



Jira (Suing as the administrator and legal representative of the Estate of Bakari Jira Katana - Deceased) v Kenya Power & Lighting Company Ltd (Civil Appeal E027 of 2024) [2025] KEHC 16060 (KLR) (7 November 2025) (Judgment)

Neutral citation: [2025] KEHC 16060 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CIVIL APPEAL E027 OF 2024
J NGAAH, J
NOVEMBER 7, 2025**

BETWEEN

OMAR JANGAA JIRA (SUING AS THE ADMINISTRATOR AND LEGAL REPRESENTATIVE OF THE ESTATE OF BAKARI JIRA KATANA - DECEASED) APPELLANT

AND

KENYA POWER & LIGHTING COMPANY LTD RESPONDENT

JUDGMENT

1. On 21 February 2018, Bakari Jira Katana (deceased) was electrocuted as he opened the door to his house. The electrocution was attributed to the negligence of the respondent and so by a plaint dated 3 August 2020, his estate sued for general damages under the *Fatal Accidents Act*, cap. 32 and the *Law Reform Act*, cap. 26. The estate also sought for special damages, costs of the suit and interest.
2. The respondent denied the deceased's estate claim and, in that regard, filed a defence. In particular, the respondent denied the deceased died as a result of electrocution attributable to the respondent's negligence.
3. In a judgment delivered on 2023, the court (Hon. Noelyne Ake (Senior Resident Magistrate) allowed the deceased estate's claim and entered judgment for the appellant in the following terms:

“Pain and suffering Kshs. 500,000/=

Loss of expectation of life Kshs. 200,000/=

Special damages Kshs. 110,150/=

Total Kshs. 810,150/=”



The appellant was also awarded costs and interest.

4. The appellant was not satisfied with this judgment and has thus filed the instant appeal. By a memorandum of appeal dated 29 January 2024, the judgment has been impugned on the following grounds:

- “ 1. That the learned magistrate erred in law and in fact in failing to award damages under the *Fatal Accidents Act*, cap. 32 Laws of Kenya, for loss of dependency.
2. That the learned trial magistrate erred in fact and Law in failing to analyze and apply the law to the evidence before her thereby failing to make an award for loss of dependency, thus meting out and injustice.
3. That the learned magistrate erred in law and in fact in disregarding the evidence of the appellant and failing to take into account relevant issues hence arriving at a decision that was erroneous and against the evidence that was placed before her.
4. That the learned magistrate erred in law and in fact in failing to give reasons for her Judgment, and more specifically for omission on the award of loss of dependency thus committing a grave error.
5. That the learned magistrate erred in law and in fact in failing to consider adequately or at all the submissions by the Appellant and the authorities submitted thereby arriving at an erroneous award.”

5. The appellant has asked this Honourable Court to vary the judgment of the lower court and assess damages for loss of dependency under the *Fatal Accidents Act*.
6. The lower court record shows that the appellant and one other witness testified in support of the appellant’s case. The appellant testified that the deceased was his brother and that, at the time of his demise, he was married with three children. However, the deceased and his wife had separated and, thus, he was the one taking care of the children.
7. In his statement which he filed and adopted as his evidence in chief, the appellant stated that he obtained grant of letters of administration of the deceased’s estate on 24 February 2020.
8. The deceased’s neighbour Hassan Mangale, testified that the deceased’s house was directly opposite his house. It was evidence that there was an electricity cable hanging over the deceased’s door. The cable was naked and, apparently, it was in contact with the deceased’s steel door when the deceased was electrocuted.
9. In the witness statement which he adopted as his evidence in chief, Mangale stated that the incident took place at around 8.00 PM at which time he was seated outside his house together with his neighbours. He heard screams and what he described as a “buzzing” sound from the deceased’s house. Upon checking, he noticed the deceased was stuck on his steel door. The neighbours frantically tried to detach the deceased from the door but their efforts failed.
10. The police came to the scene a few hours later and the “medics” who came along with them pronounced the deceased dead. The Kenya Power and Lighting Company staff came to the scene the following day on 22 February 2018 and switched off the power.

The respondent did not call any evidence.



11. The grounds against the lower court judgment and the prayers in the memorandum of appeal point to the conclusion that the appellant's only concern is failure by the learned magistrate to award damages under the Fatal Accidents Act.

12. According to section 4 (1) of the Fatal Accidents Act, proceedings may be brought for the benefit of the deceased's dependants to recover the loss caused to them by the death of their breadwinner. This provision of the law states as follows: -

4.

(1) Every action brought by virtue of the provisions of this Act shall be for the benefit of the wife, husband, parent and child of the person whose death was so caused, and shall, subject to the provisions of section 7, be brought by and in the name of the executor or administrator of the person deceased; and in every such action the court may award such damages as it may think proportioned to the injury resulting from the death to the persons respectively for whom and for whose benefit the action is brought; and the amount so recovered, after deducting the costs not recovered from the defendant, shall be divided amongst those persons in such shares as the court, by its judgment, shall find and direct:

Provided that not more than one action shall lie for and in respect of the same subject matter of complaint and every such action shall be commenced within three years after the death of the deceased person.

13. Damages under the heads of loss of earnings, pain and suffering and loss of expectation of life are usually grouped under the Law Reform Act. The only head of damages under the Fatal Accidents Act is the loss of dependency though its assessment will invariably involve reference to the loss of earnings for the years the deceased would have worked (the lost years).

14. That an action is maintainable under the Fatal Accidents Act for the benefit a deceased person's wife, husband, parent or child is beyond dispute and, therefore, there was no reason, why the learned magistrate did not make an award under this head of damages. As a matter of fact, no reason whatsoever was proffered for this omission. Yet, in his pleadings, in the plaint, in particular, the appellant pleaded loss of dependency and averred as follows:

"8. The plaintiffs bring this suit on his behalf and on behalf of the deceased's dependant's namely: -

(i) Jumwa Jira Katana	-Mother	70 YEARS
(ii) Mwaka Mwachande Kombo	-Wife	27 YEARS
(iii) MB	-Daughter	16 YEARS
(iv) NB	-Son	12 YEARS
(v) JB	-Daughter	9 YEARS



9. The plaintiff aver that as a result of the said accident, the deceased's estate and dependants have suffered loss and damage.”

15. And in his testimony in court on this aspect of the suit, the appellant testified as follows:

“The deceased was married and he had 3 children. He was healthy and he had no known illness. He was at a hotel where he was earning Kshs. 200 per day.”

The death certificate shows that the deceased died of “cardiopulmonary arrest due to electrocution” at the age of 33 years.

16. In assessment of damages under the *Fatal Accidents Act*, the trial court has the discretion, as always, to determine the amount of damages payable. In exercising this discretion, subsection 41 (2) of the Act provides a guide of what ought not to be considered although it does not provide any general or specific guidelines of what ought to be considered. In my humble view, the omission is deliberate; it is deliberate because the law leaves it to the trial court with sufficient latitude within which it can exercise its discretion in the assessment of damages depending on the circumstances of each particular case.

17. The manner of assessment of damages under the *Fatal Accidents Act* was succinctly put in Wangui Thairu versus Ezekiel Barngetuny & Another Nairobi HCCC No. 1638 of 1988 (UR) where Ringera, J. (as he then was) stated as follows:

“The principles applicable to an assessment of damages under the *Fatal Accidents Act* are all too clear. The court must in the first instance find out the value of the annual dependency. Such value is usually called the multiplicand. In determining the same, the important figure is the net earnings of the deceased. The court should then multiply the multiplicand by a reasonable figure representing so many years. In choosing the said figure, usually called the multiplier, the court must bear in mind the expectation of earning life of the deceased, the expectation of life and dependency of the dependants and the chances of life of the deceased and dependants. The sum thus arrived at must then be discounted to allow the legitimate considerations such as the fact that the award is being received in a lump sum and would if wisely invested yield returns of an income nature.”

18. Turning back to the appellant's case, there was evidence that the appellant was survived by three children. At the time of his demise, his wife is said to have separated from him. There was no evidence that besides his children, there was any other dependant. Although it was pleaded that his mother, said to be aged 70 when the suit was filed, depended on him, no evidence was provided in proof of this fact. The alleged mother did not testify and, in his testimony, the appellant neither alluded to any evidence of how the deceased's mother depended on the deceased nor provided any proof of such dependency.

19. As far as the deceased's earning are concerned, the appellant testified that the deceased earned Kshs. 200 per day as a hotel worker. But again, there was no proof of such employment or earnings. However, it has been held that, lack of proof of earnings or employment is not fatal to a claim under this head.

20. In Jacob Ayiga Maruja & Another v Simeon Obayo, Civil Appeal No. 167 of 2002 [2005] eKLR, the Court of Appeal observed with respect to this question that: -

“We do not subscribe to the view that the only way to prove the profession of a person must be by production of certificates and that the only way of proving earning is equally the production of documents. That kind of stand would do a lot of injustice to very many Kenyans who are even illiterate, keep no records and yet earn their livelihood in various ways.



If documentary evidence is available, that is well and good. But we reject any contention that only documentary evidence can prove these things.”

21. Thus, where a person is engaged in some income generating activity but his income or salary cannot be determined with any measure of certainty, it may be pegged on the government wage guidelines issued from time to time for purposes of assessment of damages for loss of dependency or, in the alternative, the court may award a global sum.
22. In *Mwanzia v Ngalali Mutua and Kenya Bus Services (Msa) Ltd & Another* which was quoted with approval in *Albert Odawa v Gichimu Gichenji NKU HCCA No. 15 of 2003[2007]* eKLR, Ringera, J. as he then was stated as follows:

“The multiplier approach is just a method of assessing damages. It is not a principle of law or a dogma. It can, and must be abandoned, where the facts do not facilitate its application. It is plain that it is a useful and practical method where factors such as the age of the deceased, the amount of annual or monthly dependency, and the expected length of the dependency are known or are knowable without undue speculation where that is not possible, to insist on the multiplier approach would be to sacrifice justice on the altar of methodology, something a Court of Justice should never do.”
23. The same principle was adopted in *Mary Khayesi Awalo & Another v Mwilu Malungu & Another* ELD HCCC No. 19 of 1997 [1999] eKLR where Nambuye J., stated that: -

“As regards the income of the deceased there are no bank statements showing his earnings. Both counsels (sic) have made an estimate of the same using no figures. In the court’s opinion that will be mere conjecture. It is better to opt for the principle of a lump sum award instead of estimating his income in the absence of proper accounting books.”
24. Guided by these decisions I would endorse a global award under the head of loss of dependency. According to the deceased’s death certificate, the deceased was aged 33; he was survived by three children who, at the time of his death, were all minors. In these circumstances, and doing the best I can, and considering that the deceased’s estate will benefit from the award made under the *Law Reform Act*, I award of Kshs. 1000,000/= as a global award under the head of loss of dependency. In my humble view, this is a reasonable compensation under this head.
25. No appeal or cross-appeal was filed against any of the other awards by the learned magistrate and, therefore, I would advisedly refrain from saying anything about them.
26. For the reasons I have given, the appeal succeeds; over and above what the learned magistrate awarded, the appellant is awarded Kshs. 1,000,000/= under the head of loss of dependency. He is also awarded costs of the appeal and, of course, costs of the suit in the lower court. Interest at court rates shall accrue from the date of judgment in the lower court. It is so ordered.

SIGNED, DATED AND DELIVERED ON 7 NOVEMBER 2025

NGAAH JAIRUS

JUDGE

