



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 135 OF 2010

EDITH ALIVITSA.....PLAINTIFF

- V E R S U S -

KENYA FOREST SERVICE.....1ST DEFENDANT

KENYA POWER AND LIGHTING CO. LTD.....2ND DEFENDANT

JUDGEMENT

1. Edith Alivista, the plaintiff herein, filed an action against Kenya Forest Service and Kenya Power & Lighting Co. Ltd, the 1st and 2nd defendants respectively, claiming both general and special damages for the injuries she sustained as a result of electrocution which occurred on 2.10.2007. The action is by way of the plaint dated 9.3.2010 and amended on 18.3.2010. The defendants filed a joint statement of defence.

2. When this suit came up for hearing, Edith Alivista was the only witness who testified in support of the plaintiff's case. The defendants on the other hand did not summon any witness in support of their defence.

3. It is the evidence of the plaintiff (PW1), that on 2.10.2007, she was assigned the duties of putting out a fire in parts of 1st defendant's forest at Karura. She stated that she got in contact with a live electric wire owned by the 2nd defendant and in the process she got electrocuted thus sustaining serious injuries to wit:

- *Electric shock on the left side of the body.*
- *Loss of consciousness paralysis of the left side of the body*
- *Swelling of the left upper limb with burns on left hand.*
- *Swollen foot*

4. The plaintiff told this court that she was employed by the 1st defendant as a casual labourer and that on the 2.10.2007, five months into her employment, her employer deployed her to participate in putting out a fire in its compound. She stated that in the process of putting out the fire, she got seriously electrocuted and at the moment she is unable to resume her employment nor get another employment.

5. PW1 stated that she was not trained nor employed to put out fires. She also stated that she was not warned nor equipped for the dangers which may arise out of such an exercise.

6. She further stated that while putting out the fire, she got electrocuted by an open electric wire which had fallen down and had been hidden in the thickets. As a result of the injuries, the plaintiff stated that she is unable to perform any manual chores as indicated in the medical report prepared by Dr. Alugada. At the close of evidence learned counsels were invited to file written submissions.

7. Having considered the evidence tendered by the plaintiff and the rival written submissions, two issues presented themselves for determination namely: **liability** and **quantum**. On liability, it is the submission of the plaintiff that she presented credible evidence which were not controverted by the defendants.

8. It is the submission of the defendants that the plaintiff failed to prove her case on a balance of probabilities that the accident occurred solely due to the negligence, breach of statutory duty by the defendants. It was also argued by the defendants that the plaintiff did not establish the particulars of negligence levelled against the defendants.

9. The defendants further pointed out that the plaintiff had worked with the 1st defendant for a long period hence was familiar with the surrounding and that the exercise of putting out fire does not require any training.

10. The defendants further argued that the plaintiff was to blame for the said accident as she was supposed to take proper precautions while carrying out the exercise.

11. It is not in dispute that the plaintiff was deployed by the 1st defendant to put out a fire in its Karura Forest. It is also not disputed that the plaintiff suffered serious injuries.

12. I am convinced that the plaintiff has presented credible evidence to show that the defendants are wholly to blame for the accident. The 1st defendant deployed the plaintiff to perform the work of putting out a fire yet it knew that the plaintiff was not trained to perform such a duty.

13. The 1st defendant did not also provide the plaintiff with any protective gear to undertake such an exercise. The 2nd defendant on the other hand did not ensure that its electric wires were securely above the ground and in a cleared path. I find the defendant jointly and severally liable.

14. On quantum, the plaintiff beseeched this court to award her a sum of ksh.4,000,000/=. The plaintiff cited two cases in support of her proposal. However the relevant case is that of **Nickson Muthoka Mutari vs Kenya Agricultural (2016) Eklr** where this court awarded a sum of kshs.3,000,000/= for burns on the abdomen, burns on both palms, burns on the right leg and burns on the foot both sole and dorsum.

15. The defendants on their part proposed that a sum of ksh.300,000/= is adequate compensation for the plaintiff. They cited two cases. The first case is that of **Mary Wairimu Njuguna vs Kenya Power & Lighting Co. Ltd (2018) eKLR** where the court awarded a sum of ksh.500,000/= for electric shock, electric burns on the right arm, blisters on the dorsum of the right hand, eye injury, acute kidney shut down, confusion and bleeding on the lower back.

16. In the second case of **Eunice Onyango vs East African Growers Ltd (2017) eKLR**, this court awarded ksh.500,000/= for general damages for pain and suffering in respect of deafness, unable to lift her leg and arm, pains in the right side of the body permanent hemiparesis, fornicoli, permanent incapacity of 80% amputation of the thumb index finger.

17. Having considered the authorities cited, it is clear that the authorities cited by the defendants are in respect of injuries closely comparable to the injuries obtaining in this case. The case cited by the plaintiff is in respect of more serious injuries. I am convinced that an award of kshs.800,000/= is reasonable and is within the range given in comparable cases.

18. In the end, judgment is entered in favour of the plaintiff and as against the 1st and 2nd defendants jointly and severally. The plaintiff is awarded ksh.800,000/= plus costs of the suit. The aforesaid award to attract interest at court rates from the date of judgment until the date of full settlement.

Dated, Signed and Delivered in open court this 7th day of December, 2018.

J. K. SERGON

JUDGE

In the presence of:

.....for the Plaintiff

.....for the Defendant