



Wabwaya v H Young & Co (E.A) Ltd (Employment and Labour Relations Appeal E006 of 2024) [2025] KEELRC 2644 (KLR) (26 September 2025) (Judgment)

Neutral citation: [2025] KEELRC 2644 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
EMPLOYMENT AND LABOUR RELATIONS APPEAL E006 OF 2024
AN MWAURE, J
SEPTEMBER 26, 2025**

BETWEEN

JOSHWA OMONDI WABWAYA APPELLANT

AND

H YOUNG & CO (E.A) LTD RESPONDENT

(Being an Appeal from the Judgment and order of the Honourable Y. I Khatambi, Principal Magistrate, delivered 26th January, 2024 in Naivasha Civil Suit No. 239 of 2016)

JUDGMENT

1. The Appellant, being dissatisfied with the judgment and order of the Honourable Principal Y.I Khatambi, filed this appeal *vide* a Memorandum of Appeal dated 5th February 2024 on the grounds that: -
 1. The learned Magistrate erred by making an award for general damages, pain, suffering and loss of amenities, which award was too low as to represent an erroneous estimate of loss and damage.
 2. The learned Magistrate erred by making an award for general damages, pain, suffering and loss of amenities, which award did not take into account the aspect of inflation.
 3. The learned Magistrate erred by making an award for general damages, pain, suffering and loss of amenities, which award did not take into account the precedent presented in court and the nature and extent of injuries.
2. The Appellant prays that:
 - a. The appeal herein be allowed



- b. This court proceeds to reassess the award, and the award made by the lower court be enhanced to such a reasonable sum that the court may consider just
 - c. The Appellant be granted costs of the Appeal
3. The court directed that the appeal be disposed of by way of written submissions.

Appellant's submissions

4. The Appellant submitted that the judgment of the learned Magistrate challenged the award of Kshs.250,000/= in general damages as inadequate given the severity of injuries sustained, a crush injury to the left small finger with a fractured distal phalanx and 5% permanent disability, described as grievous harm in Dr. Obed Omuyoma's medical report. The Appellant had sought Kshs.500,000/=, before the trial court, while the Respondent proposed Kshs. 200,000/=, citing the case of *Oluoch Eric Gogo v Universal Corporation Limited* [2015] KEHC 4850 (KLR), where Kshs. 200,000/= was awarded for a similar thumb injury without permanent incapacity. The Appellant argued that the cited case was not entirely comparable and instead relied on *Raiply Woods (K) Limited v Paul Ajoko Misolo* [2011] KEHC 3428 (KLR), where Kshs.300,000/= was upheld for more extensive hand injuries with 10% disability. In light of these precedents and the nature of the Appellant's injuries, it is submitted that the awarded damages were a gross undervaluation, warranting enhancement to Kshs. 500,000/=.
5. The Respondent, on the other hand, did not file their respective written submissions as directed by this Honourable Court.

Analysis and determination

6. Being the first appeal, this Honourable Court's main role is to re-evaluate, re-assess and reanalyse by examining the contents of the record, then decide whether the conclusions drawn by the learned trial Judge should be upheld or overturned, providing clear justification for either outcome. In *Abok James Odera T/A A.J Odera & Associates v John Patrick Machira T/A Machira & Co. Advocates* [2013] KECA 208 (KLR), the Court of Appeal relied on the case of *Kenya Ports Authority v Kuston (Kenya) Limited* (2009) 2EA 212 wherein the Court of Appeal held *inter alia* that: -

“On a first appeal from the High Court, the Court of Appeal should 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 that respect. Secondly, that the responsibility of the court is to rule on the evidence on record and not to introduce extraneous matters not dealt with by the parties in the evidence.”

7. The issue for determination is whether the appeal before this Honourable Court is merited. Sections 107, 108 and 109 of the *Evidence Act* provide who alleges must prove, and in this particular appeal, the Appellant is challenging the award given by the learned magistrate on 26th January 2024. Parties agreed on liability on a ratio of 80:20, and the injury sustained by the Appellant was a crush injury to the left small finger with fractured distal phalanx, awarding Kshs.250,000/=.
8. The court is of the considered view that the learned magistrate erroneously awarded the Appellant, not factoring in the inflation over the years and similar cases. The Honourable Court understands that the learned magistrate had discretion in awarding the general damages, but the award was too low in the circumstances. In *West Kenya Sugar Co Ltd v Joseph Sore Shirambula* [2021] KEELRC 2149 (KLR), where Radido J awarded Kshs. 450,000/= in favour of the Respondent, who had sustained a severe crush injury on the distal phalanx of his left index finger, leading to amputation. In *Tile & Carpet*



Center Warehouse v Okello [2022] KECA 5 (KLR), the Court of Appeal awarded Kshs.482,000/= as general damages, as the Respondent suffered an amputation of the distal phalanx of the right little finger and a defective right-hand power grip. The disability/incapacity was fixed at 4% and 2%.

9. With the foregoing in mind, this Honourable Court finds that the appeal is merited and therefore substitutes the award for general damages as Kshs.400,000 putting into consideration the severity of the finger injury and the state of depreciation of the Kenya Shilling. There is however no evidence that the Respondent's finger was amputated. The total award is as follows:

General damages Kshs.400,000/=

Less 20% contribution Kshs. 80,000/=

Total Kshs. 320,000/=

Plus Special damages Kshs. 6,000/=

Total Kshs.326,000/=

10. The costs of this appeal will be borne by the Respondent

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 26TH DAY OF SEPTEMBER, 2025.

ANNA NGIBUINI MWAURE

JUDGE

order

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of the Constitution which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE

JUDGE

