

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA NAIROBI
CIVIL APPELLATE DIVISION
HCCA E318 OF 2025

KENYA POWER & LIGHTING COMPANY
APPELLANT

VERSUS

BERNARD ODOUR WANEKEYA1ST
RESPONDENT

DAVID OLOUCH WANYUNGU2ND
RESPONDENT

JUDGMENT

- 1.** This Appeal basically is hinged on a case of a malicious prosecution in which the lower Court found that the respondents were maliciously prosecuted.
- 2.** The history of this matter is that the two respondents were arrested by KPLC personnel for illegal reconnection of power and charged before a magistrate who later acquitted them for lack of evidence and upon acquittal they sought compensation for malicious prosecution.
- 3.** Several decisions have been rendered on the consequences of acquittals and it is largely agreeable that acquittals do not

necessarily constitute full proof evidence of malicious prosecution. The Courts must go beyond a cursory look at the acquittal judgements by reading the actual proceedings leading to acquittal. This is very important because not all prosecutions must lead to convictions. There are several justice players which include the court that influence a conduct of even the “tightest of the cases. “

- 4.** Investigations are expected to be conducted professionally because the decision to charge a person with a criminal offence is heavy and attracts consequences. This perhaps, is the reason why the standard of prove in criminal cases is beyond reasonable doubt. The term “malicious prosecution has in many instances interpreted to connote words like “spite, malice, “or generally what it means in common dictionary books.
- 5.** The facts of this case is that the Respondents were charged for illegal reconnection and indeed there was evidence that a certain meter had been reconnected illegally despite the fact that it had arrears of over Ksh 30000. Under these circumstances, it is not easy to prove malice by the KPLC personnel thus for the purpose of law, the word malice is expanded to mean failure to conduct a reasonable investigation although the element of malice as we know is

not there. By imputing malice in a case of poorly conducted investigations, the Courts may be seen as acting subjectively because it would be difficult to tell if indeed the arrest was malicious or based on unprofessionalism.

6. The people bestowed with authority are expected to act professionally lest they risk carrying the burden of their decisions to charge. The case in which the respondents were acquitted was not properly investigated. No one saw the respondents reconnect the power. The owner of the house was not called as a witness. There was no prove of how the respondents would have benefitted for illegally reconnecting the power since there was no prove that they lived in the premises. These loopholes were overlooked by the Appellant which carried the investigations before the Respondents were charged. In fact, one of the witnesses who testified admitted that the owner of the meter ought to have been charged and so one wonders why the real beneficiary of the illegal reconnection was not charged and in fact they knew all the details of the owner. Under these circumstances it is clear that the prosecution of the Respondents was malicious in the eyes of the law.

7. This court as it is for all appeals, can only interfere in quantum when it is proven to be excessive or unreasonable. The respondents were dragged into court for almost three years. The anxiety, the inconvenience during this period can be felt. The mere threat of a conviction stands out loud. The award by the Lower Court is not excessive given the duration of the trial and the missed opportunities when attending Court sessions.
8. The conclusion of the above is that I do not see any reason for me to disturb the lower court finding. The Appeal is dismissed with costs.

**DATED, DELIVERED VIRTUALLY AND SIGNED ON THIS 26TH
DAY OF FEBRUARY 2026.**

HON L P KASSAN

JUDGE

In the presence of;

Mwenda for Appellant

Muranda holding brief Wangoi for Respondent

Carol - Court Assistant

STAY FOR 30 DAYS IS GRANTED

ORIGINAL