



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Kenya Power & Lighting Co. Ltd v Ndiaga (Civil Appeal
E130 of 2023) [2025] KEHC 6521 (KLR) (23 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 6521 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CIVIL APPEAL E130 OF 2023**

**H NAMISI, J
MAY 23, 2025**

BETWEEN

KENYA POWER & LIGHTING CO. LTD APPELLANT

AND

PAUL NJOGU NDIAGA RESPONDENT

*(Being an Appeal from Judgement of Hon. R. N. Nganga, Chief Magistrate
delivered on 29 November 2022 in Gatundu CMCC No. E128 of 2021)*

JUDGMENT

1. On or about 21 April 2018, Stephen Kioni Wambui (now Deceased), aged 12 years, accompanied his grandmother, Benadetta Kabura Kamau, to complete some farm chores. The Deceased accidentally stepped on a live electric wire which had been left lying on the ground. As a result, the Deceased was electrocuted and died.
2. In the lower court, the Respondent instituted proceedings in her capacity as legal representative of the Deceased seeking the following orders against the Appellant:
 - i. Special Damages of Kshs 143,700/=
 - ii. General damages under the Law Reform Act and the Fatal Accidents Act;
 - iii. Interest on (i) and (ii) at court rates
 - iv. Costs of the suit
3. The Appellant entered appearance and filed a Statement of Defence denying the Respondent's claims.
4. Parties agreed on liability in the ration 80:20 in favor of the Respondent.



5. At the hearing, the Respondent testified that her son was aged 11 years at the time of his death. He was in standard 7 and performed well at school. He was a bright student, aspiring to become a doctor. It was the Respondent's testimony that she spent a lot of money on the burial preparations, though she did not have receipts.
6. The Appellant did not call any witnesses.
7. The trial court rendered its judgement as follows
 - i. Liability agreed at 80:20% in favor of the Plaintiff against the Defendant;
 - ii. Pain and suffering – Kshs 30,000/=;
 - iii. Loss of expectation of life – Kshs 100,000/=;
 - iv. Lost years – Kshs 1,000,000/= (less 20%) = Kshs 800,000/-;
 - v. Special Damages – Kshs 80,000/=Total Award = Kshs 1,010,000/=
- vi. Costs and interest of the suit to the Plaintiff
8. Aggrieved by the judgement, the Appellant lodged this appeal on the following grounds:
 - i. That the learned trial magistrate erred in law and in fact in awarding the Plaintiff Kshs 1,010,000/= on damages under the Law Reform Act and Fatal Accident Act by relying on the filed documents which were never produced by the Plaintiff and marked as exhibits by the court contrary to the Evidence Act;
 - ii. That further to the above, the learned trial Magistrate erred in law and in fact by failing to address and make a finding on the issue raised by the Appellant on the fact that the Plaintiff failed to produce the filed list of documents as exhibits;
 - iii. That the learned trial Magistrate erred in law and in fact in awarding Kshs 1,000,000/= on loss of dependency which amount is inordinately high and excessive in the circumstance of the case;
 - iv. That the learned trial Magistrate erred in law and in fact in disregarding the Appellant's submissions and judicial authorities.
9. The Appeal was canvassed by way of written submissions.

Analysis and Determination

10. This being the first appeal, it is this court's duty under Section 78 of the Civil Procedure Act, Cap 21 of the Laws of Kenya, to re-evaluate the evidence tendered before the trial court and come to its own independent conclusion, taking into account the fact that it did not have the advantage of seeing and hearing the witnesses as they testified. This principle of law was well settled in the case of *Selle v Associated Motor Boat Co. Ltd* (1968) EA 123.
11. It is trite that though an appellate court has mandate to interfere with findings of fact made by a trial court, this mandate should be exercised cautiously and only when it is clear that the trial court's decision or finding of fact was not based on any evidence or was based on a misrepresentation of the evidence or on wrong legal principles.



