



REPUBLIC OF KENYA



KENYA LAW
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**Nyapola v China Road & Bridge Corporation (Appeal E042 of 2025)
[2025] KEELRC 2492 (KLR) (18 September 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2492 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
APPEAL E042 OF 2025
JW KELI, J
SEPTEMBER 18, 2025**

BETWEEN

GILBERT WERE NYAPOLA APPELLANT

AND

CHINA ROAD & BRIDGE CORPORATION RESPONDENT

*(Being an Appeal from the Judgment and Decree of the Hon. S. Kandie (RM)
delivered on 6th February, 2025 in Mavoko Law Courts Civil Suit No. 948 of 2018)*

JUDGMENT

1. The Appellant herein, dissatisfied with the Judgment and Decree of the Hon. S. Kandie (RM) delivered on 6th February, 2025, in Mavoko Law Courts Civil Suit No. 948 of 2018 between the parties, filed a memorandum of appeal dated the 7th of February 2025 seeking the following orders:-
 - a. The appeal herein be allowed and judgment of the lower court be set aside.
 - b. Costs of the appeal.
 - c. The Appellant be awarded special damages of Kshs. 4,000/-, general damages for pain and suffering, interest and costs in the lower court as pleaded in the Appellant's plaint dated 26th June 2018.

Grounds of the Appeal

2. The Honourable Trial Magistrate erred in law and in fact by finding that the Appellant failed to prove the claim and dismissed the evidence tendered by the Appellant.



3. The Honourable Trial Magistrate erred in law and in fact by relying on an unsigned job card in finding that the Appellant was not at work on the 14th of April 2016 when the Appellant sustained the injury on his right leg.
4. The Honourable Trial Magistrate erred in law and in fact in stating in the judgment that the job card produced by the Respondent was signed yet the Respondent's witness confirmed during the hearing on cross-examination that the job card produced by the Respondent was unsigned.
5. The Honourable Trial Magistrate erred in law and in fact by stating that the Appellant's cut wound on the left leg was not a soft tissue injury as stated in the medical records.
6. The Honourable Trial Magistrate erred in law and in fact by relying on a work injury record produced by the Respondent which had no signatures of the employees listed therein to confirm having reported and sustained the alleged injuries; the Respondent confirmed during hearing to have solely prepared the work injury record; the injury record did not capture the project site where the injuries stated therein happened.
7. The Honourable Trial Magistrate erred in law and in fact by, in apparent contradiction of findings, properly awarding the Appellant special damages as pleaded and on the other hand dismissing the Appellant's suit for lack of sufficient proof.

Background to the Appeal

8. The Appellant filed a claim against the Respondent vide a plaint dated the 26th of June 2018 seeking the following orders:
 - a. Special damages of Kshs.4,000/-
 - b. General damages.
 - c. Costs of this suit.
 - d. Interest on (a), (b) and (c) at court rates.
 - e. Any other or further relief as this Honourable Court may deem fit to grant.(see pages 13-15 of the ROA dated the 6th of March 2025)
9. The Appellant also filed his verifying affidavit, list of witnesses, witness statement, and list of documents with the bundle of documents attached, all dated the 26th of June 2018 (pages 16-30 of ROA).
10. The claim was opposed by the Respondent, who entered appearance via a memorandum of appearance dated 6th August 2018 (pages 31 of ROA). They filed a defence dated the 17th August 2018 (pages 32-33 of ROA), a list of witnesses, two sets of the first list of documents, and two witness statements of Veronica Ouko dated 23rd July 2018 and 1st November 2018 (pages 34-45 of ROA). The Respondent later filed another list of witnesses and list of documents, both dated 28th August 2024 (pages 54-58 of ROA).
11. In response to the defence, the Appellant filed a Reply to Defence dated 25th September 2019 (pages 46-47 of ROA).
12. The Plaintiff's/Appellant's case was heard on the 31st of October 2024, where the Plaintiff testified on oath in the case. He relied on his witness statement as his evidence in chief, produced his documents, and was cross-examined by counsel for the Respondent, Ms. Itani (pages 104-102 of ROA).



