



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KISII**

**CIVIL APPEAL NO 56 OF 2020**

**KENYA POWER & LIGHTING CO. LTD.....APPELLANT**

**VERSUS**

**MARIA KERUBO KIANGA & ESBOURN MOGARU**

**KIANGA (Suing as legal administrators of the Estate of PETER KIANGA OKOTI (Deceased)....RESPONDENT**

*(Being an appeal and Judgment of the Honourable Chief Magistrate Hon. Nathan Shiundu Lutta*

*delivered on 31<sup>st</sup> day of August 2020 in Chief Magistrate’s Court Civil suit No. 121 of 2019 at Kisii)*

**JUDGMENT**

1. The respondents Maria Kerubo Kianga and Esbourn Mogaru Kianga (the Respondents) sued the appellant Kenya Power & Lightning Co. Ltd (the appellant) for special damages, general damages, interest and costs following the death of the deceased after being electrocuted.
2. According to the respondents, the deceased while trying to open a gate was electrocuted by a live wire that was carelessly left unattended to by the appellant in total disregard of the appellant’s statutory duty of care. As a result of the said electrocution the deceased succumbed to his injuries and the respondents brought a claim under the **Law Reform Act and Fatal Accident Act**. It was alleged that the deceased was survived by his wife Maria Kerubo Kianga and 4 children. At the time of his death, he was earning Kshs 15,000/- from farming and business. The respondents claimed that because the deceased’s life was considerably shortened, his estate suffered loss and damage. The estate also incurred an expense of Kshs 20,000/- legal fees paid towards procuring letters of administration and funeral expenses.
3. The appellant denied the claim and that it was reckless in carrying its duties and thus caused the deceased to be electrocuted. They argued that the respondents were not entitled to damages under the **Fatal Accident Act and the Law Reform Act**.
4. The issue of liability was ultimately settled by consent in the ratio 70:30 against the appellants. The trial magistrate awarded the respondent the following damages:

	<b>KSHS</b>
<i>Pain and suffering</i>	<i>50,000</i>
<i>Loss of expectation of life Kshs</i>	<i>80,000</i>
<i>Dependency – [15,000 x 12 x 25 x 2/3] =</i>	<i>3,015,000</i>
<i>Sub-total</i>	<i>3,015,000</i>
<i>Less [80,000 (loss of expectation of life)]</i>	<i>-80,000</i>
	<b><i>2,935,000</i></b>

*Plus Special Damages*

<i>Funeral expenses</i>	50,000
<i>Legal Fees</i>	<u>20,000</u>
<b>TOTAL</b>	<b>3,005,000</b>

5. It is the said award that has triggered this appeal. The 12 grounds of appeal are set out in the memorandum of appeal dated 24<sup>th</sup> September 2020 challenging the trial court award on damages as a whole.

6. However, the appellant in its submissions abandoned some of the grounds in its memorandum of appeal and submitted that it was only challenging the multiplier and multiplicand adopted by the trial court.

7. The principles which an appellate court will interfere with an award in general damages was stated by the Court of Appeal in **Bashir Ahmed Butt vs. Uwais Ahmed Khan (1982-88) KAR** as follows:

*‘An appellate court will not disturb an award for general 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 at a figure which was either inordinately high or low...’*

8. In **Roger Dainty v Mwinyi Omar Haji & Another MSA CA Civil Appeal No. 59 of 2004 [2004]eKLR**, the Court to Appeal observed that;

*“To ascertain the reasonable multiplier or multiplicand in each case, the court would have to consider such relevant factors as the income or prospective income of the deceased, the kind of work the deceased was engaged in, the prospects of promotion and his expectation of working life.”*

9. In **Hannah Wangaturi Moche & Another vs. Nelson Muya, Nairobi HCCC No. 4533 of 1993** the court held as follows:-

*“In determining the right multiplier, the right approach is to consider the age of the deceased, the balance of earning life, the age of dependents, the life expected, length of dependency, the vicissitudes of life and factor accelerated by payment in lump sum”*

