



Kenya Power & Lighting Company Ltd v Laktar & 2 others (Civil Appeal E029 of 2021) [2024] KEHC 5445 (KLR) (21 May 2024) (Judgment)

Neutral citation: [2024] KEHC 5445 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
CIVIL APPEAL E029 OF 2021**

KW KIARIE, J

MAY 21, 2024

BETWEEN

KENYA POWER & LIGHTING COMPANY LTD APPELLANT

AND

LUKAS OKINYI LAKTAR 1ST RESPONDENT

RURAL ELECTRIFICATION AUTHORITY 2ND RESPONDENT

KENYA ELECTRICITY TRANSMISSION COMPANY 3RD RESPONDENT

(Being an appeal from the judgment in Homa Bay Chief Magistrate's CMCC No. 126 of 2016 by Hon. T. Obutu– Senior Principal Magistrate)

JUDGMENT

1. Kenya Power & Lighting Company Ltd was a co-defendant with the second and third respondents in Homa Bay Chief Magistrate's CMCC No. 126 of 2016. The case related to electrocution, as the 1st respondent was injured by a live wire that dislodged from the appellant's pole. The learned trial magistrate delivered the judgment on September 23, 2021.
2. In the judgment, the appellant was held 100% liable. The learned trial magistrate awarded Kshs. 1,500,000.00 in general damages. The 2nd and the 3rd respondents were not held liable.
3. The appellant was aggrieved by the judgment and filed this appeal through Peter M. Karanja, Advocate. The following grounds of appeal were raised:
 - a. The learned trial magistrate erred in law and, in fact, in finding that the appellant was 100% liable for the electrocution, which was not supported by the evidence and pleadings.
 - b. The learned trial magistrate erred and misdirected himself in law by holding that the appellant was solely liable for the electrocution when no negligence was proved against him.



- c. The learned trial magistrate erred in law and failed to consider the evidence before him carefully and thoroughly. Thus, he failed to realize that there was no evidence to connect the appellant and the electric cables, poles and power lines that electrocuted the 1st respondent.
 - d. The learned trial magistrate erred in law and, in fact, in failing to find that the 2nd respondent was wholly liable for the electrocution despite the evidence given by the 1st respondent that the wires that electrocuted him belonged to the 2nd respondent. Thus, the court should find liability established.
 - e. The learned trial magistrate erred and misdirected himself in law when he held that the failure by the appellant to present evidence meant that the 1st respondent's case was established.
 - f. The learned trial magistrate erred and misdirected himself in law by failing to find that the first respondent was liable for causing or contributing to his electrocution by negligence and thereby failed to apportion liability appropriately.
 - g. The quantum of general damages for pain and suffering and loss of amenities is inordinately high, erroneous, oppressive, and punitive, amounting to a miscarriage of justice.
 - h. The learned trial magistrate erred and misdirected himself in law by failing to consider the medical evidence presented carefully and thus failing to hold that the said evidence did not support the head injury, loss of consciousness, loss of libido, and loose teeth injuries pleaded. This failure and misdirection led to an erroneous decision on quantum.
 - i. The learned trial magistrate ignored, misapprehended, and/or paid lip service to the appellant's submissions and authorities cited and failed to analyze or apply them.
 - j. The learned trial magistrate erred in fact and law in failing to appreciate the principles governing the award of damages, namely that, like cases, attracts similar awards and completely ignores the appellant's submissions.
 - k. The learned trial magistrate erred in law and fact in awarding kshs.1,5,000/- without giving any reason for such an award and thus made an award that was arbitrary, capricious, inordinately high, erroneous and which amounts to a miscarriage of justice.
 - l. The learned trial magistrate failed to consider all relevant considerations and principles when assessing the quantum of general damages.
4. Oduor Henry John, advocate, represented the first respondent who opposed the appeal. He also contended that the appeal was incompetent because the record of the appeal was incomplete. Equally, the second respondent, who Siganga and Company Advocates represented, opposed the appeal.
 5. This court is the first appellate court. I know the duty to evaluate all the evidence on record, considering I had no advantage of seeing the witnesses testify and watching their demeanour. I will be guided by the pronouncements in the case of *Selle v Associated Motor Boat Co. Ltd.* [1965] EA 123, where it was held that the first appellate court has to reconsider and evaluate the evidence that was tendered before the trial court, assess it and make its conclusions in the matter.
 6. It was argued that the appeal was incompetent because some documents forming part of the record in the lower court were omitted in the record of appeal. Not every omission of a document may render an appeal incompetent. Copies of submissions by both parties were not in the appeal record or probably not on the pages indicated. In my view, this omission will not prejudice the respondents.



