



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
CRIMINAL APPEAL NO. 18 OF 2020

ROSE MAIRURA ROMANO.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal from the original conviction of the Principal Magistrate's Court at Tigania in Criminal Case No. 806 of 2018 delivered on 28th January 2020 by Hon. G. Sogomo PM)

JUDGMENT

1. The Appellant was charged with two counts in Tigania Criminal Case No. 806 of 2018. Count I was 'Unauthorized Disconnection of Electric Power contrary to Section 64 (1) (d) of the Energy Act No. 12 of 2012.' Count II was 'Unlawfully Laying a Conductor contrary to Section 61 (1) (c) of the Energy Act No. 12 of 2012.'

2. The particulars of offence for Count I, 'Unauthorized Disconnection of Electric Power contrary to Section 64 (1) (d) of the Energy Act No. 12 of 2012' were as follows: -

'On the 29th day of September 2018 at Kaati Market of Tigania East sub-county within Meru County, jointly with others not before court disconnected a conductor from an electric supply line belonging to the Kenya Power without the consent of the said Kenya Power Company.'

3. The particulars of offence for Count II, 'Unlawfully Laying a Conductor contrary to Section 61 (1) (c) of the Energy Act No. 12 of 2012' were as follows: -

'On the 29th day of September 2018 at Kaati Market of Tigania East sub-county within Meru County, without lawful right laid conductor with supply line without the consent of the Kenya Power and Lighting Company Limited.'

4. The Appellant pleaded not guilty to both counts. The matter proceeded to trial and she was placed on her defence. By the Judgment of the Court delivered on 28th January 2020, the trial Court Hon. G. Sogomo PM convicted her for both Counts. She was then sentenced to pay a fine of Ksh 50,000/= in default to serve (one) 1year imprisonment for each of the counts. The sentences were to run concurrently.

The Appeal

5. Being dissatisfied with both the Judgment meted by the trial Court, the Appellant has preferred the instant appeal raising the following grounds of appeal: -

- i. The learned magistrate erred in law and fact in failing to find that the charge was incurably defective.**
- ii. The learned magistrate erred in law and fact in failing to find that the prosecution evidence was contradictory and insufficient to sustain a conviction.**
- iii. The learned magistrate erred in law in failing to consider the defence evidence.**
- iv. The learned magistrate failed to analyze the evidence in totality and fully.**

Appellant's Submissions

6. The appeal was canvassed by way of written submissions. The Appellant filed submissions dated 18th September 2021. She urges that from the charge sheet it is not clear on where the offence was alleged to have been committed and it is therefore incomplete and defective. That the nature of the charges require the particulars of the alleged offence to be specific as to the premises where the same took place such as the parcel of land or the plot number.

7. She urges that on 3rd April 2019 one John Muriungi Kaberia was sworn as PW1 and in the course of his testimony the trial Court observed that he was a liar and directed that he be arrested and charged with perjury. That on the following day, on 4th April 2019, the witness apologized for perjury and the Court discharged him and stood him down without any charges. We note that the person was discharged without any charge. That the same person testified as PW2 on 5th July 2019 and although his testimony was fully hearsay the trial magistrate was not disturbed and he proceeded to record the same as truth. She urges that once the Court observed that the witness was lying, he ought to have addressed his mind to the probability that the charges were preferred for other purposes other than the cause of justice. She urges that the Court should have observed that she is related to PW1 and PW2. That the two are brothers and she is their sister-in-law as she was married to their deceased brother. That one would wonder why a witness would lie against his sister-in-law. She urges that the dispute is land and that is why no parcel is mentioned in the charge sheet.

8. She urges that another issue is whether she disconnected or illegally connected electricity. She urges that no one testified that they saw her do the said acts and it is alleged that she hired people to disconnect the electricity. She urges that the men who were hired ought to have been identified and the amount they were paid for the job ought to have been stated and they also ought to have been charged. She urges that the reason the alleged men were not identified, not arrested and charged or record a statement is because there were no such people.

