



**Kenya Power and Lighting Co Ltd v Chelimo (Civil Appeal
E001 of 2024) [2025] KEHC 3969 (KLR) (28 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 3969 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ITEN
CIVIL APPEAL E001 OF 2024
JRA WANANDA, J
MARCH 28, 2025**

BETWEEN

KENYA POWER AND LIGHTING CO LTD APPELLANT

AND

ALLAN CHELIMO RESPONDENT

JUDGMENT

1. This Appeal arises from the Judgment delivered on 2/11/2022 in Iten SPMCC No. 30 of 2022 in which the Respondent (as the Plaintiff) instituted a claim against the Appellant (as Defendant) seeking compensation for loss alleged to have been suffered by the Respondent as a result of a fire that razed down his premises. The Appeal is stated to be against the trial Court's decision on both liability and quantum.
2. The background of the matter is that by the Plaint filed on 30/03/2022 through Messrs Mwinamo Lugonzo & Co. Advocates, the Respondent pleaded that on 27/01/2020, his premises situated at Chebara Shopping Centre Plot No. 56 in Elgeyo Marakwet County was completely burnt down due to an electric fault. He pleaded that the fault was occasioned by an electricity pole that was loose and thus fell on the premises setting it ablaze and as a result, burnt down and damaged the premises and all property therein. He blamed the fire on negligence and/or breach on the part of the Appellant and listed several particulars of such negligence and also relied on the doctrine of res ipsa loquitur. He then also particularized losses incurred at Kshs 370,000/- and also pleaded that he was earning rent of Kshs 5,000/- per month from the premises and that as such, he has lost earnings, for which he claimed compensation for loss of use for 3 months. In his prayers, he sought damages as aforesaid, plus interest and costs of the suit. I note that subsequently, by a Notice of Change, Messrs Kimaru Kiplagat & Co. Advocates took over the conduct of the Respondent's case.
3. The Appellant filed its Statement of Defence on 12/04/2022 through Messrs Kitiwa & Partners Advocates wherein it denied, inter alia, occurrence of the incident or the particulars of negligence or



liability alleged. It was averred that, on the contrary, the incident occurred due to the Respondent's own negligence.

4. The matter then proceeded to full trial whereof the Respondent (as Plaintiff) called 2 witnesses while the Appellant called 1.

Respondent's (Plaintiff) evidence before the trial Court

5. PW1 was Luke Kiprono from Sterling Valuers Limited. He produced the Valuation Report dated 2/02/2020 and stated that the value of the Respondent's damaged property was Kshs 350,000/- and loss of income was Kshs 5,000/- for 3 months. He also stated that he charged the Respondent a sum of Kshs 20,000/- for the valuation and then produced the Report and the Payment Receipt. In cross-examination, he stated that he had not been to the place before the incident, that he looked at the debris and materials, he did not list the items and that his work was to value the building. He stated that he was able to tell that the materials used to construct the structure was timber and GCI sheets, and that the Respondent gave him Receipts. According to him, the Respondent had 2 shops and which were leased to tenants.
6. PW2 was the Respondent, Allan Chelimo. He adopted his Witness Statement and produced the documents contained in his List of Documents. He then testified that the damage was valued and for which he paid a fee of Kshs 20,000/-, and that he had leased the house at Kshs 5,000/-. In cross-examination, he stated that the electric post was about 5 metres from the shop, it was later replaced after the incident, there is no transformer there, his metre is outside the house, the power pole was loose and that he had earlier made a Report. He denied that the incident was caused by an electric wiring fault and insisted that the wiring was done by a qualified person. He stated that it was windy on the date of the incident.

Appellant's (Defendant) evidence before the trial Court

7. DW1 was Bernard Kwame who stated that he is an artisan at the Appellant and then adopted his Statement. In cross-examination, he stated that he has a Certificate in Electrical Management, that he was the one in charge of the area, there was a leaning post in the area and which had been leaning for some time, and that he was in charge of emergency team only, and not of maintaining overhead lines. He conceded that the post was not supposed to be leaning, and agreed that there was a line from the leaning post to the Respondent's premises. He also stated that he took photographs and prepared a Report but he did not have them in Court. He further stated that he did not know whether the fire was caused by a candle or lantern, he did not know the cause and that there are about 100 structures. He also pointed out that the line from the leaning pole was connected to the Respondent's shop only, and it is only that structure that got burnt. In re-examination, he insisted that there was no connection between the leaning post and the fire but conceded that he did not know the cause of the fire and that investigations showed that everything was fine.

