



**Kenya Power & Lighting Company Ltd v Ogot (Civil Appeal
E078 of 2021) [2023] KEHC 18797 (KLR) (14 June 2023) (Judgment)**

Neutral citation: [2023] KEHC 18797 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
CIVIL APPEAL E078 OF 2021**

KW KIARIE, J

JUNE 14, 2023

BETWEEN

KENYA POWER & LIGHTING COMPANY LTD APPELLANT

AND

CAROLINE AWUOR ODOT RESPONDENT

*(Being an Appeal from the judgment in Homa Bay Chief Magistrate's CMCC
No.111 of 2019 by Hon. Joy Shiundu Wesonga– Principal Magistrate)*

JUDGMENT

1. Kenya Power & Lighting Company Ltd, the appellant herein, was the defendant in Homa Bay Chief Magistrate's CMCC No. 111 of 2019. This was a claim that arose from electrocution of the respondent who stepped on live wires which were exposed on her path due the alleged negligence of the appellant's servants. The learned trial magistrate delivered judgment dated August 11, 2021. The parties had entered consent on liability at 75% to 25% in favour of the respondent.
2. The learned trial magistrate made an award of Kshs 1,000,000.00 in general damages before factoring liability.
3. The appellant was aggrieved by the said judgment and filed this appeal through Peter M. Karanja, Advocate. The following grounds of appeal were raised:
 - a. The learned trial magistrate erred in law and fact in making the award of general damages in the said judgment that was manifestly excessive in the circumstances as to amount to an erroneous estimate of the loss suffered by the respondent.
 - b. The learned trial magistrate erred in law and fact entering judgment for general damages without considering the applicable principles as established by precedent that comparable



injuries ought to attract comparable damages and by so doing reached a figure of damages that is inordinately high, arbitrary and totally unsupportable by any authority or precedent.

- c. The learned trial magistrate erred in law and in fact by failing to correctly appreciate the plaintiff's injuries and in misapprehending the same and thus arriving at an erroneous award of damages.
 - d. The learned trial magistrate totally ignored and/or paid lip service to the appellant's submissions and authorities herein cited.
 - e. The learned trial magistrate failed to take into account all relevant considerations and principles in assessing the quantum of general damages.
4. The appeal was opposed by the respondent through the firm of Everlyne Kuke & Company Advocates. It was argued that the award was not inordinately high in the circumstances of this case.
 5. This court is the first appellate court. I am aware of my duty to evaluate the entire evidence on record bearing in mind that I had no advantage of seeing the witnesses testify and watch their demeanor. I will be guided by the pronouncements in the case of *Selle v Associated Motor Boat Co Ltd*. [1965] EA 123, where it was held that the first appellate court has to reconsider and evaluate the evidence that was tendered before the trial court, assess it and make its own conclusions in the matter.
 6. It was argued by the appellant that the general damages were inordinately high. It is trite law that an appellate court will only interfere with an award of the trial court if certain circumstances are satisfied. In *Butt v Khan* [1981] KLR 349 at page 356 Law JA stated:

...an appellate court will not disturb an award of damages unless it is so 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 a figure which was either inordinately high or low.
 7. As a result of the accident complained of, the respondent sustained the following injuries:
 - a. Hemiparesis of the left side of the body;
 - b. First degree burns on the left arm dorsal aspect;
 - c. First degree burns on the left toe; and
 - d. Stiffness of left elbow joint.
 8. The respondent was given treatment as follows:
 - a. Intravenous fluids;
 - b. Broad-spectrum antibiotics;
 - c. Broad-spectrum anti-inflammatory analgesics;
 - d. Daily dressing of wounds; and
 - e. Physiotherapy sessions.
 9. Following the accident, the respondent was admitted in hospital for twelve days.
 10. Hemiparesis is described as muscle weakness or partial paralysis on one side of the body that can affect the arms, legs and facial muscles.



11. At the hearing in the trial court, the respondent made a proposal of Kshs 2,000,000.00. She relied on *EW (Suing as the Next Friend and Mother to BM (A Minor) v Kenya Power and Lighting Company Limited & another* [2015] eKLR. In this case the plaintiff was awarded Kshs 1, 500,000.00 general damages for amputation of the right upper limb and burns on anterior abdomen.
12. The appellant in the trial court had proposed an award of Kshs300, 000.00. Several decisions were cited namely; *Wycliffe C. Ndiema v Pan Africa Chemicals Ltd* [2016] eKLR, *Kenya Power & Lighting Co. Ltd v Samuel Macharia Kinuthia* [2018] eKLR, *Bidco Oil Refineries Ltd v Pius Machuki Omboga & another* [2020] eKLR, *Pan Africa Chemicals Ltd V Benson Kimani Nganga* [2019] eKLR and *Mutinda Michael v MM (a minor suing through her mother and next of friend WKM & another* [2020] eKLR. In these decisions, the awards varied between Kshs25, 000.00 and Kshs 400, 000.00.
13. After considering the authorities cited by both counsel, and having considered the period of admission in hospital and the hemiparesis of the left side of the body and the other injuries sustained, I find that I have no basis to interfere with the award by the learned trial magistrate. The appeal is therefore dismissed with costs.

DELIVERED AND SIGNED AT HOMA BAY THIS 14TH DAY OF JUNE, 2023

KIARIE WAWERU KIARIE

JUDGE

