



THE REPUBLIC OF KENYA

IN THE CHIEF MAGISTRATE'S COURT AT NAKURU

CIVIL SUIT NO. E420 OF 2023

STEPHEN CHEGE KAMAU & MARY WANJIRU

(Suing as the Legal Representatives of the Estate)

PLAINTIFFS

of DORCAS NJOKI CHEGE (Deceased)

VRS

KENYA POWER & LIGHTING COMPANY LTD.....DEFENDANT

JUDGMENT

1. **Dorcias Njoki Chege** (deceased) at the age of 31 years, was a shop attendant in Mau Narok, Nakuru County. On or about the 28th May 2023, the deceased was lawfully going on with her normal business of house chores at her rented premises when she was electrocuted as power lines came into contact with the metallic clothing lines that were present at her home in Kaptembwo. She sustained serious injuries which she later succumbed to. As a result of the said electrocution of the deceased, the plaintiffs now hold the Defendant liable, hence the instant suit.

2. By a Plaint dated the 21st of July, 2023, the plaintiffs (suing as the legal representatives of the estate of Dorcas Njoki Chege - the deceased) sued the defendant for negligence which resulted in the death of their daughter. They are seeking general damages under the Law Reform Act and the Fatal Accidents Act, special damages, costs of the suit, interest at court rates on general and special damages and such other relief that this Honorable Court may deem fit to grant.
3. The defendant denied the allegations contained in the plaint and put the plaintiffs to strict proof thereof. It claimed that the deceased was wholly to blame or substantially contributed to the said accident.
4. At the hearing, the 1st plaintiff, PW1, **STEPHEN CHEGE KAMAU**, testified and called two witnesses in support of their case. PW1, the father of the deceased, testified on 31/10/2024 and adopted his statement dated 21/07/2023. He further produced the exhibits as per the list of documents dated 21/07/2023 and a further list dated 28/05/2023. His evidence -

in - chief basically reiterated the averments in the pleadings herein.

5. PW2, **KEVIN TAMATA MWACHI**, was a neighbor of the deceased. He witnesses the fatal accident herein. He stated that the deceased herein was electrocuted while going on with her normal business when the powerlines came into contact with a metallic clothing line that was present at the deceased's home, and that he blames the defendant for the accident because it is strictly liable for the acts of their agent or servant who acted negligently as per the particulars in the plaint. That the defendant left the wire unattended thereby causing it to leak electric power which electrocuted the deceased. He denied that the deceased was negligent in any way.

6. PW3, **JAMES MWANGI**, confirmed that he had employed the deceased as at the time of her death. He produced an **employment letter** as **PEXH. NO. 25**. That the deceased used to earn Kshs. 23,000/- per month. After the close of the claimant's case, the respondent closed its case without calling any witnesses.

PLAINTIFFS' SUBMISSION

7. The parties filed their respective submissions. The plaintiffs urged that the defendant be held fully liable having called no evidence in rebuttal. They submitted that they had proven their case on a balance of probabilities as envisioned by law for civil matters.
8. On quantum, the claimants submitted that they be awarded general damages amounting to Kshs. 100,000 for pain and suffering; Kshs 300,000 loss of expectation of life and Kshs 5,336,00 for loss of dependency. They further submitted for special damages of Kshs 436,000.

DEFENDANT'S SUBMISSION

9. The defendant submitted that the plaintiffs had failed to prove the defendant's negligence contrary to the provisions of section 107 of the Evidence Act that requires that whoever alleges that a set of facts exists, must prove those facts to enable the court to give judgment. In the alternative, it submitted that the deceased voluntarily assumed the risk related to the incident herein and thus the defendant cannot be

blamed whatsoever. Relying on the doctrine of *volenti non-fit injuria*, the defendant submitted that the deceased voluntarily agreed to undertake the risk of harm at her own expense. Further that the deceased could or should have reasonably anticipated the harm that resulted from her actions and that her failure to exercise reasonable care in the circumstances led to harm to herself.

10. On quantum, the defendant submitted that under common law, where damages due to the estate of the deceased under the Law Reforms Act and damages due to the dependents under the Fatal Accidents Act devolve to the same persons/beneficiaries, then the law requires that one award be offset against the other. The defendant urged the court to consider offsetting or deducting the award under either the Law Reforms Act against the award for loss of dependency or vice-versa, depending on which of the awards is higher than the other.

