



**Migottoy Plantation Limited v Nyakach (Civil Appeal 59 of 2022)  
[2025] KEHC 17224 (KLR) (24 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 17224 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
CIVIL APPEAL 59 OF 2022  
PN GICHOHI, J  
NOVEMBER 24, 2025**

**BETWEEN**

**MIGOTTOY PLANTATION LIMITED ..... APPELLANT**

**AND**

**JOHNSON ODUNDI NYAKACH ..... RESPONDENT**

*(Being an appeal arising from the judgment of the Honourable E.K Usui, Chief Magistrate, delivered in Nakuru CMCC No. 1322 of 2006 on 23rd March, 2022)*

**JUDGMENT**

1. The background of this appeal is that Appellant was sued by the Respondent vide a plaint dated 11<sup>th</sup> May, 2006, seeking for the following reliefs;-
  - a. General damages.
  - b. Special damages.
  - c. Costs and Interest of this suit.
2. It was pleaded that the Respondent herein, Johnson Odundi Nyakach, was an authorised employee of the Appellant, Migottoy Plantations Limited, at all material times to the suit.
3. The Respondent claimed that on or about 25<sup>th</sup> January, 2004, while he was lawfully on duty doing authorized work, he was cut and seriously injured by a knife. The core of the Respondent's claim was that the Appellant was negligent and/or breached the employment contract by failing to take reasonable precautions for his safety, failing to provide a safe and proper system of work and failing to provide protective devices.
4. He attributed the cut wound on his left little finger and resulting loss and damage to the Appellant's negligence and/or breach of contract. He thus sought for damages.



5. In response, the Appellant filed a defence dated 27<sup>th</sup> November, 2006, where he denied that the Respondent was its authorised employee and denied that any term of employment contract existed or that it owed any duty of care both statutory, contractual and otherwise to the Respondent herein.
6. Specifically, the Appellant denied the incident occurred on the date alleged 25<sup>th</sup> January, 2004 and denied that the Respondent's injuries were due to its negligence or breach of contract.
7. In the alternative, the Appellant pleaded that the Respondent was wholly negligent by exposing himself to danger, failing to wear safety devices, and working in breach of the terms of the contract.
8. Upon hearing both parties, the trial Court delivered its Judgement on 23<sup>rd</sup> March, 2022, holding the Appellant herein, 100% liable for the Respondent's injuries, finding that the employer was negligent and in breach of its statutory and common law duty to provide a safe system of work, specifically by allowing the Respondent to use a faulty tool, a knife with a broken handle and failing to provide protective gloves.
9. Consequently, the trial court entered judgment for the Respondent for Kshs. 150,000/= in General Damages for pain and suffering, Kshs. 3,000/= in Special Damages, plus the costs and interest of the suit.
10. Dissatisfied with that Judgement, the Appellant herein, lodged the current Appeal vide Memorandum of Appeal dated, 21<sup>st</sup> April, 2022 on the following grounds;-
  1. The Learned Trial Magistrate erred in fact and in law by finding that the Respondent had proved that he was employed by the Appellant at the time of the alleged injury despite there being no evidence to prove the same.
  2. The Learned Trial Magistrate erred in fact and in law by finding that the Respondent had proved that he was injured while in the course of performing his duties despite the lack of any evidence to support the same.
  3. The Learned Trial Magistrate erred in fact by finding that the Appellant provided Respondent with a knife that had a defective handle despite the lack of evidence and the same not having been pleaded by the Respondent in his plaint dated the 11th May 2006.
  4. The Learned Trial Magistrate erred in fact by finding that the Appellant had a duty to supply the Respondent with effective tools of work and protective gear despite the Appellant leading evidence to prove that the Respondent was not an employee in the first place.
  5. The Learned Trial Magistrate erred in fact and in law in apportioning 100% liability upon the Appellant herein for the injuries sustained by the Respondent despite the Respondent pleading that he was aware that he was using a dangerous tool with no protective gear.
  6. The learned Trial Magistrate erred in fact and in law in awarding a sum of Kshs 150,000/- as general damages which amount is manifestly excessive considering the nature, extent and effect of the injuries sustained.
  7. The Learned Trial Magistrate erred in law in imposing an unreasonably high burden of proof upon the Appellant.
  8. The Learned Trial Magistrate erred in law by filling in the gaps and shortcomings in evidence in the Respondent's case thus arriving at a fundamentally flawed decision.



