



**Kenya Power & Lighting Co. Ltd & another v Mbugua (Civil Appeal
4 of 2020) [2022] KEHC 10154 (KLR) (24 May 2022) (Judgment)**

Neutral citation: [2022] KEHC 10154 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITALE
CIVIL APPEAL 4 OF 2020**

LK KIMARU, J

MAY 24, 2022

BETWEEN

KENYA POWER & LIGHTING CO. LTD 1ST APPELLANT

MATHEW OMONDI 2ND APPELLANT

AND

LIVINGSTONE MBUGUA RESPONDENT

*((From original Judgment and Decree in CMCC Case No. 50 of 2013 of the
Chief Magistrate's Court at Kitale delivered by Hon. P.C. Biwott - SPM))*

JUDGMENT

1. At the material time prior to the incident that led to the Respondent filing suit against the Appellants, the Respondent had a not so good relationship with the 1st Appellant. According to the Respondent, the 1st Appellant disconnected electricity from his house situate at the parcel of land known as LR No. Kitale Municipality Block 15 (Koitogos) 891 on allegation that the Respondent had not paid the correct amount for the electricity that he had used. According to the Respondent, he entered into an agreement with the 1st Appellant by which he agreed to pay the assessed arrears in Electricity usage by instalments. He also agreed to have the electricity meter that he was using at the time replaced by another meter which in the 1st Appellant's assertion would give the correct billing for the electricity that the Respondent used. The Electricity was reconnected on condition that the Respondent pays the assessed arrears in the agreed instalment. The Respondent did not keep part of his bargain and on 23rd September 2011, electricity supply to his house was again disconnected.
2. According to the Respondent on 19th October 2011 the 2nd Appellant, an employee of the 1st Appellant, visited the Respondent's premises and requested to see the electricity meter box. He asked for, and was given the keys to open the electricity meter box. According to the Respondent, the 2nd Appellant fiddled with the meter box and after a while left without reconnecting electricity to the



house. A short while later, the house was consumed by fire. The fire burnt down the house despite the efforts by the then Municipal Council fire officers to put out the fire. According to the Respondent, the entire house was totally destroyed by the fire. He also lost household goods which he valued at Kshs 1,037,500/=. In total the Respondent claimed a loss of Kshs 3,037,500/=. The Respondent also asked to be awarded costs of the suit.

3. The Appellants filed a defence in which they essentially denied being the authors of the fire that consumed the Respondent's house. They denied the allegation that the 1st Appellant's employee visited the Respondent's premises and tampered with the electricity meter thereby causing the fire that destroyed the Respondent's house. The Appellants put the Respondent to strict proof thereof in relation to his claim that the fire was caused by an electrical fault. The Appellants urged the court to dismiss the suit with costs.
4. After hearing the parties, the trial court found in favour of the Respondent. Judgment was entered in the Respondent's favour. The Respondent was awarded Kshs 3 million all-inclusive plus costs of the suit. The court ordered interest to be paid from the date of the judgment.
5. The Appellants were aggrieved by the decision. They filed an appeal to this court. In their memorandum of appeal, the Appellants raised six grounds of appeal challenging the verdict. The Appellants were aggrieved with the finding of the trial court that they were responsible for the fire yet no evidence had been established to required standard of proof that that was the case. The Appellants faulted the trial magistrate for failing to properly evaluate the evidence and thereby arrived at the decision that the 2nd Appellant was negligent and that the 1st Appellant was vicariously liable for the accident. As regard liability, the Appellants took issue with the assessment of damages, which in their view, was reached after the trial court had applied the wrong principles of the law. In the premises therefore, the Appellants urged the court to allow the appeal, set aside the judgment of the trial court and substitute it with the judgment of this court dismissing the Respondent's suit with costs.
6. Prior to the hearing of the appeal, Counsel for the Appellants and the Respondent agreed by consent to file written submissions in support of their respective clients' cases. The said written submissions were duly filed. This court has carefully considered the same. It also had the benefit of reading the proceedings before the trial magistrate's court. As the first appellate court, this court has a duty to re-evaluate the evidence adduced before the trial magistrate's court and reach its own independent determination always having in mind that it did not see the witnesses as they testified and therefore cannot make any comments regarding the demeanour of the witnesses. As was held by the Court of Appeal in the case of *Peters v Sunday Post Ltd* [1958] EA 424 at P 429:

“it is a strong thing for an appellate court to differ from the finding, on a question of fact, of the judge who tried the case, and who had the advantage of seeing and hearing the witnesses. An appellate court has, indeed, jurisdiction to review the evidence in order to determine whether the conclusion originally reached upon that evidence should stand but this is a jurisdiction which should be excised with caution: it is not enough that the appellate court might itself have come to a different conclusion.”

