



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Civil Suit 10 of 1998

CHARLES KIMANI NG'ANG'APLAINTIFF

[Suing as next-of-kin and representative of NG'ANG'A KIMANI – injured minor]

-VERSUS-

KENYA POWER & LIGHTING COMPANY LIMITEDDEFENDANT

JUDGMENT

A. INJURY OCCASIONED BY LOOSE ELECTRIC-WIRE SHOCKS: THE PLEADINGS

The plaintiff in this suit was originally filed on *7th January, 1998*. An amended plaintiff was subsequently filed, on *5th October, 1999*. And a re-amended plaintiff, dated *27th February, 2003* was later filed.

The plaintiff pleads that at all material times, the defendant was the owner and supplier of electricity at Kahawa West Shopping Centre, inclusive of a sub-station, No. 3255 situated thereat. On *11th February, 1995* the plaintiff's son, who was then aged 14 years, was a lawful pedestrian within Kahawa West Shopping Centre and was injured by electric shock caused by loose-hanging electric wire, and this happening was attributable to negligence on the part of the defendant's agents or servants. It is pleaded that the injury to the plaintiff occurred because the defendant's field attendants who were responsible for the safe flow of electric power at the Kahawa West Shopping Centre, had been negligent. It is pleaded further, or in the alternative, that electric power sub-station No. 3255 which was the property of the defendants, had been constructed close to a corridor used by passers-by. It is pleaded that electricity had escaped from the sub-station, on or about *11th February, 1995* due to the snapping of a wire, as a consequence of which the entire transformer became electrically alive, and the plaintiff's son who was passing by was burnt by a hanging wire, and sustained severe physical injuries and shocks.

The plaintiff pleads that the keeping of electricity in the defendant's transformer and electric mains constituted a ***non-natural user*** of the land, electricity being a dangerous thing, and so the defendants are to be held liable to the plaintiff for the escape of the electricity. The plaintiff avers that the defendant failed to ensure that electricity would not escape from the transformer or electric mains; and in this way the defendant created and maintained a ***public nuisance*** which caused injuries to the plaintiff's son.

As particulars of negligence, it is pleaded that the defendant had failed to keep power checks, or to ensure that the electric wires were insulated; that the defendant failed to give any warning of loose, live, hanging electric wire from the transformer; that the defendant failed to ensure that youngsters in the neighbourhood did not touch or play with uninsulated, loose, live electrical wires; that the defendant failed to take safety precautions to ensure that passers-by would not be injured by the flow of electricity;

that the defendant failed to maintain the sub-station switch-gear in good and sound mechanical condition; that the defendant allowed or permitted the presence of a defective and dangerous sub-station in the middle of a shopping centre; that the defendant failed to fence or provide guards around the sub-station, for the protection of the public from any danger arising there from; that the defendant failed to take adequate, or any measures, by way of inspection, maintenance or repair, for ensuring that the sub-station was safe to the public.

Particulars of injuries to the plaintiff's son occasioned by electric shocks as aforesaid, are set out thus: burns on both hands; blisters on the right leg; blisters on the left leg; infection on the left leg; scars on both hands and on left leg; wounds on the left leg; wounds on both hands; loss of memory; inclination to fainting; loss of concentration. The plaintiff pleads that as a result of the said electric shocks, his son was traumatized and suffered post-traumatic stress, disorder and psychiatric complications leading to loss of memory and lack of concentration. The son was treated with antibiotics and had wound dressing over a number of weeks. The plaintiff's son had, just one day after the incident, developed an inclination to faint, poor vision, and nightmares.

It is pleaded that the plaintiff had suffered *special damages*, while the son had suffered *general damages*, as a consequence of the incident leading to this suit. The plaintiff's special damages are shown as: (i) police abstract – Kshs.100/=; (ii) medical expenses – Kshs.85,790/=; (iii) medical reports – Kshs.68,500/= - totalling to Kshs.154,390/=. The plaintiff further pleads that to-date, medical treatment for his son is still continuing, and so there would be proof of current costs, as part of the special damages. A claim was also being made for general damages. The plaintiff prayed for costs, and interest at Court rate.

The defendant's statement of defence dated 29th January, 1998 and filed on 9th February, 1998 was not amended following the amendments to the plaint; and therefore it still represents the defendant's up-to-date pleadings.

