



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 2861 OF 1997**

JOHN KITHEKA MULAI PLAINTIFF

VERSUS

JINA RATINA CONTRACTORS LIMITED DEFENADANT

JUDGMENT

The case before me is one of accident injury sustained whilst in employment.

The palitnffi was employed by the defenant company as a carpenter.

On the 23.3.97, eh was assigned duties of sanding a floor. This was at a reputable hotel in Nyeri. The work ahd not been doen well. The sanding had to be redone but his tiem with the polish alaredy on it. The plaintiff did this and his task was tonow ensure tht he saw dust was disposed off by burning it.

He took the saw dust form a bag in the machine and went outside where he threw t he saw dust. It immeaditely caught fire due to he polish init and bunt hsia rms and face.

He was rushed to hospital treated then released. Unfortunately that night his wounds became wrose and the injuries were then trated agin. The following day at the hospital. The palitnff was thena dmitted for about 16 days and tehreaft er continued as an out patient

By this tiem his employer was nolonger interested in him nor of his treatment. Ghe plaingiff was nto able to cope with his employment due to he discomfort. It seems as if eh is nolonger in employment as his employer was ntohappy tht he was coming to court to claim compensation.

He nonehtelss sued he defendants on the 14th of November, 1997 (plaint filed on 12.11.97).

The defeantns field defence to he plaint.

When he case came up for hearing on he 11th fo may, 1999 the parties entered into a consent judgment as liability y whichw as agreed at eh ratio of 20% to the plaintiff and 80% to the defendant.

Special damatges of Ksh.4,500/- was also agreed to by consent.

The parties brought it to mya ttentiona dn both agreed tht the palitnffif was paid workmans compensation of ksh.36,800/-. Tghsi figure is tobe taken into account on assessing the damates.

The only issue left from the “agreed issues” field by the aptries is:-

“Is [the plaintiff] entitled to damages as pleaded?”

“Which party shall bear the costs of this suit?”

The plaintiff gave evidence for how his arms up to his elbows still feel itchy and uncomfortable after the said burns.

Dr. S.O. Owinga examined the plaintiff on behalf of the defendants in June 1998. (The plaintiff claimed that this doctor actually did not examine him but just made records and told him to go away). The doctor had the opportunity to see the scars on the plaintiff's face and arms again in court.

In his evidence the doctor stated that the burns on the face were superficial. That this would clear. He also stated that the arms do not require plastic surgery.

In his medical report he stated that the right upper limb had 4% moderately deep burns and left upper limb had 2% moderately deep burns.

There were superficial burns of the face and anterior neck.

The medical report put in by consent by Dr. Bhanji and prepared on the 22.8.97 (The incident occurred on the 23.3.97) confirmed the plaintiff's sustained scarring patches on his arms due to the burns received. He would require future surgical care to remove the scarring of Ksh.300,000/-

The advocate for the plaintiff prayed an award of Ksh.400,000/- by way of General Damages be awarded. The advocate for the defendant stated the injuries were superficial.

I find that the plaintiff did sustain injuries. I would agree with the medical evidence from the two doctors that the injuries on the face and neck were superficial. The injuries that were serious and deep were those on the two upper limbs or arms – up to the elbow.

I find that the reasonable award to be given to the plaintiff be Ksh.100,000/-. I would not make any award for future superficial care as

the doctor for the defendant states the scars would disappear with time.

I hereby enter judgment for the plaintiff for pain suffering and loss of amenities at Ksh.100,000/- (appointed to Ksh. 80,000/-) less Workman's Compensation of 36,800/- Ksh.43,200/-).

I make no award for Special Damages as this has not been proved. I award the costs of this suit from the date of this judgment.

Dated this 13th day of May 1999 at Nairobi.

M.A. Ang'awa

Judge