**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT NAIROBI**

**APPEAL NUMBER E160 OF 2025**

**CROWN PAINTS KENYA LIMITED……...……..….....APPELLANT**

**-VERSUS-**

**PATRICK ONSARIGO MOKERI…….....RESPONDENT**

*(Being an Appeal from the Judgment and Decree of the Hon. L.A. Mumassaba (PM) delivered on 30th April 2025 in Nairobi MCCC No. 22 of 2018)*

***CORAM***

***Before Lady Justice J.W. Keli***

***C/A Otieno***

**JUDGMENT**

1. The Appellant herein, being dissatisfied with the J Judgment and Decree of the Hon. L.A. Mumassaba (PM) delivered on 30th April 2025 in Nairobi MCCC No. 22 of 2018 filed a Memorandum of Appeal dated the 31st of May 2025 seeking the following orders: -

**a) This appeal be allowed.**

**b) The judgment and consequential decree of the lower court delivered on 30th April 2025 be reversed and set aside and substituted with an order dismissing the suit.**

**c) Costs of the lower court and this appeal be awarded to the Appellant.**

**GROUNDS OF THE APPEAL**

2. The Honourable Magistrate erred law and fact in finding that the Respondent had proved his case against the Appellant and entering judgment against the Appellant.

3. The Honourable Magistrate erred in law and fact in failing to appreciate that the Respondent did not prove that the lead in his blood was as a result of industrial exposure by the Appellant.

4. The Honourable Magistrate erred in law and fact in failing to appreciate that the lead in the Respondent's blood was at normal levels and not as a result of industrial exposure by the Appellant.

5. The Honourable Magistrate erred in law and fact in finding that the lead levels in the Respondent's blood was as a result of exposure by the Appellant in the absence of evidence.

6. The Honourable Magistrate erred in law and fact in failing to appreciate the totality of the evidence before her and in particular, failing to consider the lead levels in the Respondent's blood being below the threshold set by international health bodies and legal notice no. 24 of 2005.

7. The Honourable Magistrate erred in failing to hold that the Respondent's medical issues are wholly unrelated to the work he did and they are not an occupational disease.

8. The Honourable Magistrate erred in reaching a conclusion that was contrary to the evidence before her.

9. The Honourable Magistrate erred in applying an erroneous standard of proof and failed to appreciate that the Respondent had failed to discharge the burden of proof placed upon them as a matter of law.

10. The Honourable Magistrate erred in law and fact in failing to appreciate that the Appellant had taken all reasonable care expected in the circumstances to protect the Respondent from lead exposure.

11. The Honourable Magistrate erred in law and fact in failing to appreciate that the Respondent did not prove negligence against the Appellant.

12. The Honourable Magistrate erred in law and fact in failing to appreciate that the Respondent did not suffer any injuries to his health and the health problems he had were as a result of age and not lead related exposure despite evidence to the contrary.

13. The Honourable Magistrate erred in giving evidence on behalf of the Respondent by asserting on her own accord, a medical position, that no level of lead exposure is safe, not advanced by any witness in the proceedings.

14. The Honourable Magistrate erred in law and fact in awarding general damages of Kshs. 250,000/- which was manifestly high and excessive in the circumstances.

15. The Honourable Magistrate erred in assessing and awarding special damages of the sum of Kshs. 1,500 as pleaded without sufficient proof.

16. The Honourable Magistrate wholly erred in failing to dismiss the Respondent's suit.

**BACKGROUND TO THE APPEAL**

17. The Respondent filed a suit against the Appellant vide a plaint dated 8th January 2018 seeking the following orders: -

a) General damages

b) Special damages as pleaded in paragraph 9 above.

c) An order directing the Occupational Safety and Health Office Kiambu County, to prosecute and/or penalize the Defendant for breach or non-compliance of the mandatory Statutory Provision mentioned in paragraph 11above.

d) Costs and interest thereon on (a), (b) and (c) above, at present court rates.

e) Any other relief this Honourable Court may deem just and expedient to grant.

(pages 5-8 of Appellant's ROA dated 26th August 2025).

18. The Respondent filed his list of witnesses dated 8th January 2018; witness statement dated 29th December 2017; list of supporting documents dated 8th January 2018 with the bundle of

documents attached; further list of supporting documents dated 13th February 2018; and further statement dated 13th February 2018 (pages 10-30 of ROA).

