Rural Electricifcation Authority v Yator (Suing as the Legal Representative of the Estate of Elijah Kipchumba Kibet) Deceased) & another (Civil Appeal 54 of 2019) [2025] KEHC 10734 (KLR) (23 July 2025) (Judgment)

Neutral citation: [2025] KEHC 10734 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT ELDORET

CIVIL APPEAL 54 OF 2019

RN NYAKUNDI, J

JULY 23, 2025

BETWEEN

RURAL ELECTRICIFCATION AUTHORITY ..... APPELLANT

AND

JOSEPH KIBET YATOR (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF ELIJAH KIPCHUMBA KIBET) DECEASED) ..... 1ST RESPONDENT

PHALIL CONTRACTORS AND GENERAL SERVICES ..... 2ND RESPONDENT

(Being an Appeal from the Judgement and Decree in Eldoret Chief Magistrates Court Civil Case No 435 of 2013)

JUDGMENT

1. By way of Amended Plaint dated 15th May 2014, the 1st Respondent sought general damages and costs of the suit. The cause of action arose from the electrocution of the deceased on 23rd July 2012 during installation of new power lines and electricity posts. The 1st defendant entered a statement of defence and denied the allegations of the plaint and urged the court to dismiss the suit.

2. The matter proceeded for hearing and upon considering the submissions and evidence, the trial court entered judgment, apportioning liability at 20% against the plaintiff, 30% against the third defendant and 50% against the first defendant. The court awarded damages as follows;

    1. Pain and Suffering – Kshs. 100,000/-
    2. Loss of expectation of life – 300,000
    3. Loss of dependency – Kshs. 2,304,000/-

3. Being aggrieved with the quantum only, the appellant instituted the appeal vide a Memorandum of Appeal dated 3rd April 2019 premised on the following grounds;

    1. That the Learned Trial Magistrate erred in Law and Fact in failing to appreciate the reasonable and sufficient evidence tendered in Court when assessing and awarding damages.

    2. That the Learned Trial Magistrate erred in Law and Fact in awarding damages that was excessive in the circumstance.

    3. That the Learned Trial Magistrate erred in Law and Fact in assessing General Damages at Kshs. 2,404,000/- (Kenya Shillings Two Million, Four Hundred and Four Thousands only) which assessment when viewed against the evidence adduced is "manifestively" excessive and inordinately high as to amount to a miscarriage of justice.

    4. The Learned Trial Magistrate erred in law and fact in failing to evaluate the evidence in its totality and in failing to take into consideration Submissions and Authorities submitted by the Appellant.

    5. The said award of Damages is out of keep with other Kenyan awards for comparable/similar claims.

    6. The Learned Trial Magistrate failed to exercise his discretion judiciously in awarding General Damages and failed to apply the settled principles of law and thus there was no good or proper basis for the said Assessment of Damages.

Appellants' submissions

4. Learned counsel for the appellant submitted that the award was inordinately high as to amount to miscarriage of justice. He urged that the award of Kshs. 100,000/= was made without rational and the learned trial magistrate did not support her decision to award such amount with a decided case/ authority. Further, that the circumstance and evidence of death was that the Deceased was electrocuted and died instantaneously. The guiding principle in awards under this heading was well settled in the case of Hyder Nthenya Musili & another v China Wu Yi Untiled & another [2017] eKLR where the court restated the principle as follows:

> " The generally accepted principle therefore is that very nominal damages will be awarded on these two heads of damages if the death followed immediately after the accident. The conventional award for loss of expectation of life is Kshs 100,000/- while for pain and suffering the awards range from Kshs 10,000/= to Kshs 100,000/= with higher damages being awarded if the pain and suffering was prolonged before death. "

5. Counsel submitted that the Respondent failed to state and substantiate the evidence of pain suffered by the Deceased, and therefore, the trial magistrate had no business in inferring pain suffered. The trial magistrate thus erred in awarding damages based on speculations and inference. He urged that Kshs. 10,000/= is sufficient in the circumstances since death followed immediate and or that evidence were given that the deceased died at the scene immediately.

