



**SOU alias SO (Minor Suing through Next Friend and Mother VAW)  
v Kenya Power & Lighting Company (Civil Appeal E079 of 2024)  
[2025] KEHC 19054 (KLR) (19 December 2025) (Judgment)**

Neutral citation: [2025] KEHC 19054 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
CIVIL APPEAL E079 OF 2024  
AC BETT, J  
DECEMBER 19, 2025**

**BETWEEN**

**SOU ALIAS SO (MINOR SUING THROUGH NEXT FRIEND AND MOTHER  
VAW) ..... APPELLANT**

**AND**

**KENYA POWER & LIGHTING COMPANY ..... RESPONDENT**

*(Being an Appeal from the judgment and decree of Hon. M.A. Onyango (SRM) in Mumias Senior Principal Magistrate's Court Civil Suit No. E025 of 2023 delivered on 25/3/2024)*

**JUDGMENT**

1. This appeal arises from a judgment delivered in Mumias SPMC Case No. E025 of 2023, where the Appellant's mother had instituted a suit as next friend to the minor against the Respondent seeking general and special damages, costs, and interest for injuries suffered by the minor due to the electrocution that occurred on 22<sup>nd</sup> December 2022, where the minor was injured, and his grandmother unfortunately succumbed to her injuries.
2. At the trial, the Respondent denied any liability and attributed the negligence to the Appellant and his grandmother. In a judgment delivered on 25<sup>th</sup> March 2024, the trial court dismissed the claim, holding that they had failed to prove their case on a balance of probabilities.
3. The Appellant was dissatisfied with the decision of the trial court and filed this appeal on the following grounds: -
  1. That the learned trial magistrate erred in law and in fact by failing to appreciate the standard of proof in civil cases.



2. That the learned trial magistrate erred in law and in fact by arriving at a finding against the weight of evidence tendered by the appellant, thereby occasioning a miscarriage of justice.
3. That the learned trial magistrate erred in law and in fact by failing to appreciate the fact that there are instances when the burden of proof shifts.
4. That the learned trial magistrate erred in law and in fact by entirely relying upon the evidence of DW1 when the same was not substantiated.
5. That the learned trial magistrate erred in law and in fact in failing to appreciate the physics behind how electricity operates and how a power surge occurs.
6. That the learned trial magistrate erred in law and in fact in disregarding the plaintiff's testimony together with that of PWII in its entirety without any legal basis and/or justification
7. That the learned trial magistrate erred in law and in fact in dismissing the plaintiff's suit with costs to the defendant.

### **Evidence in brief**

4. PW1, SO, a minor, testified that on 22<sup>nd</sup> December 2022, while visiting his grandmother in Mayoni, he was electrocuted after touching a tin connected to an ice-making machine. He stated that electricity poles had fallen that day, and, as he went to check whether the ice had dried, the tin produced a cracking sound and became stuck to him. He screamed, and his grandmother, M, who was coming from the bathroom, rushed to help him but was also electrocuted. Both fell, and he later found himself at Matungu Hospital, where he received treatment. He stated that his grandmother died as a result of electrocution. He produced treatment notes, a medical report, and a receipt showing payment of Kshs. 10,000/=, a demand letter, and a certificate of postage. He testified that he still experiences pain and blamed the Appellant for failing to turn off the power during repair.
5. The Appellant's case was supported by that of his mother, who testified as PW3, and said that she was outside the house when the incident occurred. The witnesses attributed the incident to a power surge caused by KPLC staff working on the power lines without switching off the power.

### **Respondent's Case**

6. DW1, Tom Marunga, a Distribution Area Engineer with KPLC based in Mumias, testified that he was in charge of the Mumias and Butere region. He adopted his witness statement and filed documents as his evidence-in-chief. He stated that he was informed of the incident on 16<sup>th</sup> March 2023 through KPLC's Nairobi office upon being served with a court summons. He visited the scene on 17<sup>th</sup> March 2023 at around 10:00 a.m., but was not granted access into the house and was limited to inspecting the meter and network.
7. He testified that there was no maintenance work from KPLC in the area on the date of the incident, and no report of power surges was received. He explained that KPLC is responsible up to the cut-out and meter, while internal wiring is the consumer's responsibility. He noted that the meter box had loose connections and excessive taping, indicating poor internal wiring. He concluded that the incident occurred within the consumer's premises and KPLC should not be held liable. He urged the court to dismiss the claim against KPLC.