19. The claim was opposed by the Appellant who entered appearance and filed a defence dated 16th February 2018 (pages 31-34 of ROA). The Appellant also filed a list of witnesses dated 30th July 2024; a witness statement of JESSE JACKSON of even date; and a list of documents of even date with the bundle of documents attached (pages 35-96 of ROA). The Appellant later filed a further list of documents dated 14th August 2024 with the bundle of documents attached (pages 97-103 of ROA).

20. The Respondent's case was heard on the 27th of November 2024 and 19th February 2025, with the Respondent testifying in the case, alongside another witness Dr. Cyprianus Okoth, who testified as PW2. The Respondent relied on his filed witness statement as his evidence in chief and produced the documents attached to his list of documents as his exhibits. He was cross-examined by counsel for the Appellant, Ms. Kihenjo. PW2 also testified and produced his report. He was cross-examined by counsel for the Appellant, Ms. Kihenjo (pages 131-133 of ROA).

21. The Appellant's case was also heard on 19th February 2025 with the Appellant calling two witnesses: Jesse Jackson Agio as DW1, and Rose Kiura as DW2. DW1 relied on his filed witness statement and further witness statement as his evidence in chief, and produced the Appellant's documents. DW2 produced her medical report. They were both cross-examined by counsel for the Respondent Mr. Okao (pages 134-135 of ROA).

22. The parties took directions on filing of written submissions after the hearing, and complied.

23. The Trial Magistrate Court delivered its judgment on the 30th of April 2025 allowing the Claimant/Respondent's claims to the tune of Kshs. 251,500/- comprising of general damages and special damages, plus costs and interests from eth date of filing suit until payment in full (judgment at pages 147-151 of ROA).

**DETERMINATION**

24. The appeal was canvassed by way of written submissions. Both parties complied.

**Issues for determination**

25. The Appellant submitted generally on the appeal in their submissions dated 29th October 2025.

26. On his part, the Respondent identified the following issues for determination in his submissions dated 24th October 2025:

i. Whether the trial
statutory duty.

ii. Whether the awa
circumstances.

iii. Whether the App
fact and law.

27. The court on perusal of the grounds of appeal was of the considered opinion that the issues placed by the parties for determination in the appeal were-

   i. ***Whether the trial court erred in finding that the Appellant was negligent and in breach of statutory duty.***

   ii. ***Whether the award of damages in the sum of Kshs. 250,000 was justified in the circumstances.***

**Whether the trial court erred in finding that the Appellant was negligent and in breach of statutory duty.**

**The appellant's submissions**

28. The learned Magistrate erred in law and in fact in finding that the Respondent suffered from an occupational disease, a conclusion that was contrary to the evidence before her. Section 107(1) of the Evidence Act provides that; 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. In Antony Francis Wareham t/a AF Wareham & 2 others v Kenya Post Office Savings Bank [2004] KECA 166 (KLR), the court of Appeal at Nairobi in addressing the issue of burden of proof stated as follows: And the burden of proof is on the plaintiff and the degree thereof is on a balance of probabilities. In discharging that burden, the only evidence to be adduced is evidence of existence or non-existence of the facts in issue or facts relevant to the issue. It follows from those principles that only evidence of facts pleaded is to be admitted and if the evidence does not support the facts pleaded, the party with the burden of proof should fail. (emphasis added) In the instant case, the Respondent pleaded that he suffered lead poisoning as a result of working for the Appellant. (See Paragraph 9(a) of the

Plaint at page 7 of the Record of Appeal) It behooved him to produce evidence to prove the same. The Respondent produced the Laboratory Test Report dated 14th July 2017 by Lancet Kenya Limited which reported the Respondent's blood lead levels to be 2.2 ug/dl of blood. As indicated in the report, normal ranges of blood lead levels without industrial exposure were between 2ug/dl- 9ug/dl, whereas industrial exposure was from 20ug/dl upwards. (See page 23 line 16 of the Record of Appeal) This medical evidence adduced by the Respondent confirmed that his blood lead levels were within normal limits, falling far below the threshold for industrial exposure or lead poisoning. Further, the Appellant adduced a medical report dated 20th June 2024 made by DW2, a medical doctor and a Designated Health Practitioner appointed by the DOSHS under the Act, it was her expert opinion that the laboratory test done in 2017 reported normal blood lead levels which implies that he was not regularly exposed to lead. (See page 92 line 15 of the Record of Appeal) Dr. Cyprinus Okere, PW2, also confirmed during cross-examination that the Plaintiff's blood lead levels were within normal levels and below industrial exposure levels. (See page 133 lines 27 – 30 of the Record of Appeal) On re-examination, DW2 confirmed to the court that the low blood lead levels found in the Respondent's blood sample could not cause lead poisoning. (See page 134 lines 36-37) In the report dated 20th June 2024 (D Exhibit 9), DW2's expert opinion was that on examination, the Respondent's vitals were normal, cognitive exam (Mini-Cog) was normal and his physical exam was largely normal except for signs suggestive of left knee osteoarthritis. A left knee x-ray done confirmed moderate osteoarthritis and mild joint effusion, which were unrelated to exposure to lead. (See page 92 line 18-21) This evidence was unchallenged. From the foregoing, it is evident the Respondent failed to prove that he had suffered from lead poisoning. Consequently, it is clear that the learned Magistrate erred in finding that the Respondent suffered from an occupational disease – lead poisoning, in absence of evidence.

