



REPUBLIC OF KENYA



KENYA LAW
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**Kenya Power & Lighting Co Ltd v Chumo (Civil Appeal E001 of 2023)
[2024] KEHC 13806 (KLR) (4 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 13806 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KILGORIS
CIVIL APPEAL E001 OF 2023
F GIKONYO, J
NOVEMBER 4, 2024**

BETWEEN

KENYA POWER & LIGHTING CO LTD APPELLANT

AND

ALICE CHESANG CHUMO RESPONDENT

*(Being an appeal from the judgment and decree of Hon. W. K. Kitur
(SRM) delivered on 21/02/2023 in Kilgoris SPMCC No. 1 of 2019)*

JUDGMENT

Impugned judgment

1. This appeal challenges the judgment of the Senior Principal Magistrate's Court at Kilgoris in Civil Suit No. 1 of 2019 delivered on 21/02/2023 in which the trial court made the following orders and awards: -
 - a. Liability 75%: 25% (by consent of the parties)
 - b. General damages Kshs. 4,800,000/=
 - c. less 25% contribution to negligence Kshs. 1,200,000/=
 - d. Costs of the suit and interestTotal =3,600,000/=
2. The memorandum of appeal dated 20/03/2023 cited seven (7) grounds of appeal which relate to; i) quantum of damages.



Background

3. On or about 10/03/2018, the respondent while undertaking her daily activities in Angata division, Narok county came in contact with wet grass that had attracted a magnetic field from the circulating current from loose electricity poles. As a result of the contact, she suffered severe electric burns and injuries both in her feet and hands for which she was treated in Lolgorien, Kilgoris, Kisii, Tenwek, and Longisa hospitals respectively. The respondent blamed the appellant. Particulars of negligence were set out against the appellant.
4. The respondent during the trial called three witnesses- respondent Alice Chesang Chumo, Clinical Officer- Lucy Njambi, And Chief- Paul Ruto.
5. The appellant closed their case without calling any witnesses.

Directions of the court

6. The appeal was canvassed by way of written submission.

The Appellant's submissions

7. The Appellant submitted that, this court should interfere with the awards on general damages for being inordinately high, exaggerated an unreasonable in the circumstances. According to the appellant, there was no permanent disability. On that basis, the appellant proposed a sum of Kshs. 1,000,000/= as fair compensation.
8. The appellants relied on the cases of *Texcal House Service Station Limited And Another Vs Jappien and Another* (Nairobi CA No. 134 of 1998), *Stanley Maore Vs Geoffrey Mwenda* (Nyeri CA No. 147 of 2002), *Mwavita Jonathan Vs Silivia Onunga* [2017] eKLR, *Morris Nahashon Muriuki & Another* [2018] eKLR, *John Nkuja Mbatu v Esther Muthomi Mhuri* [2017] eKLR, *Ngugi v AG* HCCC No. 15 of 1994.
9. The appellant submitted that no receipts for special damages were ever produced and as such no special damages should be awarded to the respondent.

The respondent's submissions

10. The respondent submitted that the trial court's judgment was based on cogent evidence in respect to liability and the award made was comparable to awards in other cases with similar facts. The award was reasonable and not inordinately high or excessive. Therefore, there is no basis for interfering with the award of the trial magistrate. The respondent relied on the case of *Kenya Power and Lighting Company Ltd v Joseph Khaemba Njoria* [2015] eKLR.
11. The respondent submissions on whether the amount awarded to the respondent was inordinately high are so jumbled up that one cannot deduce what the respondent intended to seek. The respondent relied on the cases of *Wambua Vs Kenya Power & Lighting Co.* Civil Appeal No. 60 of 2004 citing the case of *Kemfro Africa Ltd Vs A. B Lobia & another* [1982-1988] KRA 777, *Cecilia W. Mwangi v Ruth W. Mwangi*, Nyeri CA 251/96[1997] eKLR, *Butler v Butler* KLR 225, *Douglas Kalafa Ombeva v David Ngama* [2013] eKLR, *Hezron Waitbaka Ndarwa & Another v Ezekiel Ruheni Maina* [2019] eKLR, *AMK (suing as the mother & next friend of IMK -minor) v Kenya Power & Lighting Company Limited* [2020] eKLR, *DA v Kenya Power & Lighting Company Limited* [2021] eKLR, *FG(suing by his mother and next friend of CWK) v Kenya Power & Lighting Company Limited & Another* [2022]