The defendant denied that an electricity incident had taken place on 11th February, 1995 involving one **Ng'ang'a Kimani** who was then aged 14 years and was a pedestrian and that the cause was loose, hanging electric wires at the Kahawa West Shopping Centre in Nairobi. It is then pleaded that, without prejudice to the foregoing assertion, even if an accident took place in which the plaintiff touched a loose, hanging electric wire the same would not have been due to the defendant's, but the injured person's negligence.

The defendant stated as acts of negligence on the part of the plaintiff's son the following: climbing the electric post to the location of the transformer and electric wire; touching the wire which the injured boy should have known was live and dangerous; going into an enclosed area where the wire and the transformer were; failing to notice that the wire was not insulated, and that therefore, it was dangerous.

The defendant pleaded that there were no pleadings for medical expenses as special damages; and so the defendant would object to evidence being adduced to prove medical expenses.

B. TESTIMONIES

(a) The Plaintiff's Case

The matter came up before me on 25th May, 2005 when the plaintiff was represented by learned counsel **Mr. Mariaria**, while the defendant was represented by **Mr. Masika**. **Mr. Mariaria** introduced the plaintiff's case, and led P.W.1, **Patrick Ng'ang'a Kimani**, through the evidence-in-chief.

P.W.1 testified that he lives at Kamae, in the Kasarani area of Nairobi. He testified that he was 23 years of age, and had no memory of what had befallen him when he was 14 years old – i.e. the electrical-shock incident which has led to the instant suit. He used to attend school then, some nine years ago, but he later

dropped out of school. He could not recall what cause led to his leaving school. He did not even know whether he had ever been ill in his life. He recalled that in 1997, he used to attend Kahawa Primary School. He testified that today he has no work engagement, and spends his time with his mother and father (**Charles Kimani**) at home.

Upon cross-examination by learned counsel, **Mr. Masika**, P.W.1 testified that he spends all his time at home while some of his age-mates are involved in informal jobs such as bicycle repairing. He testified that he is able to feed himself, as well as to bathe and to dress up, but his sister was the one who would make up his bed after he has slept in it. He averred that there had been a time (which he could not remember) when he could not feed himself. Although there are friends who come to visit the witness, he does not go to visit them. He recalled that in school, he had progressed up to Primary Standard 8 level; but he did not remember whether he had taken any examinations at that level. He said his memory was poor; in 1997 he was a student in Standard 8; he did not know why he had left school. He testified that he was not feeling ill at the moment, and he reckoned that he had no health problem. He said he liked dealing with figures; and he knew that five plus five was *ten*; and ten plus ten was *fifteen*.

P.W.2 was **Charles Kimani Ng'ang'a**, the plaintiff herein. He averred that he lived at Kamae in Kahawa West, Nairobi, and **Patrick Ng'ang'a Kimani** was his son, born in 1981 and was now 22 years of age.

P.W. 2 testified that, on **11th February, 1995** he had gone out from home, leaving his car behind to be washed. As he was walking back home, at about 12.00 noon he came by a crowd of people talking excitedly; and he then learned that the subject – matter was his own son, **Patrick Ng'ang'a Kimani** who had had a mishap. His son was later, at about 5.00 p.m., taken to Ogwedhi Clinic which was about one kilometre from his home. When P.W.2 saw his son at Ogwedhi Clinic, at about 8.00 p.m. the son could not recognise him. The son had injuries on the hands and feet. He had been accorded treatment at the Clinic, and P.W.2 took him home. After further medication had been dispensed at home, it was realised that the injured son was not improving; and even after three days he was unable to recognise anybody including his siblings. P.W.2 then took the son to a medical doctor, **Professor Peter Odhiambo** whose clinic was at Continental House in the City Centre. **Professor Odhiambo** attended to the patient, and gave medication. This doctor later prepared a medical report, dated 1st February, 1996 (Plaintiff's Exhibit No. 3).