She failed to properly evaluate both the oral and documentary evidence presented before her to the effect that the Respondents blood lead levels were within the normal range and could not cause lead poisoning. The learned Magistrate erred in finding that the Appellant breached its duty of care towards the Respondent, a conclusion that was contrary to the evidence before her. In Timsales Limited V Stephen Gachie [2005] KEHC 366 (KLR) Musinga J as then was, when addressing the issue of an employer's liability where an employee sustains an injury at the work place, held that: If he (an employee) pleaded that the employer did not provide a safe system of work, he was duty bound to plead and prove what the proper system of work was and the relevant respects in which it was not observed. The Respondent pleaded that he suffered loss and damages on account of the Appellant's breach of statutory duty, and/or contract, and or negligence on the part of the Appellant, its servants, or agents. He listed 7 particulars breach of statutory duty, and/or contract, and or negligence. (See paragraph 7 of the Plaint at page 6 of the Record of appeal.) The Respondent did not produce any evidence in court to prove the particulars stated at Paragraph 7(a-g) of the Plaint. On the other hand, DW1 testified that the Appellant observed and maintained statutory and international standards of safety and health, and produced certificates of compliance and relevant policies. (See the Appellants list and bundle of documents at page 39 – 63 of the Record of Appeal) It was also the Appellants evidence that it provided its employees with the requisite protective equipment that were regularly upgraded. (See page 36, 37 and 38 of the Record of Appeal). The Appellant produced Distribution Lists which were signed by the employees - including the Respondent in acknowledgement that they had received protective equipment. (See pages 71 – 88 of the Record of Appeal) This evidence was not challenged. In fact, in his testimony, the Respondent admitted to having been provided with personal protective equipment while working for the Appellant. (See page 132 line 28, 29 and 30 of the Record of Appeal) DW1

also testified that the Appellant had started phasing out the use of lead based raw material in 2005 and had completely stopped using them by the year 2010, barely a year after the Respondent's engagement with the Appellant (see page 37 line 22 of the Record of Appeal). This evidence was uncontroverted in West Kenya Sugar Co. Ltd v Kalibo [2023] KEELRC 939 (KLR) the court held that the employer is required to take all reasonable precaution for the safety of the employee to provide an appropriate and safe system of work which does not expose the employee to unreasonable risk under section 6 of the Occupational Safety and Health Act. The evidence on record clearly demonstrates that the Appellant had implemented and maintained statutory and international standards of safety and health, and had provided the Respondent with the necessary protective equipment. Further, the uncontroverted testimony of DW1 confirmed that the Appellant discontinued the use of lead-based materials as early 2010. DW2's expert report of 20th June 2024 confirmed that the Respondent's vitals, cognitive and physical examinations were normal, save for osteoarthritic changes in his left knee, which were unrelated to lead exposure. PW2, the Respondent's own medical witness, conceded during cross-examination that the Respondent's blood lead levels were normal and could not indicate occupational exposure. It is our humble submission that the Appellant took all reasonable precaution to ensure the safety of its employees – including stopping the use of lead based raw materials. Therefore, the Magistrate's conclusion that the Appellant was negligent and/or breached its duty of care towards the Respondent was erroneous and not supported by evidence.



