



**Ngangi v Laxmanbhai Construction Limited (Cause 840 of 2021)  
[2024] KEELRC 1108 (KLR) (3 May 2024) (Judgment)**

Neutral citation: [2024] KEELRC 1108 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 840 OF 2021  
MA ONYANGO, J  
MAY 3, 2024**

**BETWEEN**

**PETER MUTINDA NGANGI ..... CLAIMANT**

**AND**

**LAXMANBHAI CONSTRUCTION LIMITED ..... RESPONDENT**

**JUDGMENT**

**Claimant's Case**

1. The Claimant, Peter Mutinda Ngangi, brought this claim vide a plaint dated 21<sup>st</sup> September, 2015 for general damages and special damages arising out of an industrial accident.
2. The Claimant stated that during his employment while he was receiving timber plunks from other employees on the truck, the timber loads suddenly came tumbling down on him and he sustained severe injuries to his hand and fingers. He was rushed to Guru Nanak Ramgharia Hospital in Parklands where he was hospitalized for 3 days. His middle finger of the right hand was amputated.
3. He stated that after his recovery, the Respondent terminated his employment on account of redundancy.
4. The Claimant gave particulars of his injury as-
  - i. Degloving injury of the index and ring fingers.
  - ii. Crushed middle finger that led to its amputation.
5. He stated the particulars of negligence of the Respondent to be:
  - a. Failing to take any adequate precautions for the safety of the Claimant while he was engaged upon his work.



- b. Exposing the Claimant to risk of damage or injury of which it knew or ought to have known.
  - c. Failing to provide a safe place of work for the Claimant
  - d. Causing or permitting poorly stacked planks of timber to fall on the Claimant from the Respondent's truck.
  - e. Failing to take any or any adequate measures to ensure the planks being off loaded were improperly secured on the Respondent's truck.
  - f. Failing to provide and/or maintain a safe or proper system of work.
6. He set out the particulars of loss to be:
- i. Treatment costs Kshs.25,000.00
  - ii. Transport and miscellaneous Kshs.15,000.00
  - iii. Medical report Kshs.5,000.00
- Total Kshs. 45,000.00
7. The Claimant prayed for judgement against the Respondent for:
- a. General damages
  - b. Special damages of Kshs. 45,000/=
  - c. Costs of the suit
  - d. Interest on (a) (b) and (c) above court at court rates.
8. The Claimant filed a witness statement in which he reiterated the facts above.

**Respondent's Case:**

9. It was the Respondent's case that the parties entered into a consent in which judgement on liability was entered in the ratio of 80:20 in favour of the Claimant.
10. The submissions by both parties were hence in respect to quantum only.

**Claimant's Submissions;**

11. The Claimant submitted that he was only 29 years old at the time he sustained the injury which will cause him to suffer indignity of unsightly stump where his finger was amputated. That this is a permanent disfiguration and great loss deserving damages.
12. The Claimant relied on the following authorities:
  - I. *Eastern Produce (K) Ltd vs. Allan Okusi Wasike* Civil Appeal No. 15 of 2013 [2014] eKLR where the court awarded a sum of Kshs. 200,000.00 to the Claimant for loss of his left index finger;
  - II. *Sino Hydro Corporation Ltd vs. Daniela Atela Kamuda* [2016] eKLR where Hon. Justice D. S Majanja awarded Kshs. 600,000.00 for amputation of a middle finger. In the case the Judge cited the case of *David Mwawughanga Kingaga v Narcol Aluminium Rolling Mill Msa HCC* No. 133 of 1998 where an award of Kshs. 540,000 was made and *Samuel Kazungu v Umoja*



*Rubber Industries Ltd* Msa HCC No. 350 of 1996 where an award of 500,00 was made for similar injuries.

- III. *Pasha Enterprises Ltd vs. Bernard Kinyua Gitbaka Kiburi* HCA No. 401 of 2011 [2016] eKLR where justice J. K Serگون upheld a lower court award of 450,000.00 for amputation of the left index finger and a fracture of the middle finger.
13. In conclusion the Claimant stated that, keeping in mind the prevailing inflation and the age of the authorities cited, an award of 500,000.00 will be sufficient compensation.
14. The Claimant further paid for special damages of Kshs. 45,000.00 as supported by documents on record which according to the Claimant, the Respondent did not object to.
15. After deduction of 20% contribution as agreed by the parties the total claimed is Kshs. 436,000.00.

#### **Respondent's Submissions;**

16. The respondents did not dispute the injuries sustained by the Claimant as captured in the medical reports produced in court. It however submitted that the Claimant has since recovered from the injury he sustained.
17. On quantum, the Respondent relied on the case of *John Otieno Ojwok vs Samuel Onyango Abunga & Ano*. HCCC 2001 of 1992 Nairobi in which the court awarded the Claimant 30,000/= for soft tissue injuries to the chest, back, right hand and left leg.
18. The Respondent also relied on the decision in *Florence Muthoni Ndatbi v Danson Njiru Maringa* HCCC 5389 of 1991 where an award of Kshs. 60,000 was made for a deep cut wound to the scalp, blunt trauma to the chest, spine and bruise on the right side scalp.
19. The Respondent Submitted that 30,000/= will be sufficient compensation less 20% contributory negligence.

#### **Determination**

20. The parties having agreed on liability at 80:20 in favour of the Claimant the only issue for determination is quantum.
21. The parties are agreed on the injuries as stated in the medical reports produced by each of them which were admitted on record by consent. The medical Report by Dr. Jacqueline Kitulu filed by the Claimant states that the Claimant sustained degloving injury of the index and ring fingers and a crushed middle finger. On examination the Dr. observed a well healed scar on the right index finger and amputation of the distal phalanx of right middle finger with a well healed stump.
22. The Dr. further observed that the Claimant required physiotherapy for get his hand, which he had stated experienced numbness, back to function.
23. The Respondent filed a medical report of Dr. Ashwin Madhiwala who agreed with the injuries sustained by the Claimant as stated above. Dr. Madhiwala observed that the only complaint by the Claimant when the doctor examined him was occasional pain over the stump of the right finger.
24. The authorities cited by the Respondent in proposing general damaged of Kshs. 30,000 are not relevant to the injuries suffered by the Claimant herein and are more than 20 years old.
25. In the authorities cited by the Claimant the injuries sustained were more serious than those suffered by the Claimant.



26. Taking into account the nature of injuries sustained by the Claimant and the fact that the injuries healed well leaving him with a stump due to the amputated distal phalanx, it is my view that an award of Kshs. 150,000 is reasonable.
27. In addition, the Claimant is awarded Kshs. 45,000 special damages the Respondent having not objected to the same.
28. In summary the Claimant is awarded the following:
  - General Damages Kshs. 150,000
  - Special damages Kshs. 45,000
  - Total Kshs. 195,000
  - Less 20% contribution Kshs. 39,000
  - Balance payable Kshs. 156,000
29. The Claimant is awarded Kshs. 156,000.
30. The Respondent shall pay costs of the Claim. The instructions fee will be based on Chief Magistrate scales as the suit was filed there and was transferred to this court after parties had filed submissions due to the confusion over jurisdiction in WIBA matters.

**DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 3<sup>RD</sup> DAY OF MAY, 2024**

**MAUREEN ONYANGO**

**JUDGE**