9. She urges that the trial Court shifted the burden of proof to her and that the trial court was biased against her. That from the proceedings and the judgment, the trial Court was asking her to explain who did it if at all it was not her. She prays for the Court to quash the conviction of the trial Court.

Prosecution's Submissions

10. The Prosecution filed submissions dated 15th September 2021. In response to Ground 1, they urge that the law on drafting a charge sheet is found under Section 134 of the Criminal Procedure Code as follows: -

“Every charge or information shall contain, and shall be sufficient if it contains, a statement of the specific offence or offences with which the accused person is charged, together with such particulars as may be necessary for giving reasonable information as to the nature of the offence charged.”

11. They cite the case of *Obedi Kilonzo Kevevo vs Republic* [2015] KLR for the test in determining a defective charge sheet and the effect on conviction which they urge is the question whether the conviction based on the alleged defective charge occasioned a miscarriage of justice resulting in a great prejudice to the appellant.

12. Citing the case of *BND vs Republic* [2017] eKLR, they urge that the test for whether a charge sheet is fatally defective lies in the questions whether the accused was charged with an offence known to law and whether it disclosed in a sufficiently accurate fashion to give the accused adequate notice of the charges facing him.

13. They urge that in the present case, the charges and every element thereof was stated by the court to the accused person in the language that she understood.

14. With respect to ground 2, they cite the Court of Appeal of Nigeria in *David Ojeabuo vs Federal Republic of Nigeria* (2014) LPELR-22555 (CA), for the definition of the word 'contradiction.' They also cite the case of *Philip Nzaka Watu vs Republic* (2016) CR APP 29 of 2015.

15. With respect to ground 3, they urge that the Appellant was put to her defence and called one witness and she also gave a sworn evidence. That in her evidence, she stated that on the material day when the offence happened she was not present and that she returned from school and found the power line to her house removed by unknown people that it was not true that she supervised the removal of the power line. That the second defence witness stated that he saw four employees of Kenya Power in overalls disconnecting electricity from a pole because there was ongoing construction and power lines were overhead the building but during cross examination, he stated that he could not tell whether the men were repairing the power lines or disconnecting power. That he also stated that he did not see the appellant at the scene.

16. They urge that the Appellant raised an issue of *alibi* and in its judgment the trial court cited the case of *Republic vs GNK* [2017] eKLR for the proposition that an accused person who wishes to rely on a defence of *alibi* must raise it at the earliest opportunity to afford the prosecution an opportunity to investigate the truth or otherwise of the *alibi*. They further cite the case of *Ricky Ganda vs The State* (2012) ZAFSHC 59, for the proposition that a court should consider an *alibi* defence in light of the totality of the evidence in the case.

17. They urge that PW1, in his evidence placed the Appellant at the scene as the person who disconnected the electricity from the main pole using hired hands and when he asked the Appellant why she had disconnected the electricity she responded by saying that the men were employees at Kenya Power and Lighting. That since he, PW1, was affected by the power outage he called Kenya Power and Lighting office to inquire about the disconnection they confirmed that they were not behind the event. They urge that PW2 in his evidence stated that he went to the home of Rose, the Appellant to make inquiries and she revealed that she had petitioned Kenya Power and Lighting to remove the pole but that the company had taken too long to act prompting her to remove it in order to pave way for construction that she intended to carry out. They urge that PW3 who is a way leave officer at the Kenya Power in Meru stated in his evidence that when he visited the scene

he found the Appellant at the scene of the vandalism and she confirmed that the site was in her land. That she told them that she had not permitted way leaves over her land into her neighbours.

18. They urge that the Prosecution proved its case beyond reasonable doubt against the Appellant in both counts she had been found guilty and convicted of and that the evidence of the prosecution witness was clear, concise and consistent.

Evidence adduced at trial Court

19. This being a first appeal, this Court is invited to look at both questions of fact and of law. The Court is enjoined to analyze the evidence and make its own independent findings, bearing in mind that it is the trial Court that had the advantage of seeing the demeanour of the witnesses. See *Okeno v Republic (1972) EA 32*.