Respondent's submissions

29. It is not disputed that the Respondent was an employee of the Appellant at all material times, working in an environment involving chemical handling and that also the Appellant was using

lead based raw materials without providing the employees with proper protective gears. Under Sections 6, 13, and 73 of the Occupational Safety and Health Act, 2007, the employer is under a statutory duty to ensure a safe working environment, provide adequate protective gear, and prevent exposure to harmful substances. The aspect of a safe working environment was explained in the case of Sokoro Saw Mills Limited –Vs- Bernard Muthimbi Njenga Nakuru High Court Civil Appeal No. 38 of 1995 where the court stated that the duty of the employer to provide a safe place of work to the employee, comprises, "not merely to warn the employee against unusual dangers known to them….but also make the place of employment as safe as the exercise of reasonable skill and care would permit." Further, in Wislon & Clyde Coal Co. –Vs- English (1938) AC 579 it was held that employers are under a duty to provide adequate material and a safe system of work. The Appellant contends that the Respondent's illness was not work related however evidence before the trial court, including the testimony of the Respondent and the medical report of Dr. Okere, established that the unhealthy lead levels in the body system of the Respondent was due to failure in handling chemicals with adequate protective equipment and thus the Respondent inhaled the fumes. The court in P.J. Dave Flowers Limited v Barasa (Appeal 25 of 2018) [2023] KEELRC 3320 (KLR) at paragraph 43 held that:- "43.Employers owe their employees a common law duty to exercise reasonable care for their safety and health. They are bound to have in place systems and mechanisms necessary to safeguard employees from any reasonably foreseeable hazard. The standard of care required is that of the prudent or reasonable employer. In the House of Lords case of Paris v Stepney Borough Council [1951] AC, Lord Oaksey defined the expression 'reasonable care' as: 'The care which ordinarily prudent employer would take in all the circumstances." The Appellant failed to rebut this evidence or to produce proof of compliance with safety requirements, contrary to Section 6(3) of the Act, which places the burden on the employer to

show that all practicable measures were taken. Section 107(1) of the Evidence Act provides as follows:-"107(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." The Court of Appeal in Kenya Power & Lighting Co. Ltd v. Nathan Karanja Gachoka & Another [2016] eKLR held that once an employee proves exposure to hazardous conditions during employment, the burden shifts to the employer to demonstrate safety compliance.

**Decision**

30. The grounds of appeal under the issue were as follows-

*a) The Honourable Magistrate erred law and fact in finding that the Respondent had proved his case against the Appellant and entering judgment against the Appellant.*

*b) The Honourable Magistrate erred in law and fact in failing to appreciate that the Respondent did not prove that the lead in his blood was as a result of industrial exposure by the Appellant.*

*c) The Honourable Magistrate erred in law and fact in failing to appreciate that the lead in the Respondent's blood was at normal levels and not as a result of industrial exposure by the Appellant.*

*d) The Honourable Magistrate erred in law and fact in finding that the lead levels in the Respondent's blood was as a result of exposure by the Appellant in the absence of evidence.*

*e) The Honourable Magistrate erred in law and fact in failing to appreciate the totality of the evidence before her and in particular, failing to consider the lead levels in the Respondent's*

*blood being below the threshold set by international health bodies and legal notice no. 24 of 2005.*

f) *The Honourable Magistrate erred in failing to hold that the Respondent's medical issues are wholly unrelated to the work he did and they are not an occupational disease.*

g) *The Honourable Magistrate erred in reaching a conclusion that was contrary to the evidence before her.*

h) *The Honourable Magistrate erred in applying an erroneous standard of proof and failed to appreciate that the Respondent had failed to discharge the burden of proof placed upon them as a matter of law.*

i) *The Honourable Magistrate erred in law and fact in failing to appreciate that the Appellant had taken all reasonable care expected in the circumstances to protect the Respondent from lead exposure.*

j) *The Honourable Magistrate erred in law and fact in failing to appreciate that the Respondent did not prove negligence against the Appellant.*

k) *The Honourable Magistrate erred in law and fact in failing to appreciate that the Respondent did not suffer any injuries to his health and the health problems he had were as a result of age and not lead related exposure despite evidence to the contrary.*

l) *The Honourable Magistrate erred in giving evidence on behalf of the Respondent by asserting on her own accord, a medical position, that no level of lead exposure is safe, not advanced by any witness in the proceedings.*

31. The respondent vide plaint dated 8th January 2018 stated that he was employed as a machine operator in 2009 by the appellant mixing hazardous chemicals which proved detrimental to his health having contracted occupational disease being lead exposure/poisoning. He blamed the appellant of negligence as particularised under paragraphs 8 of the plaint. The Respondent in the witness statement stated that in the year 2017 he was examined and the doctor told him he needed urgent specialized treatment due to potential fatal condition arising from years of exposure to chemicals as work workplace. The Respondent swore a further statement dated 13th October 2018, that his services were terminated since the last doctor examined him and classified his condition as *' unhealthy levels of lead in my body system''*. The respondent stated that since 2012 he had symptoms of severe pain and stiffness of limbs and joints, immense back pain. Inability to achieve full bending and recurrent swollen eyes and puffed up face.(page 29 of ROA) He produced and relied on the medical report of his Doctor, Dr Okere, who relied on the Lancet laboratory report, indicating blood lead as 2.2ug/dl. I will return to the findings later in the judgment.