8. On cross-examination, DW1 confirmed he works for Kenya Power but had no documents in court to prove it. He admitted he is not formally trained in investigations and was instructed by KPLC's head office to handle the matter. An external insurance investigator also questioned him, but he was not shown their report.
9. He visited the scene on 17<sup>th</sup> March 2023 and spoke with a neighbour who reported the electrocution incident but refused to give a name. He did not enter the house and could not verify the alleged loose sockets. He acknowledged that the meter found at the house belonged to Constantin Miheso and not the premises in question, suggesting the connection was illegal. However, he provided no documents to support this and did not include the disconnection in his report. DW1 also testified that no incident was reported in KPLC's system on the material day and that working on live power lines is unsafe and unlikely. He admitted that the report established only probable cause and that the exact cause of the incident could not be determined.

### **Appellant's Submissions**

10. The Appellant submitted that the learned trial court erred in so far as it considered that the entire burden of proving the case was upon the appellant under Section 107(1) of the *Evidence Act*, while the Respondent, being the custodian of records which should have included material records as to incidents of electrocution and staff deployment, did not produce such records; for this case, the records should have confirmed or dispelled the incidents that had allegedly occurred. The appellant argued that the burden of proof was shifted to the respondent under Section 112 of the *Evidence Act*, as the respondent was in exclusive possession of the information necessary to prove or disprove the incident on 22nd December 2022.
11. The Appellant also submitted that the Respondent's witness confirmed in cross-examination that KPLC keeps incident records and had commissioned a private investigation into the matter. However, neither the incident records nor the investigative report was produced in court. The failure to produce this evidence is said to constitute concealment of material facts, particularly since the respondent's witness admitted that the report was filed with the company's legal department. It is submitted that the only logical inference is that the findings were adverse to the respondent and were deliberately withheld.
12. Further, the Appellant asserted that the Respondent alleged that the electric meter at the deceased's home belonged to a third party and that there was an illegal connection, yet no documentation was provided to support the claim, and no complaint by the alleged owner of the meter was tendered. The witness also claimed the power was disconnected after the incident, yet this was not recorded in the witness statement or report. The trial court was faulted for having dismissed the claim because there was no independent witness or production of the ice-making machine. It is contended that there is no legal bar to family members testifying, particularly where they are eyewitnesses to the incident. The rejection of such evidence on the basis that the witnesses were related is, therefore, unfounded. Furthermore, the insistence on the production of the ice-making machine as evidence is akin to requiring the production of a vehicle in a road traffic accident claim, an expectation that the law does not support.
13. The Appellant relied on Kenya Power & Lighting Co. Ltd versus Samuel Macharia Kinuthia, HCCA No.130 of 2016 (Kiambu), wherein the High Court found in favour of the plaintiff because the defendant failed to produce internal records or to rebut the evidence effectively. Similarly, he argued that in *Rosemary Vassaux v Kenya Power & Lighting Co. Ltd (2014) eKLR*, the court applied the doctrine of *res ipsa loquitur*, holding the defendant liable because the harm arose from equipment under its control and would not have occurred if proper care had been taken.