20. At this point, the Court will analyze the evidence adduced at the trial Court before delving into the issues for determination. The same is reproduced hereunder.

Prosecution's Case

PW1

21. PW1 testified as follows: -

“My name is Festus Bariu a resident of Kaathi and I am a shopkeeper. On 29th September 2018 during the morning hours Rose Mairura disconnected electricity from the main pole using hired hands. When I asked her why she had done so she told me that the men who had done the disconnection were employees at Kenya Power and Lighting. The disconnection affected me causing a power outage in my house. I called Kenya Power and Lighting officers to inquire about the disconnection and they confirmed from their systems that they were not behind the event. The officials of KPLC visited the scene and found the pole supporting the power lines had been felled. I went to Mulika police station to report the incident because the cable from the main to my newly constructed house had been removed. I have a customer application form duly filled to show that I applied for connection of electricity to KPLC. Police visited the scene and took photographs of the damage which are before court. Rose is seated there (pointing at accused), she is my sister in law and my immediate neighbour and I know her quite well.”

Cross examination

“The accused was married to my late brother Ezekiel Kiraithe Kaberia who died in the year 2015. I do not know the citation of Ezekiel's land. It is true that the electricity line to my house passed through Ezekiel's land. Ezekiel had signed a way leave in the year 2012. I am not aware of a complaint by the accused that a way leave had not been signed. The accused hired workers to fell the electricity pole and I saw them doing so. The workmen who felled the pole were about 6 and the accused authorized and supervised them in the task. She was wielding a machete. I went physically to the KPLC offices in the month of October 2018 because the following day was a Saturday. I do not have a copy of the way leave I signed because the document is not normally issued to customers.”

PW2

22. PW2 testified as follows: -

“My name is John Muriungi Kaberia and I am a compliance officer of Kenya Dairy Board in Mombasa. On 29th September 2018 I was in Mombasa when at around 7.00 pm, I received a cellphone call from my wife Mercy who informed me that electricity at my village had been disconnected and that the electricity pole outside my house had been felled and the cables cut. I travelled to my village home from Mombasa arriving 2 days later and confirmed the vandalism. My house had no electricity. The felled pole had electricity cables serving the homes of my brother Festus Bariu, my sister in law Rose Mairora and myself. The pole was in Roses land. I went to Rose's home to make inquiries and she revealed that she had petitioned Kenya Power and Lighting to remove the pole but that the company had taken so long prompting her to remove it in order to pave way for construction that she intended to carry out. Festus had already recorded a statement with the service provider and their security officer visited the scene and I recorded a statement later. Photographs of the vandalism were taken by the police and the same are before court. Rose is the one seated there (pointing at accused) and I know her quite well being my neighbour and sister in law.”

Cross examination

“I did not see the actual act of vandalism. It was merely reported to me. I was not present when the photographs were taken. I do not know whether accused had written a letter to Kenya Power petitioning for the removal of the pole. I do not know who removed the electricity pole from the scene.”

PW3

23. PW3 testified as follows: -

“My name is Phineas Mawira a resident of Meru town and I am way leave officer at Kenya Power in Meru. On 19th October 2018, I was in my office when our security officer John Ireri showed up with a client, one Kaberia. John reported a complaint by Kaberia to the effect that their client’s electricity had been disconnected and that power lines to his home had been vandalized by his brother in law’s wife one Mairora. I confirmed from our records that Kaberia was our client and together with John we went to Kaberia’s home and established that our electricity where our electricity cables were had been vandalized and at the spot where the pole once stood, construction of a house was on going. An electricity cable had been laid over and a pole erected that were not in our system and did not conform to our standards. As per our regulation if one wishes the removal and/or relocation of way leaves on application must be made in writing for rerouting where after the company would send a designer to the site redesign the line for rerouting. A quotation would then issue and the customer/applicant would then pay for the rerouting service and receipt would then issue. Mairora had not done only of these. According to our regulations complaints of location of electricity poles or lines must be made within six months of the installations. I found Mairora at the scene of the vandalism that the site was in her land. She told and she confirmed us that she had not permitted way leaves over her land into her neighbours homes. I established that as a result of the vandalism, electricity at Kaberia and his brothers home had been disconnected. The letter that Festus had applied is before court. Another application by Fest us brother Phineas is before court. Also before court is an acknowledgement from our company that Ezekiel Kiraithe had given consent for way leave. Mairora is the one. seated there (pointing at accused). She was unknown to me prior to this case. I was present when a police officer took photographs of the site of vandalism.”