32. In a witness statement for the appellant of 30th July 2024, Jesse Jackson stated that the appellant stopped the use of lead-based raw materials sometime in 2010, that the appellant conducted training on risk assessment and hazard identification, and caustic soda, and stated the respondent was trained. He further stated that protective gear was provided. Jesse stated that the main exposure to the respondent was dust, and that he was given respirators and masks. That he was the supervisor and the respondent did not raise any safety concerns during his service. The appellant produced evidence of compliance with OSHA requirements, including ISO certification, Occupational safety and health systems, and safety and protective gear distribution lists, as well as the training attendance lists, where it

was proved the respondent was issued with protective gear and trained. The appellant further produced the blood test result of the respondent (page 89 of ROA) and the medical report of Dr. Kiura and the final report dated 6th August 2024 to effect that there was no evidence of occupational disease. I will get back to the final medical report by Dr. Kiura (pages 98-101 of ROA) later in the judgment.

33. During cross-examination, the respondent confirmed employment in 2009, that he was issued with gloves, gumboots, a dust mask, and safety shoes. He confirmed having attended safety training. During examination in chief, he told the court the case was not about protective gear and that the mask could not have prevented the chemical exposure. The respondent called Dr. Okere as an expert witness. He produced his medical report. On cross-examination, Dr. Okere told the trial court the respondent inhaled fumes and sustained lead poisoning. Dr. Okere told the court that he relied on the Lancet Lab test report which confirmed presence of lead fumes in the blood of the respondent which he also confirmed and said it was due to exposure of the respondent at work. During cross-examination by counsel for the appellant, Dr Okere said lead poisoning could be from other places like petrol stations, but stated that the case of the respondent was beyond the natural places. He further stated that he relied on the Lancet lab report, which indicated lead in blood of the respondent was at 2.2ug . He told the trial court that the blood lead test was not above industrial exposure.

34. Conversely, the appellant's witness told the trial court they used lead chemical 2005-2009 but denied that they stopped due to complaints. He stated lead was not good for humans. DW2 was Dr Kiura who produced her medical report. On cross-examination by the counsel for the claimant/respondent, the doctor told the trial court that she was a designated health

practitioner and in private practice. Dr. Kiura examined the respondent physically , took a blood test, and sent it to the Lancet lab. The test 2.2 ug /dl was below the industrial exposure limit. Dr. Kiura told the court that lead could be ingested from the environment paints, welding , old pipes and water and that explains why there was non-industrial exposure limit. The witness told the court in re-examination that the level of blood lead could not lead to poisoning.

35. The trial court on liability held as follow- '*This Court finds that the Defendant, owed a duty of care to the Plaintiff under both common law and constitutional provisions, particularly Article 42 of the Constitution, which guarantees every person the right to a clean and healthy environment. This duty required taking reasonable measures by the Defendant to prevent the Plaintiff from being exposed to environmental health hazards such 5 lead-based substances. It was also established through evidence that the Defendant took no reasonable action to mitigate his risk until after the year 2010.*

*In whether this duty was breached, the Plaintiff testified that when he was employed in 2009 the Defendant was using lead bases products which exposed him to toxic lead levels. The Laboratory Report from Lancet Kenya Limited, the Medical Report by Dr. Cyprianus Okoth Okere and that of Dr. Rose Kiura confirm that the Plaintiff was exposed lead 2.2mg/dl.*

*In the case of STATPACK INDUSRIES V. JAMES MBITHI MUNYAOthe Court held as follows: "It is trite law that the burden of proof of any fact or allegation is on the Plaintiff. He must prove a casual link between someone's negligence and his injury. The plaintiff must adduce evidence from which on a balance of probability, a connection between the two may*

*be drawn. Not every injury is necessarily as a result of someone's negligence. An injury per se is not sufficient to hold someone liable."*

*Although the Plaintiff's blood lead level of 3.5 µg/dL is below the intervention threshold set by international health bodies, and as provided in legal notice no.24 of 2005, It is medically recognized that no level of lead exposure is safe. The Court accepts that the exposure albeit moderate originated from the Defendant's premises and was avoidable had the Defendant acted diligently. Whether the Plaintiff is entitled to compensation despite the lead level falling below common industrial exposure thresholds.*

