



**Alpharama Limited v Kinyili (Employment and Labour Relations Appeal
12 of 2020) [2025] KEELRC 3042 (KLR) (29 October 2025) (Judgment)**

Neutral citation: [2025] KEELRC 3042 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MACHAKOS
EMPLOYMENT AND LABOUR RELATIONS APPEAL 12 OF 2020
MA ONYANGO, J
OCTOBER 29, 2025**

BETWEEN

ALPHARAMA LIMITED APPELLANT

AND

JULIUS MUTISYA KINYILI RESPONDENT

(Being an appeal from the Judgment of Honourable J.A. Agonda (Mr.) Senior Resident Magistrate delivered on 7th April 2017 in Mavoko PMCC No. 622 of 2013)

JUDGMENT

1. This is an appeal from the judgment and decree of the Principal Magistrate's court at Mavoko by Hon. J.A. Agonda (SRM) dated 7th April 2017 in PMCC No. 622 of 2013. The Respondent who was the Plaintiff before the trial court, sued the Appellant (the Defendant in the lower court) for damages arising out of injuries he sustained while in the course of his employment.
2. After a full trial, the trial court rendered its decision in which it found the Appellant 100% liable for the accident in which the Respondent sustained injury and awarded the Respondent general damages of Kshs. 100,000 and Special damages of Kshs. 11,050 and costs of the suit.
3. The Appellant was aggrieved by the judgment on both liability and quantum and filed a Memorandum of Appeal dated 4th May 2017 on the following grounds of appeal: -
 - a. The Learned trial Magistrate misdirected herself and erred in law and in fact by holding that the Plaintiff had proved his case against the Defendant on a balance of probabilities.
 - b. The Learned trial Magistrate misdirected herself and erred in law and in fact by disregarding the Defendant's Witness testimony and holding the Appellant 100% liable for the accident the subject of this suit.



- c. The Learned trial Magistrate misdirected himself and erred in law and in fact by-30 totally disregarding the Defendant's Witnesses testimony and holding the Appellant 100% liable for the alleged accident while the evidence or record called for dismissal of the suit against the Respondent.
 - d. The Learned trial Magistrate misdirected herself and erred both in law and in fact in failing to consider the Defendant's overwhelming evidence on record and hence arrived at an erroneous finding on liability.
 - e. That the Learned trial Magistrate misdirected herself erred in law and in fact by failing to find that the plaintiff did not prove that he was the defendant's employee at the material time or at all and hence arrived at an erroneous finding on liability.
 - f. That the Learned trial Magistrate misdirected herself erred in law and in fact by failing to find that the plaintiff did not prove that he was working for the defendant at the time of the alleged injury and hence arrived at an erroneous finding on liability.
 - g. That the Learned trial Magistrate misdirected herself erred in law and in fact by failing to find that the plaintiff did not prove that he was harmed by any known chemical in use by the defendant hence arrived at an erroneous finding on liability.
 - h. The Learned trial Magistrate misdirected herself erred in law and in fact by awarding general damages for pain and suffering that are so manifestly excessive as to be erroneous vis a vis the injuries sustained by the plaintiff.
 - i. That the Learned trial Magistrate misdirected herself and erred in law and in fact by totally failing to consider the Defendant's Submissions on record thus arrived at an erroneous finding on liability and quantum.
 - j. The Learned trial Magistrate erred in law and in fact by failing to uphold precedent and the doctrine of stare decisis.
4. The Appellant prayed that the appeal be allowed and the Judgment of the trial court be set aside. It further prayed for costs.
 5. The Appeal was disposed of by way of written submissions. Only the Appellant's submissions are on record. The Respondent did not file submissions even after being granted time to do so severally.

Appellant's submissions

6. The Appellant argued grounds 1 to 8 of the Memorandum of Appeal together. It was the Appellant's submission that the Respondent did not prove his case to the required standards and the trial court erred in holding the Appellant liable 100%. In the Appellant's opinion, the suit should have been dismissed.
7. The Appellant submitted that even though the Respondent pleaded that he was an employee of the Appellant at the time of injury and was injured in the course of employment when chemicals poured on his back and he sustained chemical, burns, the evidence adduced by the Appellant was sufficient proof that the Respondent was not at work on the said date. The Appellant referred the court to its DEX B the attendance register.
8. It was the Appellant's submission that the evidence of DW1 at page 106 line 12-15 of the Record of Appeal was that the Respondent was not working for the Appellant on the material day as his name does not appear in the register.



