



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KERICHO**

**CIVIL CASE NO. 24 OF 2008**

**PHILIP ONDIEKI MASIRA.....PLAINTIFF**

**VERSUS**

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

**JUDGMENT**

1. The plaintiff herein, PHILIP ONDIEKI MASIRA (hereafter referred to as the plaintiff) filed the plaint dated 30/5/2008 against KENYA POWER & LIGTHING CO LTD (here-after referred to as the Defendant) seeking general damages for injuries the plaintiff sustained on 6/6/2005 when live wires came in contact with the plaintiff in the cause of his employment with the defendant.
2. The plaintiff also asked for special damages in respect of medical expenses incurred and costs of the suit plus interest at court rates.
3. The Defendant entered appearance and file filed a Defence dated 8/9/2014 denying the plaintiff's claim and also stating that the suit is statute time barred by virtue of section 4 (2) of the Limitations of Actions Act Cap 22 Laws of Kenya.
4. The case proceeded Exparte since the Defendant was served with the hearing notice and did not appear in court during the hearing of the case.
5. The plaintiff said in his testimony in court that he works with Kenya Power and Lighting Company (the Defendant) as an artisan since 1989 until 2005 when he was injured in an accident.
6. The plaintiff said on 6/6/2005, he was supervising a team erecting power lines in Getarwet along Sotik – Kericho road near Litein when he left his supervisor George Masech to put off the main source of power at Chemosit sub-station. The electricity at Chemosit was switched off but at Litein there was one phase that was connected directly which was under the supervision of Awuor which was not switched off.
7. The plaintiff said he went with one casual worker to the site. A wire was lying on the tea plants and he did not know it was live. He was carrying a crowbar and when he got near the wire, he found himself on the ground. He lost consciousness and he later learnt he was in a coma for 3 months at Siloam Hospital.
8. The plaintiff said he was in Siloam Hospital for one and a half years. Apart of left foot was cut off with one toe on the right foot which was cut off. He said tendons were cut off on the left arm and he had holes on the shoulder where the current passed.
9. The plaintiff said from Siloam he was taken to Kericho Nursing Home and then transferred to Aga Khan Kisumu where he stayed for one month. An X-ray was done and he was taken to theatre and one bone which was burnt was removed and skin grafting was done on both legs.
10. The plaintiff said he stopped going for checkups in Aga khan in 2010 and he still goes for physiotherapy at Nyamira. He said he reported the accident to Ministry of Labour but no action was taken.
11. He said his employer offered him Kshs.508,000 as compensation but he declined. He said Dr. Raburu in Aga Khan assessed his incapacity at 85%. He is now seeking compensation for the accident. He said he is seeking special damages, general damages for pain and suffering and costs of the suit.
12. The Defendant did not attend court to give evidence and neither did they file any submissions. The plaintiff's counsel filed written submissions dated 24/12/2018.

13. The plaintiff is now seeking damages tabulated as follows in the written submissions:

a. 85% permanent incapacity	Kshs.6,999,048
b. Temporary incapacity	Kshs.583,254
c. Doctors fees	Kshs.20,000
d. Hospitalization costs	Kshs.500,000
e. Medication	Kshs.300,000
f. Post Hospitalization	Kshs.300,000
g. Incidental costs	Kshs.300,000
<b>TOTAL</b>	<b>Kshs.9,002,302</b>

14. The defendant filed a statement of defence dated 8/9/2014 and denied the plaintiff's claim and averred that if any injuries, loss and/or damages were occasioned to the plaintiff as alleged in the plaint, the same were solely and wholly caused and/or contributed to by the negligence, carelessness of the plaintiff and not the defendant as alleged.

15. The defendant also stated in paragraph 13 of the defence that this suit is statute time barred. The defendant did not appear in court on the date the case was listed for hearing to defend the suit. The issues for determination in this suit are as follows:

**i. Whether the cause of action is time-barred by the Limitation of Actions Act.**

**ii. Whether the defendant is liable for the injuries the plaintiff sustained.**

**iii. What damages is the defendant liable to pay the plaintiff?**

16. On the issue as to whether the cause of action is time-barred by the Limitation of Actions Act, I find that the cause of action arose on 6/6/2005 and the plaint dated 30/5/2008 was filed on even date.

17. I also find that the plaintiff pleads this claim both as tort and contract and he has the benefit of relying on either of the limitations periods set out for tort and contract. In the present case the plaintiff's case is grounded both on tort and contract which do have a limitation period of 3 and 6 years respectively.

18. I find that this case was filed within a period of 3 years after the cause of action arose and therefore the same is not time-barred by the Limitation of Actions Act.

19. On the issue of liability, I find that the plaintiff's evidence was not challenged as the defendant did not defend the suit. I find the defendant 100% liable in negligence for the injuries the plaintiff sustained.

20. On the issue of damages, the law requires that special damages be specifically pleaded and strictly proved. I find that no special damages were pleaded and therefore none are payable.

21. On the issue of general damages for pain and suffering, the plaintiff is seeking Kshs.6,999,048. I have considered the authorities relied on and I find them comparable. I rely on the case of **Duncan Kimathi Karagana vs Ngugi David & 3 Others [2016]eKLR** where Kshs.5,000,000 was awarded for similar injuries.

22. I accordingly award the plaintiff Kshs. 5,000,000 in respect of general damages for pain and suffering.

23. The rest of the heads of damages were not proved and the same are dismissed.

24. Judgment be and is hereby entered in favour of the plaintiff against the defendant in the sum of Kshs. 5,000,000 together with costs of this suit and interest at court rates from the date of this judgment until payment in full. Orders to issue accordingly.

**Delivered, dated and signed at Kericho this 18<sup>th</sup> day of September 2020.**

**A. N. ONGERI**

**JUDGE**