10. The court in **Marko Mwenda vs. Bernard Mugambi & Another Nairobi HCCC No. 2343 of 1993** held that:

*“In adopting a multiplier the Court has regard to such personal circumstances of both the deceased and the dependants as age, expectations of earning life, expected length of dependency and vicissitudes of life. The capital sum arrived at by applying the multiplicand to the multiplier is then discounted to allow for the fact of receipt in a lump sum at once rather than periodical payments throughout the expected period of dependency. The object of the entire exercise is to give the dependants such an award as would when wisely invested be able to compensate the dependants for the financial loss suffered as a result of the death of the deceased...The multiplier approach is just a method of assessing damages and not a principle of law or dogma. It can, and must be abandoned, where the facts do not facilitate its application. It is plain that it is a useful and practical method where factors such as the age of the deceased, the ages of the dependants, the net income of the deceased, the amount of annual or monthly dependency and the expected length of the dependency are unknown or are knowable without undue speculation. Where that is not possible, to insist on the multiplier approach would be to sacrifice justice on the altar of methodology, something a court of justice should never do. Such sacrifice would have to be made if the multiplier approach was insisted upon in this case.”*

11. I now turn to consider whether the multiplier of 25 years was appropriate. The appellant contends that the trial court adopted a multiplier of 25 years without taking consideration of the vagaries and vicissitudes of life. It was also advanced that the trial court completely ignored the authority cited by the appellant, **Mary Wanjiru Mugwe v Peter Gatoto Ng’ang’a & another (2009) eKLR**, on the issue of multiplier yet the facts were nearly identical. In the said case the deceased was a 40-year-old business woman and the court applied a multiplier of 15 years.

12. The respondent on the other had argued that there was no evidence that the deceased was suffering from any ailment and thus could work until the age of 70. They supported the trial magistrate application of the multiplier of 25 years.

13. In **Florence Ngina Nyalando Achacha & another v Daniel Munyua Njathii & another [2016] eKLR** the court adopted a multiplier of 16 years where the deceased in that case was 41 years old at the time of death and employed with the Teachers Service Commission. In my view a multiplier of 20 years is appropriate considering that the deceased was a farmer and taking into account the vicissitudes of life as a farmer he could worked up to 65 years old.

14. On the multiplicand to applicable, the appellant did not take issue with the trial court’s decision to apply the wages of a general laborer, his contention is that the court failed to consider the deceased’s place of work at the time of his death. In this case the trial court found that the income of the deceased was unascertainable and applied **the Regulation of Wages(General) (Amendment) Order, 2017** which provided that the wage of a general laborer was Kshs. 6,896.15/- provided that he/she is not working in Nairobi, Mombasa, Kisumu, all former municipalities and town councils of Mavoko, Ruiru and Limuru.

15. According to the demand letter dated 28<sup>th</sup> August 2018 written to the respondent, at the time of the accident the deceased was working within Bokerira sub-location. From the death certificate the deceased also resided at Bokeira. Although the respondent opposed the

appellant's argument, it is clear that the deceased was residing and working in Bokeira and that in the circumstance I am constrained to find that the trial court erred in applying Kshs 15,000/- as the multiplicand.

**16.** In conclusion, the appeal is allowed and I set aside the award of Kshs 3,015,000/- on the head loss of dependency and substitute it with judgment for Kshs. 1,103,384/- (6,896.15/- x 12 x 20 x 2/3). For avoidance of doubt judgment for the respondents against the appellant is entered as follows:

	<b>KSHS</b>
Pain and suffering	50,000
Loss of expectation of life	80,000
Dependency – [6,896.15/- x 12 x 20 x 2/3] =	1,103,384
Funeral expenses	50,000
Legal Fees	<u>20,000</u>
	<b>1,303,384/-</b>
<b>Less 30% contribution</b>	<b><u>308,261.4</u></b>
<b>TOTAL</b>	<b>1,289,384/-</b> The appellant shall have the costs of the appeal.

**DATED, SIGNED AND DELIVERED AT KISII THIS 16TH DAY OF JULY 2021.**

**R.E OUGO**

**JUDGE**

**In the presence of:**

**Appellant Absent**

**Mr. Orayo For the Respondent**

**Mr. Orwasa Court Assistant**