



**Munyanya v Vertex Builders Limited (Civil Suit 3099 of 2018)  
[2024] KEMC 84 (KLR) (21 June 2024) (Judgment)**

Neutral citation: [2024] KEMC 84 (KLR)

**REPUBLIC OF KENYA  
IN THE MILIMANI COMMERCIAL CHIEF MAGISTRATE'S COURTS  
CIVIL SUIT 3099 OF 2018  
RL MUSIEGA, SRM  
JUNE 21, 2024**

**BETWEEN**

**EVANS MUSIKO MUNYANYA ..... PLAINTIFF**

**AND**

**VERTEX BUILDERS LIMITED ..... DEFENDANT**

**JUDGMENT**

- 1 By a plaint dated 23<sup>rd</sup> March 2018 the plaintiff moved this court seeking judgement against the defendant for;
  - a. General damages
  - b. Special damages of kshs 3000/=
  - c. Costs of this suit
  - d. Interests on a) b) and c) above at court rates
  - e. Any other relief deemed fit to be granted by this honorable court
- 2 The plaintiff averred that at all material times he was an employee of the defendant's company working as a metal fixer technician
- 3 That it was an implied term of the said employment and or it was a contractual duty of the defendant to take all reasonable precaution for the safety of the plaintiff while he was engaged upon his work, not to expose him to risk of damage or injury of which the defendant knew or ought to have known to provide and maintain adequate and suitable plant to enable him carryout- the said work safely and to provide a safe and proper system of work
- 4 His case is that on or about 7<sup>th</sup> March 2018, the plaintiff, while in the course of his employment and within the scope of his duty, while setting and fixing metallic rods using a folding pipe, the pipe



suddenly broke releasing the metal bar that was being folded hitting the plaintiff on the back of his lower skull leaving him with a stiff neck towards the right side. that the foreman came and tried to fix the stiff neck by twisting his head to the left side causing the plaintiff more pain. He attributes the accident to the negligence of the defendant and has listed the particulars at paragraph 10 of the plaint.

5. The injuries sustained by the plaintiff are;
  - a. Injuries on the back of the head and neck
6. The plaintiff also claims special damages particularized as;

Medical report kshs 3000/=
7. The defendants entered appearance and filed a statement of defense dated 20<sup>th</sup> April 2018 in which they denied all the allegations levelled against them and demanded for strict proof. In the alternative and without prejudice, they blamed the plaintiff for wholly causing and or substantially contributing to the accident. The particulars of negligence are listed at paragraph 6a-c of the statement of defense. They urged this court to dismiss the suit with costs
8. The case proceeded for hearing on 7<sup>th</sup> March 2024. Dr George Kungu Mwaura testified as PW1. He produced his medical report dated 22/3/2018 as an exhibit. He basically confirmed the injuries sustained by the plaintiff. He indicated he charged kshs 2000 to prepare the medical report and kshs 10,000/= to attend and testify in court
9. In cross examination he stated that the plaintiff gave a history of having been hit by a metal while at work. He did not suffer any internal injuries.
10. The plaintiff was PW2. He adopted his witness statement dated 23/3/2018 as his evidence in chief. He also produced the documents in his list of documents dated 23/3/2018 as exhibits.
11. In cross examination he indicated that he was given the job because he understood how to do it and he was also shown how to do his work before being assigned duties. He admitted he was required to be careful. That after the was injured, he was taken to Amrit Health Care by his supervisor who had tried to twist his neck. That his employer paid medical bills. He stated that the metal did not hit any other part of his body. He indicated he was not injured on the leg. He stated he still experiences pain on the neck and he uses painkillers to relieve the pain. That he resigned from his job.
12. In re examination he stated that he was injured on the neck and head which affected other parts of his body. He also stated he was the defendant's employee. That he can no longer work like he used to before. He urged this court to award him compensation and costs.
13. The defendants never called any witnesses for their case.
14. The plaintiff filed written submissions dated 11<sup>th</sup> April 2024. He urged me to apportion liability at 100% and award kshs 500,000/= as general damages. He cited the following cases;
  1. Kitale Hauliers Limited versus Winston Wanyonyi Lugulu Bungoma HCCA No. 106 of 2011 where the court awarded kshs 300,000/= in a case where the victim suffered soft tissue injuries on the neck, chest, lower back, shoulder and leg and healed with no permanent incapacity
  2. Naivasha HCCA No. 64 of 2018 Robinson Njoroge versus Daniel Ombasa where the victim suffered severe soft tissue injuries and the court awarded kshs 300,000/=



3. Kisii HCCA No. 33 of 2014 Francis Ochieng & another versus Francis Kajimba where the court awarded kshs 350,000/= for multiple soft tissue injuries.

My issues for determination are;

1. Liability
2. Quantum

### **Liability**

15. Section 107 of the [Evidence Act](#) (Cap 80) Laws of Kenya provides:-

"Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist."

16. In [Edward Muriga Through Stanley Muriga vs. Nathaniel D. Schulter Civil Appeal No.23 of 1997](#), it was held that where a defendant does not adduce evidence the plaintiff's evidence is to be believed, as allegations by the defence is not evidence.
17. In the case of Motex Knitwear Limited vs. Gopitex Knitwear Mills Limited Nairobi (Milimani) HCCC No.834 of 2002, Lesit, J. citing the case of Autar Singh Bahra and Another vs. Raju Govindji, HCCC No.548 of 1998 appreciated that:
18. Although the Defendant has denied liability in an amended Defence and counterclaim, no witness was called to give evidence on his behalf. That means that not only does the evidence rendered by the 1st plaintiff's case stand unchallenged but also that the claims made by the Defendant in his Defence and Counter-claim are unsubstantiated. In the circumstances, the Counter-claim must fail."
19. Failure by the defendants to call witnesses for their case means that their statement of defense remains unsubstantiated. The plaintiff's case is therefore unchallenged and it stands. I find the defendants 100% liable for the accident.
20. In assessment of damages the general and time-tested method of approach is that comparable injuries should as far as possible be compensated by comparable awards with a view to maintaining a similar level of awards in similar cases. I have considered the cited by the plaintiff in his submissions and I find they are comparable to this case. Dr Mwaura opined that the plaintiff suffered severe soft tissue injuries and the apportioned permanent incapacity at 10%. Considering inflation and the injuries sustained by the plaintiff, the nature of the treatment, passage of time, and guided by above authorities and principles, I hold that an award of Kshs 400,000/= as general damages is reasonable according to the injuries sustained by the Plaintiff. Special damages were pleaded at Kshs 2000/= receipts were produced to support the claim. I allow the claim.
21. The plaintiff is awarded costs and interest

**DELIVERED DATED AND SIGNED AT MILIMANI THIS 21ST DAY OF JUNE 2024**

**RAWLINGS LILUMA MUSIEGA**

**SENIOR RESIDENT MAGISTRATE**

