



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Civil Appeal 699 of 2003

KENYA POWER & LIGHTING CO LTD.....APPELLANT

VERSUS

FLAVIAN MBUGUA (suing his mother& next friend)

GLADY'S MUGURE.....1ST RESPONDENT

STEPHEN MARARO.....2ND RESPONDENT

(From the judgment and decree of M. Kaikai, Resident Magistrate in Milimani CMCC No. 3952 of 2003)

JUDGEMENT

This appeal arises from the Judgment of the trial magistrate in a plaint dated 8/6/2001 filed by the Respondent in this appeal, through her next friend. The plaintiff had sought general and special damages. She also had sought costs and interests.

The plaintiff/Respondent, had pleaded that on 11th day of June, 2000, at Umoja Estate, she was electrocuted by an electricity wire which had allegedly been negligently installed and/or left exposed in the premises of the 2nd defendant. As against the 2nd defendant, the plaintiff had pleaded that the 2nd defendant had constructed the said premises so close to the main power lines that he failed to ensure that the premises were not exposed to electrical dangers or failed to generally ensure that the general safety of the users of the premises was assured.

The plaintiff had finally pleaded that he was on the relevant date electrocuted at the 2nd defendant's premises thereby suffering serious burns on different parts of his body. He alleged suffering serious pain, loss and damage, for which he sought compensation.

The defendants had however filed defenses. The 1st defendant had generally denied the plaintiff's claim for special and general damages. It, in the alternative, pleaded that if the alleged accident occurred and/or caused the alleged injuries and damage, the same were caused by the negligence of the plaintiff himself and the 2nd defendant.

During the trial, the plaintiff testified and called witnesses. He stated that he was a minor, of about seven years. That he on 11/6/2000, visited the 2nd defendant's flat on the 3rd floor of the 2nd defendant's premises. That as he was in premises, he held a steel bar which turned out to be live with electricity which electrocuted him. That he did not know the circumstances under which the steel bar became alive with

electricity. Both parties and particularly the 1st defendant/appellant, did not dispute the fact the respondent was actually electrocuted. The court does not therefore question the same. It was accepted by both parties as well that the premises were too close to the power lines. The plaintiff was taken to hospital immediately after the accident and received medical treatment. A medical report was also prepared and was introduced into evidence.

PW3, Washington N. was the surgeon who first examined the plaintiff. He found extensive deep burn injuries on his 20% body surface, including the face, the chest, the stomach and the upper limbs, with stiffness of the right elbow. The plaintiff was in serious pain. He recommended some hypertrophic surgery in the near future to minimize the ugliness of the skin.

On his part the plaintiff had testified that on visiting the 2nd defendant's house on the material day in company of other children he held a metal bar of the railing which electrocuted him by throwing him to the floor unconscious. He came to at the hospital where he felt serious body pain.

The defendants adduced evidence and called witnesses as well. A senior supervisor of the 1st defendant testified that the electric line in the place where the accident took place, was installed in 1983. He visited the accident area five days after the accident. He established the premises in which the accident took place had been built less than one foot from the power line. He conceded a request to and produced a letter from the 2nd defendant with a request to re-locate the power line to create a safe distance. He also conceded that the 2nd defendant had actually on 4/2/2000 paid to it Kshs. 22,850/= being the requisite fees and costs for such re-location. He agreed too that the company did not re-locate the power line until after the 11/8/2000 when the accident took place.

It is in the evidence of the supervisor that he did not know whether the 2nd defendant constructed the relevant building before or after the power line had been installed. He conceded however, that the Kenya power & Lighting Company Ltd, had power to refuse to connect electricity to any building, if conditions for installation including safety conditions, had not been complied with by a consumer.

The 2nd defendant also gave evidence. He said that he constructed the relevant building in 1998-1999 and the power installation by the 1st defendant was done in 1998. That when he in 1999, complained to the company that they had located the power line too close to the premises, he was told to request in writing for re-location. That he soon did so, paid the requisite fees, but the company failed to act until the accident took place. He produced the relevant correspondence and receipts as evidence and confirmed that the 1st defendant only acted very fast to relocate the main power line after the accident.

In his Judgment the honourable trial Magistrate, after considering the evidence, made a finding that the 1st defendant, herein the Appellant, was solely to blame for the accident, that led to the Respondent's injuries, pain and suffering. He properly observed that the appellant installed the power line and was under legal and statutory obligation to install same at a safe distance from the premises. He also observed that even when the 2nd Defendant applied for re-location and paid for it, the appellant deliberately failed to act until the plaintiff was injured when it then acted fast to do the re-location.

I have carefully considered the evidence on the record after perusing the pleadings and the trial court's judgment. I agree that the act of negligence at the time the accident took place lay solely at the door of the appellant. The appellant had installed the power lines too close to the 2nd defendant's premises. The appellant failed or acted negligently in delaying to re-locate the power line after the 2nd defendant applied and paid for the re-location. The fact that the appellant was ready and indeed capable of acting so fast after the accident occurred, confirms that the company always had the capacity to re-locate the power line but negligently failed to do so.

Since the trial Magistrate properly and correctly arrived at his finding after considering all the factors that this court has also considered, this court finds no fault with the trial court's findings. He did not in any way misdirect himself. He took into account all the relevant factor and evidence and law. In the

circumstances this court finds that this appeal has no merit. It is hereby dismissed with costs. It is so ordered.

DATED and DELIVERED at Nairobi this 11th day of December, 2012

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D.A. ONYANCHA
JUDGE