ISSUES FOR DETERMINATION

11. Having considered the pleadings, evidence and submissions, the court asserts that the main issues for determination are: -
- a. Whether the defendant is liable for negligence for causing the deceased's death.
 - b. Whether the plaintiffs are entitled to the reliefs sought.

ANALYSIS AND DETERMINATION

Whether the defendant is liable for negligence for causing the deceased's death.

12. The evidence on record is that on the material day, the deceased was lawfully going about her domestic chores at her house in Kaptembwa when she was electrocuted. The **OB report** of the accident was produced as **PEXH. No. 20** and the same confirms the electrocution. The **photograph** of the carelessly and dangerously exposed electric wire cables was also produced herein as **PEXH. NO. 21**. The deceased was thus electrocuted by an exposed live electric wire dangerously hanging at her home. The deceased died from the injuries she

sustained as a result of the harm she suffered from the electric shock.

13. PW2, a neighbor to the deceased, witnessed the incident and his evidence has been sufficiently corroborated. This evidence was neither denied nor controverted by the defendant even during cross-examination. Furthermore, the defendant chose not to call any witnesses. It was not denied and it is common knowledge that the defendant is the entity in Kenya responsible for erecting electric supply lines, maintaining them and distributing power through the said electric supply lines in most parts of the country.

14. The defendant relied on its statement of defence. However, that cannot constitute evidence capable of displacing the plaintiffs' evidence. In the case of **AMK (Suing as the mother and the next friend of JMK - Minor) VRS KENYA POWER & LIGHTING COMPANY LIMITED [2020] eKLR** the Hon Justice Mabeya stated that:

Where a party fails to call evidence in support of its pleading (be it a plaint or defence), the evidence of the opposing party is to be believed

as having not been rebutted, unless effectively displaced in cross-examination. In this case, the evidence was not displaced in cross-examination. Accordingly, the evidence of the plaintiff was uncontroverted.

15. Section 121 (1) (h) as read together with section 140 of the Energy Act imposes upon a licensed distributor, such as the defendant herein, a duty to protect the health and safety of its employees, consumers and other members of the public. Section 140 states that:

140. (1) It shall be the duty of a distribution licensee to—

a. build, maintain, and keep in good state of repair suitable and sufficient electric supply lines for purposes of enabling supply to be given in the area of supply specified in that behalf in the license;

b. operate an efficient, safe, coordinated and economical distribution system

16. Further, section 166 (2) of the Energy Act imposes upon a licensee liability arising from any failure, poor quality or irregularity of electricity supply. It provides that:

(2) The licensee shall be liable to pay appropriate compensation to a person if due to failure, poor quality or irregularity of electricity supply, the person incurs damage to his or her property, financial loss, loss of life due to negligence or avoidable default by the licensee.

17. In the case of **DA VRS KENYA POWER & LIGHTING COMPANY LIMITED [2021] eKLR** while determining the liability of the defendant, Hon Justice Gikonyo was of the opinion that:

The defendant is aware of the extreme danger posed by high voltage electric power lines which traverse through areas which are inhabited or accessible by the public. As the installer of the electric power lines and cables thereto, the defendant has a statutory duty of supervising, inspecting and maintaining its electric installations under section 52 of the Energy Act. This calls for a high degree of vigilance on its part in order to avert accidents. They therefore bear the duty to ensure the power lines or cables do not become source of injury to the members of public.

18. Furthermore, in the event of an accident or incident causing loss of life, the defendant has an obligation to inform the Energy and Petroleum Regulatory Authority within forty-eight hours as per the provisions of section 214 of the Energy Act which states that:

1.A person engaged in any undertaking or activity pursuant to a license under this Act shall notify the respective licensing authority and the Authority within forty-eight hours in writing, in the form and manner prescribed by the Authority, of any accident or incident causing loss of life, personal injury, explosion, oil spill, fire or any other accident or incident causing harm or damage to property which has arisen in Kenya or within Kenya's Exclusive Economic Zone or Outer Continental Shelf.

2.The licensing authority or the Authority may direct an investigation to be carried out into any incident under subsection (1) and take such action as it deems necessary.

