

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 1534 OF 1997

FRANCIS MWANGI.....PLAINTIFF

versus

SIMON K. WAIHWA.....DEFENDANT

RULING

The plaintiff was employed by the defendant in the defendant's Timber yard and Sawmill where his duties included the pushing of logs into the saw mill machine. In the course of his duties, the plaintiff was injured and as a result brought this suit against the defendant for injuries sustained. The defendant was served with summons to enter appearance but failed to do so. On application by the plaintiff an interlocutory judgment was entered against the defendant and suit listed for formal proof.

When the suit came up for hearing the plaintiff gave evidence in line with his pleadings and explained how he was injured. As a result, he suffered as a result of injuries to the left hand in that the terminal phalanx of the left index finger was amputated, two phalanges of the left middle finger was amputated and half of the 4th finger was also amputated. Subsequently, he said the doctor by examination.....prepared a medical report. He added that the he cannot do the same work he used to do and it is not possible to get employed because of the injuries sustained. The plaintiff said that he was not provided with any protection gear and the machine was not covered. The doctor who examined the plaintiff was called to give evidence. He produced a report he prepared after examining the plaintiff and in his opinion the 3 fingers on the left hand of the plaintiff are now useless and as such he cannot make use of the hand. These injuries will be of permanent incapacity.

I have considered the evidence of the plaintiff and the doctor and relate the same to the pleadings. The evidence remains uncontroverted and I believe the defendant is liable for the injuries sustained by the plaintiff.

The injuries were no doubt as a result and such.....likely.....right hand is also useless. The learned counsel for the plaintiff has cited to cases. These are HCCC NO. 911 of 1990 Mombasa SWALEH SULEIMAN MWABAGURA -v- NARSHIDAS & CO. LTD. In that judgment the plaintiff lost 4 fingers of the left hand and he was hospitalised for one month. General damages for pain suffering and loss of amenities were assessed at kshs. 440,000/- on 26th April, 1993.

The second is HCCC- NO. 528 of 1991 MOMBASA SEVILE MWANYALO MZEE -v- ABEID MOHAMED KHARIER & ANOTHER.

In that case the plaintiff suffered crush injuries to his right hand resulting in loss of the right ring finger and he was hospitalised for five days during which the fingers were amputated. He was off work for six weeks and injuries healed but with permanent loss of the ring and little fingers of the right hand resulting in a weak and cripple. The weak and cripple incapacity was a considerable incapacity in law market. General damages for pain suffering and loss of amenities were assessed to Kshs. 320,000/- on 15th November, 1994.

On my part going by the medical report and considering the cited case cited to me with similar injuries and after considering the time lapse during the time those injuries were suffered to the person..... on the.....general damages pain and loss of amenities at Kshs.500,000 proved special damages amount to Kshs. 3,000/-.

Accordingly there shall be judgment for the plaintiff against the defendant in the sum of Kshs. 500,000/- general damages plus 3,000 special damages. The plaintiff shall also have the costs of the suit and interest at court rates. Orders accordingly.

Dated and delivered at Nairobi this 22nd day of July, 1998

A. MBOGHOLI MSAGHA

JUDGE