



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI LAW COURTS)
CIVIL CASE 1054 OF 1993, 1237 & 1341 OF 1994

1. GRACE WAMERE KANYI
2. BEATRICE NJERI MWANGI
3. PETER MWANGI KANYIPLAINTIFFS

V E R S U S

KENYA POWER & LIGHTING CO. LTDDEFENDANT

J U D G M E N T

BEATRICE NJERI MWANGI and **PETER MWANGI KANYI** are wife and husband respectively. They are also the parents of **GRACE WAMERE KANYI**. Each of the three filed a separate suit against the Defendant, **KENYA POWER & LIGHTING CO. LTD.**

Grace Wamere Kanyi is the plaintiff in **HCCC No. 1054 of 1993**. She will be referred to in this judgment as the **1st Plaintiff**. She was a minor when she filed the suit through her father as next friend. She has since attained majority.

Beatrice Njeri Mwangi is the plaintiff in **HCCC No. 1237 of 1994**. She will be referred to as the **2nd Plaintiff**. Peter Mwangi Kanyi is the plaintiff in **HCCC No. 1341 of 1994** and will be referred to as the **3rd Plaintiff**.

All three cases were consolidated to be heard as one by an order entered on 8th March, 2003. Hearing commenced before Ojwang', J on 16th May, 2005 but the learned judge was transferred to another division of the court before he concluded the trial. I proceeded with the hearing from where Ojwang', J had reached with it. The trial was concluded on 9th April, 2008. There has thus been considerable delay in the preparation and delivery of this judgment. The same was occasioned by oversight due to pressure of work. It is regretted.

The Plaintiffs' respective cases against the Defendant, as pleaded in their complaints, are as follows. On or about 10th September 1988, while the 2nd Plaintiff was at her home in Nairobi a "**live electricity (wire) within the estate made contact with a (clothes drying) line, thus electrifying it. While the (2nd) Plaintiff was hanging clothes (for drying), she touched the (drying) line and (was) electrocuted**". In

an attempt to rescue her mother, the 1st Plaintiff was “also electrocuted”. The 3rd Plaintiff had similarly rushed to rescue his wife, the 2nd Plaintiff, and was **“also electrocuted”.**

The Plaintiffs blamed the accident on the negligence of the Defendant primarily for **“causing or permitting...(a live electric) wire to be...a danger to persons lawfully in the...locality”.** Particulars of negligence are given in the plaints.

The Defendant filed defence in all three suits. It denied liability and the loss, injury or damage pleaded. The Defendant also pleaded:-

- (a) that it was not aware of the accident; and
- (b) that if there was an incident of electrocution as alleged, the same was **“a result of the consumers’ own making via an improper, unapproved and irregular installation”.**

The Defendant further pleaded **in the alternative and without prejudice** that the accident was **“wholly caused or greatly contributed (to) by the negligence of the Plaintiff(s)”.** Particulars of contributory negligence are pleaded.

The Defendant subsequently took up the point, in an application, that the suits were barred by the statute of limitation. It turned out at the hearing of the application that the necessary leave of the court to bring the suits out of time had been obtained.

An agreed statement of issues signed by advocates for the parties was filed in each case. The issues as framed are similar. They are:-

- 1. Were the Plaintiffs electrocuted by live wires as alleged?**
- 2. Who was responsible for the said accident?**
- 3. What is the apportionment of liability?**
- 4. Is the doctrine of *volenti non fit injuria* available as a defence to the Defendant?**
- 5. Did the Plaintiffs suffer any loss and sustain damages as a result of the said electrocution?**
- 6. Are the Plaintiffs entitled to damages, and if so, what damages are awardable?**
- 7. Was demand and notice of intention to sue given?**
- 8. Who should bear the costs of this suit?**

All three Plaintiffs testified. The 3rd Plaintiff testified as PW1, the 2nd Plaintiff as PW2 and the 1st Plaintiff as PW3. One **STEPHEN GICHAGA GITURO** testified for the Defendant as DW1. I have considered the testimonies of all the four witnesses. I have also considered the written submissions filed on behalf of the parties, including the authorities cited.

The testimony of the 2nd Plaintiff was that she went to hang wet clothes on a drying line that was a metal wire. On placing the first item of clothing on the line, she heard an explosion and fell down. She later found herself in hospital together with the 1st and 3rd Plaintiffs. The 1st and 3rd Plaintiffs testified that they were electrocuted when they went to rescue the 2nd Plaintiff.

The testimonies of the 2nd and 3rd Plaintiffs agreed that the single room that they rented was supplied with electricity from the main house via a naked wire. The electricity was switched on and off from the main house. This naked wire was near the clothes drying line, which was also made of a naked wire. The

drying line ran from the metal roof of their room to a post near the road. The main house itself was supplied with electricity from a pole outside.

Only the 1st Plaintiff attempted to differ from this testimony. She said that the main house was supplied with electricity from the small rooms her family and other tenants occupied. She was clearly wrong, especially in view of the testimony of DW1. The 1st Plaintiff was about 11 years old when the incident occurred. She was about 30 years old when she testified. Her young memory had failed her.

DW1 was at the material time an electrical technician working with the Defendant and was then in charge of the Defendant's emergency service within Nairobi. He visited the scene a day or so after the accident. He testified that electricity was properly supplied by the Defendant to the main house from a pole outside through a conduit in the roof, and then into a meter box mounted in the inner wall of the entrance hall of the house. He found no evidence of supply to the tenants' block constructed about 10 feet from the main house, either directly or from the main house. But he found evidence of recent electrical work at the meter-box.

