



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CIVIL DIVISION**

**HIGH COURT CIVIL APPEAL CASE NO. 17 OF 2014**

**KENYA POWER & LIGHTING CO. LTD.....APPELLANT**

**VERSUS**

**KOM & MM (Legal Representatives of the Estate of the late BA (Deceased).....RESPONDENT**

**(Being an Appeal from the Judgment of Mr. Ole Keiuwa (Principal Magistrate)**

**delivered on 10<sup>th</sup> January 2014 in Civil Case No 1709 of 2011 before the**

**Chief Magistrates Court, Milimani Commercial Courts Nairobi)**

**JUDGMENT**

1. The Appellant, Kenya Power and Lighting Company Limited was sued by the Respondent vide a plaint dated 20/4/2011. The Respondent's claim was for damages following the electrocution of the deceased by power cables. By the consent of the parties, liability was apportioned in favour of the Respondent against the Appellant at 70%. The case then proceeded for assessment of damages.

2. The trial magistrate assessed the damages as follows;

**a. Pain and suffering – Kshs. 20,000/=**

**b. Loss of expectation of life – Kshs. 200,000/=**

**c. Lost years – Kshs. 200,000/=**

**d. Special damages – Kshs. 6,525/=**

Subject to the apportionment of liability, the trial magistrate entered Judgment for the Respondent for Kshs. 298,567.50, costs and interest.

3. The Appellant was aggrieved by the said Judgment and appealed to this court on grounds that can be summarized as follows;

**a. The trial magistrate erred in awarding damages for lost years.**

**b. The trial magistrate erred in awarding damages for loss of expectation of life that was manifestly excessive.**

4. This being a first Appeal, this court is duty bound to re-evaluate the facts afresh and come to its own independent findings and conclusions. See for example the case of **Selle v Associated motor Boat Co. & others [1968] E.A. 123** where it was stated as follows:-

**“An appeal to this Court from a trial by the High Court is by way of retrial and the principles upon which this Court acts in such an appeal are well settled. Briefly put they are that this Court must 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 this respect. In particular, this court is not bound necessarily to follow the trial judge's findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially**

**to estimate the evidence or if the impression based on the demeanor of a witness is inconsistent with the evidence in the case generally (Abdul Hameed Saif v Ali Mohamed Sholan (1955), 22 E.A.C.A. 270)”.**

5. It was submitted by the Appellants’ side that the deceased was about 1<sup>1/2</sup> years old and that therefore the award of damages for lost years was not justifiable. That on loss of expectation of life, the Respondent’s side had submitted for an award of Kshs. 120,000/= while the Appellant’s submitted for a sum of Kshs. 30,000 yet the trial magistrate awarded the manifestly excessive sum of Kshs. 200,000/=. The court was urged to dismiss the claim for lost years and reduce the sum awarded for loss of expectation of life to Kshs. 80,000/=.

6. The Respondents’ side supported the Judgment.

7. As stated by the Court of Appeal in the case of **Kemfro Africa Limited T/a Meru Express Services & Another v A.M. Lubia and Another (No. 2) (1982-88) L KAR 727 at page 703** that:-

**“It is trite law that the assessment of general damages is at the discretion of the trial court and an appellate court is not justified in substituting a figure of its own for that awarded by the court below, simply because it would have awarded a different figure if it had tried the case at first instance.**

**The appellate court can justifiably interfere with the quantum of damages awarded by the trial court only if it is satisfied that the trial court applied the wrong principles (as by taking into account some irrelevant factor or leaving out of account some relevant one) or misapprehended the evidence and so arrived at a figure so inordinately high or low as to represent an entirely erroneous estimate.”**

8. In addition to the authorities cited by the parties herein, this court has also looked at other comparable cases e.g.

(a) **Anthony Konde Fondo & another Vs. RMC (The Representative of FC(Deceased) [2020] eKLR** where the representatives of a child aged 7 years was awarded Kshs. 900,000/= for loss of dependency.

(b) **S.M.K Vs. Josphat Nkari Makaga [2017] eKLR** where the award of dependency in respect of a deceased child was assessed at Kshs. 800,000/=.

9. On loss of expectation of life, the same is not unreasonable particularly taking into account the fact that it is within the range of comparable decisions. **See for example;**

**a. Siginon Freight Ltd & another Vs. Simon Kamau Githemba [2020] eKLR and**

**b. West Kenya Sugar Company Ltd Vs. Philip Sumba Julaya (Suing as the administrator and personal representative of the estate of James Julaya Sumba [2019] eKLR.**

10. In the upshot, I do not find the assessment of general damages by the trial magistrate to be excessive nor any wrong principles applied. The same is reasonable. I find no merits in the Appeal and dismiss the same with costs.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 29<sup>TH</sup> DAY OF JULY, 2021.**

**B.THURANIRA JADEN**

**JUDGE**