12. I have taken time to read the Record of Appeal, specifically the proceedings and the judgment of the trial court. I have also read with care the submissions by both parties. The main contention in this appeal is the claim by the Appellant that the Respondent did not prove her case on a balance of probabilities. The main issue is that the Respondent did not produce her documents in support of her case. Their main arguments centre on the issue of damages awarded.
13. From the record of the trial Court, the only person who testified was Respondent. I have keenly read through the handwritten as well as typed proceedings. There is no mention of production of documents. There is no record of any intention of the parties to either consent to the production of all documents on record.
14. In their submissions in the trial court, the Appellant submitted that since the Respondent failed to produce her list of documents dated 14 April 2021 as exhibits, then the documents did not form part of the Court record. They cannot become evidence and ought not to be evaluated by the Court. The Appellant cited numerous cases in support of this argument.
15. In its judgement, when determining the damages for pain and suffering, the trial Court refers to PW2. It is unclear who PW2 was since only one witness, the Respondent, testified at the hearing. In assessing the other heads of damages, the trial court refers to documentary evidence, specifically the Certificate of Death and receipts.
16. After assessing the entire evidence, I find as a fact that, the trial court was in error to admit documentary evidence that had not been produced or proven in evidence and proceeded to ascribe probative value and assess quantum on the basis of such documents.
17. This notwithstanding, the Respondent submitted, rather persuasively, that once the issue of liability was agreed upon, then the documents such as the Letters of Administration, Letter from Chief, Death Certificate and post-mortem Report had no probative value in the determination of the damages.
18. Looking at the Respondent's list of documents, the same contains 6 documents. The only 2 documents referenced in the judgement by the trial court are the Death Certificate and the Mortuary payment receipts. Indeed, the Grant of Letters of Administration, Letter from Chief, Post Mortem Report and Demand Notice would have no probative value in the determination of damages.
19. On that basis, the first limb of the appeal herein succeeds to the extent that the special damages pleaded by the Respondent were not proved and therefore, the same cannot be awarded.
20. What is left for this Court to determine is whether the award by the trial Court was inordinately high.
21. Under loss of dependency, the trial court opined that the figure proposed by the Respondent of Kshs 1,500,000/- was too high, while that proposed by the Appellant of Kshs 450,000/- was too low. The Court observed that the Deceased died at the age of 10 years, with no infirmities or conditions that would have impeded his growing up and becoming a doctor. The trial court relied on the case of Kenya Power & Lighting Co. Ltd -vs- Abednego Shikhuyu Inea & Another [2021] eKLR where the Court upheld an award of Kshs 1,000,000/- for a child who died at the age of 4 years.
22. In *Kemfro Africa Ltd t/a Meru Express & Another vs A.M Lubia (1982--88) I KAR 727* the court held that assessment of damages is at the discretion of the trial Magistrate and an appellate court will be slow to interfere with such discretion unless it is demonstrated that in assessing the damages, the court acted on wrong principles or failed to take into account a relevant fact or considered an irrelevant fact and as a result arrived at a wrong decision.



23. The Appellant proposed an award of Kshs 450,000/= as fair and reasonable. They relied on the cases of *Chen Wembo & 2 Others -vs- IKK & Anor* (suing as the legal representatives and administrators of the estate of CRK (Deceased) [2017] eKLR, *Ambrose Kiptanui & Anor -vs- Timona Wekesa* (suing as the Administrator of the estate of Faith Nafula Wekesa (Deceased) [2020] eKLR and *Rosemary Onyango & Anor -vs- Mohamed Jenjewa Ndoyo & Anor* [2019] eKLR.
24. I have equally looked at comparable cases. In *Kenya Wildlife Services v Geoffrey Gichuru Mwaura* (2018) eKLR, an amount of Kshs 700,000/- was awarded on appeal for a 13 years old boy for loss of dependency under the *Fatal Accidents Act* and in this case because the minor is aged 11 years, the amount awarded by the trial court was a little high.
25. In *Kenya Power and Lighting Co v Agnes Nduku Ndava* [2019] eKLR, the Court awarded a global sum of Kshs 800,000 where an 11-year-old girl died as a result of electrocution.
26. This Court finds that the global award given by the trial court of Kshs. 1 million cannot be termed as excessive. I find no reason to interfere with it.
27. The upshot is that the appeal partially succeeds. I hereby set aside the judgement entered on 29 November 2022 in Gatundu CMCC Case No. E128 of 2021 and substitute the same as follows:
- i. Liability agreed at 80:20% in favor of the Plaintiff against the Defendant;
 - ii. Pain and suffering – Kshs 30,000/=;
 - iii. Loss of expectation of life – Kshs 100,000/=;
 - iv. Lost years – Kshs 1,000,000/=(less 20%) = Kshs 800,000/-;
Total Award = Kshs 930,000/=
 - v. Costs and interest of the suit to the Plaintiff
28. Costs of the appeal are awarded to the Appellant. The same are assessed at Kshs 50,000/=.

DATED AND DELIVERED AT THIKA THIS 23 DAY OF MAY 2025.

HELENE R. NAMISI

JUDGE OF THE HIGH COURT

Delivered on virtual platform in the presence of:

Ms. Njeri h/b Kiungu .. for the Appellant

Mr. Mariga..... for the Respondent

Libertine AchiengCourt Assistant

