



**Isaac v Transaftric Timber Limited (Civil Case 950 of 2017)
[2024] KEMC 63 (KLR) (10 September 2024) (Judgment)**

Neutral citation: [2024] KEMC 63 (KLR)

**REPUBLIC OF KENYA
IN THE NAKURU LAW COURTS
CIVIL CASE 950 OF 2017
PA NDEGE, SPM
SEPTEMBER 10, 2024**

BETWEEN

EVANS MARANGA ISAAC PLAINTIFF

AND

TRANSAFTRIC TIMBER LIMITED DEFENDANT

JUDGMENT

1. The plaintiff in this case, Evans Maranga Isaac, is praying for judgment against the Defendant, Transaftric Timber Limited for general and special damages of Kshs. 8590/= emanating from an industrial accident that occurred on or about 22.07.2017, as a consequence of which he sustained injuries, loss and damages for which he holds the defendant herein primarily and/or vicariously liable. He brought this suit vide a Complaint dated 13.09.2017 and filed on 25.09.2017.
2. It is the plaintiff's case that he was an employee of the defendant's company at the on 22/07/2017, the plaintiff herein was dutifully, lawfully, carefully and or properly working in the Defendant's aforesaid premises and or workplace when he was injured by a piece of wood, timber and/or log. That the said injuries, accident/ fateful event was/ were caused solely by breach of employment contract/ engagement, common law duties/ obligations and or statutory duties/ obligations by the defendant herein either by itself, its agents, servants and or employees. He particularized his injuries, present complains and/or resulting injuries, loss and damages at paragraph 8 of the Complaint as follows: -

PARTICULARS OF THE PLAINTIFF'S INJURIES

- a. Deep cut wound on the right middle finger

PRESENT COMPLAINS AND OR RESULTING INJURIES

- b. Pain and stiffness of the right middle finger
- c. Scars



- d. Restriction of movements of the distal interphalangeal
- e. Grievous harm
- f. Permanent disability
- g. Further particulars of injuries to be furnished at the hearing hereof by way of medical report.

Particulars Of Loss And Damages

- h. Medical expenses-----Kshs. 590/=
- i. Medical legal report-----Kshs. 8000/=
- TOTAL-----KSHS. 8,590/=

3. The plaintiff particularized his claim of negligence on the part of the defendants at Paragraph 9 of his plaint as follows: -

Particulars Of Negligence/ Breach Of Contract Or Statutory Duty On The Part Of The Defendant/ Its Agent/ Servant

- a. Failure to provide the Plaintiff with a proper, reasonable and or safe working environment and or system of work
- b. Failure to comply with, adhere to and or observe statutory, occupational, safety, health, workplace and/or common law duties, provisions, practices and or safeguards imposed on the Defendant taking into consideration all the circumstances of this case
- c. Failure to provide the Plaintiff with any, reasonable, proper, requisite, necessary and or adequate supervision, training, orientation, instructions, guard, protective system, facilities, clothing, boots, gloves, apparel and or gear.
- d. Making, instructing, allowing and or requiring the Plaintiff to use, deal with and or attend to a defective, ill-serviced, dangerous, inadequate, risky and or faulty equipment, machine, appliance, means/ system of work and or their parts/ components,
- e. Making, requiring, instructing and or allowing the Plaintiff to attend to/ work on the machine in such a manner/ condition that posed danger, threat and exposing the plaintiff to known and or peril and not adequately and or properly providing him with any, proper, sufficient and or adequate training, safeguards, information, supervision, warning, protective clothing/ gears and or necessary facilities.
- f. Failure to provide any, proper, reasonable and or adequate supervision
- g. Failure to provide the plaintiff with well trained, mindful, diligent, proper, careful, reasonable and or adequate co-employee(s), maintenance crew, supervisors, staff and or man power.
- h. Providing the plaintiff with a machine/ equipment which had no proper, functioning, well maintained, requisite, reasonable, sufficient and or adequate parts/ components.



- i. Failure to provide the Plaintiff with any, reasonable, proper, requisite, necessary, well maintained, working, proper, safe and or adequate facilities, machines, kits, provisions, equipment and or their parts/ components.
 - j. Failure to properly, as required, adequately, reasonably and or routinely repair, maintain, fix and or service machine/ equipment and or their parts/ components.
 - k. Providing the plaintiff with unqualified, inadequate, less, mindless, negligent, reckless and or careless co-employee(s), maintenance crew, colleague(s) and or supervisors
 - l. Failing to act in time or at all so as to avoid the said accident
 - m. Failing to have regard to the safety and or well being of the plaintiff while on duty
 - n. Failure to timely, periodically and or reasonably check, supervise, assess and or gauge the safety of the Plaintiff while on duty
 - o. Failure to exercise due diligence, care and or expertise expected of it as regards plaintiff's safety while at its premises and or workplace
 - p. Knowingly, willingly, intentionally and or otherwise creating a danger/ risk which was otherwise avoidable
 - q. Engaging, instructing and or requiring the Plaintiff to perform and or engage in duties/ workload beyond his scope, strength, safety, experience, capacity and or ability
 - r. Adapting, employing and or using standard procedure, rules and regulations, work methodology and or means/ mode/ laws of operation that are reasonably, knowingly, obviously and or dangerously.
4. The defendant entered appearance and filed his defense, vide a Memorandum of Appearance and Statement of Defense, both dated 11.04.2018 and filed on 27.06.2018; filed by the firm of Messrs. E. M. Juma & Ombui advocates, wherein it mainly disavowed the alleged negligence and or breach of contract or statutory duty attributed on it and/or his agent. Furthermore, the defendants attributed the accident to the negligence of the plaintiff; and particularized the same in its Statement of Defense.
5. The plaintiff testified while the defendant failed to present any witness or evidence in its case. Dr. Malik's medical report was however admitted as DEXH. NO. 1. Both parties were then able to file and serve their respective written submissions. At the close of the hearing and submissions, the accident and injuries have not been challenged. The remaining issues for determination are mainly as follows: -
- a. Who is to blame for the accident?
 - b. Whether the plaintiff is entitled to the reliefs sought?
- Basically, it is a determination on liability and quantum.
6. On liability, the plaintiff testified, and adopted his statement dated 13/09/2017, and basically reiterated his averments in his pleadings. He is blaming the defendant for failing to train him, and or provide him with protective devices like gloves that could have protected him from the injuries. He also blames the