9. Relying on the decision in *Nyamathe Tea factory Co. Limited v Henry Nyabuto Monari* [2009] the Appellant submitted that the trial court erred in finding that the Respondent had discharged his burden of proof. In that case Musinga J (as he then was)

“It is appreciated that many employees do not give identification documents or letters of appointment to casual employees. If that is the case, where a person intends to prove such casual employment, he must endeavor to advance all manner of evidence as would be sufficient to satisfy a court that such arrangement did actually exist, especially where the person knows that the alleged employer has specifically denied the alleged casual employment”

10. The Appellant further submitted that the trial court erred in holding that the Respondent’s neck was burned by a chemical dripping on his neck without expert evidence identifying the chemical.

11. The Appellant further relied on the decision of Mulwa J. in *Lamorna Ltd v Hannah Waruguru Macharia* [2015] eKLR where the Judge stated:

“The court in the case *Homegrown (k) Ltd v Hannah Wairimu HCCC No. 68 of 1999* held that specific chemicals that affected the Respondent must be identified through expert evidence and a scientific basis for the ailments of the Respondent”

12. On quantum the Appellant submitted that the award was excessive as the nature of injury was soft tissue. The Appellant urged the court to reduce the award to Kshs. 30,000 from 100,000 awarded by the trial court.

13. As I have indicated above the Respondent’s submissions are not on the court record.

Analysis

14. The duty of the first appellate court is set out in the case of *Selle and another v Associated Motor Board Company and Others* [1968] EA 123 as follows: -

“An appeal from the High Court is by way of re-trial and the Court of Appeal is not bound to follow the trial Court’s finding of Fact if it appears either that he failed to take account of particular circumstances or probabilities or if the impression of demeanor of a witness is inconsistent with the evidence generally.”

15. The Respondent Julius Mutisya Kinyili testified as PW1, the Plaintiff in the trial court and adopted his statement dated 4th July, 2013 filed with his Plaint. He also produced his bundle of documents which included treatment summary from Athi River Health Centre PEXH 2, cash receipt for treatment PEXH 2b, treatment note dated 20th May, 2013 PEXH 2c and demand letter PEXH 1. He further produced medical report of Dr. Okere PEXH 4.

16. PW1 testified that on the material day he was working for the Appellant removing lime from a container and taking it to the store. The lime was packed in nylon packets/sacks. The sun was shining and caused the lime powder to melt, drip and burn his back. He was treated at Athi River Health Centre.

17. He testified that the nylon packaging in which the lime was packed was not strong and got torn while being loaded. He testified that his supervisor was Hezron Ondieki, who testified as DW1.



18. Under cross examination PW1 testified that he was working in Off Loading Department and used to off-load chemicals. That at the time of accident he had been off-loading for 4 to 5 days but was not new in the company.
19. He testified that the lime powder melted when it got in touch with his sweat and that is what burned his skin. That he had not noticed that the packaging was torn before he carried it.
20. He stated Document PEXH 2a did not bear the stamp of the hospital and had no name of the doctor who treated him. That the document shows it was issued at Makadara Hospital which is inserted by hand. That the same had an alteration of the date from 20th to 18th. He testified that he was treated at both Makadara and Athi River Health Centre.
21. PW2 Dr. Cyprianus Okoth Okere testified that he is a private medical practitioner and examined the Respondent on 27th May, 2013 with a history of having been injured while carrying hide packed chemical which poured on his neck causing chemical burns on his neck. That the Respondent complained of itching at the time of examination. PW2 testified that he saw burn wounds on the Respondent's neck and concluded that he sustained chemical burns which he classified as harm. He testified that he charged Kshs. 3000 for the medical report and Kshs. 8000 for court attendance.
22. For the Appellant DW1 Hezron Ondieki Onsongo testified that he worked for the Appellant. He adopted his witness statement dated 1st April, 2014.
23. He testified that the Respondent did not work for the Appellant. That at the company chemicals were off-loaded by a fork lift and the Respondent could not have been loading chemicals when he got injured. He stated that he had never seen the Respondent before. That the Respondent's name does not appear in the attendance register produced in court.
24. Under cross examination he testified that he was a supervisor in the store and had 6 employees whom he knew and the Respondent was not one of them.
25. DW2 Ruth Doli Agengi testified that she worked at the Appellant's HR Department. That employees are recruited through advertisement by word of mouth. That the Appellant keeps an attendance register which is marked every day when an employee reports to work, is sick or on leave.
26. She testified that the Respondent had sued the company 3 times: on 17th May, 2017; 23rd May 2013 in Machakos and the third case in civil case No. 650 of 2013. That in all 3 claims he alleged he got injured with similar injuries.
27. DW2 testified that if the Respondent got injured at work he would have been taken to the company's clinic and if the injury was serious he would have been referred to Athi River Medical Hospital, Guru Nanak or Nairobi West Hospital. She stated that the Appellant's attendance register does not show that the Respondent worked for the Appellant.
28. Under cross examination DW2 stated that the Attendance Register DEX-1 was generated by her colleague and is signed by the head of department and not by employees. On re-examination she stated that the register was generated by the company but was not signed.
29. In the judgment dated 7th April, 2017 the trial court found the Appellant 100% liable and awarded the Respondent Kshs. 100,000 general damages, Kshs. 11,050 special damages and costs.



