



**Kenya Power & Lighting Company Ltd v Matunga (Civil Appeal
E009 of 2023) [2024] KEHC 1596 (KLR) (22 February 2024) (Judgment)**

Neutral citation: [2024] KEHC 1596 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
CIVIL APPEAL E009 OF 2023
KW KIARIE, J
FEBRUARY 22, 2024**

BETWEEN

KENYA POWER & LIGHTING COMPANY LTD APPELLANT

AND

RODGERS OWUOR MATUNGA RESPONDENT

*(This is an appeal from the judgment in Mbita Principal Magistrate's PMCC
No. E013 of 2021 by Hon. Nicodemus N. Moseti– Senior Resident Magistrate)*

JUDGMENT

1. Kenya Power & Lighting Company Ltd, the appellant herein, was the defendant in Mbita Principal Magistrate's PMCC No. E013 of 2021. This was a claim that arose from electrocution after the respondent was injured by a live wire that dislodged from the appellant's pole. The learned trial magistrate delivered the judgment dated 15th February 2023.
2. In the judgment, the appellant was held 100% liable. The learned trial magistrate made an award of Kshs. 2,506,000.00 in general damages and special damages of Kshs.6,500/=
3. The appellant was aggrieved by the judgment and filed this appeal through Owiti, Otieno & Ragot Advocates. The following grounds of appeal were raised:
 - a. The learned magistrate erred in law and, in fact, in finding that the appellant was fully liable for the accident when both the respondent and his witnesses failed to demonstrate in their testimonies how negligent the appellant was in causing the accident.
 - b. The learned trial magistrate erred in law and fact by holding that the appellant was 100% liable for the incident; hence, the apportionment of liability was erroneous and against the weight of the evidence.



- c. The trial magistrate erred in law and fact in awarding the respondent the sum of kshs.2,506,500/- without any legal or factual explanation or justification as to how the assessment was arrived at. Consequently, the trial court arrived at an award that was too high to justify a variation by this court.
 - d. The learned magistrate failed to properly evaluate the evidence on record, thus making an erroneous decision. The judgment appealed was against the weight of the evidence.
 - e. The learned trial magistrate erred in law and in fact in failing to consider in whole the evidence adduced in court.
 - f. The learned magistrate erred, in fact, and law, in failing to find that the respondent did not prove his case on a balance of probabilities.
 - g. The learned magistrate erred in law and, in fact, in disregarding the submissions made and filed by the appellant in arriving at the judgment in the case.
4. The respondent opposed the appeal through the Ouma & Ouma Associates Advocates firm. It was argued that the award was reasonable in the circumstances of this case.
 5. This court is the first appellate court. I know the duty to evaluate all the evidence on record, considering I had no advantage of seeing the witnesses testify and watching their demeanour. I will be guided by the pronouncements in the case of *Selle vs Associated Motor Boat Co. Ltd.* [1965] E.A. 123, where it was held that the first appellate court has to reconsider and evaluate the evidence that was tendered before the trial court, assess it and make its conclusions in the matter.
 6. Section 52 of the *Energy Act* provides:
This Act shall not relieve the Corporation of the liability to pay compensation or damages to any person for an injury to that person, that person's property or any of the persons' interests caused by the exercise of the powers conferred on the Board by this Act or by any other written law or by the failure, whether wholly or partially, of any works.
 7. In this case, the respondent was working in his garden when a wire dislodged from the pole electrocuted him. The appellant contended that he ought to have been on the lookout for the incident that occurred during the time. This was an unfair attempt to shift the blame. The appellant had a duty of care to maintain and secure all electric transmission lines and infrastructure.
 8. The finding by the learned trial magistrate that the appellant was 100% liable cannot be faulted.
 9. The appellant has argued that the award of kshs.2,506,500/- was very high. It is trite law that an appellate court will only interfere with an award of the trial court if certain circumstances are satisfied. In *Butt vs. Khan* [1981] KLR 349 on page 356, Law JA stated:
...an appellate court will not disturb an award of damages unless it is so inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the judge proceeded on wrong principles, or that he misapprehended the evidence in some material respect, and so arrived a figure which was either inordinately high or low.
 10. The respondent, as a result of the accident, pleaded that he sustained the following injuries:
 - a. Deep, extensive burns on both legs on the dorsal and the palmer aspect;
 - b. Deep extensive burns on the forearm extending to the humeral aspect of the right side;
 - c. Deep burns on the whole right palmer aspect;