P.W. 2 later resorted to a different doctor, **Dr. Munene**. He too provided treatment, and subsequently gave a medical report, dated 16th September, 1998 (Plaintiff's Exhibit No. 4). **Dr. Munene** recommended psychiatric attention, and so the patient was committed to **Dr. Okonji** who also prepared a medical report, dated 9th June 2003 (Plaintiff's Exhibit No. 2). The defendant's insurance company, Kenindia Assurance Company Limited, had wanted the patient to be seen by their doctor, **Dr. Shah**. **Dr. Shah** examined the patient and prepared a medical report dated 10th September, 1998 (Plaintiff's Exhibit No. 6).

A further medical opinion was still required; so the patient was seen by **Dr. Mulunga**, who also prepared a report (Plaintiff's Exhibit No. 5). **Dr. Munene** again saw the patient several times. And Kenindia Assurance Company Limited arranged for yet another doctor, **Professor Roberti**, to see the patient. **Professor Roberti** examined the patient for many hours, and prepared a report dated 5th October, 2001 (Plaintiff's Exhibit No. 1).

The plaintiff testified that his son had been attending Kahawa Primary School before the accident, which occurred in 1995. The son thereafter endeavoured to attend school, but dropped out. The school report (Plaintiff's Exhibit No. 7), dated 22nd October, 1998 showed that the boy had had average academic performance before the accident, but his performance dropped dramatically after the accident; and he had to repeat a class due to poor performance. His performance in Standard 6 had been very poor, even though he was allowed to proceed to Standard 7, purely on grounds of age; and in 1995 he went to Standard 8, but could not concentrate on his studies and did not take the main examination of that year, the Kenya Certificate of Primary Education (K.C.P.E.).

The plaintiff testified that his son had not recovered to-date; he was now aged 22 but had no useful

occupation or vocation; he is still ailing; he is incapable of living with any amount of fire close-by. The plaintiff averred that recently, the son had disappeared from home without anyone's knowledge, and a search led to his place of escape in Nyahururu.

P.W.2 testified that it was some three kilometres from his house to the spot where the electrical accident had taken place. He had himself seen the electrical wire which had caused injury to his son; it was on the ground; this wire had developed short-circuit. Photographs had been taken of the scene of the accident some three days after the incident (Plaintiff's Exhibits 8A, 8B, 8C); and these showed that the said fallen electrical wire was naked, all the way from the transformer to the ground. Only several days after the accident did the defendant's workers or agents come along to insulate the naked wires. The incident had been reported to the defendant, who on 27th February, 1995 conducted investigations and prepared findings (Plaintiff's Exhibit No. 9). The defendant's report is duly signed by its senior engineer, and it was supplied to the plaintiff after he had been called to the offices of the defendant. The report stated that a high-voltage earth wire had low-voltage conductors and this had led to the transformers being live, and thus dangerous.

P.W.2 testified that he had incurred large expenses in the treatment of his son; he produced a bundle of receipts and invoices (Plaintiff's Exhibit No. 12). He testified that he was still, even at this moment, incurring further costs in the treatment of the son; and that before filing suit he had already spent as much as Kshs154,390/=. The son still attends clinics from time to time, and every three-to-six months it is necessary to have medical attention. These days such regular medical care is provided at the Kenyatta National Hospital, and transport costs amount to Kshs.200/= on each such occasion; and for each attendance the sum of Kshs.120 is paid to the hospital. He estimated that every year he spends Kshs.640/= in having medical care for the son at Kenyatta Hospital. He testified that he had been the one bearing these costs, and that the defendant has not carried the burden. **Dr. Munene** had recommended such medical consultations some five years ago, and they have continued since then.

(b) Defendant Closes Case

After counsel for the plaintiff, on 17th November, 2005 closed the plaintiff's case, counsel for the defendant did the same, noting that the parties had already reached agreement on liability. The defendant adduced no evidence.

C. CONSENT JUDGMENT ON LIABILITY, AND CONTENTION ON QUANTUM OF DAMAGES: SUBMISSIONS FOR THE DEFENDANT

On 14th January, 2003 counsel in this matter appeared before **Lady Justice Rawal**, who recorded a consent judgment in the following terms:

“By consent, judgement be entered in favour of the plaintiff in the ratio of 30%: 70% on liability. The issue of quantum of damages claimed to be heard and determined”.

This was the starting point in the defendant's submissions, dated and filed on 7th December, 2005.