9. The Learned trial Magistrate erred in failing to adequately consider the Appellant's written submissions and thus arriving at an unfair determination of the issues in dispute.
11. The Appellant prays that the appeal be allowed and that the Judgment of the trial court be set aside and judgment be entered in its favour against the Respondent as prayed for in its Defence and that it also be awarded the costs of this appeal as well as the costs of the proceedings before the trial court.
12. This Appeal is canvassed by written submissions filed by both parties.

### **Appellant's Submissions**

13. The Appellant submits that the trial court erred in law and fact by making findings unsupported by the pleadings and evidence, primarily challenging the existence of an employment relationship, the finding of negligence, the failure to apportion liability, and the excessive quantum of damages.
14. It argues that the Respondent failed to discharge the legal burden of proof under Section 107(1) of the Evidence Act to establish the fact of employment, which is the cornerstone of the claim. For this argument, he cites the case of *Anne Wambui Ndiritu v Joseph Kiprono Ropkoi & Another* [2005] 1 EA 334, which defines the legal burden of proof lying upon the party who asserts the affirmative, and the evidential burden captured in Sections 109 of the Evidence Act.
15. The Appellant asserts that in the absence of basic proof of employment such as pay-slips and appointment letter, the claim must fail, relying on *Thome v Katuma & another* [2024] KEELRC 1110 (KLR), which held:-

“In the absence of credible evidence, the court finds that the Claimant has not proved the existence of an employment relationship between him and the Respondents. The result is that the entire Claim falls and is accordingly dismissed.”
16. Further, the Appellant maintains that since the Accident Book and payroll records did not reflect the Respondent's employment on the material day, the trial court's finding was speculative.
17. The Appellant contends that the trial court introduced an unpleaded fact by finding that the knife had a defective handle, a crucial element not contained in the Complaint, violating the rule that parties are bound by their pleadings. In support of its argument, the Appellant relies on the case of *Pius Machafu Isindu versus Lavington Security Guards Limited* [2017] KECA 225 (KLR), which states that issues not raised in pleadings or prayers need no proof and that parties are bound by their pleadings. Further reliance is placed on *Caparo Industries plc v Dickman* [1990] 2 AC 605 (UKHL), for the argument the duty of care to provide safe tools only arises upon proof of a legal relationship.
18. The Appellant further argues that the court erred in imposing 100% liability and failing to find contributory negligence, noting the Respondent admitted using a dangerous tool without protective gear. He cites *Amalgamated Saw Mills v David K. Kariuki* [2016] eKLR, which noted that:-

“...an employer cannot baby-sit an employee especially in manual tasks that need no special training or supervision. He must work and at the same time take precaution on his own security and safety,” the Appellant submits that the Respondent failed to take reasonable care for his own safety.”
19. On quantum, the Appellant argues that the award of Kshs. 150,000/- for a simple cut wound on the little finger is manifestly excessive and unreasonable, as there was no evidence of permanent disability



or long-term effects, thus requiring the Appellate Court's intervention under the principles set out in *KMFRO Africa Ltd v Meru Express Servicev A.M Lubia & Another* 1957 KLR 27,

### **Respondent's Submissions**

20. The Respondent submits that the appeal lacks merit and that the trial court's findings should be upheld.
21. He acknowledges the duty of the first appellate court to re-evaluate the evidence as stated under section 78 of the *Civil Procedure Act* but cautions against interfering with the trial court's findings of fact unless they are based on no evidence or a misapprehension of the evidence citing *Kiruga v Kiruga & Another* [1988] KLR 348, which observed that:-

“An appeal court cannot properly substitute its own factual finding for that of a trial court unless there is no evidence to support the finding or unless the judge can be said to be plainly wrong. An appellate court has jurisdiction to review the evidence in order to determine whether the conclusion reached upon that evidence should stand...”
22. On liability, he submits that his sworn testimony regarding employment and injury with a defective knife was more credible than the Appellant's records. The Respondent argues that the Appellant's records, that is, payroll and patient book, which are prepared by the employer without employee input, are inherently unreliable, especially given evidence that not all employees were listed on the payroll and that the patient book appeared altered.
23. In his submissions, he relies on the case of *Sokoro Saw Mills Limited v Grace Nduta Ndungu* [2006] eKLR, where the Court found that the employer's records cannot be considered to be the factual in the face of the evidence which was adduced by the respondent and her witness. He thus concluded that the Appellant failed to prove it provided protective gear, and the 100% finding of liability was justified.
24. He submits that the award of Kshs. 150,000/- is reasonable for the cut wound on the left little finger and should be upheld, especially given his proposal for Kshs. 200,000/- at the trial level, relying on *Longonot Horticulture Ltd v Isaac Oluoch Kichama* [2010] KEHC 2491 (KLR).
25. Ultimately, he prays that the appeal be struck off with costs awarded to him.

