



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

CIVIL APPEAL NO. 76 of 2017

KENYA POWER & LIGHTING COMPANY LIMITED.....APPELLANT

VERSUS

JUDITH AWUOR AWINO

(suing as a personal representative/administrator of the estate of Hildah Adhiambo

Owino.....RESPONDENT

(Being an Appeal from the Judgment and Decree in Kisumu CMCC No. 354 of 2014 delivered by Hon. H. Adika (SRM) on 17th October, 2017)

JUDGMENT

1. **JUDITH AWUOR AWINO** (*hereinafter referred to as respondent*) sued **KENYA POWER & LIGHTING COMPANY LIMITED** (*hereinafter referred to as appellant*) in the lower court claiming damages for fatal injuries suffered by her daughter, Hildah Adhiambo Owino, who was electrocuted on 20th June, 2014 allegedly as a result of the negligence of the appellant.

2. The defendant/appellant filed a statement of Defence and denied the claim.

3. In a judgment delivered on **17th October, 2017**, the trial court found the appellant liable at 100% and awarded general damages under the Law Reform Act in the sum of Kshs.1,956,190/-.

The Appeal

4. The Appellant being dissatisfied with the lower court's decision preferred this appeal and on 15.11.17 filed the Memorandum of Appeal dated 13.11.17 which sets out 8 grounds of appeal that may be summarized into the following 5 grounds that:-

- 1) The Learned trial Magistrate failed to evaluate and inclusively take into account the evidence presented before him and arrived at a wrong decision**
- 2) The Learned trial Magistrate erred in law and in fact in finding that the respondent had proved negligence and breach of duty against the appellant**
- 3) The Learned trial Magistrate erred in law and in fact when he failed to find that the deceased was the author of her misfortune and also failed to apportion liability against the deceased**
- 4) The Learned trial Magistrate erred holding appellant liable for the illegal connection by the owner of the plot**
- 5) The Learned trial Magistrate did not consider vagrancies of life in applying a multiplicand of Kshs. 9,780.95 and a multiplier of 25 years**

SUBMISSIONS BY THE PARTIES

5. This appeal was argued by way of written submissions. In further exposition of the appeal, both parties cited various authorities.

Appellant's submissions

6. Appellant holds the view that it was not to blame for the accident since deceased was electrocuted as a result of a clothes line that passed on top of the metre box. Appellant placed reliance on *Kenya Power and Lighting Company Limited v Nathan Karanja Gachoka & another [2016] eKLR* where the court held as follows:

“The plaintiff admitted that they hanged clothes from the uncoated electric wires hanged across their houses. The deceased, PW1 and PW2 ought to have known that uncoated electric wires were dangerous. They did not take any action to ensure that the same were fixed for their own security and safety. No mention of having reported to Kenya Power Lighting Company was made. Ignorance is no defence in law and common sense too must be employed more so in obvious and naked danger to life, in this case, hanging clothes on live electric wires that were naked and obviously haphazardly installed.”

Respondent’s submissions

7. It was submitted for the respondent that the trial court rightfully found that the appellant had failed in its statutory duty and further that no reason had been demonstrated to justify interference with the discretion of the trial court.

Analysis and Determination

8. This being the first appellate court, its duty is to reevaluate the evidence and come up with its own conclusions but also bear in mind that it should not interfere with the findings of the trial court unless the same were based on no evidence or on misapprehension of the evidence or the trial court applied the wrong principles in reaching its findings. See *Sumaria & Another –Vs- Allied Industrial Ltd (2007) 2KLR* and *Selle & Another –Vs- Associated Motor Boat Co. Ltd. & Others 91968) EA, 123*. It then behooves this court to summarize the evidence that was tendered before the trial court.

9. The extent to which an appellate court may interfere with an award of damages is well settled. It must be shown that the trial court in awarding of the damages took into consideration an irrelevant fact or the sum awarded is inordinately low or too high that it must be a wholly erroneous estimate of the damage, or it should be established that a wrong principle of law was applied (see *Butt v Khan [1981] KLR 349*).

10. I have perused the entire record of appeal and considered the submissions of counsels for both parties. I note that the appeal revolves around the question of liability and quantum.

LIABILITY

11. It is trite that all electrical installations are the mandate of the Kenya Power and lighting Company limited who has a duty to ensure that the electrical installations are done by its qualified staff and in the manner specified in the **Electric Power Act Cap 314** and the Rules thereunder. Kenya Power and Lighting Company is the only entity mandated to install, supervise, inspect and maintain electric installations. (See **Section 63, and 109 of the Electric Power Act, Cap 314.**) The duty for constant checks, inspections and maintenance of electrical installations is placed upon the appellant by statute. Had appellant’s employees constantly checked the meter box in the plot where deceased was electrocuted, they would have noticed the clothes lines passing over it and taken the necessary action to avoid harm and damage as happened to the deceased.

12. I am also persuaded by the holding in *Kenya Power and Lighting Company Limited v Nathan Karanja Gachoka & another (Supra)* that deceased was not without blame and ought to have employed common sense in obvious cases of danger to life such as using a clothes line that was running over a metre box.

13. Consequently; I have come to the conclusion that the deceased partly contributed to the accident and I apportion liability at 70:30% in favor of respondent as against the appellant.

QUANTUM

a. Multiplicand

14. Deceased’s earnings were not proved. In my considered view, the trial court rightfully applied Kshs. 9,780.95 as the minimum wage for a general worker under the Regulation of Wages (General) (Amendment) Order 2013 (*Legal Notice No. 197/13*).

b. Multiplier

15. It is on record that the deceased died at the age of 26 years. The learned trial magistrate applied a multiplier of 25 on the ground that deceased would have worked up to the age of 60 years were it not for the untimely death. Deceased was in the informal sector which is not governed by the normal retirement age and I therefore find no cause to interfere with the trial court’s finding on the multiplier.

Disposition

16. In view of the finding I have made, the appeal partially succeeds. The award general damages remain as awarded by the trial court except that it will be subject to a liability ratio of **70:30%** in favor of the respondent against the appellant. Costs and interest will abide the orders of the trial court. Each party will bear its costs of this appeal.

DATED, DELIVERED AND SIGNED THIS 10th DAY OF May, 2018

T. W. CHERERE

JUDGE

Read in open court in the presence of-

Court Assistant - Felix

Appellant - Ms. Ongira Holding Brief for Ms. Aron

Respondent - Mr. Sala Holding Brief for Mr. Madialo