



Suba & another (Suing as the administrators of the Estate of the Late Said Komora Mohamed) v Kenya Power and Lighting Co Ltd (Civil Suit E025 of 2024) [2025] KEHC 1779 (KLR) (4 February 2025) (Ruling)

Neutral citation: [2025] KEHC 1779 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CIVIL SUIT E025 OF 2024
JK NG'ARNG'AR, J
FEBRUARY 4, 2025**

BETWEEN

BEAUTAH MWANZA SUBA AND SULEIMAN ROBLE (SUING AS THE ADMINISTRATORS OF THE ESTATE OF THE LATE SAID KOMORA MOHAMED) PLAINTIFF

AND

KENYA POWER AND LIGHTING CO LTD DEFENDANT

RULING

1. The Plaintiff filed a Notice of Motion application dated 21st July 2024 under Certificate of Urgency pursuant to Order 13 Rule 2 & Order 36 Rule 1 of the *Civil Procedure Rules 2010*, Section 1, 1A, 1B, 3, & 3A of the *Civil Procedure Act*, and all other enabling provisions of the law.
2. The Plaintiff/Applicant seeks for orders that this court be pleased to enter judgment as against the Defendant/Respondent on admission of liability, that this court be pleased to direct that parties do proceed for assessment of damages by way of submissions, and that costs of both application and the suit be in the cause.
3. The application is based on grounds on its face and the supporting Affidavit of Beautah Mwanza Suba sworn on 21st July 2024 that on 14th July 2022, the Defendant wrote to the Plaintiff expressly admitting liability of the accident that had occurred. That through the said letter, it also expressly and unequivocally stated that by itself through its agents/staff did visit the scene and conducted investigations of the said accident. That it was its finding that indeed the accident occurred through their own fault of improperly installed power poles. That the Defendant/Respondent requested the family to visit their offices for compensation at their claims office. That the Defendant/Respondent has no reasonable defence to this suit having admitted to be in fault. That it is in the interest of justice that the orders sought are granted.



4. The Defendant/Respondent filed Grounds of Opposition dated 18th October 2024 that the application dated 21st July 2024 is extremely frivolous, vexatious and a waste of this court's time as the Plaintiff wants this court to aid her in getting orders without hearing all the parties. That nothing has been filed, tabled or submitted by the Defendant indicating that they had admitted the claim as alleged and the viability of the Plaintiff's claim can only be determined after hearing all the parties inter-partes. That the Plaintiff is using the application to defeat justice, avoid to appear in court for hearing and delay hearing and determination of the matter.
5. The application was canvassed by way of written submissions. The Plaintiff in their submissions dated 29th October 2024 stated that it is a waste of court's precious time for this matter to go on trial when there are admissions. The Plaintiff relied on Order 13 Rule 2 of the Civil Procedure Rules which provides: -

Any party may at any stage of a suit, where admission of facts has been made, either on the pleadings or otherwise, apply to the Court for such judgment or order as upon such admissions he may be entitled to, without waiting for the determination of any other question between the parties; and the Court may upon such application make such order, or give such judgment, as the Court may think just.
6. The Defendant filed submissions dated 12th November 2024 and contended that The Plaintiff instituted a suit vide a plaint dated 17th April 2024 which was opposed through a statement of defence dated 16th May 2024. That it is after filing the defence that the Plaintiff filed the present application seeking to have default judgment entered on account of alleged admission by the Defendant. The Defendant submitted that allowing the application will be tantamount to allowing a claim against the Defendant without according the Defendant a chance to be heard and/or have their evidence and/or claim tested through cross examination. The Defendant relied on the holdings in the cases of Daudi Mutua v Crown Industries Limited (2022) KEELRC 914 (KLR) and D.T. Dobie & Company (Kenya) Limited v Joseph Mbaria Muchina & Another (1980) KECA 3 (KLR). The Defendant prayed that the suit proceeds to full trial so that the Plaintiff's evidence can be tested by way of cross examination before the court can make a conclusion on liability and quantum.
7. I have considered the Notice of Motion application dated 21st July 2024, Grounds of Opposition dated 18th October 2024 and submissions by the parties. The issue for determination is whether the application is merited for grant of the orders sought.
8. The Plaintiff sought for orders that judgment be entered against the Defendant on admission of liability and that this court directs parties to proceed for assessment of damages. The admission is said to have been made in an incident report number KP4/IF-2/QMS/FM/01. The Defendant on the other hand alleges that the deceased having been electrocuted with their energized power lines which had fallen in the neighbourhood, the occurrence was solely and/or substantially contributed to by the deceased's own negligence.
9. This court notes that despite the Defendant's defence denying the claim and allegations on liability, they do not deny that the deceased was electrocuted by their energized power lines. A further perusal of the documents furnished to this court show that the deceased died of electrocution by electric power lines as a result of a terminal pole with its conductors falling on a roof.



10. This court relies on the case of *Guardian Bank Limited v Jambo Biscuits Kenya Limited* (2014) eKLR where the court held: -

“The principle applicable in judgment on admission is that the admission must be very clear and unequivocal on a plain perusal of the admission. The admission in the sense of Order 13 Rule 2 of the Civil Procedure Rules is not one which requires copious interpretations or material to discern. It must be plainly and readily discernible. In such clear admission, like J.B. Havelock J stated in the case of *747 Freighter Conversion LLC v One Jet One Airways Kenya Ltd & 3 Others* HCCC No. 445 of 2012, there is no point in letting a matter go for a trial for there is nothing to be gained in a trial. See the case of *Botanics Kenya Ltd Ensign Food (K) Ltd* HCCC No. 99 of 2012, where Ogola J gave a catalogue of other cases which amplified this principle. These cases are:

Choitram v Nazari (1984) KLE 327 that: -

“...admissions have to be plain and obvious as plain as a pikestaff and clearly readable because they may result in judgment being entered. They must be obvious on the face of them without requiring a magnifying glass to ascertain their meaning.”

Chesoni Ag. JA went on to add that: -

“...an admission is clear if the answer by a bystander to the question whether there was an admission of facts would be ‘of course there was’.”

Cassam v Sachania (1982) KLR 191 –

“The judge’s discretion to grant judgment on admission of fact under the order is to be exercised only in plain cases where the admissions of fact are so clear and unequivocal that they amount to an admission of liability entitling the plaintiff to judgment”

11. In the upshot, the Plaintiff’s Notice of Motion application dated 21st July 2024 is merited and allowed. Costs be in the cause.

DELIVERED VIRTUALLY VIA CTS AT MOMBASA THIS 4TH DAY OF FEBRUARY, 2025

J.K. NG’ARNG’AR, HSC

JUDGE

In the presence of: -

..... Advocate for the Plaintiff

..... Advocate for the Defendant

Court Assistant – Shitemi