### **Analysis and Determination**

26. Upon hearing the parties in this appeal, it is noted that the claim before the trial court was for damages for the injuries allegedly sustained by the Respondent in the cause of his employment by the Appellant.
27. Before proceeding further, and despite the fact that neither of the parties herein has raised the issue, the jurisdiction of this Court to handle the Appeal has to be dealt with first as it has powers to do so suo moto.
28. Indeed, it is settled law that jurisdiction can either flow from *the Constitution* or legislation or both; and it cannot be expanded through judicial craft or innovation and that without judication, the Court cannot make one more step as held in the celebrated case of *Owners of the Motor vessel "Lillian S" v Caltex Oil (Kenya) Ltd* [1989] KLR 1 and reiterated by the Supreme Court in *Samuel Kamau Macharia & Another v. Kenya Commercial Bank & 2 Others*, SC Application No. 2 of 2011 [2012] eKLR.
29. Article 165(5)(b) of *the Constitution* expressly provides that the High Court shall not have jurisdiction in respect of matters reserved for the courts established under Article 162(2). Article 162(2)(a)



- establishes the Employment and Labour Relations Court to hear and determine disputes relating to employment and labour relations.
30. Further, Section 12 of the ELRC Act and Section 52(2) of WIBA clothe that Court with jurisdiction over appeals in respect of decisions arising from work injury claims.
31. Under Section 12(5) of the *Employment and Labour Relations Court Act*, the jurisdiction of ELRC on Appeal is provided as follows:-
- “(5) The Court shall have jurisdiction to hear and determine appeals arising from;  
(a) decisions of the Registrar of Trade Unions; and (b) decisions of any other local tribunal or commission as may be prescribed under any written law.”
32. Further, Section 52 of the Work Injury and Benefits Act provides that:-
- “52. 52.(1) The Director shall within fourteen days after the receipt of an objection in the prescribed form, give a The *Work Injury Benefits Act*, 2007 32 written answer to the objection, varying or upholding his decision and giving reasons for the decision objected to, and shall within the same period send a copy of the statement to any other person affected by the decision. (2) An objector may, within thirty days of the Director’s reply being received by him, appeal to the Industrial Court against such decision.”
33. It follows therefore, that any injury that arises in the work place should be filed in accordance with the law under WIBA, and their appeals lodged at the Employment and Labour Relations Court.
34. The Court of Appeal in Daniel N. Mugendi v Kenyatta University & 3 Others [2013] eKLR underscored that once *the Constitution* and statute have demarcated the jurisdictional boundaries between the High Court and specialised courts, those boundaries must be respected.
35. Equally, in Elizabeth Njeri Nderi & another v Highway Carriers Limited [2019] KECA 433 (KLR) the Court of Appeal reiterated that work injury claims are to be processed under WIBA, with appellate recourse lying to the ELRC. The Court held that:-
- “The repealed W.C. Act gave jurisdiction to a subordinate court to determine applications for compensation whatever may be the amount involved (section 17). It appears from the provision of the 2007 Act that the jurisdiction to determine applications for compensation is now conferred upon the Director of Work Injury Benefits established by section 53 of that Act. By section 51 thereof, a person aggrieved by the decision of the Director has a right to file an objection to the Director and by section 52(2), there is a right of appeal to the Industrial Court from the decision of the Director on the objection. The Industrial Court was replaced by the Employment and Labour Relations Court (E&LRC) which was established by the *Employment and Labour Relations Court Act* – No. 20 of 2011 which by section 12(1) gives that court exclusive original jurisdiction to hear and determine disputes relating to employment and labour relations. Section 12(5)(b) specifically gives E&LRC power to hear and determine appeals from the decision of any other local tribunal or commission as may be prescribed under any written law.”
36. Similarly, and as earlier stated by this Court, this appeal arises from a trial court’s judgment that awarded compensation for a work injury.



37. As stated above, it is a well-established principle that any appeal concerning a work injury claim must be filed exclusively in the Employment and Labour Relations Court (ELRC), as the claim falls squarely within the purview of the *Work Injury Benefits Act* (WIBA).
38. In the circumstances, this Court lacks jurisdiction to hear and determine the Appeal.
39. In conclusion, this Court makes the following Orders;-
1. The appeal is struck out.
  2. Each party to bear his own costs.

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 24<sup>TH</sup> DAY OF NOVEMBER, 2025.**

**PATRICIA GICHOHI**

**JUDGE**

Mr. Mwangi Maina h/b for Mr. Adama for Appellant

N/A for Respondent

Kamau, Court Assistant

