



Kenya Power & Lighting Co Limited v Pwani Warehousing Limited (Civil Appeal E187 of 2023) [2024] KEHC 7862 (KLR) (27 June 2024) (Judgment)

Neutral citation: [2024] KEHC 7862 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CIVIL APPEAL E187 OF 2023**

DAS MAJANJA, J

JUNE 27, 2024

BETWEEN

KENYA POWER & LIGHTING CO LIMITED APPELLANT

AND

PWANI WAREHOUSING LIMITED RESPONDENT

(Being an appeal from the judgment and decree of Hon. J.M. Nyariki (SRM) dated 11th July, 2023 in Mombasa CMCC No. 1265 of 2019)

JUDGMENT

1. The Appellant herein preferred the present appeal challenging the judgment of the Subordinate Court which found it 100% responsible for a fire that occurred on 12.06.2018 in a godown situated on LR No. Mombasa/Block1/401/Shimanzi belonging to the Respondent. The court awarded the Respondent Kshs. 930,000.00 special damages together with costs of the suit.
2. The background of the matter is that on 12.06.2018 at around 1930 hours, a fire broke out on a warehouse situated on L.R. No. Mombasa/Block/1/401/Shimanzi which belonged to the Respondent who had leased it to Portside Freight Terminals Limited. Security guards on duty put out a distress call to the fire department of the County Government of Mombasa who responded with alacrity and with the help of the port fire brigade, extinguished the fire at around 2020hrs. The Chief Fire Office of the County Government of Mombasa wrote a report covering the fire incident which attributed the cause of the fire to an electrical short circuit on the electrical wiring in the internal distribution caused by excess power as a result of power surge.
3. The Respondent sued the Appellant as the power supplier to the premises for negligence and for Kshs. 930,000.00 being monies expended towards the repair of the premises. The Respondent also prayed for general damages.



4. The Appellant opposed the suit on the ground that the fire occurred due to a short circuit in the internal distribution which was beyond its jurisdiction. It stated that it could only be held responsible for fires caused due to faults on the main power line. It also contested the special damages on the ground that they had not been proved to the required standard.
5. The Subordinate Court rendered its judgment noting that ownership of the property and the occurrence of the fire were not disputed. Both parties agreed that the fire was internal but disagreed on the cause being a power surge. The court however noted that the Appellant failed to indicate that it had inspected a meter box on the Respondent's premises. The Court relied on *Lily White v University College London Hospital NHS Trust* [2005] EWCA CIV 1466 together with the investigation report of the county officer and found that the Appellant was in control of the power supply hence was 100% liable for the fire.
6. The Appellant is dissatisfied with the judgment and appeals to this court based on the Memorandum of Appeal dated 24.07.2023. It raises the following issues for determination:
 - a. Whether the subordinate court misapprehended the evidence and consequently arrived at a wrong conclusion;
 - b. Whether the subordinate court proceeded on wrong principles and so arrived at an erroneous decision;
 - c. Whether the Respondent proved his case meriting granting of orders as prayed in the plaint;
 - d. Whether the subordinate court disregarded submissions and cases cited by the Appellant.
7. This being a first appeal, I am under a duty as the first appellate court to review the evidence afresh and reach my own conclusion; bearing in mind that the court of first instance had the chance to interact with witnesses first hand and thus had the benefit of observing their demeanor (*See Selle v Associated Motor Boat Co.* [1968] EA 123).
8. The report from the County Government of Mombasa – Fire and Rescue Services dated 14.06.2028 observed that during investigations:

It was noted that there were no signs of burnt electrical devices or smoldering of any insulations in the electrical power supply system from the main line to the transformer and into the meter, the system was intact except dismantling of the cut out fuses to isolate the supply into the godown; signs of smoldering with black residue of soot was observed on the internal wiring in the final distribution inside the godown.
9. DW1, the Appellant's witness, insisted that if there was a power surge, neighbours on the same service line would have been affected as well. Quoting the cases of *Jeremiah Maina Kagema v Kenya Power & Lighting Company Ltd* [2001]eKLR and *Apollo Njiru Munyi & another v Kenya Power & Lighting Company Ltd* [2021]eKLR the Appellant maintained the proposition that its liability stopped at the meter box. According to the Appellant, since the system was intact from the main line to the transformer and into the meter, then there was no power surge on the outside which could occasion liability on its part. From my observation, the investigation report by the Chief Fire Officer Mombasa County indicated that the cutout fuses had been dismantled to isolate supply into the godown. This would explain why neighbouring areas on the same supply line would not be affected by a power surge from the main supply line.
10. Dismantling of cut out fuses isolating only the godown would mean that the godown was left without protection from current surges and overloads. The report observed that the cause of fire was an



electrical short circuit on the electrical wiring in the internal distribution caused by excess power as a result of a power surge. Much as the cause of fire originated in the internal wiring, I doubt the power surge would have reached the internal wiring if the cut out fuses to the godown were in place. I do not think it is the responsibility of the Respondent to ensure that cutout fuses from the main supply line to the godown remained connected at all times. It was not proved that it was out of the negligence of the Respondent that the cutout fuses were dismantled to isolate the godown.

11. The cases of Jeremiah Maina Kagema v Kenya Power & Lighting Company Limited (Supra) and Apollo Njiru v John Njoka Runi & another (Supra) are distinguishable from the present cases in that the cut outs in the said cases were intact.
12. All factors considered, I agree with the Subordinate Court that on a balance of probability, the power surge in the Respondent's premises was not caused by the negligence of the Respondent, but rather of the Appellant.
13. Regarding the special damages of Kshs 930,000.00 the Respondent produced evidence to show that it engaged Rodgers & Sharon Investments who conducted renovations; copies of invoices, petty cash voucher and receipts were also produced to prove payment of the amount. I have no basis upon which to unsettle the award by the trial court.
14. In conclusion, the appeal is dismissed with no order as to costs given that the Respondent did not file any documents in response to the appeal.

SIGNED AT NAIROBI

D. S. MAJANJA

JUDGE

DATED and DELIVERED at MOMBASA this 27TH day of JUNE 2024.

OLGA SEWE

JUDGE