Trial's Court Judgment

8. After the trial, as aforesaid, the trial Court delivered its Judgment on 26/11/2020 in favour of the Respondent. Liability was found at 100% against the Appellant and damages awarded (plus costs and interest) in the following terms:



Damage to the structure	Kshs 350,000/-
Valuation Fee	Kshs 20,000/-
Rental loss	Kshs 15,000/-
Total	Kshs 385,000/-

Appeal

9. Dissatisfied with the Judgment, the Appellant filed this Appeal on 2/12/2022, premised on the following grounds:
- i. That the learned trial Magistrate erred in law and in fact in finding that the Respondent had proved his case on a balance of probabilities contrary to the evidence on record.
 - ii. The learned trial Magistrate erred in law and in fact in failing to dismiss the Respondent's case.
 - iii. The learned trial Magistrate erred in law and in fact in shifting the burden of proof from the Respondent to the Appellant.
 - iv. The learned trial Magistrate erred in fact and in failing to consider the Appellant's evidence on record and submissions.
 - v. The learned trial Magistrate erred in fact and in law in using wrong principles to assess damages.
 - vi. The learned trial Magistrate erred in law and fact in awarding special damages that were not pleaded and proved.

Hearing of the Appeal

10. The Appeal was canvassed by way of written Submissions. The Appellant filed its Submissions on 1/07/2024 while the Respondent had filed his much earlier on 23/01/2024.

Appellants' Submissions

11. Counsel for the Appellant submitted that from the testimony of DW1, the fire emanated from inside the Respondent's premises and was therefore not caused by the Appellant's transformer, pole and/or cable, that it is the Respondent who testified that the premises burnt down due to electric fault caused by the Appellant's electricity pole yet no evidence from an expert witness was produced to corroborate the allegations. He submitted further that from the testimonies of the Respondent and DW1, the Respondent was not present at the time of the incident and therefore he relied on information relayed to him by unknown persons. He contended further that from the testimony of DW1, the Respondent's house/structure was completely locked such that that the rescuers could not mitigate the fire and sustain it before it was too late.
12. He also contended that DW1's testimony confirmed that the metre box on the Respondents house/structure was intact as well as the transformer which was also supplying power to the adjacent premises and which other premises did not burn, that the electric pole and cable were intact even after the fire incident and that no photographs were produced by the Respondent to rebut this statement. Counsel submitted further that it is not automatic that once a fire starts then the blame should lie on the power supplier, the Respondent's claim was founded on tort and it was incumbent upon him to prove the



particulars of negligence pleaded in the Plaint, the fire did not emanate from the electric pole or cable but started from inside the Respondent's structure and was therefore caused by wiring done in the premises by the Respondent's technician, and who was not called as a witness or his qualifications produced. He also pointed out that no evidence of a destroyed metre box or cable was availed and argued that if at all the live wire was faulty, it would have burnt down the adjacent structures as all the neighbouring premises' power was supplied by the same transformer.

13. He faulted the trial Magistrate for failing to consider the testimonial of DW1, and for shifting the burden of proof to the Appellant on what caused the fire. He cited the case of *Jeremiah Maina Kagema v KPLC* [2001] eKLR and urged that to date, it is unknown what caused the fire, and that the Respondent ought to have called an expert witness from the County Government Fire Department. He also cited Section 107 of the *Evidence Act* on the principles of burden of proof and submitted that although the Appellant has a duty of care, the Respondent had the burden of proving breach of that duty. Regarding the Respondent's claim that the electric pole that was loose fell on the Respondent's premises and caused the fire, Counsel averred that no evidence thereof was presented.
14. He also faulted the trial Magistrate for failing to put reliance on the evidence of DW1 for the reason that the witness failed to produce documentation to authenticate his qualifications as a Network Manager at the Appellant yet DW1 produced his employment credentials by showing his identification card and position at the Appellant. On "causation" and the need to establish nexus in cases of negligence, he cited the case of *Statpack Industries vs James Mbithi Munyao*, NRB HCCA No. 152 of 2023.
15. On the issue of quantum of damages, Counsel submitted that the Valuation Report produced was not supported by any material to confirm that indeed items and/or equipment burnt were actually in the premises and/or added up to Kshs 350,000/-. He submitted that the Valuer (PW1) also confirmed that he never visited the premises prior to the fire incident and that no single receipt, invoice, document and/or photograph obtained before the incident as produced. He cited the case of *David Bagine v Martin Bundi* [1997] eKLR.