7. In the present appeal, there are essential two issues for determination: Firstly, whether the Respondent proved to the required standard of proof that it is the Appellants who were responsible for the fire that consumed his house. From the evidence adduced by both the Respondent's and the Appellants' witnesses there is no dispute that indeed the Respondent's house caught fire and was destroyed a few minutes after the 2nd Appellant have gone to the house and requested for the key to the electricity meter box. The key was handed over to the 2nd Appellant. According to the Respondent, the 2nd Appellant



- opened the electricity meter box and fiddled with the wires within the meter box after which he left. It was a few minutes after that that the Respondent's house caught fire.
8. The thrust of the Respondent's case is that it was the tampering of the meter box by the 2nd Appellant that led to the electrical fault that caused the fire that destroyed the house. In that regard, the Respondent called PW5 Edoma Michael Echoto, a fire officer working for the County Works office, Trans Nzoia who visited the scene on 20th October 2011 a day after the fire incident and formed the opinion that indeed the fire had been caused by an electrical fault which ignited from the electricity meter box and then spread to other areas of the house. The Appellants countered this evidence by adducing their own evidence through the 2nd Appellant who denied tampering with the meter box and by the evidence of DW2 Peter Kipkorir, a technician working for the 1st Appellant who was emphatic that the fire did not emanate from the meter box. The Appellants produced into evidence a report dated 19th October 2011 in support of their assertion that the cause of the fire was not an electrical fault.
 9. It was this conflicting evidence that the trial court resolved in favour of the Respondent. Upon re-evaluation of this evidence and the submissions made by the parties in this appeal, this court reached the conclusion that indeed the Respondent established to the required standard of proof that it was the 2nd Appellant's tampering with the electricity meter box at the Respondent's house that caused the fire. Although the 2nd Appellant denied doing anything at the said meter box that could have caused the fire, it was peculiar that the fire that consumed the Respondent's house started immediately after the 2nd Appellant had visited the Respondent's house. The fire officer who visited the scene after the fire incident observed that the fire had started from the meter box, which a few moments earlier had been opened by the 2nd Appellant. The question is whether there was basis in believing the fire officer's testimony and disbelieving the testimony by Appellant's witness as to cause of the fire. The Appellant's witness was not a fire expert. Indeed, he was a fellow staff member and colleague of the 2nd Appellant. It cannot be ruled out that the report was contrived to exonerate the 2nd Appellant from blame for causing the fire that destroyed the Respondent's house.
 10. This court took into account the totality of the evidence adduced by the Respondent's wife and daughter, and the report of the fire officer, which clearly established a proximate nexus between the 2nd Appellant's visit to the Respondent's premises and the fire that soon erupted a few minutes after the 2nd Appellant had left the premises. This court cannot disagree with the finding reached by the trial court that the evidence adduced by the Appellants was self-serving and meant to exonerate them from liability. If the Appellants wanted their evidence to be considered as credible, they should have called a fire expert to testify on their behalf as to the cause of the fire.
 11. Their failure in their regard leads this court to the conclusion that the Respondent proved his case to the required standard of proof on a balance of probabilities that indeed it was the 2nd Appellant's tampering with the electricity meter box that caused the fire that destroyed the Respondent's house. The 1st Appellant is vicarious liable for the acts and omissions of the 2nd Appellant. The Appellants' appeal against the trial court's finding on negligence lacks merit and is hereby dismissed.
 12. On quantum, the Respondent produced before the trial court a valuation report prepared by a registered valuer which established the value of the house that was burnt down as Kshs 1.5 Million. This valuation was not disputed by the Appellants who did not produce a rival valuation report to counter the report that had been produced by the Respondent. In the absence of such report, this court has no option but to rely on the report produced by the Respondent which in the circumstances of this case was credible. As regards the value of the household goods in the house that were destroyed when the house was burnt down, this court empathized with the Respondent because it cannot be expected that he could have kept receipts of every item in the house in expectation that he would one day be



required to produce them in court to establish their respective values. This court cannot fault the trial court for reaching the determination that it did. The report by General Adjusters Kenya Limited that was relied on by the Appellants in a bid to have the Respondent's claim adjusted is unrealistic because it has given no basis for the figures that it arrived at so as to assess the values of the household goods that were in the Respondent's house at the time of the fire. In any event, this court took into consideration the incidences of inflation which could have meant that it would cost more for the Respondent to replace the household goods that were destroyed in the fire. This court cannot therefore interfere with the assessment of the trial court.

13. The upshot of the above reasons is that the Appellants' appeal lacks merit and is hereby dismissed with costs.

DATED AT KITALE ON THIS 24TH DAY OF MAY 2022.

L. KIMARU

JUDGE