6. On loss of dependency, counsel urged that the court did not give reasons for the approach adopted or the reasons for rejecting the invitation for lump sum award of Kshs. 800,000/= and 300,000/= submitted by the defendants. He stated that dependency is a fact that must be proved and in this case the deceased was still a student who had no known and regular income. He had only been contracted on daily casual job of erecting electricity poles which was to last a short term. The plaintiff also confirmed

on cross-examination that the deceased was preparing to join college and failed to give evidence as to how much the deceased was giving him and the mother in form of support.

7. Counsel submitted that the issue of dependency and income of the deceased having not been proved meant that the approach of assessment taken by the magistrate was not appropriate but based on conjecture and speculations. Furthermore, the adoption of 36 years as number of years the deceased would earn income was without basis as the nature of casual job the deceased was doing was sporadic. There was no evidence of certainty that the deceased would regularly earn the alleged income for the alleged period of time. There were a lot factors including vagaries of life, difficulties to find jobs, unemployment and other factors of nature which would directly affect the working and earning life. There would be no certainty that he would work up to 60 years. Counsel maintained that the proper approach was to award damages based on the lump sum approach as this would have cured all the speculations arising from the approach taken by the trial court. Further, that an award of Kshs. 300,000/= was appropriate then and due to passage of time, an all-inclusive award of Kshs. 800,000/= is sufficient.

8. Counsel further submitted that on loss of dependency, the award arrived at was inordinately high for reasons that: The ratio of 2/3 (two-thirds) was inapplicable for reasons that no evidence of extend of dependency was tendered. The deceased was unmarried and had no minors/children who were dependent on him. Counsel placed reliance on the case of Dickson Taabu Ogutu (suing as the legal representative of the estate of Wilberforce Ouma Wanyama v Festus Akolo & Another (2020) eKLR in this regard. Further, that a dependency ratio of 1/3 (one-third) would have been appropriate in the circumstance, citing the case of Rodgers Kinoti v Linus Bundi Murithi & another [2022] eKLR where the high court judge in holding that 1/3 dependency ratio was appropriate in comparable circumstance.

9. Counsel urged that the income of the deceased was assessed at Kshs l0,000/-and he would not have spent half of that sum on his parents. Further, that the dependency ratio adopted by the trial court was on the higher side and a dependency ratio of 1/3 is considered to be more reasonable.

10. Counsel urged that the multiplier of 36 years is speculative. That the trial magistrate considered that since the deceased was 24 years old and the legal retirement age in Kenya is 60 years then it definitely translate that the deceased would have worked for another 36 years. Further, that the same should be set aside and replaced with 25 years. He placed reliance on the case of the Board of Governors of Kangubiri Girls High School & Another - Jane Wanjiku & Another (2014) eKLR in this regard. He additionally cited Muthike Muciimi Nyaga (Suing as Administrator of the estate of James Githinji Muthike) (Deceased) (2021) eKLR.

11. Counsel urged that the adoption of Kshs.8,000/= based on the minimum wage regulations, was too incorrect for reasons that the deceased was working in the villages of Kolol Keiyo-South within Elgeyo Marakwet county and the provision of minimum wages for casual/general labourers for the year 2012 in all other areas was Kshs. 4,577.20/=, The trial magistrate thus erred in applying Kshs. 8 000/= which a round figure for same category of labourers but applicable in cities.

12. Counsel urged that the reasonable award would calculate as follows:

    Dependency ratio for unmarried student 1/3 (one-third)

    Income under The Regulation of Wages (General) (Amendment) Order, 2012, Legal Notice No. 71 of June, 2012, is Kshs. 4,577.20 applicable under the column "all other areas".

    Reasonable Multiplier of 25 years.

    (1/3 *12*25*4,577.20=457,720/=)

13. He urged the court to allow the appeal.

Respondent's' submissions

14. Counsel cited the case of Butt V Khan (1977) 1 KAR where the Court of Appeal held that; and Gitobu Imanyara & 2 others v Attorney General [20161 eKLR, urging that it is clear that the award of damages is always at the discretion of the trial court and the appellate court should not interfere unless it is satisfied that in awarding the damages the trial court misapprehended the facts or applied the wrong legal principles or that the award was either too high or too low as to lead to an inference that it was an erroneous estimate of the loss or damage suffered.