## Respondent's Submissions

14. The Respondent, in its submissions dated 11<sup>th</sup> December 2024, contends that the trial court rightly dismissed the Appellant's case, having correctly evaluated the evidence and found that their story was more believable.
15. They quoted the case of Manchester Outfitters Limited V. Tailors and Textiles workers union (2024) KECA 304 (KLR) to support their assertion on who bore the burden of proof
16. The Respondent faulted the Appellant for failing to seek discovery of relevant documents, citing Lustman & Co (1990) Ltd v Corporate Business Centre Ltd & 4 Others [2022] eKLR, and asserts that the Appellant could not shift the evidential burden.
17. They further submitted that the Appellant alleged that the Respondent's activities triggered the power surge which caused the ice-maker to electrocute the minor and that it was up to them to prove that the ice-maker existed, that it was not faulty, and that there were ongoing repairs by the Respondent's personnel on its power-lines. Further, they submitted that it was impossible for the Respondent's staff to work on live electricity without suffering electrocution. They also contended that since the alleged repairs affected the entire area, the power surge would have affected other neighbours, not just the Appellant's home.
18. Reliance was placed on John Muneve Mati vs. Returning officer Mwingi North Constituency & 2 others (2018) eKLR; Mumbi M'Nabea vs. David M. Wachira (2016) Eklr to argue that the burden of proof is on the Appellant to prove that the Respondent acted negligently.
19. They quoted the case of Kenya Power & Lighting Company Limited vs. Ganjoni Towers Limited (2024) KECA 1803 (KLR) and submitted that the trial court was right in its decision, which was based on the law, evidence and facts which were correctly analyzed.
20. However, if the appeal succeeds, the Respondent supported the trial court's assessment of quantum at Kshs. 150,000/= as reasonable.

## Analysis and Determination

21. As this is a first appeal, this court is guided by the principles in *Selle & Another v Associated Motor Boat Co. Ltd & Others* [1968] EA 123, that an appellate court must reconsider the evidence, evaluate it afresh, and draw its own conclusions, while bearing in mind that it did not see or hear the witnesses. The Court of Appeal in *Ephantus Mwangi & Another v Duncan Mwangi Wambugu* [1982-88] 1 KAR 278 emphasised that appellate interference is warranted only where the trial court misdirected itself on a point of law or fact, thereby causing a miscarriage of justice.
22. I have considered the pleadings, memorandum of appeal, and the parties' written submissions, and I have deduced the following issues for determination;
  - a. Whether the Appellant discharged the burden of proof.
  - b. Whether the trial court erred in dismissing the Appellant's claim.
  - c. Whether the court should allow the appeal.
23. In *Kenya Power & Lighting Company Limited vs. Ganjoni Towers Limited*(supra), the Court of Appeal reaffirmed that in claims of electrical negligence, the plaintiff must demonstrate, on a balance



of probabilities, that the injury was caused by the defendant's equipment or operations and that the defendant failed to take reasonable care to prevent foreseeable harm.

24. Sections 107 and 109 of the *Evidence Act* require the party asserting a fact to prove it on a balance of probabilities. The Appellant contends the trial court erred by not shifting the burden to KPLC under Section 112, which applies when facts are peculiarly within a party's knowledge. The Appellant argues that KPLC withheld critical records, including the surge reports and the investigation findings, thereby warranting an adverse inference.
25. Without establishing a prima facie case of negligence on the part of the Respondent, the burden does not shift. The Appellant's case was based on alleged ongoing repairs by the Respondent and the power surges caused by the repairs.
26. This being an appellate court, it should be cautious in differing with the finding of facts by the trial court. In *Peters v Sunday Post Ltd.* (1958) EA 424, at Pg. 429, the court held that:-

“It is a strong thing for an appellate court to differ from the finding on a question of fact, of a Judge who tried the case and who has had the advantage of seeing and hearing the witness.”
27. The Appellant's case was based on alleged ongoing repairs by the Respondent and the power surges caused by the repairs. In the first instance, the Appellant was required to prove that the deceased was a legitimate customer of KPLC. This was important in view of the Respondent's defence, which blamed the incident on the Appellant and specifically pleaded that the deceased tampered with and allowed the minor to tamper with electricity. It is trite knowledge that there are many illegal connections of electricity in the country. To establish a nexus between the incident and KPLC therefore, it was imperative that the Appellant provide evidence of legitimate consumption of KPLC's power through production of a power bill or official receipt proving the existence of a supplier-customer relationship with the Respondent that would give rise to a duty of care over electricity supplied to the deceased's house and provide a causal link for the incident.
28. This was crucial in view of the fact that the incident occurred within a private dwelling house resulting in injury to the minor and loss of life of his grandmother and KPLC had blamed the deceased for the incident. As observed by the trial court, the Appellant produced an Occurrence Book No. 11/2/1/2023, which indicated that an incident was reported on 2<sup>nd</sup> January 2023. The electrocution incident occurred on 22<sup>nd</sup> December 2022, which was 12 days before incident was reported. It is also noted that the report did not indicate whether the accident was due to electrocution. The Appellant further failed to call a police witness to adduce any evidence and confirm the nature of the report that was made. Be that as it may, the significant lapse of time between the date of the incident and the date of report to the police raises doubt as to the credibility of the report. An injury and loss of life from an electrocution should have elicited an immediate formal report to the police and KPLC. It is worth noting that the first report to KPLC came in February 2023.
29. The failure by the Appellant to produce material evidence meant that their evidence was largely circumstantial and speculative. As held in *Statpack Industries v James Mbithi Munyao* [2005] KEHC 2043 (KLR), negligence must be proved specifically and cannot be inferred merely from the occurrence of an accident. In the said case, the court held that;-

