



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**CIVIL DIVISION**  
**CIVIL CASE NO. 441 OF**

**1. ANASTACIA TENGECHA**  
**2. WILLIAM KIPLANGAT TUIMISING**

(suing as the personal representatives of  
**RICHARD KENYOE SANG**  
**TENGECHA)..... PLAINTIFFS**

**V E R S U S**

**KENYA POWER & LIGHTING COMPANY**  
**LIMITED..... DEFENDANT**

**J U D G M E N T**

The Deceased in this case, **RICHARD KENYOE SANG' TENGECHA**, was the 1<sup>st</sup> Plaintiff's husband and the 2<sup>nd</sup> Plaintiff's nephew. He accidentally died on 25<sup>th</sup> May, 2006 by electrocution in the course of his duties as the Defendant's employee. He was aged 35 years at the time of his death.

This suit was brought by the Plaintiffs (as administrators of the Deceased's estate) for the benefit of his estate under the **Law Reform Act, Cap. 26**, and also for the benefit of his dependants under the **Fatal Accidents Act, Cap. 32**. His dependants were:-

- (i) ANASTACIA TENGECHA – Widow
- (ii) DENNIS KIPTOO TENGECHA – Son
- (iii) CHERONO RUTH TENGECHA – Daughter
- (iv) NAOMI CHEROTICH TENGECHA – Daughter.

All the children are still minors.

Judgment on liability was entered by consent on 19<sup>th</sup> May, 2010 at 80%/20% in favour of the Plaintiffs. This judgment therefore concerns only assessment of damages.

Before hearing commenced on 30<sup>th</sup> May, 2011 the Plaintiffs' bundle of documents filed on 14<sup>th</sup> December, 2007 was by consent admitted in evidence as **Exhibit A**. The Deceased's payslips for the months of June to May, 2006 were also by consent admitted in evidence as **Exhibit B**.

It was agreed by the learned counsels that the following were the issues for determination:-

1. The multiplicand.
2. The multiplier.
3. The dependency ratio.
4. Quantum of damages under the Law Reform Act.

5. Quantum of damages under the Fatal Accidents Act.
6. Costs of the suit.

For the Plaintiffs only the 1<sup>st</sup> Plaintiff testified. The Defendant also called one witness, **Peter Misango (DW1)**. He was the Pay-Roll Accountant-in-Charge of the Defendant and had worked in that capacity from November, 2008. But he had been in the Defendant's employment since 1990 (in accounting since 1991).

I have considered the testimonies of those two witnesses. I have also considered the written submissions filed on behalf of the parties, including the cases cited.

**The Multiplicand**

The evidence before the court shows that the Deceased had the following constant monthly income at the time of his death:-

- (i) Basic Salary.....KShs. 22,859/00
- (ii) House (Owner-Occupier) Allowance.....23,650/00
- (iii) Shift Allowance (Day).....4,509/30
- (iv) Mileage Allowance.....20,169.50

In addition, the Deceased also had a variable income of overtime (high) and overtime (low). As these extra incomes were variable (and sometimes not earned) the just approach is to take the monthly averages for the period June, 2005 to May, 2006. Those averages, which represent the extra monthly income, by my calculation, were:-

- (v) Overtime (high).....KShs. 7,820/90
- (vi) Overtime (low).....4,254/70
- Gross monthly income.....**KShs. 83,263/40**

From this monthly income must be deducted the monthly statutory deductions, which were P.A.Y.E. (KShs. 21,682.40), N.H.I.F. (320/00), N.S.S.F (200/00) and trade union dues (100/00) – a total of KShs. 22,302/40. That leaves an average nett income of **KShs. 60,961/00**.

I am not persuaded that the Deceased's repayment towards his various loans and salary allowances ought to be taken into account when reckoning his monthly income. Through the loans and advances he had merely consumed his income in advance; it does not mean that the income was not earned.

The **multiplicand** to be used therefore is **KShs. 60,961/00**.

