



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KIAMBU**

**(CORAM: CHERERE-J)**

**CIVIL APPEAL NO. 60 OF 2018**

**BETWEEN**

**KENYA POWER & LIGHTING COMPANY LIMITED.....APPELLANT**

**AND**

**MARGARET WANJIKU NJUNGE.....RESPONDENT**

*(Being an Appeal from the Judgment and Decree of Hon. B.J.Bartoo (RM) in Thika CMCC NO. 969 of 2014 dated 05th April, 2018)*

**JUDGMENT**

1. **MARGARET WANJIKU NJUNGE (hereinafter referred to as respondent)** sued **KENYA POWER & LIGHTING COMPANY LIMITED (hereinafter referred to as appellant)** in the lower court claiming damages for injuries allegedly suffered on 26<sup>th</sup> March, 2014 when she was electrocuted allegedly due to the negligence of the Appellant.
2. The defendant/Appellant filed a statement of Defence and denied the claim and urged the court to dismiss it with costs.
3. Liability was agreed at 80:20% against the Appellant. The trial court awarded Kshs. 800,000/- general damages together with costs and interest.

**The Appeal**

4. The Appellant being dissatisfied with the lower court's decision preferred this appeal and set out 4 grounds of appeal which I have summarized into two grounds to wit:

1. **The learned magistrate erred in law and in fact in assessing damages which are manifestly high and disproportionate to the injuries suffered by the Respondent**
2. **The learned magistrate erred in law and in fact by failing to address her mind to the Appellant's submission and list of authorities**

**SUBMISSIONS BY THE PARTIES**

5. This appeal was argued on the basis of written submissions which both parties dutifully filed.

**Analysis and Determination**

6. This being the first appellate court, its duty is to reevaluate the evidence and come up with its own conclusions but also bear in mind that it should not interfere with the findings of the trial court unless the same were based on no evidence or on misapprehension of the evidence or the trial court applied the wrong principles in reaching its findings. In **Peters v. Sunday Post Limited (1958) EA at Pg. 424**, it was held inter alia as follows:

**"It is a strong thing that for an appellate court to differ from the finding, on a question of fact, of the judge who tried the case and who has had the advantage of seeing and hearing the witnesses. An appellate court has, indeed, jurisdiction to review the evidence in order to determine whether the conclusion originally reached upon that evidence should stand. But this is a jurisdiction which should be exercised with caution: It is not enough that the appellate court might itself have come**

**to a different conclusion."**

7. A medical report by Dr. Karanja and another by Dr. Wambugu shows that Respondent suffered the following injuries sustained:

- Soft tissue injuries to right index finger and thumb
- Soft tissue injuries to left and 5<sup>th</sup> fingers
- Soft tissue injuries to face
- Soft tissue injuries to anterior chest wall

8. The Respondent lost distal phalanx of the right thumb and left little finger whereas the right index finger healed with a deformity and left ring finger healed with surgical scars. Dr. Karanja and Dr. Wambugu assessed permanent incapacity at 20% and 15% respectively.

9. In the lower court, the Respondent cited **City Engineering Works (K) Ltd v Venatsio Mutua Wambua [2016] eKLR** where Respondent had suffered injury to the left hand as a result of which his fingers were crushed leading to amputation of the fingers and was on appeal awarded Kshs. 600,000/-. Respondent also cited **Pietro Canobbio v Joseph Amani Hinzano [2016] eKLR** where the respondent who suffered amputation of three fingers leading to 18% permanent disability was awarded Kshs, 750,000/-.

10. The Appellant on the other hand cited **Simba Posho Mills Ltd v Onguti [2005] eKLR** where the Respondent was awarded Kshs. 180,000/- for amputated distal phalanx and comminuted fracture of the right index finger of the right hand. degloving minor in jury palp of the middle finger of the right hand and (iii) Cut wound on the right thumb.

11. The trial court on its part relied on **Pyramid Packaging Limited V Humphrey W. Wanjala [2012] eKLR** which was not cited by any of the parties. In that case, Respondent was on appeal awarded Kshs. 650,000/- for swollen and tender left hand with bruises, traumatic amputation of the left index finger (lost all the phalanges, traumatic amputation of the left middle finger (lost all the phalanges) and traumatic amputation of the left ring finger (lost all the phalanges). These are more serious injuries than the ones suffered by the Respondent in this case.

12. The principle of law on whether a court on appeal can disturb the quantum of damages was well settled in the case of **Kemfro Africa Ltd t/a Meru Express Service Gathogo Kanini .v. A.M. Lubia and Olive Lubia (1985) 1KAR 727** . At page 730 Kneller J.A. said: -

**“The principles to be observed by an appellate court in deciding whether it is justified in disturbing the quantum of damages awarded by a trial judge were held by the former Court of Appeal of Eastern Africa to be that it must be satisfied that either that the judge, in assessing the damages, took into account an irrelevant factor, or left out of account a relevant one, or that; short of this, the amount is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage.**

13. I have considered the record of appeal and the submission by both parties. It is the duty of the advocates to avail relevant authorities to guide the court in arriving at a fair award for the injuries suffered. With due respect, the case cited by the Appellant was irrelevant whereas the two cited by the Respondent related to slightly more serious injuries than those suffered by the Respondent in this case.

#### **DISPOSITION**

14. Considering all factors, the submissions made and the cited case law, I would consider an award of Kshs. 500,000/- as adequate compensation for pain and suffering which sum is subject to 20% contributory negligence.

15. Since the Appellants have partially succeeded each party shall bear its own costs of this appeal.

**DELIVERED AND SIGNED AT KIAMBU THIS 12<sup>th</sup> DAY OF September 2019**

**T. W. CHERERE**

**JUDGE**

**Read in open court in the presence of-**

**Court Assistant - Nancy & Morris**

**For the Appellant -N/A**

**For the Respondent -Mr. Ngumbi hb for Ms. Ngetho**