13. The Respondent's case was heard on 19 November 2024, when the Respondent's witness, Veronica Akinyi Ouko, testified in the case. She relied on her witness statement as her evidence in chief, produced the Respondent's documents, and was cross-examined by counsel for the Appellant, Ms. Okumu (pages 102-104 of ROA).
14. The parties took directions on the filing of written submissions after the hearing. The parties complied.
15. The Trial Magistrate Court delivered its judgment on 6 February 2025, partially allowing the Plaintiff's claim and awarded damages for Kshs. 150000 and special damages of Kshs. 4,000/-. The court, at the same time, stated that the suit is dismissed with costs and interest in the case awarded to the Defendant (Judgment at pages 7-9 of Supplementary ROA dated 20 July 2025).

Determination

16. The appeal was canvassed by way of written submissions. The Appellant filed, but at the time of writing this judgment, the Respondents was yet to file.
17. This being a first appellate court, it was held in *Selle v Associated Motor Boat Co.* [1968] EA 123 that:-

“The appellate court is not bound necessarily to accept the findings of fact by the court below. An appeal to the Court of Appeal from a trial by the High Court is by way of a retrial and the principles upon which the Court of Appeal acts are that the court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular the court is not bound necessarily to follow the trial Judge's findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanor of a witness is inconsistent with the evidence in the case generally.”
18. Further in on principles for appeal decisions in *Mbogo v Shah* [1968] EA page 93 De Lestang V.P (as he then was) observed at page 94:

“I think it is well settled that this court will not interfere with the exercise of its discretion by an inferior court unless it is satisfied that its decision is clearly wrong, because it has misdirected itself or because it has acted on matters on which it should not have acted or because it has failed to take into consideration matters which it should have taken into consideration and in doing so arrived at a wrong conclusion.”

Issues for Determination

19. In his submissions dated the 17th of June 2025, the Appellant submitted on the appeal generally.
20. The issue was framed to be whether the appeal was merited.
21. The appellant claimed to have been injured on the 14th April 2016 and sought treatment on 15th April 2016. The appellant produced treatment note and a medical report. The respondent's position was that the claimant was not at work on the 14th April 2016, and they relied on the job card, which indicated the appellant was not at the workplace. The respondent produced a medical report of Dr Fredrick Kinama, which confirmed that the appellant sustained injuries following an industrial injury to the leg as alleged. That he suffered harm (page 57 of ROA).



22. During cross-examination, the appellant told the trial court he was working on 14th April 2016 and on 15th April was on sick leave. He did not sign the job card, and his witness had left employment, and he could not trace them.
23. RW1 was Veronica Ouku, a Human Resources Officer of the respondent. She told the court that the appellant was absent from work on the material date. That she was on the site. That the appellant was their employee. She did not have the employment records, the employment policy on handling injuries at work, or the list of documents concerning hospitals under the respondent. RW1 confirmed that the work injury record was not signed by the employer, that their doctor confirmed the injuries, and that the job card was not signed by the employee.
24. The trial court relied on the accident register to find that the appellant was absent from work on the alleged date of the accident, 14th April 2016. The trial court found that the claimant signed his job card and was paid(page 8 of the supplementary record of appeal).
25. The job card was produced before the trial court and was only signed by the supervisor(page 36 of ROA). Indeed, RW1 confirmed the job card was not signed by the employee(page 107) of ROA. The Court established that the trial court erred in fact at paragraph 11 of the judgment in finding that the appellant signed the job card.
26. The trial court relied on the daily injury record produced by the respondent (pages 41-44 of ROA). The appellant submits that the register did not disclose the site where the said accidents occurred. The court agreed with the appellant. The appellant's accident was said to have occurred at the Syokimau Railway Terminal construction site. The produced register did not disclose the site of the accident.
27. The claimant, having alleged an accident at a specific work site, the burden was on the employer to prove the employment record, the alleged absence from duty on 14th April, and that the accident did not occur. The accident register would have been a reliable defence if it had indicated the site of the accidents, and the same applies to the job card if it was signed by the employee. The employee was not at work on 15th April 2016, when he claimed to have sought a medical report. The respondent produced a medical report from its doctor, which confirmed the occurrence of the accident.
28. The court, upon re-evaluating the evidence presented before the lower court, finds that the Learned Trial Magistrate erred in assessing the facts, particularly in determining that the appellant signed the job card, which was not supported by the evidence of RW1, and in failing to consider that the appellant was not at work on 15th April 2016, when he is alleged to have sought medical treatment for the injuries.
29. The court having re-evaluated the evidence before the trial court, held that the trial court erred in facts and set aside its finding on liability and substitutes it with a finding that the respondent was liable 100% for the accident, as there was no prove of measures put in place by the employer to ensure safety at the shop floor. I upheld the decision in *Victor Ndege Manase v Ashton Apparels (EPZ) Limited* (2016) eKLR where the court found the Respondent 100% liable for the work injury incident sustained by the Appellant therein for reasons that the Respondent did not attempt to show what safe systems of work was availed to the Appellant therein.