7. Unless proven otherwise, it is widely accepted that the appellant installs, manages, and controls electricity power lines in Kenya. This is an apt case where the doctrine of *res ipsa loquitur* ought to be invoked. In the case of *Susan Kanini Mwangangi & another v Patrick Mbiti Kavita* [2019] eKLR, the doctrine was explained as follows:

The doctrine of *res ipsa loquitur* is one in which a plaintiff, by proving that an accident occurred in circumstances in which an accident should not have happened, thereby discharges, in the absence of any explanation by the defendant, the original burden of showing negligence on the part of the person who caused the accident. The plaintiff, in those circumstances does not have to show any specific negligence but merely indicates that an accident of that nature should not have occurred in those circumstances, which leads to the inference, the only inference, that the only reason for the accident must therefore be the negligence of the defendant...The defendant can avoid liability if he can show either that there was no negligence on his part which contributed to the accident; or that there was a probable cause of the accident which does not connote negligence of his part; or that the accident was due to the circumstances not within his control.

8. The trial court did not receive any evidence to the contrary. In this case, the respondent testified that he was in the process of controlling his oxen when he was hit by a live wire that had dislodged from a pole and lost consciousness.
9. The finding by the learned trial magistrate that the appellant was 100% liable cannot be faulted.
10. The appellant has argued that the kshs.1,500,000/- award was very high. It is trite law that an appellate court will only interfere with an award of the trial court if certain circumstances are satisfied. In *Butt vs. Khan* [1981] KLR 349 on page 356, Law JA stated:

...an appellate court will not disturb an award of damages unless it is so inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the judge proceeded on wrong principles, or that he misapprehended the evidence in some material respect, and so arrived a figure which was either inordinately high or low.

11. The 1st respondent, as a result of the accident, pleaded that he sustained the following injuries:
- a. Bruises on the forehead;
 - b. Burns on the right arm on the palmer aspect;
 - c. Burns on the right fingers behind the right hand;
 - d. Extensive burns on the forearm extending to the humeral(shoulder) area;
 - e. Extensive burns on the trunk (chest);
 - f. Deep burns on both legs-dorsal and palm aspect;
 - g. Lacerations on both knees; and
 - h. Loosening of the upper incisor teeth.
12. Dr Ogando Zoga Ezekiel testified that the 1st respondent lost consciousness for 48 hours due to trauma to the brain cells. He added that he was admitted for 14 days. At the time of examination, he said his heartbeat was rapid. He lost libido due to nerve injuries and had weakness in the right part of the body. He assessed permanent disability to be at 45%.



13. It has been argued that Dr Ogando Zoga Ezekiel's report contains evidence I should disregard. However, it is essential to note that the appellant had the opportunity to challenge the report during the trial and present any evidence to the contrary. As no other evidence was presented, both the trial court and this court must base their judgment solely on the presented evidence.

14. In the case of *Charles Kimani Ng'ang'a vs Kenya Power & Lighting Company Ltd* [2006] eKLR. The plaintiff was awarded Kshs. 2,500,000.00. We can be able to discern the injuries in the following paragraph of the judgment that states as follows:

PW 2 had testified that Patrick Ng'ang'a Kimani had suffered several recurrent fainting attacks, poor vision and impaired intelligence, and the evidence is supported by the findings made by Professor Peter A. Odhiambo in his medical report of February 1, 1996 – one year after the accident. The psychiatrist, Dr M.M.O Okonji, had written in his medical report that the plaintiff, who had been a normal average pupil up to Standard 5 level in primary school prior to 11th February, 1995 when he suffered an electric shock, was now operating academically at a nursery-to-pre-unit level, as a result of the accident. Dr. Gregory K. Mulunga stated in his report of January 26, 1999 that upon examination of Patrick Ng'ang'a Kimani he formed the opinion that the injured boy was suffering a severe post-traumatic stress disorder after the electric shock. The injured boy, this doctor remarked, appeared to have lost all interest in life and was merely drifting on. The same view was held by Professor R.F. Ruberti, a consultant neurosurgeon who conducted an examination on 5th October, 2001. This doctor remarked that the injured boy was mentally slow and had lost interest in life. Patrick Ng'ang'a Kimani deteriorated in his school work until he dropped out of school. Professor Ruberti and Dr. Okonji were in agreement that the electric shock had affected Patrick Ng'ang'a Kimani mentally, and they were both of the views that the boy's deterioration in academic standards was a consequence of brain damage, which had occasioned a permanent invalidity of the order of 20% - 30%.

15. The appellant in the trial court had proposed an award of Kshs.400, 000.00. Several decided cases were relied upon with awards ranging from Kshs.500 000.00 to Kshs.800 000.00. In the case of *Mary Wairimu Njuguna vs Kenya Power & Lighting Company Ltd*[2018] eKLR, an award of Kshs.500 000.00 was given for the following injuries:

- a) Electric shock
- b) Electric burns on the right arm
- c) Blisters on the dorsum of the right hand
- d) Eye injury with bilateral conjunctivitis and reduced visual acuity on both eyes
- e) Acute kidney shutdown
- f) Contusion and bleeding on the lower back
- g) Light nerve damage on the left lower limb.

The injuries are less severe compared to what the first respondent suffered.

16. The upshot of the preceding analysis of the evidence on record is that I have no reasons which have been advanced to persuade me to interfere with the award by the learned trial magistrate. The appeal is dismissed with costs.

DELIVERED AND SIGNED AT HOMA BAY THIS 21ST DAY OF MAY 2024



KIARIE WAWERU KIARIE
JUDGE

