



**Kenya Power & Lighting Company v Wambui (Civil Appeal  
23 of 2020) [2023] KEHC 3092 (KLR) (13 April 2023) (Judgment)**

Neutral citation: [2023] KEHC 3092 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MURANG'A  
CIVIL APPEAL 23 OF 2020  
J WAKIAGA, J  
APRIL 13, 2023**

**BETWEEN**

**KENYA POWER & LIGHTING COMPANY ..... APPELLANT**

**AND**

**STEPHEN IRUNGU WAMBUI ..... RESPONDENT**

*(Being an Appeal from the judgement of Hon E.M Nyaga PM delivered  
on 5th November 2019 in MURANGA CMCC NO 141 of 2015)*

**JUDGMENT**

1. The Appellant was sued by the Respondent for General and special Damages arising out of an electrocution accident on 2<sup>nd</sup> May 20123 at Kadudu village involving the deceased who was carrying out her house- hold chores, through the high voltage electricity current flow into her house.
2. It was alleged that the said accident was caused by the negligence of the Appellant servants and or agents the particulars whereof were pleaded.
3. By a statement of defence thereon dated 9<sup>th</sup> October 2015, the Appellant denied that the deceased was electrocuted due to the negligence on its part and in the alternative stated that the said accident which is denied if occurred was caused by the negligence or substantially contributed to by the deceased own negligence.
4. Based upon the said pleadings, the matter proceeded for trial and by a judgment thereon dated 5<sup>th</sup> November 2019, the trial Court found the Appellant liable at 100% and awarded damages as follows:
  - A. Loss of dependency 10000 =2,400,000
  - B. Pain and suffering 100,000
  - C. Loss of expectation of life 100,000



D. Special damages 80,890

TOTAL 2, 680,890

5. Being dissatisfied by with the said determination, the Appellant filed this Appeal and raised the following grounds of Appeal:
  - i. The trial Court erred in law by finding the Appellant liable at 100% in disregard of the evidence adduced.
  - ii. The Court failed to consider the submissions of the Appellant, the evidence and witness testimonies presented.
  - iii. The award was excessive and inordinately high.
  - iv. The Court failed to follow the rules as regards award of damages.

### Submissions

6. Directions were issued that the Appeal be heard by way of Written Submissions. On behalf of the Appellant, it was submitted, that there was no eye witness who testified on how the accident occurred and that the Respondent case was wholly based on hearsay evidence and that PW2 stated that he was unable to tell who caused the accident. It was contended that this not being a strict liability claim, the Respondent was duty bound to present evidence in proof of negligence in support of which the case of Charterhouse Bank LTD v Frank N Kamau [2016] e KLR where it was stated that before the Court can conclude that the Plaintiff's case is not controverted or is proved on a balance of probability by reason of the defendants failure to call evidence the Court must be satisfied that the Plaintiff has adduced some credible and believable evidence , which can stand in the absence of rebuttable evidence by the defendant.
7. It was contended that the Court should apportion liability at 50% to 50%
8. On quantum, it was submitted that the award was excessive looked at against the damage sustained and that the Court should have taken into account the Appellant's Submissions. It was contended that the award under the heading of pain and suffering should have been Kshs.10,000/= based on the cases of Moses Koome Mithika & another v Doreen Gatwiri & another [2020] eKLR and Crown Bus Services Ltd & 2 others v Jamila Nyangesa & another [2020] eKLR.
9. On loss of dependency, it was submitted that there was no proof of marriage and that her profession was listed as a salonist without proof of monthly salary so the Court should have adopted the minimum wage of Kshs.8,579.80 as a general labourer in support of which reference was placed on West Kenya Sugar Company Ltd v Dishon Oyoo Obwa [2019] e KLR where the Court adopted a multiplicand of Kshs 6415 in respect of a salonist holding that she was an unskilled employee.
10. It was contended that since the Respondent did not prove dependency, the ration should have been 1/3 and the same being 30 years the Court should adopt a multiplier of 20 years as was stated in the case of Bush Hauliers v Dama Kalume Karisa & another [2020] eKLR. It was proposed that the award be Kshs  $8,579.80 \times 20 \times 12 \times 1/3 = 688, 384$ .
11. On behalf of the Respondent, it was submitted that the trial Court considered the pleadings and the evidence on record and that the Appellant did not call any witness or adduced evidence so his claim remained mere allegations as was stated in the case of Obed Mutua Kinyili v Well Fargo & another [2014] eKLR where the Court held that just like the Plaintiff once the defendant failed to adduce evidence their pleadings cannot be relied upon because they remain unproved.



12. It was contended that the Appellant did not discharge its duty in adducing evidence and therefore the trial Court cannot be faulted and the Appellant was not entitled to setting aside of the judgement as no sufficient cause was shown to do so as was stated in the case of Esther Wamaita Njihia v Safaricom Ltd [2014] eKLR. It was submitted that the Appeal should be dismissed with cost.
13. This being a first Appeal the Court is expected to re-evaluate the evidence tendered at the lower Court to come to its own conclusion thereon as was stated in the case of Abok James Odera & Associates v John Patrick Machira [2013] eKLR.
14. PW1 the Respondent adopted his witness statement and in cross examination stated that he was informed that the deceased who was his wife had been electrocuted and that they did not have an electrical problem in the house on the material day. He stated that the same was earning Kshs 10,000 per her payslip and that the Doctor informed him that she had been electrocuted. PW2 MIKE MWANAKACHA produced a police abstract which conformed that the deceased was electrocuted in her rental house when she touched a naked electric cable. The Appellant did not call any evidence.
15. Based on the proceedings herein the trial Court found the Appellant liable and awarded the Respondent the sum challenged herein.

#### **Determination**

16. The Appellant Court will only interfere with the trial Court's determination on quantum if the it is inordinately low or high or that the judge acted up on some wrong principles of law as was stated in the case of Gitobu Imanyara & 2 others V Attorney General [2016] eKLR.
17. In this matter the Appellant did not call any evidence to challenge the Respondents case and having evaluated the evidence tendered I am convinced that the Respondent proved his case on a balance of probability and therefore find no fault with the trial Courts determination thereon and will not interfere with the same merely because if I were the trail Court I would have arrived at a different determination thereon.
18. On quantum am not persuaded that the award was inordinately high and that the trial Court acted on wrong principles of law and therefore find no merit on the Appeal herein both on liability and quantum which I hereby dismiss with cost to the Respondent.

**DATED SIGNED AND DELIVERED AT MURANGA THIS 13<sup>th</sup> DAY OF APRIL 2023.**

**J. WAKIAGA**

**JUDGE**

**In the presence of:**

Dr. Kimotho for Ms Rigaga for the Appellant

Mr. Matu for Mr. Mwangi for the Respondent

Court Assistant – Ms Carol Mutahi