Quantum

30. The trial court held that the appellant had sustained soft tissue injuries and having taken into account past awards awarded Kshs. 150000 and awarded special damages for Kshs. 4000. The grounds of appeal on quantum were-



- a. The Honourable Trial Magistrate erred in law and in fact by stating that the Appellant’s cut wound on the left leg was not a soft tissue injury as stated in the medical records.
 - b. The Honourable Trial Magistrate erred in law and in fact by relying on a work injury record produced by the Respondent which had no signatures of the employees listed therein to confirm having reported and sustained the alleged injuries;
 - c. The Respondent confirmed during hearing to have solely prepared the work injury record; the injury record did not capture the project site where the injuries stated therein happened.
 - d. The Honourable Trial Magistrate erred in law and in fact by, in apparent contradiction of findings, properly awarding the Appellant special damages as pleaded and on the other hand dismissing the Appellant’s suit for lack of sufficient proof.
31. The appellant submits that the Court in the matter of *Amukhuma v Valley Bakery Limited* (2024) KEHC 9151 (KLR) assessed the award that the Appellant would have received if successful at Kshs . 100,000/= for soft tissue injury on the Appellant's left leg. That the Respondent is liable to pay the Appellant damages of Kshs.150,000/= for the injuries sustained herein considering the lapse of time period from the above Amukhuma decision and inflation.
32. The court’s award of damages is a discretion of the court. In the case of *Butt vs Khan* (1977) 1KAR Law JA stated that-
- “ An appellate court will not disturb an award for damages unless it is inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the Judge proceeded on wrong principles, or that he misapprehended the evidence in some material respect, and arrived at a figure which was either inordinately high or low.”
33. In the instant appeal, the medical reports relied on by both parties indicated that the appellant suffered soft tissue injuries to the left lower leg and had since recovered without any limitations. The court, applying the decision in Butt v Khan, finds that the award of damages of Kshs. 150,000 based on comparable past awards- and with no cross-appeal- was not an erroneous estimate of the injuries. The court found no basis to fault the trial court on the quantum. The special damages awarded, Kshs. 4000, are upheld.
34. In conclusion the appeal is allowed . The Judgment and Decree of the Hon. S. Kandie (RM) delivered on 6th February, 2025 in Mavoko Law Courts Civil Suit No. 948 of 2018is set aside and substituted as follows:-
- Judgment is entered for the plaintiff against the defendant as follows:-
- a. Special damages for Kshs. 4000
 - b. General damages for Kshs. 150000
 - c. Costs
 - d. Interest on a,b, and c above at court rates from date of judgment.
35. Costs of the appeal awarded to the appellant.
36. Stay of 30 days granted.
37. It is so Ordered.



DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 18TH DAY OF SEPTEMBER, 2025.

J. W. KELI

JUDGE

In The Presence Of:

Court Assistant: Otieno

Appellant – Ms. Okumu

Respondent: No appearance

