



**REPUBLIC OF KENYA**

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

**CIVIL APPEAL NO. 876 OF 2005**

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

**VERSUS**

**SIMON NJENGA WAINAINA ..... RESPONDENT**

*(An appeal from the judgment and decree of Hon. C.W. Meoli (Mrs.) Ag. Chief Magistrate in Milimani  
CMCC No. 6099 of 2003 delivered on 17th day of October, 2005)*

**JUDGMENT**

This appeal arises from the judgment of the lower court delivered on 17<sup>th</sup> October, 2005. The respondent suffered burns on his body and blamed the appellant for the negligence of its servants and or agents.

Before the trial started the parties recorded a consent judgment on liability at the rate of 85% on the part of the appellant and 15% contributory negligence on the part of the respondent. They were unable to agree on quantum and the matter was listed for assessment of damages.

At the time of the injury the respondent was 15 years old and looking after his father's cattle on 25<sup>th</sup> October, 2001. He came into contact with live electrical wires and sustained burn injuries set out in the plaint and the medical reports produced in evidence. He was examined by doctor Githae and the report dated 1<sup>st</sup> October, 2002 was produced in evidence. The other report was by doctor Ndiba Wairioko dated 16<sup>th</sup> January, 2003.

After receiving evidence and parties having filed submissions the lower court in its judgment made an award of Kshs. 600,000/= for pain, suffering and loss of amenities, Kshs. 150,000/= for loss of future earning capacity and Kshs. 28,500/= special damages. Giving allowance of 15 % contributory negligence, the trial court made an award of Kshs. 666,000/= in total. The respondent was also awarded costs of the suit and interest.

I have gone the evidence recorded by the trial court, submissions and authorities cited by counsel. The appellate court may interfere with the discretion of the trial court in assessing damages if it too account or left out relevant facts. The lower court decision may also be interfered with if the award is so inordinately low or so high that it must be a wholly erroneous estimate of damages.

The learned trial magistrate took into account the material presented before her including the cited cases to arrive at the figure in general damages. The authorities cited by the appellant's counsel in this appeal were decided in the 1980's and have not taken into account the depreciation of the Kenya shilling and attendant inflation. **High Court Civil Case No. 954 Of 2000 Nzilani Ndari Vs. Boniface Musyoka Ndoe and Another** provides a better guide. In that case the plaintiff was awarded Kshs. 500,000/= general damages in the year 2001.

Taking into consideration the material before me, I am unable to fault the trial magistrate in that regard. The respondent did not plead loss of future earning capacity and no evidence was adduced in that regard. There was no basis therefore to award the sum of Kshs. 150,000/= for loss of future earning capacity. That award must be set aside. If that sum is deducted from the total figure of Ksh. 666,000/= the balance is Kshs. 516,000/=.

In the end this appeal is allowed in part such that there shall be judgment for the respondent in the total sum of Kshs. 516,000/=. Each party shall bear their own costs.

*Dated, signed and delivered at Nairobi this 15<sup>th</sup> Day of February, 2017*

**A. MBOGHOLI MSAGHA**

**JUDGE**