication.
12. The appellant went further to state in her evidence that she was forced to write directly to Safaricom when she realized that the respondents were not taking action despite her communication.
13. It was the grilling that she was subjected to by the police that she says caused her emotional distress.
14. The plaintiff did not produce any medical evidence to show that she saw a therapist over the issue. According to her, her reputation was ruined since the issue was highlighted in the dailies.
15. In support of her case she called her mother PW2 Josephine Maithera Muchemi who confirmed that the police had gone to her home looking for the appellant when she was out of the country.
16. The fliers for the sex party that PW2 was shown did not bear the name of the appellant.
17. The appellant did not call anyone from the police to support the allegations that she was summoned and interrogated by the police over the matter.

Respondents Case

18. The Respondent admits that the Appellant was their former employee who served as an expansion manager in charge of the company's operations till 3rd October 2018 when she resigned from the company.
19. As an expansion manager, she was responsible setting up the aggregate pay bill model with Safaricom PLC which role she played and her contact details were registered as the contact person.
20. The Respondent maintained that when the appellant resigned they informed Safaricom and requested change of the contact details on the pay bill number set up by the Appellant.
21. In defence the Respondent called Omosalewa Adeyemi as it's sole witness.
22. The witness for the Respondent told the Court that after they requested Safaricom to change contact details on the pay bill they had no control and the change was effected in June 2019.
23. The witness denied that the company had anything to do with sex party.
24. He however confirmed that the Appellant remained the contact person for the company even after she had left employment.
25. According to the Respondents it was upon Safaricom PLC to effect the change.
26. The submissions by the appellant focus on the failure by the Magistrate to find that there was a casual link between the failure by the Respondent to remove her name as the contact person and the emotional distress she suffered following the sex party inquiry.

Analysis

27. Upon analysis of the evidence tendered before the learned Honourable Magistrate I have noted that the Appellant was able to prove that she worked for the Respondent and as a result her contact details were registered by Safaricom PLC as the contact person for their aggregate pay bill.
28. No doubt after she left the company her contact details continued to feature against the pay bill number, a fact that the Respondent's witness admitted.



29. It is however not clear from her evidence how she links up the company to the sex party that she says was the cause of her public embarrassment.
30. From my independent analysis of evidence I do not find the company's involvement in the sex party organization.
31. It is also important to note that the Appellant did not present evidence from the police who investigated the issue of the sex party to determine whether there was fault on the part of the Respondent.
32. The Appellant in her evidence and that of her mother were clear that the fliers she tendered as evidence did not bear her name.
33. This Court has examined the flier appearing at page 40 of the record of Appeal. On the face of the flier "Chebet Pinkie" is indicated as the presenter of the sex party.
34. The Appellant in her testimony did not link Pinkie Chebet to the Respondent company.
35. In her statement, which she adopted in evidence the money that was being sent via the pay bill was for purposes of those sending the money being informed where the sex party would be held.
36. The Appellant did not link the Respondent to the money that was being collected for the sex party.
37. The appellant also tendered documents in support of flight costs, accommodation costs as well as therapy charges.
38. However, there was no way of telling that the costs were incurred directly in connection with the issue of the sex party.
39. No therapist was called to testify as well.
40. In my considered view the learned Honourable Magistrate was correct in his finding that there was no casual link nor proof of the emotional distress suffered by the appellant in the hands of the police.
41. The case by the appellant is one basically premised on the duty of care that the respondent owed to the Appellant regarding the use of the pay bill number.
42. The number having been registered by the Appellant for and on behalf of the Respondent company, once she left the service of the company, the Respondent was duty bound to ensure that the number was used purely for the purpose it was intended for.
43. Any abuse of the pay bill number would attract consequences against the company.
44. The respondent does not deny that the number continued in use bearing the contact details of the Appellant. The Respondent knew too well that the Appellant had left employment thus the company had no business in maintaining the contact details of the Appellant in their pay bill.
45. By electing to continue using the pay bill , with the Appellants details , the company assumed the duty of ensuring that the number was not abused and if at all there was breach the consequences would be visited upon the Respondent.
46. The concept of duty of care is well captured in the words of Lord Atkin in Donoghue Vs. Stevenson [1932] AC 562 where in the learned justice pronounced himself as below;-

“The rule that you are to love your neighbor and the lawyer's question , “who is your neighbor?” receives a restricted reply. You must take reasonable care to avoid acts or



omissions which you can reasonably foresee would be likely to injure your neighbor. Who then is law is my neighbor? The answer seems to be persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question.”

47. The respondent in this Appeal ought to have had knowledge of the risk that the Appellant would be exposed to if the pay bill continued in use with her contact details, whilst she had left their employment.
48. Pay bill numbers by their nature are used for financial transactions. It would not be an unreasonable expectation by the person giving out their contact details to register a pay bill number for a company, that the company would safeguard their interest by ensuring that the number is not used for purposes other than those contemplated and envisaged at the time of registration.
49. The Respondent ought to have known that in this era of technology, infiltration of a pay bill by unauthorized persons for illegal activities is possible thus it would be their responsibility to prevent such from happening.
50. The Respondent cannot escape liability for any breach such as that which happened in this case.
51. Once the Appellant had left employment and handed over, it was the responsibility of the Respondent to immediately close the pay bill account or ensure that the contact details of the Appellant had been removed.
52. The Appellant was able to prove on a balance of probabilities there was breach. The Respondent cannot escape liability by simply stating that they informed Safaricom to effect the changes.
53. Duty of care demanded of them that they ensure the pay bill was put to proper use without exposing the Appellant to harm.
54. The Respondents were therefore negligent in the manner they went about ensuring the Appellants details were replaced.
55. A reasonable person in the place of the Respondent would have followed up with Safaricom to ensure that the desired change was effected. The respondent clearly did not do so thus they cannot escape liability. In any event for any lawful transactions conducted vide the paybill they would be the sole beneficiaries to the exclusion of the appellant.
56. In my further analysis of the evidence, I did not find any evidence that would establish reputational damage to the Appellant.
57. The Appellant did not call any independent witness to show that her reputation was injured as a result of the misuse of the pay bill.
58. The reputation of an individual is a matter that is subject to the opinion of others. It would have been necessary for the Appellant to call evidence to prove the lowering of her reputation. She failed to do so thus she could not be compensated.
59. The Learned Honourable Magistrate found that the Appellant had only succeeded in proving emotional distress caused as a result of inquiries made via SMS concerning the pay bill. For that alone the learned Honourable Magistrate awarded a sum of Ksh 150,000 as aggravated damages.
60. The Courts decision appears to have been purely on the basis that when the Appellant was confronted with the issue of sex party organization she must have been emotionally affected considering that she was not privy to any such event. That was a rational presumption in my view.



61. The award in damages was capped at Ksh. 250,000 by the Magistrate. I do not find reason to disturb his finding considering that there was no proof of loss of reputation. The sum was reasonable.
62. The award was arrived at purely on account of the fact that the Respondent continued to use the contacts of the Appellant for a period long after she left employment. This Court is not inclined to interfere with the award since there is no material to demonstrate that the same is inordinately low in the circumstance to warrant intervention by this Court – See Butt Vs. Khan C.A No. 4 of 1997.
63. The Appellant was unable to prove the special damages for the therapist she allegedly consulted.
64. The upshot of the above is that the Plaintiffs Appeal is dismissed with costs.
65. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 27TH DAY OF SEPTEMBER, 2024.

HON. A.M MUTETI

JUDGE

In the presence of

Kiptoo: Court Assistant

Maina Makome absent for the Appellant

Jero for the Respondent