Learned counsel **Mr. Masika** acknowledges that the plaintiff's son had been electrocuted by a loose, hanging electric wire, and the injuries sustained, as described in the medical reports by **Professor R.F. Ruberti, Dr. Charles K. Munene, Dr. Okonji, Dr. Gregory K. Mulunga** and **Prof. Peter A. Odhiambo**, included: brain damage; burns on right hand; burns on left hand; burns on right foot.

Learned counsel submitted that the burns sustained by the plaintiff's son “were very minor and healed within a short period of time”. He submitted that from medical examinations involving a CT scan and EEG, the outcomes were within normal limits – and so it should be concluded that the patient had not suffered severe brain damage. Relying on **Professor R. F. Ruberti's** report, counsel contended that the fainting episodes which the patient had developed had been treated and have since stopped. Counsel submitted that in **Professor Ruberti's** assessment, the patient's permanent invalidity stood at between

20%-30%; and that in the patient's appearance and testimony in Court, it could not be concluded that he had suffered severe brain damage.

The foregoing submissions led learned counsel to the conclusion that the sum of Kshs.600,000/= would be adequate compensation for pain and suffering and loss of amenities.

Mr. Masika relied on certain authorities; such as **Bashir Ahmed Butt v. Uwais Ahmed Khan** (1982-88) 1 K.A.R. 1, in which an infant plaintiff aged 7 ½ years had suffered a fractured skull, lost two teeth, bled from the nose, was unconscious for ten hours, was hospitalised for four days, and spent a further month at home, in bed. The infant's permanent disability was assessed at 50%. The High Court, in that case, awarded Kshs.400,000/= which the Court of Appeal reduced to Kshs.300,000/=.

In **Harshid F. Patel v. Agembo Dulo & Another**, Nairobi HCCC No. 1408 of 1980, the plaintiff suffered cerebral concussion, large cuts to the forehead and palm, large haematoma around his eye and the right cheek. Some ten months after the accident, the plaintiff complained of pain in the hand and teeth, loss of sense of smell and taste, forgetfulness, and lack of sleep. There was psychiatric evidence that his permanent brain damage was in the range 20%-30%. General damages for pain, suffering and loss of amenities were assessed at Kshs.500,000/=.

In **Mercy Njeri Mwangi v. Joseph K. Githaru & Another**, Nairobi HCCC No. 1395 of 1983 the plaintiff was five years old at the time of the accident, and 13 at the time of trial. Due to a traffic accident she sustained severe brain damage and head injury, and remained deeply unconscious for one week. She suffered from bouts of epilepsy, she became anti-social and was generally regarded as being out of her mind. She could not observe simple personal hygiene and did not attend school. General damages for pain, suffering and loss of amenities were awarded, in the sum of Kshs800,000/=.

In **Mugo Kariuki v. Joseph M. Mukundi & Another**, Nairobi HCCC No. 1547 of 1984 the plaintiff, a six- year old child attending primary school was involved in a road accident and was admitted in hospital in a condition of deep unconsciousness caused by head injuries. For five days he remained in that state. He had been an average student, but deteriorated in performance. He remained with a high chance of developing epilepsy. He was awarded general damages in the figure of Kshs.250,000/=.

In **S. J. Chege & Another v. Johanna W. M. Vesters & Another** (1982-88) 1 K.A.R. 1197, the 1st respondent suffered brain concussion, fracture of the 7th cervical vertebrae, fracture of four ribs, fracture of the scapula, comminuted compound fracture of the right humerus, compound fracture of the right olecranon, closed fracture of mid-shaft right femur, compound fracture of the left femur, compound fracture of the left tibia, compound fracture dislocation of the right ankle and fracture of the right patella. She was admitted in Intensive Care Unit for 14 days and was unconscious for 10 days. The trial Judge had awarded the 1st respondent Kshs.910,000/= in general damages for pain, suffering and loss of amenities; but the Court of Appeal reduced this to Kshs550,000/=.

In **Dickson Nyamai & Another v. Monique M. Futi & Another** (1990) 2 K.A.R. 165 the respondent, then aged 19, suffered severe injuries in a road accident, which led to paralysis of the lower limbs, neurological damage, and impairment of sight and hearing. She also lost the possibility of child bearing. At the time of trial she was still unconscious; she was deeply comatose, as a result of generalised closed-head injury. General damages for pain, suffering and loss of amenities were assessed at Kshs700,000/= by the High Court and was upheld by the Court of Appeal.

