



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL SUIT NO. 1871 OF 1998**

**MATHEWS AGWINGI.....PLAINTIFF**

**-VERSUS-**

**CHANDARIA INDUSTRIES LIMITED.....DEFENDANT**

**JUDGEMENT**

The Plaintiff was an employee of the defendant working in the defendant's factory for making papers. The plaintiff in his evidence said that on that day on 11.8.1994 he was assigned to work in the machine with the duty of collecting paper which fell on the floor from the machine. To ensure that no paper fell on the ground he had the work of putting back the paper which left the roller and it was while doing so his hand was caught by the machine and was crashed. In Defence the defendant called two witnesses who were employees working in the machine room. In their evidence they sought to show that the plaintiff was a busy-body in the machine room. DW1 Njoroge In his evidence said that the plaintiff was employed as cleaner in the waste yard. He however accepted that on the day he asked the plaintiff to work in the machine to clean but not to touch the machine. He said the machine was dangerous and that it is not possible to put guards on the machine.

The two defence witnesses confirmed that the Plaintiff was an employee and that he was injured on that day working in the machine room. From the evidence, the plaintiff was taken to work in the machine room by DW1 that day where he worked from 7.30 a.m. until 11.30 a.m. when the accident occurred. The two defence witnesses accepted that this machine was dangerous and that it had injured some other workers before. Their story that the plaintiff was specifically instructed not to touch the machine but only to collect the papers which fell on the ground is not supported by any evidence. From their own evidence it is clear that none of the two witnesses was at the machine at the time of the accident. Each was some distance from the machine. Knowing the machine was dangerous they left the plaintiff to work near or around the machine. Both witnesses became alert only when the plaintiff's arm was caught by the machine. The defendant was not trained to work on this machine and it remains unexplained why he was taken into this room. DW1 says that he did not have anybody to work in that room. The two witnesses are still employees of the defendant and were directly responsible for what happened in the machine room. They would be defensive in their handling of this case to avoid being blamed. Other than their words there was no other evidence to show that the defendant was acting outside his instructions while in the machine room. These two witnesses being anxious to retain their jobs with the defendant would seek to show the plaintiff to be the author of his misfortune. I did not attach any weight to their evidence. I find that the defendant was taken to the machine room by DW1 and given the job of removing the papers which were falling off and it was in the course of returning paper into the machine that his hand was caught. The plaintiff was left alone at the machine area with no body to supervise him. This amounted to negligence on the part of the two persons who were supposed to supervise him that is Mr. Njoroge and Vitalis and who accepted that they came to the scene when the plaintiffs' arm was caught by the machine.

On the whole I find the evidence of the plaintiff more towards what took place on that day than what the two witnesses told the court. The plaintiff has proved his case and there will be judgment for the plaintiff. As a result of this accident the plaintiffs arm was crashed and had to be amputated. The plaintiff is therefore asking for damages for the loss of the arm and for pain and suffering. The injuries suffered were confirmed by the medical report by Dr. Shah.

The plaintiff said he was 25 years old at the time of the accident and was earning Shs.2,050/- per month at the time of the accident. He has lost the use of his arm and has also lost prospects of future earning. The plaintiff no doubt suffered a lot pain and any damages payable must take this into account.

I have read the cases cited by the counsels and I make the following award.

(1) For pain and suffering	Kshs.500,000/-
(2) Cost of artificial arm	Kshs.200,000/-
(3) Cost of Vocational physiotherapy	Kshs.100,000/-
(4) Loss of future earning 2,050 x 12 x 20	Kshs.492,000/-
(5) For domestic help	Kshs.150,000/-
Total	Kshs.1,642,000/-

There will be judgement for the plaintiff for the sum of Shs.1,642,000/-

The Plaintiff shall have the costs of the suit and interest.

Dated and delivered this 5th day of October, 2000.

**KASANGA MULWA**

**JUDGE**