Respondent's Submissions

16. On his part, Counsel for the Respondent cited the case of *Butt vs Khan* (1982-88) KAR 1 for the principle that an appellate Court will not easily disturb an award of damages.
17. On liability, he insisted that the Respondent's business/rental structures were burnt down by an electric fire occasioned by an electric pole fault which was loose and fell on the structures thus setting it ablaze. He pointed out that DW1, in his testimony, conceded that the electric pole was leaning, that from the pole there was a cable connecting to the Respondent's structure, and that the pole had been leaning for some time. He also urged that DW1 conceded that he did not produce a Report or photographs of the burnt down premises, that the premises was locked from inside and therefore there was no possibility that the fire had been caused by an occupant inside, and that he was not able to tell the cause of the fire.
18. Counsel cited Section 52 of the *Energy Act* and submitted that the rules thereto provide that the Appellant ensures that all electric installations are done by its qualified staff and in a manner specified and that the Appellant is the only entity mandated to instal, supervise and maintain electric installations. He contended that the Appellant did not rebut the Respondent's evidence as the Appellant did not provide any proof that it maintained its electric installations in the Respondent's area.



Determination

19. The duty of an appellate Court has been reiterated in a plethora of cases, including, for instance the case of Kenya Ports Authority vs Kuston (Kenya) Ltd. [2009] 2 EA 212, where the Court of Appeal pronounced itself in the following terms:

“On a first Appeal from the High Court, the Court of Appeal should reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in that respect. Secondly, that the responsibility of the Court is to rule on the evidence on record and not to introduce extraneous matters not dealt with by the parties in the evidence.”

20. The issues that arise for determination in this Appeal, are the following;

- i. Whether the trial Court properly entered liability against the Appellant.
- ii. Whether the trial Court’s award in damages was justified.

21. I now proceed to determine the said issues

i. Whether the Court properly entered liability against the Appellant

22. Regarding the extent of the powers of an Appellate Court, it is settled that an appellate Court will only interfere with the conclusions and findings of a trial Court if the same were not supported by evidence or were premised on wrong principles of law. This was the import of the holding in the case of Mwangi V. Wambugu (1984) KLR 453, where the Court of Appeal held, inter alia, as follows:

“A court of Appeal will not normally interfere with a finding of fact by the trial court unless such finding is based on no evidence or on a misapprehension of the evidence or the Judge is shown demonstrably to have acted on wrong principle in reaching the finding and an appellate court is not bound to accept the trial Judge’s finding of fact if it appears either that he has clearly failed on some material point to take into account of particular circumstances or probabilities material to an estimate of the evidence, or if the impression based on the demeanour of a witness is inconsistent with the evidence in the case generally.”

23. On the first issue of liability, needless to state, it is trite law that “he who alleges must prove”. This is the principle of the “burden of proof” and which is codified in Section 107 of the [Evidence Act](#) as follows:

“ 107

- (1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
- (2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.”



24. On the issue of “burden of proof” and the duty of a Plaintiff to present evidence to prove his case, the Court of Appeal, in the case of *Timsales Limited v Stanley Njihia Macharia* [2016] eKLR, stated as follows:

“As for the alleged lack of evidence on “causation”, in *South Nyanza Sugar Co. Ltd Vs. Wilson Ongumo Nyakwemba* [2008] eKLR D. Musinga J. (as he then was) approved the holding in *Statpack Industries Limited Vs. James Mbiti Munyao HCCA No. 152 of 2003* (UR) for the holding that:-

“It is trite law that the burden of proof of any fact or allegation is on the plaintiff. He must prove a causal link between someone’s negligence and his injury.

The plaintiff must adduce evidence from which, on a balance of probability, a connection between the two may be drawn. Not every injury is necessarily as a result of someone’s negligence.”

25. Further, the Court of Appeal, in the case of *Karugi & Another V. Kabiya & 3 Others* [1987] KLR 347, stated as follows:

“[T]he burden on a plaintiff to prove his case remains the same throughout the case even though that burden may become easier to discharge where the matter is not validly defended and that the burden of proof is in no way lessened because the case is heard by way of formal proof The plaintiff must adduce evidence which, in the absence of rebuttal evidence by the defendant convinces the court that on a balance of probabilities it proves the claim.”