Cross examination

“I was not informed when the vandalism took place. A client complaints cannot be entertained after 6 months of installation. I am not aware of any letters by the accused complaining about our installation of electricity. I am not the investigating officer and I did not take any witness statement. In PMF1 4 it was Festus Kaberia being favoured with way leave Ezekiel Kaberia but the date of the consent is not captured. I do not know where Ankamia is in Tigania. The way leave was in plot no 8 as at the time of the way leave. It is not that we have brought the case to cover up issues in regard to way leaves.”

PW4

24. PW4 testified as follows: -

“My name is No 61853 corporal Gabriel Koskey of DCI Meru county and I am a scenes of crime officer Gazette Notice 407 of 18th January 2010. On 12th November 2018 I was at the station when pc Kibet and PC Ireri who are attached to Kenya Power and Lighting Company requested that I accompany them to Mulika area to visit a scene of unauthorized disconnection of power lines. At the scene I took 18 photographs from different directions. I wish to produce the photographs and certificate thereof.”

Cross examination

“I found you at the scene of the crime. An electricity pole had been uprooted and power lines were scattered all over. It was not my duty to establish whether the land was yours.”

PW5

25. PW5 testified as follows: -

“My name is No. 93698 PC John Ireri of Kenya power security Mount Kenya Region with our HQ's in Meru Town. On 5th October 2018 I was in our offices when one customer of account No 38733776 one Festus Baariu arrived to report that his power line had been destroyed by his sister in Law one Rose Mairora claiming that she had never approved its installation having never signed a way leave. PC Philemon Kibet and I visited the scene at Kaathi area of Mikinduri and established that the power line was truly on the ground and that one of 3 poles had been uprooted with the conductors on the ground. Next to the uprooted pole was a storey building belonging to Rose who was present at the time. When we asked her why she had damaged the power line and poles she told us that Kenya power and lighting company had authorized her to do so. We launched further investigations and found that the power line E25302012080520 was constructed on August 2012 to serve the customer Festus. A way leave was approved by one Ezekiel Karithi Kaberia who is the late husband of Rose and Brother to Festus. The power line served Festus. Rose and John Muriungi. After its destruction Rose had constructed her own power line using an untreated pole and without authorization of Kenya power and lighting company. On 12th November 2018 we returned to the scene with Corporal Koskei of the scenes of crime department and the latter took photographs of the destructions which are before court. Before Court is a quotation for Festus application and acknowledgment of way leave. The suspect Rose is seated there (pointing at accused). She was unknown to me prior to this case.”

Cross examination

“Festus reported the illegal disconnection at around 11.00 am and we visited the scene at around 5.00 pm the same day and we found you there. You are a neighbour of Festus Phineas and other brothers in law of yours. I do not know whether you were at the home when your late husband signed the way leave.”

Further cross examination

“It true that I am the investigating officer in this case. Accused is a sister in law of the complainant. The connection was lawful there having been an application by a customer and payment having made for the same. The quotation comes after a customer applies for power. Although the applicant was Festus the owner of the land was Ezekiel Kiraithe Kaberia. I do not have the friendly agreement between Ezekiel and our company. I did not establish the land parcel number of Ezekiel. Pex 3 shows where the power line is. The form shows that the area is Ankamia Maua which denotes the feeder line and not the geographical area. I did not go to the adjudication office to establish the land parcel number. It is not true that the photographs were taken elsewhere other than the scene of crime because I was personally present when they were taken. I did not investigate family feud between the accused and the complainant. The accused jointly with others damaged the power lines.”

