



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU
CIVIL CASE NO. 119 OF 2008

AGNES WANJIKU NDEGWA..... PLAINTIFF

VERSUS

KENYA POWER & LIGHTING COMPANY.....DEFENDANT

J U D G M E N T

The plaintiff's claim against the defendant special and general damages arising from injuries she suffered as a result of an electric post falling on the road she was walking on with a friend. This road was Wamumu/Karaba/Kiandegwa in Mwea Division.

There was a consent judgment on liability in the ratio of 90:10 in favour of the plaintiff. The matter proceeded to formal proof. The particulars of the injuries complained of were;

- (i) Severe and extensive burns all over the body which have now left scares all over the body which turns itchy and painful in cold weather.***
- (ii) Extensive burns that have disfigurements in the thighs and buttocks.***
- (iii) Extensive burns to the shoulder, chest and the neck leaving stiff neck.***
- (iv) Extensive burns to both legs, feet and toes with the result that she is unable to step flat on both feet.***
- (v) Inability to do any laborious task or carry heavy loads.***

The plaintiff in her evidence stated that an electric pole fell on her and burnt her on 23/10/2007. She was from church and she was with Jane Wangechi, (PW1). They were taken to Mwea Hospital after police came to the scene. She was admitted for 3 days and transferred to Kenyatta National Hospital where she stayed for two (2) months. She produced a police document (PEXB1), Discharge summaries (PEXB2, 3a-c), bundle of receipts (PEXB4), photos of herself (PEXB5a&b), demand letter (PEXB6) medical reports (PEXB7&8). Jane Wangechi (PW1) filed a case and the decree was paid (PEXB9). In cross-examination she said she could be 66 years old. She testified that she had last gone to the hospital over these injuries 6 years ago. She admitted that age is also catching up with her. PW1 confirmed the plaintiff's evidence of the occurrence of the incident.

Both counsels did file written submissions. Mr. Njanja for the plaintiff submitted that the plaintiff had suffered a lot of pain because of the burns and that this had left her with permanent disability. He therefore suggested that she be paid Shs.1.5 million as compensation, loss of future earnings of Shs.250,000/=. He cited the case of ***NAKURU HCCC NO. 120/2006 BETTY SEGUTON VS KUNSTE***

HOTEL LIMITED where the plaintiff had suffered severe burns and an award of 1.5 million was made.

Mr. Arithi in his submissions stated that the medical report (PEXB7) indicated that she sustained 35% permanent disability. He further submitted that all injuries had healed but had left scars on the feet which are tender and affect her walking. Counsel while relying on Section 19(1), 20 & 21 of the Stamp Duty Act submitted that the claimed special damages could not be paid as no stamp duty had been paid. And relying on the case of **LILIAN OTIENO VS JOSEPH KIMANA NAIROBI HCCC NO. 2670/1986** he submitted that an award of Shs.300,000/= was sufficient compensation.

There is no dispute that the plaintiff suffered burns on parts of her body. The findings by Dr. Wokabi (PEXB7) are as follows:-

- ***She was walking with a profound limp.***
- ***She has a very tender scar on the outer aspect of the left foot.***
- ***There is a skin graft on the upper out aspect of the right foot.***
- ***The right 5th toe is missing.***
- ***There are multiple nodular scars on the right thigh and buttock.***
- ***There are multiple nodular scars covering a large area of the chest posteriorly.***
- ***There is a large contracted scar on the right side of the neck which is limiting full flexion of the neck sideways.***

Those of Dr. Wambugu are as follows (PEXB8):-

- ***Electrical burn wounds involving right side of neck, upper trunk posteriorly, left arm right lower limb and both feet.***
- ***Total burn surface area estimated at 12%***
- ***Amputation right small toe.***

Dr. Wokabi assessed her permanent disability as 35% while Dr. Wambugu gave her 30%.

The plaintiff herself in evidence said she walks with difficulty and very slowly. She even falls at times. She is not able to continue with her rice farming. It is therefore clear that even if the plaintiff is aging the electric shock and the burns have had a negative impact on her. The fact that she does not attend clinics any more is not to say she has fully recovered. PW1 who was injured together with the plaintiff said she was healed and had even been paid by the Defendant vide the decree (PEXB9).

The plaintiff has been confirmed to be 66 years by virtue of the identity card availed in Court on the date of hearing. When the accident occurred in 2007 she was only 59 years and still strong and energetic. This can be confirmed from the photos produced herein (PEXB5B).

Mr. Arithi relied on a judgment of 7/11/1990 where the plaintiff suffered burns on both legs to submit that the plaintiff herein be paid Shs.300,000/=. Even PW1 who suffered lesser injuries was paid Shs.800,000/= as general damages. The injuries suffered by the plaintiff herein are almost similar to those suffered by the plaintiff in the case of **BETTY CHEPCHIRCHIR SEGUTON VS KUNSTE HOTEL LTD (Supra)**. In the said case the plaintiff was awarded Shs.1.2 million as general damages on 6/2/2009. On this head the plaintiff will get Shs. 1,300,000.

Though the plaintiff said she was a rice farmer there was no proof of any earnings of whatever nature. On special damages the issue of stamp duty has arisen. Only one receipt dated 22/5/2008 for the medical report bears a stamp. The other receipts are said to have been issued by Kenyatta National Hospital which is a National hospital and is expected to comply with the law. In the case of **DARSHAN SHAR VS ROOPMAN (JK) LTD & 3 OTHERS [2005] eKLR** the High Court considered the exception under Section 20 of the Stamp Duty Act and held:-

“Under the Stamp Duty Act Section 19 in Civil cases only, a party wishing to claim expenses paid to him under the special damages claim and on proof of such claim must have complied

with the Stamp Duty Act. The revenue stamp on such a receipt should have been issued. Where this has not been complied with by the person issuing the said receipt, Section 20 requires that such person do proceed to the collector of stamp duty to assess the penalty required to be paid for failing to comply”.

My sister Justice Kasango in **LEONARD NYONGESA VS DERRICK NGULA RIGHA CIVIL APPEAL NO. 168/2008 (MOMBASA)** in a similar matter held:-

The position, therefore, is that a receipt for which payment of stamp duty is required under the Stamp Duty Act is admissible in evidence on condition that the person issuing the same takes it for stamp duty assessment before the Court can attach any probative value to it. In my opinion, if that is not done, the Court cannot award damages based on such a receipt.”

I do concur with this finding. It therefore follows that only Shs.2,000/= will be allowed as special damages.

Judgment is therefore calculated as follows:-

General damages	Shs.1,300,000/=
Special damages	2,000/=
TOTAL	1,302,000/=
Less 10% contribution	130,200/=
Balance	Sh.1,172,000/=

I therefore enter judgment for the plaintiff for **Shs.1,172,000/= (One million, one hundred and seventy two thousand only)** plus interest and costs.

Right of appeal explained.

DELIVERED, DATED AND SIGNED AT EMBU THIS 19TH DAY OF FEBRUARY, 2014.

H.I. ONG'UDI

JUDGE

In the presence of:-

Mr. Mogosu for Njanja for plaintiff

Plaintiff

Njue CC