19. The defendant herein did not produce any evidence to show that it had complied with the requirements of section 214 of the Act. As such this court finds that the defendant has

blatantly disregarded its statutory obligations as relates to the loss of life herein.

20. Accordingly, this court is satisfied that the defendant was negligent and was to blame for the accident and that the deceased was at no fault. I find and hold the defendant fully liable for negligence.

Whether the plaintiffs are entitled to the reliefs sought.

21. The next issue is one of quantum. The plaintiffs sought Kshs 436,000 as special damages. It is trite law that special damages must be specifically pleaded and proved. Out of the pleaded sum, the plaintiffs were able to prove special damages in the sum of Kshs 435,000 only. No evidence was adduced to prove the claim for an additional sum of Kshs 1,000 being the cost of obtaining the grant.

22. On general damages, in ***H WEST AND SON LTD VRS SHEPHERD (1964) AC 326*** the House of Lords in England stated that: -

... but money cannot renew a physical frame that has been battered and shattered. All that judges and courts can do is to award sums which must

be regarded as giving reasonable compensation. In the process there must be the endeavor to secure some uniformity in the general method of approach. By common consent awards must be reasonable and must be assessed with moderation. Furthermore, it is eminently desirable that so far as possible comparable injuries should be compensated by comparable awards. When all this is said it still must be that amounts which are awarded are to a considerable extent conventional ...

23. In regard to the issue of damages awarded under the Law Reform Act, the High Court at Kakamega in **WEST KENYA SUGAR CO. LIMITED VRS PHILIP SUMBA JULAYA (Suing as the Administrator and personal representative of the estate of James Julaya Sumba) [2019] eKLR** observed that-

The principle is that damages for pain and suffering are recoverable if the deceased suffered pain and suffering as a result of his injuries in the period before his death. In addition, a plaintiff whose expectation of life has been diminished by reason of injuries sustained in an accident is entitled to be compensated in

damages for loss of expectation of life. The generally accepted principle is that very nominal damages will be awarded on these two heads of damages if the death followed immediately after the accident.

24. As pointed out, money cannot renew the physical frame of the deceased. However, the damages ought to be reasonable in the circumstances. Having found so, I will now address the extent of damages to award under the following heads.

a. General Damages

Pain and suffering

25. The copies of both the death certificate and the postmortem report produced as evidence both indicate that the deceased died on the same day after she was electrocuted. The eye witness, PW2, however confirmed that she did not die on the spot. We are however not told how long it took her to die. Learned counsel for the plaintiff has proposed a sum of Kshs. 100,000 while the counsel for the defendant proposed Kshs. 10,000.

26. In the case of **SUKARI INDUSTRIES LIMITED VRS CLYDE MACHIMBO JUMA [2016] eKLR** the deceased had died immediately after the accident and the trial court had awarded Kshs 50,000/= for pain and suffering. Majanja J held on appeal that:

(5) On the first issue, I hold that it is natural that any person who suffers injury as a result of an accident will suffer some form of pain. The pain may be brief and fleeting but it is nevertheless pain for which the deceased's estate is entitled to compensation. The generally accepted principle is that nominal damages will be awarded on this head for death occurring immediately after the accident. Higher damages will be awarded if the pain and suffering is prolonged before death. According to various decisions of the High Court, the sums have ranged from Kshs 10,000 to Kshs 100,000 over the last 20 years hence I cannot say that that the sum of Kshs 50,000 awarded under this head is unreasonable.

27. Upon considering the pain and suffering that the deceased naturally underwent preceding her death, this court will award the sum of Kshs 100,000/- being guided by the above authority

and as proposed by the learned counsel for the plaintiff given that she did not die instantly and also factoring the rise in cost of living since 2016 when the above decision was made.

Loss of expectation of life

28. In **MERCY MURIUKI & ANOTHER VRS SAMUEL MWANGI NDUATI & ANOTHER (Suing as the legal Administrator of the Estate of the late Robert Mwangi) (2019) eKLR** the court observed that: -

The generally accepted principle therefore is that very nominal damages will be awarded on these two heads of damages if the death followed immediately after the accident. The conventional award for loss of expectation of life is Kshs 100,000/- while for pain and suffering the awards range from Kshs 10,000/= to Kshs 100,000/= with higher damages being awarded if the pain and suffering was prolonged before death.