15. On pain and suffering, counsel referred the court to the submissions in the record of appeal and urged that the deceased died on the same day of the accident and as such the amount awarded of Kshs. 100,000/= was reasonable. He placed reliance on the case of Sukari Industries Limited v Clyde Machimbo Juma [20161 eKLR. He submitted that the generally accepted principle is that the court has a discretion to award damages ranging from Kshs.10,000/= to Kshs.100,000/= for pain and suffering. Counsel urged this Court to uphold the same.

16. On loss of dependency, counsel submitted that the trial court relied on the right principles in awarding the amount. It is to be noted that the deceased was a student taking accounting at Bartek Institute and was to join 3rd year before he met his death. He invited the court to look at the evidence as tendered by PW1 during trial, pointing out that his career path was clearly laid out in that he would have been an accountant upon completion of his studies. It is for the said reasons that the lump sum approach as suggested by the Appellant is not applicable herein and the Trial court was right in using the multiplier approach.

17. Counsel submitted that an award is made for loss of dependency that the deceased's estate had suffered. They are made pursuant to the following subheadings;MultiplierMultiplicandDependency ratio

18. From the evidence tendered in the trial court, it is clear that the deceased died due to electrocution. It is not in dispute that the deceased was a 3rd year student pursuing Accounting and when the suit was determined, the deceased would be employed and earning. He urged that the Honourable Court was correct in using the Minimum wage of Kshs.8.000/- as the multiplicand, 2/3 as the dependency ratio and 36 years as the multiplier in the tabulation of loss of dependency.

19. On multiplicand, counsel submitted that evidence was placed before the lower court that since the deceased had not acquired any formal employment, a minimum wage as per the Regulation of wages was to be used as a Multiplicand. The subordinated court indeed used Kshs. 8,000/- as the minimum wage. Counsel submitted that the Appellant cannot determine where the deceased would have been employed and the Court ought to have used a minimum was of Kshs.13,572.90/= as of the year 2018. Without prejudice to the foregoing, a look at the *Legal Notice No. 71 of 2012*, the wage of a General Labourer in the city is Kshs.8,579.80/- He urged the court that if at all it is inclined to disturb the Trial Court's decision, the same should be to the effect that the Multiplicand is increased to Kshs.8,579.80/-.

20. Counsel urged that the deceased died at the age of 24 years, and as was pointed out by PW1 and PW2, had good prospects of completing school and joining the workforce as an accountant. It was thus on the assumption that the deceased would have joined the workforce upon graduating and worked up to the retirement age of 60 years. It is for the said reasons that the lower court came up with the multiplier of 36 years. Counsel cited the cases of Board of Governors of Kangubiri Girls High School & Another v Jane Wanjiku Court of Appeal sitting at Nyeri in Civil Appeal No. 35 of 2014 eKLR in this regard.

21. On dependency ratio, counsel submitted that PW1 had letter of administration ad litem to represent the estate of the deceased person. The PW1 sued in his capacity as the father of the deceased. The PW1 therefore was a dejure dependant under section 4 (1) of the *Fatal Accidents Act*. Further, that even though the deceased was unmarried and had no known issue, PW1 in his pleadings and evidence in court pointed out that the deceased was survived by 2 parents and his younger sibling. He was the 1st born in a family of 6 siblings. PW1 clearly stated that he used to help him whenever he had money. It is therefore clear that he was and indeed would be the family's bread winner in whom his parents had full faith in him. He was to help his parents and his younger siblings. He urged the Court to maintain the Dependency Ratio of 2/3 as per the trial court's decision. He placed reliance on the case of Daniel Kahica & another v Janet Jeruto & Michael Chepkwony (suing as the legal representative of the estate of Maureen Jepkoech Chepkwony - Deceased) [2019] eKLR. He additionally cited the case of Kenya Breweries Ltd vs. Saro [1991) eKLR and urged the court to uphold the decision of the trial court.

Analysis & Determination

22. This being an appeal I am guided by the decision in Abok James Odera T/A A.J Odera & Associates v John Patrick Machira T/A Machira & Co. Advocates [2013] eKLR, where the court stated as follows-

> " This being a first appeal, we are reminded of our primary role as a first appellate court namely, to re-evaluate, re-assess and re-analyze the extracts on the record and then determine whether the conclusions reached by the learned trial Judge are to stand or not and give reasons either way."