26. In this matter, the Respondent’s case before the trial Court was that his premises was burnt down and completely destroyed by a fire that arose from an electric fault caused by an electricity pole which had a cable which supplied electricity to his said premises. According to him, the pole had been leaning for some time and eventually fell on the premises, thus igniting the fire in the process.

27. It is not in dispute that only the Respondent’s premises was affected by the fire. It is also not in dispute, and the Appellant has not denied it, that the alleged electric pole at fault was the property of the Appellant which, in Kenya, has the sole mandate to supply electricity power to consumers. The question therefore is whether, in line with the provisions of Section 107 and 108 of the *Evidence Act* cited above, the Respondent (as the Plaintiff before the trial Court) adduced sufficient evidence, on a balance of probabilities, to prove his claim.

28. In respect to liability, only the Respondent testified on his own behalf. Although he claimed that it is the leaning electricity pole that eventually fell on his premises and that this is what ignited the fire, he conceded that he was not present at the scene. He was not therefore an eye-witness. In view thereof, he needed to find other means of proving to the Court that indeed the pole fell on the premises. The kind of evidence that he could have perhaps presented was the testimony of eye-witnesses, or photographs of the scene showing the fallen pole resting on the structure. Alternatively, he could have procured an expert in matters electrical to perhaps prepare a Report demonstrating that indeed the fire occurred as a result of disturbance caused by the electricity cable running from the pole. It was important for the Respondent to adduce such evidence since there could as well as be various other possible causes for the fire which needed to be ruled out. Such causes would include for instance, a deliberate act such as arson, or defective wiring works within the Respondent’s premises, or negligent or accidental factors such as worn-out wiring or even a combination of some of these factors.



29. Unfortunately, the Respondent did not bother to collect or present any corroborating evidence as aforesaid. Apart from his oral testimony, he did not adduce any evidence whatsoever to corroborate his assertions. In any case, all the photographs that he produced by only shows the electricity pole leaning, not fallen on the premises as alleged. The Respondent proceeded as if this was a case of “strict liability” whereof all he needed to do was to prove that there was occurrence of the fire and that it razed down the premises. With due respect that was not sufficient at all to justify finding the Appellant liable.

30. The above observation is in line with various authorities which have reiterated that negligence must be proved as there is still no “liability without fault” system in our legal matrix. One such authority is the case of M’iruanji Muchai v Broadways Bakery & another [1996] eKLR in which the Court of Appeal emphatically pronounced itself as follows:

“Negligent was alleged and particularized in the plaint but no evidence was given to prove it. On that basis the Judge found negligence not proved and dismissed the appellant’s claim. There can be no doubt at all that the Judge was right because as this Court held in the case of Kiema Muthuku v Kenya Cargo Handling Services Ltd (1991) 2 KAR 258, there is, as yet, no liability without fault in the legal system in Kenya, and a plaintiff must prove some negligence against the defendant where the claim is based on negligence.”

31. In his Witness Statement, which he adopted in his evidence-in-chief, DW1 stated as follows:

“
As part of my duty, I did my observations to establish the cause of the fire. I observed that the Kenya Power service cable was intact and up to now it is still coiled to the terminal pole. The pole was slightly leaning but never fell on the premise. The pole was not burnt either. The fuse at the metre box was also intact.
I came to the conclusion that the cause of the fire did not emanate from the KPLC. If this would have been the case, the fuse on the transformer would have also blown. More so, such a problem would have affected the market centre on that line because the line serves up to 100 plus customer and not just the Plaintiff. I did not complain any complaints from any other customers served by that line.
The fire therefore emanated from inside the premise and not by electricity pole fault as alleged by the owner of the premises.
.....”

32. The Appellant having emphatically denied the Respondent’s claim in its defence and having filed a Witness Statement that poked serious holes in the Respondent’s claim as quoted above, the Respondent had advance notice that he had been put to strict proof on his allegations, and thus needed to collect and present adequate evidence at the trial, to disprove the Appellant’s defence above. This, I am afraid the Respondent failed to do.

33. I note that the trial Magistrate, in entering Judgment against the Appellant, remarked that DW1 stated that he did not know the cause of the fire, that he did not produce any document to authenticate his qualifications, and also that although he stated that he investigated the cause of the fire, he failed to present the Investigation Report to the Court. With due respect to the trial Magistrate, these “findings” were neither here nor there. By making the said observations, what the trial Magistrate did was to shift the burden of proof from a Plaintiff to a Defendant which is not allowed in our system of law. Burden of proof lies entirely on the Plaintiff save in the few limited recognized instances.