As regards **special damages** counsel submitted that the damages, claimed as Kshs154,390/= could not be claimed except by adding up the total sum shown on the receipts which had been submitted. Counsel also disputed the sufficiency of proof of the claimed sum of Kshs640/=, for transport and consultation fees. The claim for Kshs1,000,000/= for future medical expenses was also contested as it had not been pleaded, nor proved.

Learned counsel urged that English authorities should not be the reference point, in determining the requisite levels of awards in Kenya. The Court of Appeal in **Butler v. Butler** (1984) K.L.R. 225 had thus

held (p.234):

“... awards by foreign Courts do not necessarily represent the results which should prevail in Kenya, where the conditions relevant to the assessment of damages, such as rents, standard of living, levels of earnings, costs of medical supervision and drugs, may be different. Some degree of uniformity, however, is to be sought in awards of damages and the best guide is to pay regard to recent awards in comparable cases in local Courts”.

Learned counsel urged that the proper awards in this case are: Kshs800,000/= as general damages – less 30% contribution of Kshs240,000/= leaving a balance of **Kshs.560,000/=**.

Mr. Masika disputed the plaintiff’s claim for Kshs.9,500,000/=, as not being grounded on valid parameters: “No doctor whose medical report was presented in Court stated that the plaintiff needs future medical expenses”.

Learned counsel submitted that special damages in the sum of Kshs.154,390/= were introduced into the case only in 2003 – some eight years ago; and so the claim is time-barred.

D. QUANTUM OF DAMAGES: PLAINTIFF’S SUBMISSIONS

(a) Special Damages

Learned counsel **Mr. Mariaria** submitted, on the basis of the evidence, that **Patrick Ng’ang’a Kimani** had continuously received medical attention following the electrical-shock accident which he had suffered on 11th February, 1995. The bundle of receipts tendered in evidence, counsel submitted, showed that a certain sum of money prayed for in the re-amended plaint had been spent in securing medical attention for the plaintiff’s son – and on that evidence there had been no contest and no cross-examination. The plaintiff was therefore praying for the sum of Kshs154,390/= in special damages.

(b) General Damages

Learned counsel urged that general damages are a pecuniary compensation which will make good the loss suffered by the plaintiff as far as money can provided recompense, for a wrong committed by the defendant. The injury suffered by **Patrick Ng’ang’a Kimani** in this case, it was submitted, was the natural result of the defendant’s acts of negligence.

Mr. Mariaria submitted that all the doctors’ reports produced by consent of the parties – save for the one by **Dr. R.B. Shah** – are in agreement that the plaintiff had suffered brain damage due to the electrical shock he sustained on 11th February, 1995 due to the negligence of the defendant. The several doctors, namely **Dr. Geoffrey K. Mulunga**, **Professor R.F. Ruberti**, **Dr. M.M.O. Okonji**, **Professor Peter A. Odhiambo** and **Dr. Charles K. Munene**, counsel submitted, all agree that the plaintiff had suffered brain damage as a result of the electric shock.

PW 2 had testified that **Patrick Ng’ang’a Kimani** had suffered several recurrent fainting attacks, poor vision and impaired intelligence, and the evidence is supported by the findings made by **Professor Peter A. Odhiambo** in his medical report of 1st February, 1996 – one year after the accident. The psychiatrist **Dr. M.M.O Okonji** had written in his medical report that the plaintiff who had been a normal average pupil upto Standard 5 level in primary school prior to 11th February, 1995 when he suffered electric shock, was now operating academically at a nursery-to-pre-unit level, as a result of the accident. **Dr. Gregory K. Mulunga** stated in his report of 26th January, 1999 that upon examination of **Patrick Ng’ang’a Kimani** he formed the opinion that the injured boy was suffering a severe post-traumatic stress disorder after the electric shock. The injured boy, this doctor remarked, appeared to have lost all interest in life, and was merely drifting on. The same view was held by **Professor R.F. Ruberti**, a consultant neurosurgeon who conducted an examination on 5th October, 2001. This doctor remarked that the injured boy was mentally slow and had lost interest in life. **Patrick Ng’ang’a Kimani** deteriorated in his school

work until he dropped out of school. *Professor Ruberti* and *Dr. Okonji* were in agreement that the electric shock had affected *Patrick Ng'ang'a Kimani* mentally; and they were both of the view that the boy's deterioration in academic standards was a consequence of brain damage which had occasioned a permanent invalidity of the order of 20% - 30%.

Counsel submitted from the evidence that *Patrick Ng'ang'a Kimani's* appearance in Court as PW1, had shown that he was an incapacitated young man of 22 now, who remembered very little and had a level of intelligence and alertness which fell below that of a normal average person of his age. His father (PW2) gave evidence that he has not recovered from the accident, and has been returning to hospital for medical examination at least twice a year. PW2 testified that the young man suffers memory lapses, looks confused, and is not capable of caring for himself. Counsel submitted, on the evidence, that as a result of the electrical accident, *Patrick Ng'ang'a Kimani* had suffered brain damage leading to neurosis which is recognized as mental illness, and for this injury the young man was entitled to damages.

Counsel submitted that the said electric-shock accident, for *Patrick Ng'ang'a Kimani*, led to loss of pleasure and other amenities of life; he lost his enjoyment of life, as well as all forms of concentration and sense of purpose. It was submitted that the young man had lost the capacity and power to earn a living, and may for ever depend on his parents.

Learned counsel urged that the Court, in awarding general damages, should consider loss of future prospective earnings, as *Patrick Ng'ang'a Kimani* has been rendered incapable of earning a living in any capacity. Counsel urged that the Court do take into account that *Patrick Ng'ang'a Kimani* may not marry and set up a family of his own, and he will probably always need the aid of an assistant.

Counsel urged that the Court should rely on an English case on brain damage, *W.H. Stewart v. War Office*, 1951 C.A. No. 174. He noted that in the *W.H Stewart* case an award of the equivalent of Kshs.2,451,000/= had been made in 1951. Counsel urged the Court to start from that baseline, and consider the intervening "*large and comparative permanent changes in real money value*". The plaintiff's prayer was for an award of Kshs.9,500,000/= as general damages incorporating lost future prospective earnings, and in addition a sum of Kshs.1,000,000/= as future medical expenses. The plaintiff also prayed for special damages in the sum of Kshs.154,390/=, and costs.

E. ANALYSIS AND DECREE

There is not too much difference on the facts, as between the parties. The electric-shock accident, in respect of which consistent and well-supported evidence has been given, changed the life of a boy, *Patrick Ng'ang'a Kimani*; it ruined his prospects for having formal education, of developing a vocation, of earning a livelihood, of enjoying the amenities of life, of establishing his own family. He also suffered pain and disability, and has remained dependent since then. The most serious aspect of his tribulation is the *brain damage* which he suffered, as a consequence of which he has been unable to manage his own life as an independent person. It is, I believe, the fact that all these factual matters are common cause, which led the parties, on 14th January, 2003 to agree on a consent judgment which was duly entered by *Lady Justice Rawal*.

In this relatively lengthy matter the question before the Court was only one: how much money should the injured be paid in damages?

I would dispose of the issue of *special damages* at once. It is common cause that the plaintiff had to carry the prolonged burden of medial care for the injured, and in his pleadings he asked for *Kshs.154,390/=*, a modest sum also supported by receipts and invoices, and not controverted in any evidence emanating for the defendant. I will, therefore grant that amount.

It is not disputed that to-date, *Patrick Ng'ang'a Kimani* still has to undergo periodic medical attention, and it cannot be known how many more times he will require such care in the future. This element, in my judgment, is not amenable to special damages; I will, therefore, take it into account as I make an award of *general damages*.

