



REPUBLIC OF KENYA

IN THE HIGH COURT AT BUNGOMA

CA NO.31 OF 2010

(Appeal from Chief Magistrate Hon. R. Nyakundi in Bungoma Court in CC No.672 of 2003 delivered on 30th March 2010)

THOMAS SIMIYU BARASA.....APPELLANT

VS

ALEX OJIAMBO.....1ST RESPONDENT

KENYA POWER & LIGHTING.....2ND RESPONDENT

The Appellant was aggrieved by the decision of the Chief Magistrate at Bungoma who dismissed his suit against the Respondents. The undisputed facts of the case were that the Appellant and the Respondent owned adjoining plots/buildings at Kanduyi market. The Appellant had rented his building to four tenants one of whom (PW3 Maurice Omondi) operated a radio repair shop. The 1st Respondent was operating a shop in his building. The buildings were each served by power from the 2nd Respondent. At about 9. p.m on 20/9/2002 the buildings were gutted by fire. The Appellant testified that when he first saw the fire it was the 1st Respondent's building that was burning. The fire then spread to his building. The extend of damage to his building was Ksh.900,000/= . The 1st Respondent's damage was to the tune of Ksh.1.8 million.

The Appellant sued the 1st Respondent claiming the fire was as a result of negligence on his part. It was alleged the 1st Respondent had defective wiring system, the electrical appliances in his shop were not in good state of repair, the electricity meter was overloaded, electrical gatchets had been left unattended, and

so on. The 1st Respondent denied liability. He subsequently brought the 2nd Respondent into the case. The 2nd Respondent filed a defence denying liability.

The trial court received evidence from the parties before dismissing the suit with costs.

In the Memorandum of Appeal the Appellant complained that he had called sufficient evidence to prove his case and yet his case had been dismissed.

It is the duty of this court to subject the entire evidence to fresh scrutiny and analysis and be able to reach its own conclusions on the matter, while appreciating that it did not have the advantage of seeing or hearing the witnesses. **(Peters v. Sunday Post Ltd [1958] EA 424).**

The evidence on record is clear that both the Appellant and the 1st Respondent came to the scene after the fire had begun and could not tell how it had begun and what its cause was. The allegations contained in the particulars of negligence were therefore not supported by evidence. Infact, the evidence of the 2nd Respondent tendered through its Senior foreman/supervisor Lawrence Obura (DW1) was that the buildings had no problem with the wiring system; the meters were intact which was evidence that the system was good and there was no overloading; and that the cause of the fire was not at all electric-connected. The evidence of the Appellant that the fire begun in the 1st Respondent's building and spread to his cannot be evidence of liability against the 1st Respondent unless it could be shown, which was not done, that the 1st Respondent caused the fire and that was done out of negligence.

In short, after my own consideration of the evidence of the parties as recorded, I find that the trial court was correct to reach the decision that it did. The result is that the appeal is dismissed with costs.

Dated, signed and delivered in open court this 15th day of March, 2012.

A. O. MUCHELULE

JUDGE