Defence Case

DW1

26. DW1, the Appellant testified as follows: -

“My name is Rose Mairora Romano a resident of Kaathi and I am a teacher at Kathanene primary school. It is not true that I illegally disconnected a power line and that I then reconnected the same to my house. I own land parcel No 2094 Ankamia adjudication section and I have a house therein which is connected to electricity grid. I own no land in Maua. The parcel of land is registered in the name of my late husband Ezekiel Kiraithe Kaberia. Festus Baariu is my late husband brother and our respective lands boarder each other. My reference number for the electricity connection together with the metre number was given to me after successful application and I have a smart card in this regard. In August 2018 I requested for a change of line which was acceded to and I was given another reference line. As from 3rd July 2018 I complained to Kenya Power and lighting about a line crossing my plot which had neither been consented to by my late husband or myself thus hindering my development. On 26th September 2018 as I returned home from school I found the power line to my house removed by unknown people. Some materials had been left at the site.

It is not true that I supervised the removal of the power line. On 29th November 2019 I woke up early in the morning and went to hospital to seek treatment home in the evening. at Hope Medical care. I returned home in the evening. Nothing untoward occurred on that day. The removal of the power line did not affect my connection of electricity.”

Cross examination

“I have taken up succession proceedings after my husband passed on but I do not have the proceedings. I sought to construct a storey building hence my complaint to Kenya power. I have since completed the project. After making my complaint KPLC officials assured me that they would act and on 26th September 2018 when I found the power line removed. I thought that they are the ones who had done so. The material that was left after the removal of the power line was one pole. I do not know who removed the electricity line because I was at my place of work by then.”

Re-examination

“I have been up to date in electricity payment using the new line.”

DW2

27. DW2 testified as follows: -

“My name is Amos Ithali, a resident of Athwana and I am a herdsman. In November last year I had been an employee of Sabera Nyoroka as a fodder collector for her cow. Rose Mairora was a neighbor of Sabera. On 29th November 2018, I saw 4 employees of Kenya Power in overalls disconnecting electricity from a pole because there was ongoing construction and power lines were overhead the building. The construction was in Rose's homestead. I did not see Rose at the scene then. I saw nothing else untoward. I did not speak to the 4 men I saw disconnecting the power. Rose's homestead is ringed with a timber fence but from where I was, I was in a position to witness the activities therein. It is true that from outside there are sections of Rose's homestead that are invisible. I did not enter Rose's homestead to see inside. I am not an expert in electricity but from my education, I know that they were disconnecting power. I cannot tell whether the men were repairing power or disconnecting power. I cannot tell whether Rose was in her homestead that day. I was purchasing credit at a nearby shop when I witnessed the happenings. It is the accused that has paid my bus fare to attend court today.”

Re-examination

“The shop I was buying credit from was about 5 metres from accused home stead. I saw the 4 men removing electricity cables from the electricity pole.”

Issues for Determination

28. The Appellant's grounds of Appeal can be condensed into 2 main issues: -

i. Whether the charge sheet was defective.

ii. Whether the Prosecution proved their case beyond reasonable doubt.

Determination

i) Whether the charge sheet was defective.

29. The Appellant urges that the charge sheet was defective for failing to indicate the plot number where the offence allegedly took place. She urges that the nature of the charges required specificity in the particulars of the location.

30. The provision of law with respect to drafting of charge sheets is found in Section 137 of the Criminal Procedure Code. Section 137 a) iii) provides for the contents of the particulars offence as follows: -

137. Rules for the framing of charges and informations

The following provisions shall apply to all charges and informations, and, notwithstanding any rule of law or practice, a charge or information shall, subject to this Code, not be open to objection in respect of its form or contents of it is framed in accordance with this Code-

a. i)

ii)

iii) after the statement of the offence, particulars of the offence shall be set out in ordinary language, in which the use of technical terms shall not be necessary: Provided that where any rule of law or any Act limits the particulars of an offence which are required to be given in a charge or information, nothing in this paragraph shall require more particulars to be given than those so required;

iv)

v)

b) i)

ii)

c. i) Description of property.—the description of property in a charge or information shall be in ordinary language, and shall indicate with reasonable clearness the property referred to, and, if the property is so described, it shall not be necessary (except when required for the purpose of describing an offence depending on any special ownership of property or special value of property) to name the person to whom the property belongs or the value of the property;