defendant for providing him with a defective machine. That the machine was not well maintained till its chain got cut, thereby causing the accident to blame.

7. In cross-examination, he stated that he was assigned to work as a plant operator at the billing machine. That had worked there all along, since 2013. That he therefore had sufficient experience. That he was the one who was controlling the machine because everyone else was new in the section.
8. In a bid to determine and or apportion liability herein, I have gone through the submissions by the learned counsel herein. In an action for negligence, the burden of proof falls on the plaintiff alleging to establish each element of the tort, hence it is for the plaintiff herein to adduce evidence of facts on which he bases his claim. There has to be a duty of care which was breached resulting to loss and damage to the plaintiff. The plaintiff herein therefore has a duty to prove his case on a balance of probabilities that the defendant was so negligent so as to occasion the accident that led to the plaintiff's injuries. However, once the legal burden of proof is discharged by the plaintiff, the evidential burden might shift to the defendant to prove his claim of plaintiff's sole or contributory negligence as pleaded.
9. The provisions of sections 107 and 108 of the Evidence Act are relevant and provide as follows:

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- (1) 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.
- (2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.

108. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

10. In the case of MURUINGU KANORU JEREMIAH VRS STEPHEN UNGU M'MWARABUA [2015] eKLR the superior court held as follows with regard to the burden of proof:

....As I have already stated, in law, the burden of proving the claim was the appellant's including the allegation that the respondent did not pay the sum claimed as agreed; i.e. into the account provided....The trial magistrate was absolutely correct in so holding and did not shift any legal burden to the appellant....The appellant was obliged in law to prove that allegation; after the legal adage that he who asserts or alleges must prove.... In the circumstances of this case, the respondent bore no burden of proof whatsoever in relation to the debt claimed. By way of speaking, the shifting of burden of proof would have arisen had the trial court magistrate held that the respondent bore burden to prove that he deposited the sum of Kshs. 98,200/= the debt being claimed herein.

11. I also refer to THE HALSBURY'S LAWS OF ENGLAND, 4TH EDITION, VOLUME 17, at paras 13 and 14: which describes it thus:

The legal burden is the burden of proof which remains constant throughout a trial; it is the burden of establishing the facts and contentions which will support a party's case. If at the conclusion of the trial he has failed to establish these to the appropriate standard, he will lose. The legal burden of proof normally rests upon the party desiring the court to act; thus, a claimant must satisfy the court or tribunal that the conditions which entitle him to an award have been satisfied. In respect of a particular allegation, the burden lies upon the party for whom substantiation of that particular allegation is an essential of his case. There may therefore be separate burdens in a case with separate issues.



12. The legal burden is discharged by way of evidence, with the opposing party having a corresponding duty of adducing evidence in rebuttal. This constitutes evidential burden. Therefore, while both the legal and evidential burdens initially rested upon the plaintiff, the evidential burden may shift in the course of trial, depending on the evidence adduced. As the weight of evidence given by either side during the trial varies, so will the evidential burden shift to the party who would fail without further evidence.
13. In this case, I find that the plaintiff has proved that the defendants herein were liable for the accident by reason of negligence and/or breach of duty. The plaintiff's evidence on how the accident occurred and generally as to causation has not been challenged or controverted in any way. I thus do hereby find the defendant to be blamed 100% for the accident herein. The defendant ought to have discharged their evidential burden as to their averments concerning plaintiff's negligence.
15. On quantum, I also do find that the medical evidence adduced herein to be uncontroverted that the plaintiff sustained the injuries pleaded. There was however no relevant authority submitted to aid me reach a guided opinion as to quantum. The authorities submitted by both counsel herein have underwhelmed given that the injuries contained therein are not almost similar to the ones sustained by the plaintiff herein. That notwithstanding, I find an amount of Kshs. 200,000/- as sufficient compensation for pain and suffering.
16. Turning to special damages, I do find that the plaintiff has been able to prove Kshs. 8,000/= being cost of the medical report and Kshs 590/- being medical expenses vide PEXH. NO. 5, which I do hereby grant. Thus, the total damages awardable herein is hereby assessed at 208 590/-.
17. In conclusion, judgment is hereby entered in favor of the plaintiff, against the defendant at Kshs 208 590/=, costs and interests at court's rates.

DATED, SIGNED AND DELIVERED AT NAKURU IN OPEN COURT THIS 10TH , DAY OF SEPTEMBER 2024

ALOYCE-PETER-NDEGE

SENIOR PRINCIPAL MAGISTRATE

In the presence of;

Plaintiff's counsel: Kurere h/b Njuguna

Defense Counsel: Obura

Plaintiff:

Defendant:

