

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
CIVIL SUIT NO.52 OF 2003

JOHN MACHOKA.....PLAINTIFF

VERSUS

KENYA POWER & LIGHTING Co. LTD.....DEFENDANT

J U D G M E N T

The parties in this suit have entered Judgment on liability at 80% in favour of the plaintiff and 20% in favour of the defendant.

On quantum the plaintiff suffered intense inflammation of the testicular tissue and penile shaft. Deep burns on the right side of the tongue and on the right leg exposing the tibia bone. Multiple inflamed tissues of right hand and both thighs. According to Dr. Julius Ogeto's report which was Plaintiff's exhibit 3, the plaintiff has as a result of the inquiries to his testicular tissue and penile shaft suffered complete loss of sexual libido. He assessed disability at 95%.

The Doctor also attributed severe depression suffered by the plaintiff after the incident in issue in this case to the injuries he suffered. Dr. Malik, whose report was Plaintiff Exhibit 4 was not conclusive on the loss of libido and incapacity suffered by the plaintiff. All the Doctor said in his report was that the loss of libido could not be confirmed on clinical examination.

The plaintiff's advocate has in his submissions suggested an award of Kshs.3 million. He relies on the case of **SIMON NGANGA KIBUNJA –VS- JAMES KIHARA WAMBUGU**, HCCC 2214/1984, Nairobi. In the cited case, the plaintiff was awarded 600000/- for total paralysis from waist downwards, and impotence. The permanent incapacity was assessed at 100%. The defendant's advocate suggests 180000/- and relies on two cases.

In **master Peter –vs- Attorney General and the Municipal Council of Mombasa** , HCCC No.2670/86, the plaintiff was awarded 180000/- for 2nd degree burns on both legs and feet. In **LILIAN OTIENO – VS- JOSEPH KIMANI**, HCCC No.2670/1988, the plaintiff was awarded 150,000/- for extensive burns on both legs. The plaintiff in this case was 39 years old when he was electrocuted while working for the defendant. He has since been retired on medical grounds. Apparently from the company doctor's report, Dr. Ogeto dated January, 2003, the plaintiff was incapable of concentrating on his work. He has prayed for general damages and special damages of 2500/- for the Medical Report. I deduce from this that the plaintiff must have been compensated somehow for the premature retirement. The quantum sought should therefore address the pain, suffering and loss of amenities following the electrocution incident in issue.

Dr. Ogeto awards the plaintiff 95% incapacity for loss of libido and severe depression. Dr. Malik in his report, Plaintiff exhibit 4 does not commit himself to assessment of the degree of incapacity suffered by the plaintiff stating that it was difficult to do so purely on clinical examination.

The plaintiff has adduced evidence to prove physical injuries he suffered due to the electrocution that caused inflammations on the tongue, thighs, leg, penile shaft, testicles and hands. The inflammation on the right leg was severe enough to cause exposure of his tibia bone. He says his wife has since left him due to the loss of libido. That fact is undisputed by evidence.

I will not agree with the defendant's submission that the award in general damages should only cover severe burns. It must also cover psychological effects of depression which directly led to the plaintiff's

early retirement as shown in this case. The award should also compensate the plaintiff for impotence.

I have considered the Medical Report and the degree of injury suffered by the plaintiff together with the cases cited by the advocates. The plaintiff has become impotent and suffered severe depression both which Dr. Ogeto has declared are permanent incapacities. No amount of compensation can restore the plaintiff's potency and the psychological effects of the accident. I will award general damages for pain, suffering and loss of amenities at 800000/-. I make no award for special damages for lack of documentary proof. I award interest at court rates and costs of the suit to the plaintiff.

Dated at Nakuru this 6th day of March, 2004.

JESSIE LESIIT

JUDGE