34. In this case, the Appellant had no obligation whatsoever to call an expert or present an Investigations Report as it was simply a Defendant. That was the duty of the Respondent (as the Plaintiff). The Appellant had no obligation to assist the Respondent by supplying him with evidence as alluded by the trial Magistrate. My reading of the trial Magistrate's ratio decidendi leaves me with the feeling that the trial Magistrate ruled the way he did perhaps on the basis of sympathy for the Respondent for the loss of his premises. In the obvious absence of evidence to pin the Appellant down, this was wrong.
35. I also note that in finding the Appellant liable, the trial Magistrate invoked the doctrine of *res ipsa loquitur*. Regarding the applicability of the doctrine, in the case of Catherine Wangechi Wariah (Suing as the administrators of the estate of late James Mwambiriro Njeri) versus Meridian Hotel Ltd [2016] eKLR, the Court held as follows:

“The effect of properly invoking the maxim of *res ipsa loquitur* shifts the burden of proof to the Defendant to show that the accident did not occur due to its negligence. In law, the court can infer negligence from the circumstances of the case in which the accident occurred ... In the book of Winfield and Jolowiz on tort 17th Edition the learned author wrote;

“This had traditionally been described by the phrase *Res Ipsa Loquitur* the thing speaks for itself ... its nature was admirably put by Morris L.J when he said that it;

“Possesses no magic qualities, nor has it any virtue, other than that of brevity, merely because it is oppressed in latin. When used on behalf of a plaintiff, it is generally a short way of saying;

I submit that the facts and circumstances which I have proved establish a *prima facie* case of negligence against the Defendant ... there are certain happenings that do not normally occur in the absence of negligence and upon proof of these a court will probably hold that there is a case to answer”

“There must be reasonable evidence of negligence, but when the thing is shown to be under the management of the defendant or his servants and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in absence of explanation by the Defendants that the accident arose from want of care...”

36. Similarly, in *Nandwa v. Kenya Kazi Ltd* (1988) KLR, 488, the Court of Appeal stated that:

“In an action for negligence, the burden is always on the plaintiff to prove that the accident was caused by the negligence of the defendant. However, if in the course of trial there is proved a set of facts which raises a *prima facie* inference that the accident was caused by negligence on the part of the defendant, the issue will be decided in the plaintiff's favour unless the defendant provides some answer adequate to displace that inference.”

37. Further, in the case of *Virginia Njeri & another v Joseph Njenga* [2020] eKLR, Ngugi (Prof) J (as he then was) held as follows:

“16. It is important to recall that the doctrine of *Res ipsa loquitur* is a legal rule that lets plaintiffs avoid proving specific negligence when they can show that the type of accident speaks of the defendant's negligence. It assesses liability in the absence of clear evidence of what went wrong. The Courts allow Plaintiffs this facility out of realization that some accidents are usually caused by negligence. Consequently, when the Plaintiff brings his case within the doctrine, the Court infers negligence from the accident's very occurrence.



17. However, for the doctrine to apply, two conditions must be satisfied. First, it must be shown that the accident is one that ordinarily would not occur in the absence of negligence. This is what allows the plausibility of the inference: if the inference is far-fetched, then the doctrine does not apply. Second, the doctrine does not apply unless it can be demonstrated that the Defendant was in exclusive control of the agency that caused the injury. This refers to the extent to which the Defendant participated at the scene of the accident. If the Defendant had exclusive agency that caused the accident, and the accident is one that ordinarily would not occur in the absence of negligence, then by operation of the doctrine of *res ipsa loquitur*, the Defendant would be liable for the accident unless he offered an explanation other than negligence.”

38. It is therefore clear that the doctrine of *res ipsa loquitur* is basically an exception to the principle that burden of proof always lies with the Plaintiff. It is however also evident that for the doctrine of *res ipsa loquitur* to apply, the Plaintiff must have first laid a sufficient basis by at least establishing a foundation for such shifting of liability. In this case, apart from only his oral testimony, the Respondent presented no other evidence inferring any negligence on the part of the Respondent. His only allegation was that the electric pole fell on his premises yet he presented nothing before the trial Court to demonstrate this alleged falling of the pole.

