



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL APPEAL NO. 72 OF 1996**

PATRICK M. NDAMBUKI .....APPLICANT

VERSUS

KENYA POWER & LIGHTING CO. LTD. ....RESPONDENT

**JUDGMENT**

In the case subject to this appeal liability was recorded for the appellant against the respondent by consent at 100% on 31st March 1995 and evidence taken from the plaintiff as to quantum on 7th February 1996.

The plaintiff produced a number of exhibits in the case including his assessor's report (exh. 3) which gave the capital value of reconstruction of the building as Kshs.192,000/=.

The respondent did not testify but his valuation report was admitted as evidence without calling the maker and it gave the estimated cost of reinstatement as Kshs.42,000/= on the same day of hearing of the case.

The learned principal magistrate (R. Wendoh (Mrs) wrote her judgment on 26th February 1996 and awarded the appellant Kshs.10,000/= being special damages and Kshs.60,000/= as general damages.

The appellant was not satisfied with these awards and filed this appeal listing three (3) grounds which disputed the figures awarded by the magistrate for both special and general damages.

Counsel for the parties appeared before this court on 29th May 2002 and either urged or opposed the appeal with counsel for the appellant arguing that the amounts awarded by the magistrate were inordinately low while that for the respondent submitted that the awards given were correct.

I have heard submissions from counsel for both parties.

Though there was a claim in the plaint for special damages, during the evidence none was proved as required by law.

Pleading costs of construction in the plaint at Kshs.192,000/= and not adducing evidence in form of production of receipts and/or invoices to support them does not satisfy the standard of proof set out in the case of *Ouma v Nairobi City Council* [1976]KLR 297 at page 302.

I therefore do not know where the magistrate got Kshs.10,000/= to award to the appellant as special damages but in the circumstances of this case I do not feel it is fair to disallow that figure in this appeal.

As regards general damages it was the question of interpretation of the valuation reports. The

appellants report talked of estimated cost of reconstruction while that of the respondent talked of reinstatement.

The former gave the impression of rebuilding the shop in question while the latter gave the impression of repairs made to it.

The best way out would have been for the makers of the reports to be called in court and to explain what they meant.

In view of this sort of confusion and the conflicting evidence in the valuation reports as to whether the shop was or was not in use, the learned Principal Magistrate did the best she could in the circumstances to award the appellant the sum of Kshs.60,000/= and I would have no justification in disturbing that figure too.

I dismiss this appeal with costs.

Delivered this 24th day of June, 2002.

**D.K.S. AGANYANYA**

**JUDGE**