**The Multiplier**

The Deceased died at age 35. I believe the retirement age for a person employed in the public service at the time (including those working with public corporations) was 60 years. But one has to give allowance for the uncertainties and vicissitudes of life. The Plaintiff's learned counsel has suggested a multiplier of 23 years, while the Defendants' learned counsel suggests 14 years. I will award a multiplier of 17 years to give him a working life up to the age of 52 years.

**Dependency Ratio**

The evidence shows that the Deceased was over-committed with loans and advances. The 1<sup>st</sup> Plaintiff testified that the loans were for paying school fees. Sometimes the Deceased did not get anything at the end of the month because he had already consumed it in advance by way of loans and/or advances. What is clear is that he did not have the KShs. 50,000/00 every month that the 1<sup>st</sup> Plaintiff claimed he gave her for house-keeping, etc.

Besides, the 1<sup>st</sup> Plaintiff herself had an income of KShs. 40,000/00 per month, some of which she must

have utilised towards upkeep of the family.

The dependency of two-thirds claimed by the 1<sup>st</sup> Plaintiff is not proved on a balance of probabilities. That suggested by the defence at two-fifths is on the lower side given that the Deceased had a wife with 2 young children and one other on the way coming. It is not unreasonable to expect that he used about one-half of his income on his family. I will therefore use a dependency ratio of **one-half**.

### **Damages Under the Law Reform Act**

(i) **For pain and suffering:** No one ever dies instantly. There're must always be an element of suffering. There is no evidence of prolonged suffering in the present case. I will therefore award KShs. 5,000/00 as suggested by the Plaintiffs' counsel.

(ii) **Loss of expectation of life:** The Deceased died at the prime of his life with a promising career ahead of him. I will award the KShs. 70,000/00 suggested by the Defendant's counsel (the Plaintiff's counsel suggested KShs. 60,000/00).

(iii) **Lost years:** As there is a dependants' claim under the Fatal Accidents Act, damages for lost years must be discounted. See the case of **Maina Kaniaru & Another -vs- Josephat Muriuki Wang'andu, Court of Appeal, Civil Appeal No. 14 of 1989** (Unreported).

### **Damages Under the Fatal Accidents Act**

Having already determined the multiplicand, the multiplier and the dependency ratio, the arithmetic works out as follows:-

$$\text{KShs. } 60,961/00 \times 12 \times 17 \div 2 = \text{KShs. } 6,281,022/00$$

### **Special Damages**

KShs, 114,950/00 was specifically pleaded and strictly proved. I will award the same.

To summarise, I will enter judgment for the Plaintiffs as follows:-

(a) General damages under the Law Reform Act, **less** 20% contributory negligence.....KShs. 60,000/00

(b) General damages under the Fatal Accidents Act, **less** 20% contributory negligence .....4,974,417/60

(c) Special damages **less** 20% contributory negligence.....91,960/00

There will be interest at court rates on the general damages from the date of judgment until payment in full, and on the special damages from the date of filing suit until payment in full.

The Plaintiffs shall have their costs of this suit less 20% contributory negligence.

One other thing needs to be done, and that is to apportion the damages under the Fatal Accidents Act among the dependants. Those damages are KShs. 4,974,417/60. Considering the ages of the children and all other relevant factors, I will apportion that sum as follows:-

1<sup>st</sup> Plaintiff.....KShs. 3,474,417/60  
Each Child..... KShs. 500,000/00

The share of each child will be banked in the joint names of the 1<sup>st</sup> Plaintiff and the Deputy Registrar of the court, the 1<sup>st</sup> Plaintiff to have access to any interest accruing, for the benefit of the child. Upon the child attaining the age of majority the account shall be transferred exclusively to the child.

Those will be the orders of the court.

**DATED, SIGNED AND PRONOUNCED IN OPEN COURT AT NAIROBI THIS 5<sup>TH</sup> DAY OF AUGUST 2011.**

**H.P.G. WAWERU**  
**JUDGE.**