



**Kenya Power & Lighting Company Ltd v Jowi (Civil Appeal
E080 of 2021) [2023] KEHC 2395 (KLR) (28 March 2023) (Judgment)**

Neutral citation: [2023] KEHC 2395 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
CIVIL APPEAL E080 OF 2021**

KW KIARIE, J

MARCH 28, 2023

BETWEEN

KENYA POWER & LIGHTING COMPANY LTD APPELLANT

AND

HAGAI OMONDI JOWI RESPONDENT

*(Being an Appeal from the judgment in Oyugis Senior Principal Magistrate's
SPMCC No. 65 of 2019 by Hon. B. Omwansa–Senior Principal Magistrate)*

JUDGMENT

1. Kenya Power & Lighting Company Ltd, the appellant herein, was the defendant in Oyugis Senior Principal Magistrate's SPMCC No. 65 of 2019. This was a claim that arose from electrocution after the appellant left live wires exposed on the path that the respondent used. The learned trial magistrate delivered judgment dated 25th August, 2021. The parties had entered consent on liability at 70:30 in favour of the respondent.
2. The learned trial magistrate made an award of Kshs. 2,000,000.00 in general damages before factoring liability.
3. The appellant was aggrieved by the said judgment and filed this appeal through Peter M. Karanja, Advocate. The following grounds of appeal were raised:
 - a. The learned trial magistrate erred in law and fact in making the award of general damages in the said judgment that was manifestly excessive in the circumstances as to amount to an erroneous estimate of the loss suffered by the respondent.
 - b. The learned trial magistrate erred in law and fact entering judgment for general damages without considering the applicable principles as established by precedent that comparable



injuries ought to attract comparable damages and by so doing reached a figure of damages that is inordinately high, arbitrary and totally unsupported by any authority or precedent.

- c. The learned trial magistrate erred in law and in fact in failing to correctly appreciate the plaintiff's injuries and in misapprehending the same and thus arriving at an erroneous award of damages.
 - d. The learned trial magistrate erred in law and in fact in making an award of kshs.2, 000,000/- without giving any reason for such an award and thus made an award that was arbitrary, capricious and inordinately high, erroneous and which amounts to a miscarriage of justice.
 - e. The learned trial magistrate ignored the appellant's submissions, paid lip service and made no reference to all of the precedents on general damages cited before him, thus coming to a wrong decision on the quantum.
4. The appeal was opposed by the respondent through the firm of W. O Ochuka & Company Advocates. It was argued that the award was reasonable in the circumstances of this case.
 5. This court is the first appellate court. I am aware of my duty to evaluate the entire evidence on record bearing in mind that I had no advantage of seeing the witnesses testify and watch their demeanor. I will be guided by the pronouncements in the case of *Selle v Associated Motor Boat Co. Ltd.* [1965] EA 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 own conclusions in the matter.
 6. Since the parties had recorded a consent, the only issue is whether the general damages were inordinately high.
 7. 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 v Khan* [1981] KLR 349 at 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.
 8. The respondent as a result of the accident complained of sustained the following injuries:
 - a. Electric burns in the left hand;
 - b. Electric burns on the left side of the chest; and
 - c. Electric burns on the left side of the elbow joint.
 9. Dr. L.W. Okombo who examined him noted a scar on the left hand, a scar on the left side of the abdomen, unhealed wound on the right side of the chest and unhealed wound on the right foot. He was of the opinion he may require medical attention for physiotherapy and analgesic.
 10. At the hearing in the trial court, the respondent made a proposal of Kshs. 3,000,000.00. He relied on *Kenya Power & Lighting Co Ltd v Emmanuel Shapil Ndege & another (NCCK)* [2019] eKLR where the respondent who as a result of the accident, sustained burns on the neck, chest, abdomen, arms and legs including the toes was awarded Kshs. 3,000,000.00.
 11. The second case that he relied on was *Patrick M. Were v Kenya Power & Lighting Co. Ltd* [2014] eKLR. The plaintiff sustained the following injuries:
 - a. Deep electric burns on the face, neck, chest, abdomen, back and both hands.



- b. Contractures and keloid scars on the abdomen neck and back;
- c. Contractures and keloid scars on right upper arm with right shoulder joint of abduction to 15 degrees limitation of forward and backward extensions to 20%, Elbow joint contracture deformity of 30 degrees, lack of pronation and supination;
- d. left upper arm – left shoulder joint limitation of abduction 20 degrees limitation of forward and backward extension to 20%;
- e. Neck: contracture with severe limitation of extension and rotations.

For these injuries, the plaintiff was awarded Kshs.3, 000,000.00.

- 12. Clearly, the injuries in the above two cases were more severe than in the instant case.
- 13. The appellant in the trial court had proposed an award of Kshs.300, 000.00. I have looked at the authorities cited in support of this proposal and I find the injuries suffered therein to be less severe than what the respondent in this case suffered.
- 14. I am persuaded to interfere with the award of the learned trial magistrate from the foregoing observations. I set aside the award and substitute it with an award of Kshs. 1,000,000.00. To that extent the appeal succeed with half the costs.

DELIVERED AND SIGNED AT HOMA BAY THIS 28TH DAY OF MARCH, 2023

KIARIE WAWERU KIARIE

JUDGE

