



Kithome & Mutanu (Suing as an Administrator of the Estate of Joseph Mwanzau - Deceased) v Kenya Power & Lighting Company Limited (Civil Appeal E324 of 2022) [2024] KEHC 7832 (KLR) (Civ) (2 July 2024) (Judgment)

Neutral citation: [2024] KEHC 7832 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E324 OF 2022

DAS MAJANJA, J

JULY 2, 2024

BETWEEN

NZOMO KITHOME & JOYCE MUTANU (SUING AS AN ADMINISTRATOR OF THE ESTATE OF JOSEPH MWANZAU - DECEASED) APPELLANT

AND

KENYA POWER & LIGHTING COMPANY LIMITED RESPONDENT

(Being an appeal from the Judgment and Decree of Hon. G. Sogomo, PM dated 6th May 2022 at the Magistrates Court at Milimani, Nairobi in Civil Case No. 2013 of 2018)

JUDGMENT

Introduction and Background

1. On 21.03.2018, the Appellants filed suit in the Subordinate Court claiming that on or about 06.10.2016, the Deceased who was a tenant in a premise at Mukuru Kwa Njenga was electrocuted by an uninsulated live electric wire, which came into contact with a metallic hanging line occasioning his death. The Appellants averred that this was due to the failure by the Respondent to ensure safe connections of power by exposing the Deceased to a risk of danger or injury that it knew and or ought to have known. That it failed to take any effective measures for the Deceased's safety and to provide any adequate warning to the Deceased of the danger exposed to him by the electricity supply line. They further blamed the Respondent for failing to heed and remove the danger exposed to the Deceased by the electricity line, failing to take any adequate measures to ensure that the high electric power cables that were installed to residential houses were insulated, failing to properly keep, fix and or fasten its electricity supply lines, allowing illegal connections of power on residential houses and failing to ensure



- that the high voltage power lines which was a danger zone was situated at a sufficient distance from the building. For these reasons, they prayed for general damages and Kshs. 11,900.00 as special damages.
2. In its defence, the Respondent denied the Appellant's claim or that it was responsible for the alleged electrocution. It averred that it, "acted carefully, reasonably, diligently and punctiliously", in ensuring safety of the public and its customers and acted in accordance with the laid down power supply and distribution laws and regulations as well as all relevant physical planning and public utility laws. In the alternative, the Respondent proffered that, if ever the alleged incident occurred and injuries suffered as alleged, then the same were as a result of the negligence and/or omissions on the part of the Deceased and his Landlord for negligently and carelessly, interfering, illegally connecting power cables and vandalizing the power wires, knowing very well it was risky and dangerous so to do. That the Deceased was solely and substantially negligent in his conduct of touching and connecting illegal electricity cables. The Respondent further blamed the owner of the user building for encroaching the electricity wayleave and illegal electricity connection and that the same was as a result of inevitable circumstances and beyond the control of the Respondent.
 3. At the hearing, Nzomo Kithome (Pw 1) testified on behalf of the Appellants while the Respondent did not call any witnesses. In the judgment rendered on 06.05.2022, the Subordinate Court found that the Appellants failed to prove that the Respondent allowed illegal connections of power in the premises where the Deceased was electrocuted and that in fact, from the tone and tenor of the Demand letter addressed to both the Respondent and the landlord, the Appellants attributed the negligence complained of to the landlord making no adverse references as against the Respondent.
 4. Following dismissal of the suit, the Appellants lodged this appeal which is grounded on the memorandum of appeal dated 11.05.2022. The appeal has been canvassed by way of written submissions which I have considered and will make relevant references to in my analysis and determination below.

Analysis and Determination

5. I am in agreement with the parties' submission that since this is a first appeal, the court has a duty to re-evaluate and re-assess the evidence before the subordinate court and at the same time, keep in mind the fact that the trial court interacted first hand with the parties (see *Selle v Associated Motor Boat Co.* [1968] EA 123).
6. In his testimony, Pw 1 admitted that he did not personally witness the electrocution of the Deceased and that he was only informed of the same by other people. He stated that he did not know whether the Deceased's landlord had set up the illegal electricity connection and asserted that it is the Respondent who was responsible for the Deceased's electrocution. He admitted that in the demand letter, the Appellants complained against the landlord for installing overlying electricity cables close to metallic clothes line and that neither the Deceased nor Pw 1 ever complained to the Respondent or the police about the illegal power connection.
7. From the evidence outlined, I am unable to fault the trial magistrate's conclusion that save for the threadbare accusations against the Respondent, there was no evidence that the Respondent was responsible for any illegal connections or negligence that led to the Deceased's electrocution. There was no evidence that the Respondent was notified of any illegal connections by the landlord and that the Respondent failed to take action for them to be held derelict of their duties and obligations. I further agree with the Respondent's submission that there was no evidence of any nexus between the alleged illegal connection and the Respondent. I agree with the conclusion by the trial magistrate that from the Appellants' own view, it was the Deceased's landlord rather than the Respondent that was blamed by



the Appellants for the illegal connections and that they expressly stated that the landlord was negligent for not providing safe living conditions for his tenants including the Deceased.

8. From the totality of the evidence, I hold that the Appellants failed to discharge their evidentiary burden of proving that it was the Respondent that was responsible and was to be blamed for the Deceased's electrocution.

Disposition

9. This appeal lacks merit. It is dismissed with costs assessed at Kshs. 20,000.00.

DATED AND DELIVERED AT NAIROBI THIS 2ND DAY OF JULY 2024.

D. S. MAJANJA

JUDGE