It is already determined that the defendant shall bear 70% of the liability for the injury to **Patrick Ng'ang'a Kimani**; the plaintiff shall bear 30% of the liability. But what is the **amount** of the full liability? This is the most controversial issue in these proceedings, and there is no doubt each party is in its or his proposition, concerned in the first place to **lessen its own burdens**. The defendant relies on a large range of case authorities, and proposes that the full scale of liability should be no more than **Kshs.600,000/=**. The plaintiff claims as much as **Kshs.9,500,000/=**. From such a colossal discrepancy in pecuniary claims, I would see **prima facie** a failing on the part of counsel to lay trust in **regular assessment** founded on juristic principles. Such principles would carry validity not of just because they invoke some favourable decision of the past; their validity must rest on the nexus between **legal argument**, and **economic reality**; for without that nexus, no decision of the Court otherwise founded will be well-enough anchored to carry viable criteria.

I did not see the legal foundation from which counsel for the plaintiff could readily cite the English 1951 case, **W.H Stewart v. War Office**, and then propose that this Court should work **upwards from there**. In the same way I saw no basis for the figure of Kshs.600,000/= which counsel for the defendant proposed.

It is a trite proposition that general damages are compensatory in nature. This means that the **facts** of each case are all-important. Once a certain position of liability-allocation is accepted (as in the present case), the mode of compensation to an injured party is squarely dependent on the **facts** of that particular case. Those fact are, I would consider, integrally linked to the **social environment** in which the accident occurred, and to the **social and economic realities** of the country in question. For this reason alone it is unacceptable that the **Stewart** case could be applied in this country in the automatic manner proposed by learned counsel for the plaintiff.

I take it that the plaintiff's son herein was seriously injured by electric shock, and the defendant is largely to blame for the accident. The injured boy was an average pupil, 14 years of age, at the time of the accident. The boy dropped out of school, and so has missed out on proper formal education. The injured boy suffered nervous injuries which have made it impossible for him to enjoy a normal life. From the evidence, the boy is not aware of the incident that befell him in 1995, and he says he feels just alright, in terms of health. Of course, the injured boy needs medical attention from time to time. These is also clear evidence that the boy became a wholly dependent person, in the aftermath of the electrical accident.

The conclusion to be drawn about the injured boy, I think, is that great opportunities of life did not open out to him, partly on account of the electrical accident. It cannot be known how he could have used such opportunities if he had not been injured. Therefore it is not, in my opinion, rational or realistic, to seek to create a wholesale transformation in the life of the injured, purely by means of **money**, because of the unfortunate accident. It would only make sense, I think, to provide for those **hardships in his life** which are the **proximate outcome** of the injuries occasioned by the accident. On that principle alone, the proposition of the figure of Kshs.9,500,000/= as made by counsel for the plaintiff, is untenable.

Secondly, reliance on the English case **W.H. Stewart v. War Office** is not tenable. The award in that case was made in the context of a highly structured, industrial and urban economy and society in which **money awards** may be the only basis for normal living by an injured party. I trust that it is not inapt to say here that I am not wholly ignorant of the structure of the English society and economy, having read widely about it, and having lived in that society as an advanced research student for several years. On the basis of this background, I will here take judicial notice that the structured, highly monetized economy of England, a phenomenon of common notoriety, is an inappropriate basis for assessing general damages in the matter now before me. Kenyan society, compared to English society, has a more loose-textured economy, in which a given monetary award, depending on how it is planned and utilized, can more readily help to set up appropriate economic safety-nets for an injured person such as **Patrick Ng'ang'a Kimani**. In Kenya a more socially-oriented family system still prevails, in the context of which a realistic award of damages can and should be employed to provide considerable security for a person such. as **Patrick Ng'ang'a Kimani**

Being guided by the foregoing principles, and bearing in mind the awards in general damages which have been made by the Courts of Kenya over the years, I will award Kshs.2,500,000/= in general damages for

negligence, covering also future medical care. On the basis of the consent judgment of 14th January, 2003 only **70%** of that figure will be payable to the plaintiff. As already indicated, I have granted the prayer for **special damages**, and this particular item shall be paid with interest at Court rate, from the date of filing suit. The defendant shall bear 70% of the plaintiff's costs payable with interest at Court rate with effect from the date of filing suit.

It is so decreed.

Dated and Delivered at Nairobi this 17th day of February, 2006

J. B.OJWANG

JUDGE

Coram: Ojwang, J.

For the plaintiff: Mr. Mariaria, instructed by M/s Mariaria & Co., Advocates

For the Defendant: Mr. Masika, instructed by M/s Manthi Masika & Co., Advocates