29. In the case of **MOSES AKUMBA & ANOTHER VRS HELLEN KARISA THOYA (2017) eKLR** Chitembwe J rendered that an award of Kshs 200,000/= for loss of expectation of life for a

deceased who was a fisherman was not inordinately high. He stated that:

My view on the issues of loss of expectation of life is that each life is important and equal. There should be no distinction between a poor man and a rich one, no distinction between one who is working and an unemployed person. The awarded damages are for loss of expectation of life. The deceased was aged 25 years and a healthy person. He was a fisherman as per his mother's evidence. The normal expectation is that he was going to live up to the age of 60 years. Whether he was going to get formal employment or not is not an issue. It is the aspect of that life having been cut short that is being considered. Due to the sudden death, the deceased's life was shortened. All his expectations in this world were eroded. Having that in mind, we should then consider whether Kshs 70,000 is sufficient to compensate for that loss. We should not view the deceased as a simple fisherman whose expectation in life was limited to fishing. No one knows what tomorrow has for him. I do find that the award of Kshs 200,000 is fair and not inordinately high. The other dispute involves loss of dependency.

30. In the cases of **PATRICK KARIUKI MUIRURI & 3 OTHERS** **VRS ATTORNEY GENERAL [2018] eKLR** Serгон J made an award of Kshs 200,000/= under this heading. In **VINCENT KIPKORIR TANUI (Suing as the Administrator and/or Personal Representative of the Estate of Samwel Kiprotich Tanui (Deceased) VRS MOGOGOSIEK TEA FACTORY CO LTD & ANOTHER [2018] eKLR** an award of Kshs 200,000/= was made.

31. The plaintiffs have proposed an award of Kshs 300,000 as damages for loss of expectation of life while the defendant has proposed Kshs. 100,000. Upon consideration, I will award a sum of Kshs 300,000/- under this head as proposed by the learned counsel for the plaintiffs. I have again relied on the above decisions and those cited by the learned counsel for the plaintiff and factored in the rise in the cost of living.

Loss of dependency

32. The deceased was 31 years old at the time of her untimely death and was supporting her parents and children. It was the plaintiffs' submission that the deceased therefore had 29 years

working life remaining. The plaintiffs proposed a multiplier of 29 and a dependency ratio of 2/3. Surprisingly, there were no proposals under this head from the defendant.

33. It was the defendant's submission that where damages due to the estate of the deceased under the Law Reforms Act and damages due to the dependents under the Fatal Accidents Act devolve to the same persons/beneficiaries, then the law requires that one award be offset against the other. The respondents urged the court to consider offsetting the lesser award from the higher one to prevent the claimants who are also the dependants herein from receiving double benefits under both the Law Reforms Act and the Fatal Accidents Act.

34. The question of double compensation under the two Acts was explained by the Court of Appeal in **HELLEN WARUGURU (Suing as the Legal Representative of Peter Waweru Mwenja (Deceased) VRS KIARIE SHOE STOORES LIMITED [2015] eKLR** where it was held as follows:-

This court has explained the concept of double compensation in several decisions and it is surprising that some courts continue to get it

wrong. The principle is logical enough; duplication occurs when the beneficiaries of the deceased's estate under the Law Reform Act and dependents under the Fatal Accidents Act are the same, and consequently the claim for lost years and dependency will go to the same persons. It does not mean that a claimant under the Fatal Accidents Act should be denied damages for pain and suffering and loss of expectation of life as these are only awarded under the Law Reform Act, hence the issue of duplication does not arise. An award under the Law Reform Act is not one of the benefits excluded from being taken into account when assessing damages under the Fatal Accidents Act; it appears the legislation intended that it should be considered. The Law Reform Act (cap 26) section 2(5) provides that the rights conferred by or for the benefit of the estates of deceased persons shall be in addition to and not in derogation of any rights conferred on the dependents of the deceased persons by the Fatal Accidents Act. This therefore means that a party entitled to sue under the Fatal Accidents Act still has the right to sue under the Law Reform Act in respect of the same death. The words "to be taken into account" and "to be

deducted” are two different things. The words in section 4(2) of the Fatal Accidents Act are “taken into account”. The section says what should be taken into account and not necessarily deducted. It is sufficient if the judgment of the lower court shows that in reaching the figure awarded under the Fatal Accidents Act, the trial judge bore in mind or considered what he had awarded under the Law Reform Act for the non-pecuniary loss

35. In light of the foregoing, it is clear that what is required of the court is not to deduct one award from the other but to take into account the possibility of double compensation. This court is not persuaded that the plaintiffs should not be awarded damages under loss of expectation of life, I also see no rationale as to why damages for loss of expectation of life should be deducted from the award under loss of dependency.

