



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

CIVIL SUIT NO. 158 OF 2011

B O O

(Minor suing thro' M O Next friend) PLAINTIFF

VS

KENYA POWER & LIGHTING CO. LTD. DEFENDANT

JUDGMENT

On or about 9th May 2011 then Plaintiff then aged 9 years old sustained injuries when he stepped on live electric wires that were hanging on the ground near his home. On 7th May 2014 the advocates for the parties recorded a consent wherein the Defendant conceded 80% liability and the Plaintiff was to bear 20% contributory negligence.

The only issue for determination therefore is the quantum of damages awardable to the Plaintiff.

According to Dr. Were Okombo (PW4) who examined the Plaintiff on 28th August 2012, the Plaintiff suffered head injuries, second degree burns on the right hand, second degree burns on right and left hands which ended in amputation, second degree burns on the chest and on abdomen and complained of headache, chest pains, abdominal pains, pain on left and right hands which were stiff. Though the injuries were yet to heal he was physically in good condition. According to the doctor the Plaintiff also had a scar 3cm which had keloid formation on the right wrist joint, 3cm scar with keloid on the left scar joint, scar measuring 25cm with keloid formation on radial aspect of wrist joint, scar measuring 12cm with keloid formation on left hand mid region, 30cm scar on chest (anterior region) and 18cm scar with keloid formation on the abdomen. He opined that these were soft tissue injuries. He recommended further treatment specifically physiotherapy analgesics and cosmetic surgery in areas with scars with keloid formation. He estimated the cost of treatment could be at least Kshs.1.5 million. The Doctor's prognosis was that the Plaintiff had suffered grievous harm and the effect of the injuries were that he could not flex and reflex the hands, could not dig, lift heavy objects or carry out duties effectively unless there was surgery. He also testified that X-ray revealed that the Plaintiff had deformities in the joints and that he could not write properly due to stiffness and amputation.

Counsel for the Plaintiff has proposed an award of Kshs.9,000,000/= for pain, suffering and loss of amenities, Kshs.1,000,000/= for loss of future earnings, Kshs.1,500,000/= for future medical expenses, Kshs.29,000/= special damages and has also prayed for the costs of the suit. In support of his submissions he relied on the High Court authorities:

1. **Peris Onduso Omondi V. Tectura International Ltd. & Another (2012) Eklr**
2. **Charles Kimani Ng'ang'a V. Kenya Power & Lighting Company Limited (2006) Eklr.**

On behalf of the Defendant, it was submitted that an award of Kshs.300,000/= would suffice. Counsel for the Defendant relied on **HCCCA (ELD) NO. 112 of 2003 Eldoret Steel Mills V. Joash Okinyi Ochieng**.

I have considered the evidence as well as the rival submissions carefully. No doubt the Plaintiff sustained extensive injuries as a result of the electrocution. The Doctor (PW4) classified those injuries as grievous harm. He did however point out, during cross-examination, that with proper treatment the Plaintiff's injuries would heal. In re-examination he testified that the Plaintiff had not fully healed when he saw him. As was stated by Ojwang J. as he then was, in **Charles Kimani Ng'ang'a V. Kenya Power & Lighting Co**:

"It is a trite proposition that general damages are compensatory in nature. This means that the facts of each case are all important. Once a certain position of liability – allocation is accepted (as in the present case), the mode of compensation to an injured party is squarely dependant on the facts of that particular case. Those facts are, I would consider, integrally linked to the social environment in which the accident occurred, and to the social and economic realities of the country in question....."

Each case is therefore to be considered on its own merit and although damages awardable are in the discretion of the Judge that discretion must be exercised judicially. The Court must also always bear in mind that comparable injuries must attract comparable awards keeping in mind the correct level of awards in similar cases. (See **Jabare V. Olenja (1986) KLR 661 AND Arron Car Limited V. Bimomo & 2 others (2004) 2KLR 101**).

I shall begin with the claim for special damages. Here the Plaintiff claimed a sum of Kshs.27,000/=. It however became clear that he did not expend this expense as the same was paid by N.H.I.F. Accordingly that sum cannot be refunded to him. He is however entitled to Kshs.1,500/= for the medical report. The 1,500/= for Doctor's attendance to Court was neither pleaded nor strictly proved and so will not be awarded.

As for the claim for general damages for loss of future earnings the law is that it must be pleaded in order to be awarded. (See **Mary Mukiri V. Njoroge Kiania – Civil Appeal No. 48 of 1996 and Mbaka Nguru & Another V. James George Rakwar – Civil Appeal No. 133 of 1998 (1995 – 1998) 1 E.A. 246** both cited with approval in **Peris Onduso Omondi V. Tectura International Ltd. & Another (2012) 2KLR**). The Plaintiff in this case did not plead this head of damages and it has only surfaced in his Advocate's submissions. Accordingly the Kshs.1,000,000/= proposed is untenable and will not be awarded.

We are now left with the claim for general damages for pain, suffering and loss of amenities and for future medical expenses. As I have already stated whereas each case is to be determined on its own merits where the assessment of damages is concerned it is also trite that comparable injuries must be compensated with comparable awards. The Advocate for the Plaintiff cited two cases in support of his submission for Kshs.9,000,000/=. In my view that proposal is way on the higher side. The proposal by counsel for the Defendant is on the other hand way on the lower side. Looking at the authorities cited on behalf of the Plaintiff I came to the conclusion that the injuries there were in no way comparable to those of the Plaintiff. In the **Peris Onduso** case the Plaintiff ended up with a slurred speech, poor memory and very poor co-ordination of the right hand and so could not write. She also developed forgetfulness and a staggering gait. She developed convulsions and the doctor concluded that she could never go back to her old life. She was awarded Kshs.3 million. In the **Charles Kimani** case the Plaintiff suffered brain damage and was unable to manage his own life as an independent person yet was awarded Kshs.2.5 million which included future medical expenses.

In the instant case it is clear from the voire dire conducted before this testimony that the Plaintiff was very well co-ordinated in mind and speech. He had by then already gone back to school and the Doctor expected that with proper treatment he would recover fully. Apart from the scars which healed with keloids the only other significant injuries were that he was not able to flex his hands. I must admit that I

did not have the benefit of seeing him. However taking everything into account and doing the best I can, I am satisfied that an award of Kshs.1 million is adequate to compensate him for the pain, suffering and loss of amenities. **Ojwang J.** as he then was awarded future medical

expenses together with the general damages. I am persuaded that it would be reasonable to do so. Accordingly the sum of Kshs.1.5 million for future medical expenses shall also be included hence bringing the general damages awarded to Kshs.2.5 million. Accordingly there shall be judgment for the Plaintiff against the Defendant for:-

1. Special damages Kshs.1,500/= less 20%;
2. General damages Kshs.2,500,000/= (two million five hundred thousand) less 20%;
3. Costs of the suit;
4. Interest on specials from date of filing suit and interest on general damages from the date of this judgment. Interest shall be at Court rates.

E. N. MAINA

JUDGE

Signed, dated and delivered at Kisumu this 5th day of June 2015

In the presence of:-

Mr. Nyawiri for Plaintiff

Mr. Rakewa for L.G. Menezes for Defendant

CC: Moses/Rose Abondo

MR. RAKEWA: We pray for thirty days stay.

E. N. MAINA

JUDGE

COURT: Stay of execution to issue (thirty days)

E. N. MAINA

JUDGE

5/6/2015