39. On the contrary, as aforesaid, all the photographs that produced by the Respondent, in fact, shows the pole still leaning, not fallen on the premises. On what basis therefore would the doctrine of *res ipsa loquitur* be justly invoked herein? I find none whatsoever.

40. Faced with a scenario such as the one herein where no sufficient basis had been laid to justify the invoking of the doctrine of *res ipsa loquitur*, the Court of Appeal, in the case of PGM (Suing as a legal representative of the estate of KMG - Deceased) v Kimathi (Civil Appeal 98 of 2017) [2022] KECA 76 (KLR) (4 February 2022) (Judgment), held as follows:

“ 30. The above conclusion now leads us to interrogate the application of the doctrine of *res ipsa loquitur*

.....

35. Our take on the totality of the above assessment which we have deliberately set out in extenso on the application or otherwise of the above doctrine is that there must be facts from which an inference can be drawn that in the absence of any explanation, the causation of the accident subject of the inquiry in the litigation was due to the negligence of the defendant. Herein there is no evidence demonstrating how the deceased came into contact with the respondent’s motor vehicle. If at all there was such contact. There is, therefore, no facts on the basis of which an inference could then and can now be drawn to pin responsibility on the respondent for the causation of the deceased’s death.”

41. The facts of this case are almost similar to those in the case of Jeremiah Maina Kageema vs Kenya Power & Lighting Co Ltd [2001] eKLR, in which Visram J (as he then was), held as follows:

“Mr. Khawaja submitted that the Defendant was not liable under the Electric Supply Lines Act (Cap. 315), repealed, as such liability ended at the point where such electric supply line reaches the supply terminals. He relied on section 2 of Electric Power Act (Cap. 314), repealed, that defines a service line as any portion of any electric supply line through which



electrical energy is or is intended to be supplied up to the point where such electric supply line reaches the supply terminals. In fact, section 12 of the former Electric Supply Lines Act (Cap. 315) conferred statutory liability for damage caused by a supply line. That section relied on by Ms. Ritho unfortunately does not aid her client. The proposition that the supplier's liability ends at the point when electricity is delivered to the consumer is supported by Pearson J. in *Sellars v. Best* [1954] 2 All E.R. 389 at p. 394 where he states:-

“They are responsible, of course, for bringing the electricity along their own lines and for making and continuing to have, it may be, a proper connection at the terminal supply points.....It seems to me too much to say that the Board are responsible for what the occupier by himself and his contractors and agents have done or omitted to do to his own chattels on his own premises.”

It is in the Plaintiff's evidence and also that of Simon Ngigi Mburu (D.W.2) that the wiring of the house was done by him (P.W.2) and not by the Defendants. Since the fire broke out only in the ceiling, then no negligence can be inferred on the Defendant's part. None of the fuses blew, and on a balance of probability, it is reasonable to conclude, as I do, that it was an internal defect in the wiring system of the house that caused the fire.”

42. In the end, I find that the trial Magistrate's conclusions in finding the Appellant liable were based on a misapprehension of the evidence and he thus acted on wrong principles in reaching the findings. He clearly failed to take into account circumstances material to the facts presented. I therefore feel justified to interfere with his conclusions and thereby set aside his findings on the issue of liability. I therefore find that the Respondent failed to prove his case to the required standard in civil matters, and for that reason, I allow this appeal.

ii. Whether the trial Court's award in damages was justified

43. On the issue of the award of damages, had I found against the Appellant on liability, I would not have interfered with the award as the same was, in my view, satisfactorily proved by receipts and by a relatively acceptable Valuation Report and the Receipt issued in payment thereof. The Valuation Report not having been controverted by a rival Report and the compensation sought being only for the structure (and not also for the items inside), I would have accepted it. However, since I have found against the Respondent on liability, unfortunately this observation will be of no assistance to him.

Final Orders

44. The upshot of my findings above is that this Appeal succeeds, with the result that the Judgment delivered on 2/11/2022 in Iten SPMCC No. E30 of 2022 is hereby set aside and substituted with an order dismissing the suit.

45. Since costs follow the event, the Appellant is awarded costs of both the trial Court suit and of this Appeal

DELIVERED, DATED AND SIGNED AT ELDORET THIS 28TH DAY OF MARCH 2025

.....

WANANDA J. R. ANURO

JUDGE

Delivered in the presence of:

Ms. Chepkwony for the Appellant



Ms. Ekisa for the Respondent

Court Assistant: Brian Kimathi