31. In the present case, the offence in both counts are said to have happened at *Kaati Market of Tigania East sub-county within Meru County*. The Court considers it would have been best to specify the particulars of the property where the offences is alleged to have happened because the terms 'Market,' 'Sub-county' and 'County' are general and could include many other locations.

32. The above notwithstanding, the Court observes that the complainant and the accused are neighbours and relatives. To this Court's mind, all parties were fully aware of the exact location where the offences occurred. The Court also considers that the matter traces its roots from an alleged wayleave agreement entered into between the parties. There was therefore no room to create doubt and/or confusion in the mind of the Appellant as to the location being referred to in the charge.

33. In addressing the question of whether defects in a charge sheet vitiate the proceedings, the Judiciary of Kenya's Criminal Procedure Bench Book, February 2018 provides as follows at page 27: -

28. The framing of a charge or information should adhere to the rules set out in Section 137 of the CPC. However, defects in the framing of a charge or information do not automatically vitiate the proceedings. Under Section 382 of the CPC, the primary consideration is whether the defect occasioned a failure of justice..

34. This Court does not find that the omission to include with exactitude the location of the place where the offence occurred occasioned a failure of justice to the Appellant.

ii) Whether the Prosecution proved their case beyond reasonable doubt.

35. PW1 was the only eye witness in the case. He testified that on the material date, he saw about 6 hired hands disconnecting the electric power on the property and that the hands had been hired by the Appellant. He testified that the Appellant supervised the disconnection and that she was wielding a machete. He testified that when he inquired of the Appellant why that was being done, she lied to him that the hired

hands were employees of Kenya Power and Lighting but that when he called Kenya Power and Lighting to confirm this, they denied having sent anyone on the property.

36. PW2 who is also a neighbor to PW1 and the Appellant confirmed that on the material day, he got information from his wife that the electricity pole had been felled and that there was no electricity in the village. He testified that he went to inquire from the Appellant on the matter and that she told him that she had previously petitioned Kenya Power and Lighting to remove the pole but since the company had taken so long, she removed it in order to pave way for construction that she intended to carry out.

37. PW3 testified that there was a formal process to be followed in seeking for the relocation of way leaves which he urges the Appellant never opted to take. He testified that when he visited the site, he found the Appellant thereon who told them that she had not permitted wayleaves over her land. He produced an acknowledgment from Kenya Power confirming that the Appellant's deceased husband had given consent for wayleave.

38. PW5 also confirmed that when they visited the scene on 5th October 2018, they found the pole on the ground and next to it was a storey building belonging to the Appellant. He urged that the Appellant had constructed her own power line using an untreated pole and that she lied to them that she had been authorized to do so by Kenya Power and Lighting Company.

39. The Court observes that although the hired hands that PW1 witnessed do the destruction were not as witnesses in the matter, the Court finds that there is other evidence to confirm that the Appellant was behind the destruction of the electric power line. The evidence of PW3 and PW5 who testified to have gotten word from the Appellant herself that she was unsatisfied with the existence of the wayleave on her property confirms that she had reason to do the destructions in question. Both PW3 and PW5 testified that the Appellant intended to do constructions on the said land and she had gotten impatient as Kenya Power and Lightning Company was not coming to her aid. When PW5 visited the scene, it was confirmed that next to the fallen pole was the construction of a storey building. He also confirmed that the Appellant had constructed her own power line using an untreated pole.

40. The Court finds that all the elements of the charges in the two counts were proven beyond reasonable doubt against the Appellant.

Appellant's defence

41. The Court has analyzed the Appellant's *alibi* defence and finds that the same was an afterthought as it was raised for the very first time during defence hearing.

