



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT**  
**MILIMANI COMMERCIAL COURTS**  
**CIVIL CASE NO. 4706 OF 1992**

**SALOME MUNAGI OJONGA.....PLAINTIFF**

**V E R S U S**

**HENKEL KENYA LIMITED.....DEFENDANT**

**J U D G M E N T**

The plaintiff sued the defendant claiming both special and general damages in respect of a factory accident which occurred at HENKEL (K) Ltd on 7th September, 1989. Briefly the claim arises out of the following circumstances. On the 7th September, 1989 the plaintiff was in the cause of employment walking towards her place of work when she slipped on a piece of polythene paper and fell down in consequence whereof sustained the following injuries. Bimalleolar fracture of the left ankle joint with displacement of the fracture fragments. She was taken to the Aga Khan Hospital for treatment where the left ankle joint had to be immobilized in a plaster of Paris backs lab cast and later on had to be operated and metal plate fixed which has been there since then and will require to be removed. These injuries were confirmed by DW2 NASIR BHANJI who compiled a medical report Exb.3. The doctor further testified that the plaintiff will require Sh.100,000/- to operate and remove the metal plate and a further Sh.200,000/- for arthrodesis to fuse the ankle joint to eliminate the pain currently being worsened by the early development osteoarthritis.

The plaintiff in her evidence told the court that she was employed by the defendants at its factory along Outer Ring Road Ruaraka. On the material date she was walking along a passageway within the factory with her fellow workmates from the changing room to the place of work when she stepped on a polythene paper from a detergent multi-clean and she fell down thereby sustaining injuries on her leg at the ankle. She was rushed to Aga Khan Hospital for treatment by the defendants personnel where she was admitted for 3 weeks. She was operated and a metal place fitted and it is still there and she will have to go back to have it removed. She said the said polythene paper was on the passageway where the defendants employees used to pass from the changing room to their working place in the factory. She attributed the accident wholly on the negligence of the defendant for failing to take any or adequate precautions for the safety of the plaintiff while she was engaged upon her duties thereby ex posing the plaintiff to a risk of damage or injury of which they knew or ought to have known and further by providing unsafe system of working.

The defence concedes that the plaintiff had met her accident while on duty and sustained the injuries as stated. DW1 in his evidence testified that during the material time, the defendant had just a week earlier constructed a large passageway between the factory building and the washrooms on its premises. The passageway was quite wide, about 5 metres wide and it had a large polythene sheets of paper laid on it for people to walk on, so that the cement screed on it that had not fully dried upon would not get damages. He said on the material date he was just walking behind a group to workers who were walking to their place of work along that passageway which was covered by polythene sheets of paper. He witnessed when the plaintiff slided and fell down and he wondered why she fell down while none of her colleagues fell down. In conclusion counsel for the defendant submitted that the plaintiff was the author of her own misfortune and her case ought to be dismissed. But counsel for the plaintiff submitted that the defendant is a manufacturing company and at the time of the accident manufactured detergents and other chemicals. Polythene was used in their activities either in packaging, labeling sealing etc. Being involved in the manufacture of detergents and using polythene paper for sealing other products the defendant ought to have known that any polythene paper and/or detergent left on any walking surface was lethal as the combination of the two would create a dangerous and unsafe place of work. In fact there is admission that polythene sheet were laid on pathway.

After considering the evidence as well as the submissions by both counsel for the plaintiff and the defendant I am satisfied that the plaintiff fell down when she slipped over the polythene paper which was placed on the passageway through which she had to pass to her place of work. There was negligence on the part of the defendant and the plaintiff is entitled to damages. On damages counsel for the plaintiff suggested a figure of Sh.350,000/- general damages and quoted 3 authorities while counsel for the defendant suggested a figure of Sh.100,000/- and quoted 4 authorities. Having considered the injuries sustained by the plaintiff in the instant case and compared them with the injuries sustained by the plaintiffs in the cited authorities and the damages awarded it in my considered opinion that a figure of Sh.300,000/- would be adequate compensation for the plaintiff less Sh.8,625/- amount paid under Workman's Compensation Act leaving a sum of Sh.291,375/-. For further medical care counsel for the plaintiff suggested a figure of Sh.100,000/- for removal of the metal plate and screws from the plaintiff and Sh.200,000/- for arthrodesis to fuse the ankle joint to eliminate the pain currently being worsened by the early development of osteoarthritis. This was recommended by PW2 Dr. Bhanji who said that that would be a reasonable figure for the operations in the same hospital where the plaintiff received her treatment and which has the equipment to perform the operations. I agree with the doctor's evidence that these are reasonable figures for the required operations and accordingly I award the plaintiff a sum of Sh.300,000/- for further medical case.

Accordingly there shall be judgment for the plaintiff and against the defendant for the sum of Sh.591,375/- with costs and interest.

**Dated and delivered at Nairobi this 18th day of July, 2003.**

**J.L.A. OSIEMO**

**JUDGE**