“Coming now to the more important issue of “causation”, 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 a result of someone's negligence. An injury per se is not sufficient to hold someone liable for the same."

30. This court is in agreement with the trial Magistrate's finding that the mere occurrence of the incident, without credible proof of a power surge, faulty transmission, or direct link to the Respondent's repairs, cannot by itself sustain a claim of negligence.
31. In *Kenya Power & Lighting Co. Ltd v Ganjoni Towers Ltd* (supra), the Court of Appeal held that negligence claims against KPLC require cogent evidence, not mere allegations, and the plaintiff must first establish a factual basis for liability. In *Anne Wambui Ndiritu v Joseph Kiprono Ropkoi* [2004] eKLR, the Court of Appeal emphasised that the burden remains with the plaintiff unless a clear case shifts it under Section 112. Unlike *Kenya Power & Lighting Co. Ltd v Samuel Macharia Kinuthia* [2016] eKLR, where KPLC's failure to produce records was coupled with strong plaintiff evidence vide expert testimony, the Appellant in this case did not call an expert witness to support their claim that there was a power surge due to KPLC's negligence.
32. On whether the trial court erred in not considering the weight of the Appellant's evidence and considering the evidence of the Respondent, the Appellant argues that the trial court erred in rejecting PW1 and PW2's testimony for lack of independence and accepting DW1's unsubstantiated claims. The trial court found PW1 and PW2's accounts uncorroborated.
33. On the other hand, the Respondent's witness DW1 testified that there was faulty internal wiring and an illegal connection, supported by his site visit, and produced a report to support his claim. The trial court's reliance on DW1's evidence, a KPLC employee with technical expertise, which it found that evidence credible, was within its discretion. The Appellant's failure to produce the ice-making machine, a qualified electrician who inspected the scene and the wiring in the premises after the incident, or other technical testimony to corroborate the claim that there was a power surge in the area or that there were power repairs by KPLC, weakened their claim, as electrical fault cases require technical proof.
34. In *Jennifer Nyambura Kamau v Humphrey Mbaka Nandi* [2013] KECA 423 (KLR), the Court of Appeal held that :-

"If an expert witness was necessary, the evidential burden of proof was on the appellant to call the expert witness. The appellant did not discharge the burden and as Section 108 of the *Evidence Act* provides, the burden lies on that person who would fail if no evidence at all were given on either side."
35. In *Richard Muriuki Waheire v KPLC* (supra) the Court dismissed a claim for lack of expert evidence linking KPLC's actions to the incident.
36. The Court of Appeal in *Anne Wambui Ndiritu v Joseph Kiprono Ropkoi* (supra) held that appellate courts should not interfere with reasoned findings absent clear error. I am convinced that no error is evident in the trial court's findings. It is my view that the trial court's evaluation was sound and should not be disturbed.
37. If the court had allowed the appeal, it would not have disturbed the quantum which in any event, remains uncontested.
38. Accordingly, the appeal is hereby dismissed and the judgement of the trial court delivered on 25<sup>th</sup> March 2024 upheld in its entirety.
39. The Appellant shall bear the costs of this appeal.



**DATED, SIGNED, AND DELIVERED AT KAKAMEGA, THIS 19<sup>TH</sup> DAY OF DECEMBER 2025.**

**A. C. BETT**

**JUDGE**

In the presence of:

Mr. Wandallah for the Appellant

Ms. Njage for the Respondent

Court Assistant: Polycap