23. In Williamson Diamonds Ltd and another v Brown [1970] EA 1, the court held that:

> " The appellate court when hearing an appeal by way of a retrial, is not bound necessarily to accept the findings of fact by the trial court below, but must reconsider the evidence and make its own evaluation and draw its own conclusion."

24. Further, in PIL Kenya Limited v Oppong [2009] KLR 442, it was held that:

> " It is the duty...of a first appellate court to analyze and evaluate the evidence on record afresh and to reach its own independent decision, but always bearing in mind that the trial court had the advantage of hearing and seeking the witnesses and their demeanor and giving allowance for that".

25. The appeal is against quantum and in this regard, the principles guiding an appellate court in determining whether to interfere with an award for damages were set out in the celebrated case of Butt v Khan [1981] KLR 470 where the court pronounced itself as follows;

> " An appellate court will not disturb an award for damages unless it is inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the judge proceeded on wrong principles, or that he misapprehended the evidence in some material respect, and so arrived at a figure which was either inordinately high or low".

26. In that regard, an appellate court will only interfere with the judgment of the lower court, if the said decision is founded on wrong legal principles. That was the holding of the Court of Appeal in Mkube v Nyamuro [1983] LLR at 403, where Kneller JA & Hancox Ag JJA held that;

> " A Court on appeal will not normally interfere with the finding of fact by a trial court unless it is based on no evidence, or on a misapprehension of the evidence, or the judge is shown demonstrably to have acted on wrong principles in reaching his conclusion."

27. The deceased was a 24 year old student who was electrocuted on 23rd July 2012 resulting in his untimely death. He was working as a casual labourer at that time. The Appellants contended that the award for pain and suffering was excessive. The trial court awarded a conventional sum of Kshs. 100,000. The appellants have not demonstrated that the trial court erred in principle when awarding the damages for pain and suffering. In Mary Muriuki and another versus Samuel Mwangi Nduati and another. (suing in as the lead administrator of the estate of the late Mwangi) 2019 eKLR it was observed that;

> " the generally accepted principles therefore is that very nominal damages will be awarded on these two heads if the death followed immediately after the accident. The conventional award for loss of expectation of life is Kshs 100,000/- while for pains and suffering the ward ranges Kshs 10,000/- to Kshs 100,000/- with higher damages being awarded if the pain and suffering was prolonged before death".

28. It follows that I find no reason to disturb the award for damages for pain and suffering.

29. The appellant contended that the award for loss of expectation of life was excessive. The deceased was working as a casual worker as he was on holiday. In the case of Moses Mairua Muchiri v Cyrus Maina Macharia (Suing as the personal representative of the estate of Mercy Nzula Maina (deceased) [2016] eKLR, the Court held as follows-

> " It has been held elsewhere that where it is not possible to ascertain the multiplicand accurately, as appears to have been the case here, courts should not be overly obsessed with mathematical calculations in order to make an award under the head of lost years or loss of dependency. If the multiplicand cannot be ascertained with any precision, courts can make a global award, which by no means is a standard or conventional figure but is an award that will always be subject to the circumstances of each particular case."

30. The trial court adopted the global sum award and awarded a sum of Kshs. 300,000/-. I find no reason to disturb the award by the trial court and therefore the same is upheld.

31. On loss of dependency, the trial court used an estimate of Kshs. 8,000/- as the wages for a casual worker at the time to calculate the damages. The court adopted a multiplier of 36 years as the deceased was 24 years old and a dependency ration of 2/3. As per the Regulation of Wages (General), (Amendment) Order, 2012, it is my considered view that the estimate of Kshs. 8,000/- was actually lower than the statutory provisions. From the evidence of PW1, it was clear the deceased was instrumental in helping at home with expenses of his siblings. It is my considered view that the dependency ration of 2/3 was proper in the circumstances. I find no reason to interfere with the award for loss of dependency.

32. The upshot of the foregoing is that the appeal is dismissed in its entirety with costs to the Respondents.

DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 23rd DAY OF JULY 2025.

.....

R. NYAKUNDI

JUDGE