Analysis and Determination

Duty of court

12. The appellate court shall have the same powers and shall perform nearly the same duties as are conferred and imposed by this Act on courts of original jurisdiction in respect of suits instituted herein (Section 78(2) of the *Civil Procedure Act*).
13. The first Appellate Court should, therefore, evaluate the evidence afresh and make any of its conclusions albeit it must bear in mind that it did not have the opportunity of seeing or hearing the witnesses firsthand. See the case of *Selle & Anor –Vs- Associate Motor Boat Co. Ltd* 1968 EA 123.

Issues

14. This appeal relates to the quantum of damages only.

Quantum

15. An appellate court will only interfere with the trial court's discretion in the assessment of damages where; i) there is an error in principle; and or ii) the award of damages is so inordinately high or low as to represent an entirely erroneous estimate (*Bashir Ahmed Butt vs. Uwais Ahmed Khan* (1982-88) KAR).
16. The respondent testified that she is a farmer but no longer engaging in farming activities; for she is not able to do any work as a consequence of the injuries sustained in the accident herein. On 10/03/2018 she was taking her child to school and came across an electricity pole that had fallen. Her child passed by the pole but power threw her up and she landed on the ground. It had rained the previous night there was wet grass at the site. Her left hand got burnt and both her legs were also injured. They are both paralyzed. She was taken to Logorian Hospital then transferred to Kisii Hospital and later to Tenwek Hospital. After being discharged she went home but her condition worsened and she was taken to Longisa Hospital and was admitted for seven months. She was also taken to Moi Teaching and Referral Hospital
17. PW1 testified that her left-hand pains a lot and also her right leg. Her left hand still needs further treatment and metal to be fitted. Before the accident, she was a cereal business lady and a farmer. She could not tell how much she had used for her treatment. She also did not have medical documents from other hospitals except that from Logorian Hospital.
18. PW2- Lucy Njambi, a clinical officer based at Angata Health Centre but previously worked at Logorian sub-county hospital. She testified that the respondent was brought to the hospital; one arm and leg were injured. She was treated after 30 minutes of being injured. They referred her for further treatment. Left arm had 3rd-degree burns. Both legs had superficial burns. She produced a medical report and P3 form as P Exh 1 and 2 respectively. The degree of damage could not be assessed on the first day of treatment. She did not assess permanent disability. Her left arm had suffered a fracture and 3rd-degree burns. Radius and ulna bones of the left hand had suffered a fracture.
19. PW3- Paul Ruto, Chief of Oldonyorok Location Angata division. He testified that on 10/03/2018, he was called that the electric pole had fallen. He went to the scene and he found the respondent had been injured and taken to the hospital. He however never witnessed the incident.