42. The Court also considers that in her defence, the Appellant admitted to have had an issue with the way leave on her property. She testified as follows: -

As from 3rd July 2018 I complained to Kenya Power and Lighting about a line crossing my plot which had neither been consented to by my late husband or myself thus hindering my development.

43. The fact that she was unsettled about the way leave adds weight to the Prosecution's case that this is what led her to destruct the electric line.

44. The Court further considers that the evidence of DW2 who testified that he saw 4 men with overalls working on the pole was not helpful in the Appellant's defence because he could not confirm relevant questions on the matter. For instance, he could not tell whether the Appellant was in her home or not on the said date. He could also not clearly tell whether the 4 men that he saw were repairing or disconnecting power. He observed them from a distance. His evidence, therefore, was of little probative value to the defence case.

45. In criminal trials, the Court is allowed to weigh the evidence in support of an accused person's defence against the evidence of the Prosecution. I respectfully agree with the finding of Madan, Miller & Potter JJA in *Wang'ombe vs The Republic* (1980) KLR 149, where they held as follows: -

"The alibi was considered by both courts below, the High Court saying (as we have already set out) that it needed to be weighed with the evidence of the prosecution, particularly that of the complainant and his wife, and the fact that the appellant denied knowing Lucy, and particularly with Lucy's evidence.

To weight one set of evidence with another set of evidence is not to remove the burden of proving that which has to be proved from the party charged with the proof of it. To marshal, analyse and dissect evidence in order to weigh it to determine its value and veracity is a basic function of judicial officers..."

46. Although the above was discussed within the context of an *alibi* defence, the same reasoning applies irrespective of the nature of the defence.

47. The Court finds that a weighing of the Appellant's defence against the evidence of the Prosecution confirms that the Appellant is guilty for the charges against her.

Conclusion

48. On 29th September 2018, PW1 witnessed 4 hand men destructing an electricity pole on the suit property, under the supervision of the Appellant. DW2 confirmed to have seen 4 men working on the said electricity pole on the material date, which this Court takes to add

probative value to the Prosecution's case. PW1 testified that when he confronted the Appellant about the destruction, she claimed that the men were employees of Kenya Power and Lighting, but this turned out to be false as officers from Kenya Power and Lighting denied having authorized any such work.

49. The Court has considered that there is evidence from PW3 and PW5 to confirm that the Appellant was dissatisfied and/or denied the existence of a wayleave agreement allowing for the erection of the electricity pole on her land. It is said that the pole came in her way with respect to her intended constructions. The Court considers that although PW1 was the only eye witness, the circumstantial evidence adduced by PW3 and PW5 confirms that the Appellant had a reason to cause the destructions. She wanted to construct her development. Upon a site visit on the property, PW5 confirmed that next to the felled pole was a construction of a storey building belonging to the Appellant and that the Appellant had connected her own power line using an untreated pole. The Court has also considered the Appellant's defence of *alibi* and finds that the same was an afterthought.

50. The Court adds that there were more civilized ways of settling her dispute including filing of a civil suit to challenge the way leave. The Appellant's actions caused the entire area to lose electricity in addition to the losses suffered by Kenya Power and Lighting Company.

51. The Court finds that the Appellant was guilty for the offence of Unauthorized Disconnection of Electric Power contrary to Section 64 (1) (d) of the Energy Act No. 12 of 2012 and the offences of Unlawfully Laying a Conductor contrary to Section 61 (1) (c) of the Energy Act No. 12 of 2012.

52. The Appellant did not raise any issue with the sentence and the Court in any event observes that the sentence of a fine of Ksh 50,000/= in default imprisonment for a term of one year was within the confines of the law.

ORDERS

53. Accordingly, this Court makes the following orders:

i. The Appellant's Appeal is declined and the finding of the lower Court is upheld.

Order accordingly

DATED AND DELIVERED THIS 4TH DAY OF NOVEMBER, 2021

EDWARD M. MURIITHI

JUDGE

Appearances

Mr. Mutwiri for the Appellant.

Ms B. Nandwa, Prosecution Counsel for the Respondent.