



**Kenya Power and Lighting Co Ltd v Maina (Civil Appeal  
21 of 2019) [2024] KEHC 6040 (KLR) (28 May 2024) (Judgment)**

Neutral citation: [2024] KEHC 6040 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MURANG'A  
CIVIL APPEAL 21 OF 2019**

**J WAKIAGA, J**

**MAY 28, 2024**

**BETWEEN**

**KENYA POWER AND LIGHTING CO LTD ..... APPELLANT**

**AND**

**FRANCIS MARU MAINA ..... RESPONDENT**

*(Being an appeal arising out of the decree and judgement of Hon. E.M. Nyagah  
(PM) delivered on 25th June 2019 in Muranga CMCC NO 376 Of 2017)*

**JUDGMENT**

1. By a plaint dated 21<sup>st</sup> December 2017, the Respondent sued the Appellant for general and special damages arising out of an electrocution accident from which the deceased suffered fatal injuries. It was pleaded that the Appellant left the live electric cables in a dangerous state and failed to take precautionary measures to protect the deceased.
2. By a statement of defence dated 6<sup>th</sup> February 2018, the Appellant denied the occurrence of the accident, particulars of negligence and in the alternative attributed the accident to the negligence of the deceased.
3. The parties consented on liability at 80%: 20% in favour of the Respondent.
4. By a judgement thereon dated 25<sup>th</sup> June 2019, the Court awarded the Respondent the following:
  - a. Pain and suffering Kshs. 100,000
  - b. Loss of expectation of life Kshs. 100,000
  - c. Loss of dependency Kshs. 1,401,088
  - d. Special damages Kshs. 30,000



5. Being aggrieved by the said award, the Appellant filed this appeal and raised the following grounds of appeal:
  - a. The Court erred on the assessment of damages under the Law reform Act and Fatal Accidents Act.
  - b. The award was too excessive and out of line with the facts of the cases and established legal principles where the deceased was a bachelor without dependants.
  - c. The Court did not consider the Appellants submissions and authorities, thereby arriving at an erroneous assessment of damages.

## SUBMISSIONS

6. Directions were given on the determination of the appeal by way of written submissions and on behalf of the Appellant, it was submitted that the main issue was on the loss of dependency as stated in Section 4(1) of the fatal Accidents Act which states that the benefit of the wife, husband, parents and child of the deceased person. It was contended that the trial Court did not address its mind to the above provisions. In support of the submissions reference was made to the case of John Mungai Kariuki & another v Kiabei Kagai Ndethiu & 2 others [2020] eKLR where the Court held that the claim under this head was a distinct and separate claim under lost years under the Law Reform Act as it named specific beneficiaries.
7. It was therefore contended that the trial Court fell into error and rendered the judgement amenable for interference by the Court on Appeal.
8. The Respondent submitted that Section 2(1) of the Law Reform Act provides that all causes of action subsisting against or vested on the deceased shall survive as the case may be for the benefit of the estate and therefore it is trite that the deceased estate suffered loss. It was contended that the trial Court did not error and that equity should look at the substance rather than the form. In support of the proposition referenced was placed on the case of Charles Oriwo Odeyo v Apollo Justus Andabwa & another [2017] eKLR.

## DETERMINATION

9. From the submissions and proceedings herein, the only issue for determination in this matter is whether the brother and sister of the deceased were dependants for purposes of claim under the provisions of the Fatal Accidents Act?
10. The Act under Section 4 (1) clearly defines who the dependents are for the purposes of the claim under the Act and it is clear that the Respondents are not dependents for the purposes of the Act and as such are not entitled to the claim under that heading.
11. It therefore follows that in awarding them damages under this head, the Court fell into error as was stated in John Mungai Kariuki (supra) and reiterated in the case of Chania Shuttle Bus v Rebecca Mbogho [2021] eKLR, where the Court stated that in view of the clear statutory provision and case law, the Court misdirected itself and proceeded to set aside the award under the claim for loss of dependency.
12. It therefore follows that the appeal on this ground has merit and is allowed by setting aside the award under this heading and make the following final award
  - a. Loss of expectation of life Kshs.100,000



- b. Pain and suffering Kshs.100,000
  - c. Special damages Kshs. 30,000
- Total Kshs. 230,000
- Less 20% Kshs. 46,000
- Grand total Kshs. 184,000

13. The Appellant is entitled to the cost of this appeal, while the Respondent is entitled to the cost of the lower Court. And it is ordered.

**DATED, SIGNED AND DELIVERED AT MURANGA THIS 28<sup>th</sup> DAY OF MAY 2024**

**J. WAKIAGA**

**JUDGE**

In the presence of :

Mr. Kiplagat for the Appellant

Ms Wagwa for Mr. Kibongo for Respondent

Jackline – Court Assistant