20. According to the letter dated 29/03/2018 from Longisa County referral hospital, the respondent was admitted to the surgical ward due to electrical burns 3rd degree with gangrene of the left little finger and contractures of the palm. She also had 3rd degree burns on the left hand and 2nd degree deep, burns on both feet, amputation of a little finger, and debridement. The hospital was planning to do contracture release and skin grafting.
21. According to the discharge summary from Moi Teaching and Referral Hospital, the respondent was diagnosed with contracture of the left wrist finger and was admitted for contracture release.
22. According to the P3 form, the respondent sustained an obvious fracture of the left upper limb lower 1/3 of the radio ulna.
23. In *Akamba Public Road Services v Abdikadir Adan Galgalo* [2016] eKLR, the Plaintiff therein had sustained, a fracture to the tibia/fibular bone and soft tissue injuries leaving a 3% permanent disability. The award of Kshs.800,000/= in general damages was set aside and substituted with an award of Kshs.500,000/= on appeal.
24. In the case of *Makau v Atbi River Mining Ltd* [2009] eKLR where the Plaintiff suffered 60% burns on his body surface resulting in scarring to the neck and pinna and 20% disability. He was awarded KShs.1.5million in 2009 for pain and suffering.
25. In the case of *Pyramid Packaging Ltd v Humphrey W. Wangala* [2012] eKLR the plaintiff therein sustained a traumatic amputation of 3(three) fingers on the left hand and 15% permanent disability. He was awarded KShs.650,000/= for pain and suffering.
26. The plaintiff in *Geoffrey Mwaniki Mwinzi v Ibero (K) Ltd and Another* (2014) eKLR sustained a compound fracture to the left tibia/fibula bone, associated soft tissue injuries, and a collarbone fracture. He sustained 60% total disability as the affected leg was amputated as a result of gangrene. He was awarded KShs.2,500,000/= as general damages in 2014.
27. The plaintiff in *Agnes Wanjiku Ndegwa v Kenya Power and Lighting Ltd* [2014] eKLR suffered extensive burns to the neck, upper trunk, thigh buttocks left and right lower limbs, and feet. She lost the right fifth toe. Total permanent disability was assessed at between 30 and 35% by two doctors. She was awarded Kshs.1,300,000/= in 2014 for pain and suffering.
28. The court awarded Kshs.3000,000/= as general damages for pain and suffering to the plaintiff in *James Joseph Rugendo v Kenya Power and Lighting Co.* [2011] eKLR, in 2011. He had sustained 70% permanent disability following electrical shock which caused:
 - bilateral damage of upper limbs –radial- ulna and median nerve
 - third-degree electrical burns to 40% of both palms and hands
 - gangrene to right leg leading to amputation below the knee
 - gangrene to the left dorsal aspect leading to amputation of the left big toe and part of the second toe.
29. His prognosis was adverse as there was no likelihood of recovering the use of both his hands.
30. The case of *J.S(suing as father and next friend of K.S) v Kenya Power and Lightning Ltd* [2015] eKLR also involved burn injuries due to electric shock. The minor had suffered superficial burns to the right upper limb (11%), the right leg (6%), and superficial and deep burns on the right foot (4%). The injuries left ugly scars, displacement of the left elbow joint, and loss of 20% of body skin. He was awarded Kshs.1,900,000/= in general damages for pain and suffering.



31. The key injuries sustained by the Respondent herein were the 3rd degree burns with gangrene, contracture of the palm, burns on both feet, fracture of the left upper limb amputation of the little finger, and debridement. The medical report paints a poor prognosis with regard to the permanent disability and loss of the use of the left hand and legs. The Respondent had been hospitalized in several hospitals and endured multiple surgical procedures since the occurrence of the accident.
32. In view of the foregoing, injuries sustained by the respondent were not as extensive as to warrant the award made by the trial court. The award was excessive.
33. Accordingly, the court sets aside the award in respect of general damages for pain and suffering and substitutes therefore the following awards: -a) Damages for pain and suffering KShs.2,500,000/= [Two Million five hundred thousand]

Special damages

34. The respondent did not plead for special damages in her plaint and also did not produce receipts to support a claim for special damages.
 35. The claim for special damages was not proven.
 36. In an upshot, this court finds that the appeal herein succeeds, in part. Judgment is entered in favour of the respondents in the following terms-;
 - i. The appellant 75% liable
 - ii. General damages for Pain and suffering Kshs. 2,500,000/=
 - iii. less 25% contribution negligence Kshs.625 ,000/=Total Kshs. 1,875,000/=
 - iv. The respondent is awarded the costs of this appeal and the suit at the trial court
 - v. Interest on the award from the date of judgment
37. Orders accordingly

**DATED, SIGNED, AND DELIVERED AT KILGORIS THROUGH THE TEAMS APPLICATION,
THIS 4TH DAY OF NOVEMBER, 2024.**

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F. GIKONYO M.

JUDGE

In the Presence of:

1. C/A - Nyangaresi
2. M/s. Ndonga h/b for Kiprotich for Respondent – present
3. Ms. Chumo for Appellants - Absent

