



**Kenya Power & Lighting Co. Ltd v Nyagol (Civil Appeal
19 of 2018) [2023] KEHC 2125 (KLR) (21 March 2023) (Judgment)**

Neutral citation: [2023] KEHC 2125 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
CIVIL APPEAL 19 OF 2018
KW KIARIE, J
MARCH 21, 2023**

BETWEEN

KENYA POWER & LIGHTING CO. LTD APPELLANT

AND

NICODEMUS GAYA NYAGOL RESPONDENT

*(Being an Appeal from the ruling in Oyugis Senior Resident Magistrate's
SRMCC No. 150 of 2015 by Hon. J.P. Nandi –Senior Resident Magistrate)*

JUDGMENT

1. On 30th May 2018, the learned magistrate delivered a ruling where the appellant was seeking a declaration that the decretal amount had been fully settled. The court made a finding that ksh 463, 000.00 was still outstanding.
2. The appellant was dissatisfied with the ruling and filed this appeal through the firm of Nyachiro Nyagaka & Company Advocates. The following grounds of appeal were raised:
 - a. That the learned trial magistrate erred in law and in fact by concluding that the appellant owed the respondent interest on the decretal amount.
 - b. The learned magistrate erred in law and in fact by failing to analyze the evidence adduced by the appellant.
 - c. The learned magistrate erred in law and in fact by applying wrong principles of law in the ruling.
 - d. The learned magistrate failed to consider the argument raised by the applicant's counsel in support of the application.
3. The respondent opposed the appeal through the firm of Khan & Associates Advocates.



4. This Court is the first appellate court. I am aware of my duty to evaluate the entire evidence on record bearing in mind that I had no advantage of seeing the witnesses testify and watch their demeanor. 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 own conclusions in the matter.
5. This is a matter that ought not to be in court for all this time. It does not require any interpretation. This is purely an issue of accounting to establish what has been paid and what is outstanding.
6. When the trial court dismissed the application, the appellant should have sought to demonstrate to the court that payments had been done.
7. I find no merit in the appeal and the same is dismissed with costs.

DELIVERED AND SIGNED AT HOMA BAY THIS 21ST DAY OF MARCH, 2023

KIARIE WAWERU KIARIE

JUDGE