This evidence, coupled with the testimonies of the three Plaintiffs, can only mean one thing. Evidence of electricity supply from the main house to the tenants' block was removed after the accident and before DW1 came to the scene, obviously to conceal the fact of the unsafe connection that had not been properly done.

I am satisfied on the available evidence that the tenant's block was supplied with electricity from the meter box in the main house via a naked wire that was obviously unsafe. It is clear from the evidence that the electric works for this supply had not been done properly. The live naked wire most likely touched the metal roof of the tenant's block and thus electrified the drying line which was made of metal. The naked live wire could also have come into direct contact with the drying line with the same unfortunate consequences.

I am also satisfied from the testimony of DW1, and indeed the testimonies of the Plaintiffs, that there was nothing wrong with the supply line from the electric pole outside into the main house through a conduit in the roof and into a meter-box inside the house. I am satisfied that the Defendant's responsibility ended at the main switch in the meter-box. That responsibility cannot have extended to an installation not done or owned by the Defendant, such as the supply from the main house to the premises occupied by the Plaintiffs. That was the responsibility of the owner of the premises. The Defendant's responsibility under **section 108** (then in operation) of the **Electric Power Act, Cap 314**, cannot extend that far.

I respectfully agree with my learned brother, G. B. M. Kariuki, J as he held in the case of **Kenya Power & Lighting Co Ltd –vs- Joseph Khaemba Njoria, Kakamega HC Civil Appeal No 68 of 2002 (unreported)**, that the Defendant

“...has a responsibility to ensure that the power infrastructure it has installed in the country...is not only properly maintained to prevent accidents, but also that illegal connections, when they occur, are detected and removed”.

But the learned judge cannot have intended strict liability for the Defendant in all cases. He found for the respondent (plaintiff) in the particular circumstances of that case. Those circumstances were that the illegal connection involved in that case was **open and visible to the public generally and notorious, and was situated in a market centre**. The unsafe connection in the present case was in a private plot. There is no evidence that it was visible to the public generally, or that it was notorious. There was no evidence that it had been reported to the Defendant. The primary responsibility to ensure that the electric supply to the tenants' block from the main house was properly installed and safe clearly belonged to the owner of the premises. It was not the responsibility of the Defendant. On liability therefore, I find for the Defendant.

In the event that I am wrong I must assess the damages I would have awarded had I found for the Plaintiffs on liability. The 2nd Plaintiff testified that her finger and neck were burnt. She further testified

that after leaving hospital she “lost strength” for some time and could not go near a fire. Her police medical examination report (**Exhibit P2**) said that she had a painful neck and chest pains.

The 2nd Plaintiff was subsequently examined by two doctors. One **DR. D. G. NJOROGI** examined her on 23rd January, 1989 and prepared a report (**Exhibit A**). At that time, she complained of pain in the right side of the neck, pain in the right little finger, fainting attacks and a fast heart-beat (palpitation). The doctor found that she was normal in all aspects except that she had a scar on the right little finger and a scar on the left knee. He nevertheless concluded that the 2nd Plaintiff had been having “a lot of pain” since the accident and had to be constantly on drugs. The doctor was also worried about the 2nd Plaintiff’s reported fainting attacks, but he did not attribute these fainting attacks to the accident.

Another doctor, **DR. JOAB BOYO**, examined the 2nd Plaintiff on 13th November, 1989. His report is **Exhibit B**. This doctor said that the 2nd Plaintiff did not give him any history of fainting attacks. It was his opinion that she did not sustain any head injury from the accident. He found that the scars over her left knee and right little finger were “superficial and well-healed”.

The only medical reports produced in respect to the 1st and 3rd Plaintiffs were police medical examination reports. The report on the 1st Plaintiff is **Exhibit P3** while that on the 3rd Plaintiff is **Exhibit P1**. The 1st Plaintiff suffered bruises on the chin and the right side of the neck. She had a painful neck and blisters on the left palm. The 3rd Plaintiff suffered bruises on the back and on the 2nd and 3rd fingers of the right hand.

All the Plaintiffs suffered relatively minor injuries. They have all exaggerated their injuries and the effects thereof. One doctor clearly exaggerated the injuries suffered by the 2nd Plaintiff. I have considered the authorities on quantum referred to in the submissions. I would have awarded them general damages as follows had they succeeded on liability:-

- 1st Plaintiff KShs. 40,000/00
- 2nd Plaintiff KShs. 60,000/00
- 3rd Plaintiff KShs. 40,000/00

In the result, I will answer the framed issues as follows:-

Issue No. 1: The Plaintiffs were electrocuted by an unsafe live wire that came into contact, directly or otherwise, with a clothes drying line.

Issue No. 2: The Defendant was not responsible for the accident.

Issue No. 3: The issue of apportionment of liability does not arise.

Issue No. 4: The doctrine of *volenti non fit injuria* has no application in this case.

Issue No. 5: The Plaintiffs indeed sustained injury as a result of the accident.

Issue No. 6: In view of the court’s finding on liability, the Plaintiffs are not entitled to damages. I have elsewhere indicated what damages are awardable to them in the event that the judgment on liability is reversed on appeal.

Issue No. 7: No evidence of demand and notice of intention to sue was tendered.

Issue No. 8: Costs will follow the event.

In the event, the Plaintiffs have failed to prove their case on a balance of probability. Their respective cases are hereby dismissed with costs to the Defendant. It is so ordered.

DATED, SIGNED AND DELIVERED

IN OPEN COURT THIS 17TH DAY OF JULY 2009

H. P. G. WAWERU

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