



**Kamau v Ahinga & 4 others (Civil Appeal E562 & E563 of 2022 (Consolidated))
[2024] KEHC 16991 (KLR) (Civ) (31 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 16991 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
CIVIL APPEAL E562 & E563 OF 2022 (CONSOLIDATED)**

AB MWAMUYE, J

OCTOBER 31, 2024

BETWEEN

STEPHEN KIMANI KAMAU APPELLANT

AND

THOMAS OUMA AHINGA 1ST RESPONDENT

ARTHUR KANAI KAMAU 2ND RESPONDENT

BEATRICE NGONYO KAMAU 3RD RESPONDENT

**MARIA NDUKU KAMAU (SUED AS THE ADMINISTRATORS OF THE
ESTATE OF RICHARD S KAMAU) 4TH RESPONDENT**

REHEMA S KAMAU 5TH RESPONDENT

JUDGMENT

1. This judgment addresses the appeal filed by Stephen Kimani Kamau against the decisions of the Chief Magistrate's Court in Nairobi, in Civil case No. 6193 and 6194 of 2012 which found him solely liable for the collapse of a building on his property, resulting in injuries and fatalities.
2. On 19th October, 2009, a tragic incident occurred when a building owned by the appellant collapsed during construction activities, leading to the deaths of 17 individuals and injuries to others.
3. Upon being served with the 1st Respondent's pleadings at the Trial Court the Appellant herein enjoined through Third Party Notices to the 2nd to 5th Respondents who the Appellant believe are responsible for the alleged negligence as pleaded by the 1st Respondent. However, vide a judgment issued on 8th July 2022 the Trial Court held that the Appellant was solely liable and awarded the 1st



Respondent damages for pain, suffering and loss of amenities; damages for loss of future earnings and future earning capacity and costs of the suit.

4. Aggrieved by the said Trial Court's decision, the Appellant lodged this Appeal challenging the entirety of the judgment of the trial magistrate.
5. Conversely, the Respondents assert that the Appellant's poor construction practices and lack of adherence to professional standards were the primary causes of the collapse.

Whether the excavation by the 2nd to 5th respondents was the proximate cause of the collapse

6. The Appellant argues that the collapse was due to the Respondents' excavation activities on adjacent property, which he alleges were conducted without proper authorization and in disregard of safety measures. The Appellant contends that the excavation undermined the foundation of his building, leading to structural failure.
7. The Court must consider whether the excavation activities indeed created an actionable cause in tort, particularly under the principles outlined in *Caparo Industries PLC v. Dickman* [1990] 2 AC 605. This case set forth the criteria for establishing negligence: duty of care, breach of duty, causation, and foreseeability of harm. In applying this test, it is apparent that while the Respondents owed a duty to conduct their excavation responsibly, this does not necessarily indicate causation.
8. The expert testimony from Engineer Bonaya (DW2) on behalf of the Appellant attempted to establish that the Respondents' excavation activities compromised the foundation.
9. This, he argued, displaced the soil supporting the foundation, destabilizing the structure and leading to its collapse. However, this testimony alone does not substantiate causation conclusively, especially given the subsequent findings on the building's structural issues.
10. Expert reports from the Ministry of Public Works and third-party firms, including Multiplex Professional Consulting Services, describe serious lapses, such as use of substandard materials and absence of an adequate structural foundation, which independently could have caused the collapse. The Respondents note that any excavation on their part complied with municipal approvals and was accompanied by necessary safety measures like perimeter fencing.
11. Moreover, the technical reports provided by the Respondents, which included the observations from Multiplex Professional Consulting Services, indicate that the building collapsed vertically, suggesting an internal structural failure rather than lateral movement or undermining typically associated with excavation-based destabilization.
12. Thus, the Court finds that while excavation may have played a role, the evidence does not support that it was the proximate cause of the collapse.
13. The Appellant's actions, specifically his failure to adhere to professional standards in construction and quality control, were the primary cause of the building collapse.

Whether the Appellant's Actions Were the Primary Cause of the Collapse

14. The Respondents argue that the collapse resulted from the Appellant's failure to adhere to basic construction standards. The evidence presented includes multiple deficiencies, such as the use of low-quality concrete and inadequate steel reinforcement, which they contend would be insufficient for supporting a multi-storey building. This raises the question of whether the building's construction met the reasonable standards of care required in construction.