36. I rely on the case of **MOSES AKUMBA & ANOTHER VRS HELLEN KARISA THOYA (2017) eKLR** Chitembwe J rendered as follows:

The trial court invoked the provisions of section 4 (1) of the Fatal Accident Act and was well guided on the applicable legal principles. The trial court

found that the deceased had only two dependents - the parents. A multiplier of 30 years was adopted in my view that multiplier is a bit high. The award is for the benefit of those two parents who were aged 52 and 53 years respectively. What this means is that the two parents would have lived up to the age of 80 years and beyond. The concern for the award is not how long the deceased would have lived but the extent and length of the dependency. I do find that a multiplier of 20 years would be sufficient. This would have extended the dependency to over 70 years. The trial court adopted a sum of Kshs 20,000 as the deceased's salary each month. PW1 testified that the deceased was a fisherman earning between Kshs 1000 -1,500 daily. It is obvious that the allegation court not be backed by any record or documentation. The deceased was working informally. According to his mother, he had a fishing boat and the proceeds were from selling fish. Counsel for the appellant is of the view that the court should adopt the minimum wage of Kshs 4,577.220. It is clear to me that the deceased was active in life. There is no legal principal that any unemployed person should be

considered to have been earning the minimum wage. Someone running a retail shop, kiosk or an eatery could be earning more than the minimum wage. The court simply has to consider whether a fisherman can earn Kshs 5,000 each week in his fishing business. This is a possibility as it translates to about Kshs 800 each day. I do find that the estimate of Kshs. 20,000 by the trial court is not exorbitant. The trial court adopted 1/3 dependency ration which I find to be just. This is what the appellant is proposing. On this head of award, workout is as follows: 20,000 x 20 x 12 x 1/3 = 1,600,000.

37. In the instant case the deceased had 4 dependents, including the plaintiffs herein who are both elderly and 2 young children of hers. She was a single parent to the minors. Relying on the above decision by Justice Chitembwe, I do find that a multiplier of 29 will be sufficient in this case. This will adequately and reasonably cover for the dependency of the deceased's younger children who were being parented singularly by her. They still had a long way to go for them to at least become self-dependant. In regard to the wages of the deceased, the plaintiffs submitted that the deceased earned a

monthly wage of about Kshs 23,000 which amount was not controverted by the respondent. Indeed uncontroverted evidence of the income was laid in court. I will therefore adopt the amount proposed by the plaintiffs as the deceased's wage and a dependency ratio of 2/3. Considering the above findings, I therefore award for loss of dependency as follows:

$$23,000 \times 29 \times 12 \times 2/3 = 5,336,000$$

38. Accordingly, I hereby enter judgment in favour of the plaintiffs and against the defendant as follows:

- a. Liability 100%
 - b. Special damages: Kshs 435,000/-
 - c. General damages
 - i. Pain and suffering: Kshs 100,000/=
 - ii. Loss of expectation of life: Kshs 300,000/=
 - iii. Loss of dependency: Kshs 5,336,000/=
- Total** **Kshs 6,171,000/=**

39. Costs follow the event. The plaintiffs shall have costs of the suit and interest on special damages at court rates from the

date of filing the suit and interest on general damages at court rates from the date of judgment until payment in full.

**DATED AND DELIVERED AT NAKURU THIS ...13th DAY OF
...March..... 2025**

ALOYCE-PETER-NDEGE

SENIOR PRINCIPAL MAGISTRATE

IN THE PRESENCE OF:

Plaintiffs' Counsel: Koome

Defendant's Counsel: Nguono

1st plaintiff:N/A

2nd Plaintiff: N/A