- d. Lost consciousness for two days due to the current impact on brain nerve cells;
 - e. Lacerations on both knees; and
 - f. Bruises on the forehead.
11. Dr. Morebu Peter Momanyi examined the respondent on the 5th day of January 2021. He noted the injuries enumerated in the plaint. His conclusion was as follows:

Following the electrocution, Rogers sustained severe injuries, i.e., a head injury, which has left him with loss of memory and loss of libido and cannot be able to follow duty normally. The weakness is unlikely to recover fully as there is extensive damage to generalized nerves in the body.

He needs follow-up for his cardiac activity is compromised. The multiple severe soft tissue injuries some [sic] have healed with large, disfiguring, permanent, ugly scars, thereby creating a significant cosmetic defect in his appearance. However, others are septic, and he is on antibiotics. He needs neurological and occupational therapy follow-up. Permanent disability is assessed at 45%.

12. At the hearing in the trial court, the respondent proposed Kshs. 3,000,000.00. He relied on several decided cases to urge for the award. One of the cases was *Charles Kimani Ng'ang'a vs Kenya Power & Lighting Company Ltd [2006]* eKLR. The plaintiff was awarded Kshs. 2,500,000.00. We can be able to discern the injuries in the following paragraph of the judgment that states as follows:

PW 2 had testified that Patrick Ng'ang'a Kimani had suffered several recurrent fainting attacks, poor vision and impaired intelligence, and the evidence is supported by the findings made by Professor Peter A. Odhiambo in his medical report of 1st February 1996 – one year after the accident. The psychiatrist, Dr M.M.O Okonji, had written in his medical report that the plaintiff, who had been a normal average pupil up to Standard 5 level in primary school prior to 11th February, 1995 when he suffered an electric shock, was now operating academically at a nursery-to-pre-unit level, as a result of the accident. Dr. Gregory K. Mulunga stated in his report of 26th January, 1999 that upon examination of Patrick Ng'ang'a Kimani he formed the opinion that the injured boy was suffering a severe post-traumatic stress disorder after the electric shock. The injured boy, this doctor remarked, appeared to have lost all interest in life and was merely drifting on. The same view was held by Professor R.F. Ruberti, a consultant neurosurgeon who conducted an examination on 5th October, 2001. This doctor remarked that the injured boy was mentally slow and had lost interest in life. Patrick Ng'ang'a Kimani deteriorated in his school work until he dropped out of school. Professor Ruberti and Dr. Okonji were in agreement that the electric shock had affected Patrick Ng'ang'a Kimani mentally; and they were both of the view that the boy's deterioration in academic standards was a consequence of brain damage which had occasioned a permanent invalidity of the order of 20% - 30%.

13. The appellant in the trial court had proposed an award of Kshs.300, 000.00. Several decided cases were relied upon with awards ranging from Kshs.500 000.00 to Kshs.800 000.00. In the case of *Edith Alivitsa vs Kenya Forest Service & Kenya Power & Lighting Company Ltd [2018]* eKLR, an award of Kshs.800 000.00 was given for the following injuries:
- a. Electric shock on the left side of the body;
 - b. Loss of consciousness, paralysis of the left side of the body;
 - c. Swelling of the left upper limb with burns on the left hand; and



d. Swollen foot.

The plaintiff was awarded kshs.800,000/= general damages.

14. It is worth appreciating that the appellant relied on decisions where the injuries suffered were not comparable to what the respondent sustained. The decisions relied on by the respondent, on the other hand, were closely comparable to the injuries he sustained.
15. The upshot of the preceding analysis of the evidence on record is that I have no reasons which have been advanced to persuade me to interfere with the award by the learned trial magistrate. The appeal is dismissed with costs.

DELIVERED AND SIGNED AT HOMA BAY THIS 22ND DAY OF FEBRUARY 2024

KIARIE WAWERU KIARIE

JUDGE