15. The Respondents rely on the principles articulated in *Donoghue v. Stevenson* [1932] AC 562, which imposes a duty of care on individuals engaging in potentially hazardous activities, such as building construction. The duty here extends to ensuring structural integrity through adherence to standard protocols and professional oversight.
16. According to the technical findings in the Ministry of Public Works report and the reports by third-party firms, the building was constructed without the proper reinforcement and did not follow the specifications outlined in the architectural and structural drawings. Such deficiencies include low concrete strength (7.3 N/mm² for columns against the required 25 N/mm²) and inadequate foundation design, which are documented as immediate risks to structural stability.
17. The principle of causation is further reinforced by the holding in *Overseas Tankship (UK) Ltd v. Morts Dock and Engineering Co Ltd* [1961] AC 388 (*Wagon Mound (No. 1)*), which requires that the damage must be a reasonably foreseeable consequence of the actions taken.
18. The Court finds that the deficiencies in material quality, combined with the absence of adequate oversight, created a foreseeable risk of collapse, independent of the Respondents' excavation activities.
19. Therefore, the Court concurs with the trial magistrate's finding that the primary cause of the collapse was indeed due to the Appellant's own actions.
20. The Respondents' excavation activities did not constitute the proximate cause of the collapse, as internal structural failures were primarily responsible.
21. The Appellant argues that his architectural and structural drawings were properly approved by the Municipal Council of Kiambu, while the trial magistrate found discrepancies suggesting otherwise. The Respondents questioned the procedural integrity of these approvals, alleging that essential engineering oversight was lacking.
22. In *Fairley v John Thomson Ltd* [1973] 2 Lloyd's Law Reports 40, Lord Denning highlighted the critical role of adherence to regulatory standards in construction cases. Failure to follow statutory requirements can constitute negligence and contribute to liability.
23. In *Bolam v. Friern Hospital Management Committee* [1957] 1 WLR 582, the standard of professional conduct is determined by what is expected of a reasonable professional in the field. Here, the lack of proper structural oversight is critical. The architectural and structural drawings did not receive an endorsement from a licensed structural engineer, which is essential for such multi-storey constructions under building regulations in Kenya.
24. The Respondents cite inconsistencies in documentation, including the absence of contractor bonds, unsigned performance guarantees, and confusion over construction documents referring to another property.
25. The Court agrees that these discrepancies demonstrate a lack of thoroughness and fall short of the expected standard for construction documentation, as highlighted in *Hedley Byrne & Co Ltd v. Heller & Partners Ltd* [1964] AC 465, where omissions in professional services due to negligence were held to be actionable.
26. The evidence reveals procedural flaws in the Appellant's approval documents. Notably, a health clerk from the Municipality, rather than a qualified engineer, appears to have signed off on the structural drawings, raising questions about regulatory compliance. The Municipal Council's requirement for engineering oversight, if not met, suggests negligence on the Appellant's part, as statutory compliance ensures the safety and durability of construction projects.



27. Therefore, the trial magistrate’s findings are upheld, as the approval process was insufficiently rigorous. The Appellant’s failure to ensure qualified approval constitutes a breach of duty, and he bears additional responsibility for the collapse.

Whether the Trial Court’s reasoning and judgment were sound and sufficiently supported by the evidence.

28. The Appellant contends that the Trial Court’s reasoning was insufficient and did not fully address the evidence on causation. A sound judgment must exhibit reasoned conclusions based on the weighing of evidence.

29. In *Bwire v Wayo & Sailoki (Civil Appeal 032 of 2021)* [2022] KEHC 7 (KLR), the Court emphasized that judgments should clearly expose the reasoning process, allowing any reader to follow the logic from facts to conclusion. Similarly, Order 21 Rules 4 and 5 of the Civil Procedure Rules require Courts to provide reasons for their decisions.

30. In this case, the trial magistrate evaluated the evidence, including expert reports and witness testimonies, to conclude that the Appellant’s deficiencies in construction were the predominant cause of the collapse.

31. The judgment provided a logical analysis, noting the Appellant’s failure to substantiate claims of professional oversight and adherence to required safety standards. The magistrate’s reliance on expert testimony and technical reports was consistent with judicial principles for assessing conflicting evidence, as articulated in *Selle v. Associated Motor Boat Co. Ltd.* [1968] EA 123, which allows an appellate Court to interfere only if the Trial Court is shown to have clearly misapprehended the evidence.

32. Upon review, the Trial Court’s judgment could perhaps benefit from more explicit explanations, especially regarding the allocation of liability and the role of inadequate approvals. However, the Trial Court did sufficiently address the core issues, even if not in exhaustive detail. This Court finds that while the Trial Magistrate’s judgment could have been more elaborative, the omission does not amount to an error warranting reversal.

33. It is my overall finding that the Appellant has failed to meet the legal threshold for the interference by an appellate Court with the decision of the Trial Court. I find no error of law or fact by the Trial Court to warrant interference with its judgment. Consequently, I uphold the Trial Court’s decision and I dismiss the appeal herein with costs to the Respondents.

DATED, SIGNED, AND DELIVERED VIRTUALLY THIS 31ST DAY OF OCTOBER, 2024.

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BAHATI MWAMUYE

JUDGE

In the Presence Of:

Counsel for the Appellant – Mr. Makau

Counsel for the Respondents – Mr. Mutemi

Court Assistant – Mr. Guyo