Determination

30. Upon analyzing the Memorandum of Appeal, the Record of Appeal and the submissions on record, the issues that fall for determination are whether the trial court erred in finding that the Respondent was at work at the Appellant premises on the material day, that is on 17th May, 2013 (the plaint states 17th May, 2012 which I believe is an error), whether he was injured while at work, whether the Appellant was liable for the injury and if the Respondent is entitled to both the general damages and special damages as awarded by the trial court.

Whether the trial court erred in finding that the Respondent was at work at the Appellant's premises on the day the Respondent alleges to have been injured, that is on 17th May, 2013

31. In his plaint dated 4th July, 2013 the Respondent pleads that he was injured when chemicals poured on his neck and back while carrying packed hide in the course of his employment with the Appellant. In the witness statement the Respondent states that the Appellant's supervisor Mr. Ondieki assigned him and his co-worker to remove packed hide chemical from a container and take it to the store which he carried on his shoulders. He states that he reported his injury to Mr. Ondieki who administered first aid at the company premises. That on 20th May, 2013 the pain persisted and he visited Athi River Health Centre where he was treated as an outpatient. Among the documents produced by the Respondent is a treatment sheet from Athi River Health Centre dated 20th May, 2013. The treatment sheet does not bear the name of the doctor/health practitioner who treated the Respondent.
32. In the list and bundle of documents filed by the Respondent it is indicated that he filed a demand letter, treatment note from Athi River Health Centre, Receipts from Athi River Health Centre, Dr. Cyprianus Okoth Okere's medical report and Plaintiff's statement. However in the record of Appeal the only documents filed are the treatment records from Athi River Health Centre and the Plaintiff's witness statement.
33. In the proceedings of the trial court it is stated that the Respondent produced his treatment summary form (PEXH.2), payment receipt for Kshs. 50 (PEXH 2b) treatment note dated 20th May, 2013 (PEXH 2c), demand letter (PEXH 1) and medical report (PEXH 4).
34. During cross examination the Respondent stated that PEXH 2a does not bear the stamp of the hospital or the name of the doctor who treated him. That PEXH 2c was issued to him at the same hospital but shows it was issued by Makadara Hospital which is inserted by hand. That the same had an alteration on the date from 20th to 18th. That he was treated at both Makadara and Athi River Health Centre.
35. RW1 denied that the Respondent was employed by the Appellant. He further testified that chemicals were carried with a fork lift and not human force. He stated that the Respondent's name did not appear in the attendance register produced in court from January to June, 2013.
36. DW2 testified that the Respondent had filed several suits against the Appellant on the same injury being the instant suit Mavoko PM's Court No. 622 of 2013, another case No. 650 of 2013 and a third case in Machakos. However, there is no proof on record about the other two cases alleged to have been filed by the Respondent against the Appellant.
37. I have further noted from the evidence of PW2 at page 96 of the Record of Appeal that PW2 examined PW1, the Respondent, on 27th May, 2013 and saw chemical burn wounds on the neck. That he relied on the outpatient documents from Athi River Health Centre. The court notes that this was only 10 days after the alleged accident.



38. Taking into account all the foregoing factors especially the fact that PEXH 2a, the hospital treatment notes, does not bear the stamp of the hospital or the name of the doctor who treated the Respondent, the fact that PEXH 2c, the payment receipt for treatment the Respondent alleges was issued to him at the same hospital but shows it was issued by Makadara Hospital which is inserted by hand and which had an alteration on the date from 20th to 18th, the speed with which the Respondent went for medical assessment for purposes of filing suit only 10 days from date of the alleged accident, the fact that on the date the accident is alleged to have occurred the Respondent's name does not appear in the Appellants register of employees, I am inclined to reach the conclusion that the Respondent has not proved on a balance of probabilities that there was an accident on 17th May, 2013 at the Appellant's premises at which the Respondent sustained the injuries that are the subject of the suit herein.
39. I therefore find the appeal meritorious. Accordingly, I set aside the judgement of the trial court dated 7th April, 2017 and substitute it with an order dismissing the suit.
40. There shall be no orders as to costs at the trial court and in the appeal.
41. Orders accordingly

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 29TH DAY OF OCTOBER, 2025.

M. ONYANGO

JUDGE

