



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Civil Case 764 of 2002

PETER MWIHIA KARANJA.....PLAINTIFF

VERSUS

EZEMAK REFRIGERATORS & CONTRACTORS LTD.....DEFENDANT

JUDGMENT

This claim arises out of an accident which occurred on 11th November 2000 where the plaintiff in a group of other workers at the defendant's premises were removing a Machine from the lorry to the workshop the hook holding the container broke and the container crashed into the plaintiff breaking his leg. The plaintiff filed this suit against the defendant claiming special and general damages plus costs of the suit and interest.

The defendant was served with summons but failed to enter appearance nor file a defence. The plaintiff sought and obtained interlocutory judgment on 15th August 2007 and the suit was set down for formal proof.

The plaintiff's case was that he was employed by the defendant as a driver. On the 11th November 2000 while on duty a container arrived and the defendant requested him and other workers to remove the container from the lorry. While removing the container the hook that held the container broke which caused the container crash upon him and broke his leg. He was rushed to the hospital for treatment. First he was attended to at Mater Hospital and finally Kenyatta National Hospital. According to the medical report the plaintiff had sustained a fracture right femur which was reduced and held with a plate and screws, soft tissue injuries to the right leg and blunt injuries to the shoulder. This was confirmed by the medical report prepared by Dr. Njiru who testified on behalf of the Plaintiff.

The plaintiff blamed the accident on the defendant for negligence. The particulars of negligence were stated as follows:-

- (a) Instructing the plaintiff to work with a defective removal machine.
- (b) Failing to maintain the removal machine in a safe state.
- (c) Failing to provide the plaintiff with personal protective equipment.
- (d) Causing the plaintiff to work with a dangerous machine and (e) causing the accident.

The evidence of the plaintiff having not been rebutted, liability is proved.

The next issue is the assessment of damages. Special damages were proved at Shs 6570/=. On general damages counsel for the plaintiff suggested a figure of Shs. 2,000,000/= and cited one authority HCC No 37 of 1992 Leonard Kinuthia vs. William Sima Kiboros in which the plaintiff sustained a commuted fracture of the right femur and soft tissue injuries and was awarded Shs. 700,000/=. Having considered the injuries sustained by the plaintiff in the cited authority and the injuries suffered by the plaintiff in the instant case and the damages awarded, it is my considered opinion that a figure of Shs. 800,000/= would be adequate compensation for pain suffering and loss of amenities by the plaintiff.

Accordingly I enter judgment for the plaintiff and against the defendant for Shs. 806,750/=: plus costs and interest.

Delivered and dated at Nairobi this 9th day of June 2009

J. L. A. OSIEMO

JUDGE