*It was established through Medical Evidence that the Plaintiff recorded a blood lead level (BLL) of 2.2 ug/dL. The Plaintiff submits that the lead levels were above the normal range of 1mg. However, this Court finds that even though the Blood lead level was below the exposure levels, it was nonetheless actionable due to the Defendant's failure to mitigate environmental hazards on the premises.*

*The Defendant did not dispute the presence of lead-based paint within the premises until after 2010.A low Blood lead level does not necessarily preclude recovery if the exposure resulted from a breach of duty and had tangible consequences. The Plaintiff instituted this suit alleging that due to the Defendant's negligence, he was exposed to lead-based hazards, resulting in a blood lead level of 2.2 ug/dL. The Defendant admitted to prior knowledge of lead paint within the premises but denied liability on grounds that the exposure level was below intervention thresholds set by public health authorities. A Blood Lead Level (BLL) of 2 micrograms per deciliter (µg/dL) is generally considered low, but no amount of lead in the*

*blood is considered completely safe. Even low-level lead exposure can have some health effects. The Plaintiff underwent blood lead testing at Lancet following joint pains,backaches and easy forgetfulness, confirming exposure.Dr.Cyprianus Okoth Okere opined that the injury could be classified as harm. Dr.Rose Kiura equally examined the Plaintiff and as at the time of examination he complained of occasional lower back pain and left knee pain. Following the investigations done she indicated that the Plaintiff's blood lead was 3.51ug/Dl which was within normal levels and well below industrial exposure. She opined that the Plaintiff's left knee osteoarthritis was a wear and tear condition of the joints that was expected with advancing age.*

*Although no severe physical impairment has been shown, the Plaintiff was subjected to stress of possible long-term health effects, the cost of medical screening and Exposure due to the Defendant's negligent failure to remedy a known hazard. In light of the above, this Court finds that:*

*1. That the Defendant breached their duty of care.*

*2. That the Plaintiff was indeed exposed to lead in a manner warranting legal redress.*

*3. That the Plaintiff is entitled to modest compensation, both for the breach and for reasonable preventive medical actions taken.''*

36. The appellant relied on the case of Antony Francis Wareham t/a AF Wareham & 2 others v Kenya Post Office Savings Bank [2004] KECA 166 (KLR), where the Court of Appeal at

Nairobi in addressing the issue of burden of proof stated as follows: 'And the burden of proof is on the plaintiff and the degree thereof is on a balance of probabilities. In discharging that burden, the only evidence to be adduced is evidence of existence or non-existence of the facts in issue or facts relevant to the issue. It follows from those principles that only evidence of facts pleaded is to be admitted and if the evidence does not support the facts pleaded, the party with the burden of proof should fail'. In the instant case, the Respondent pleaded that he suffered lead poisoning as a result of working for the Appellant. (See Paragraph 9(a) of the Plaint at page 7 of the Record of Appeal) The Respondent produced the Laboratory Test Report dated 14th July 2017 by Lancet Kenya Limited which reported the Respondent's blood lead levels to be 2.2 ug/dl of blood. As indicated in the report, normal ranges of blood lead levels without industrial exposure were between 2ug/dl- 9ug/dl, whereas industrial exposure was from 20ug/dl upwards. (See page 23 line 16 of the Record of Appeal) .This was the same test relied on by Dr. Okere in his medical report. The lab tests confirmed that his blood lead levels were within normal limits, falling far below the threshold for industrial exposure or lead poisoning. The trial court stated it was medically recognized that that there was no lead exposure which was safe. There was no medical expert who led such evidence. The finding was not based on facts before the court. The court established compliance with duty of employer by the appellant under section 6 of OSHA. The court noted that the appellant admitted they had lead chemicals which were eliminated in 2010. The respondent was in employment in 2009 to 2010. The medical report, which was uncontroverted, was that blood lead levels without industrial exposure were between 2ug/dl- 9ug/dl and those with exposure from 20ug/dl upwards, as per the Lancet report(page 23 of the ROA), relied on by the doctor of the respondent. There was no evidence to support the opinion of the trial magistrate that no lead level was safe. All the vitals of the respondent were cleared as okay under the two

medical reports, and Dr Okere told the trial court that the blood result of 2.2 ug was normal. The court ought rely on evidence of existence or non-existence of the facts in issue or facts relevant to the issue. The evidence before the trial court did not prove occupational disease but of non-industrial lead exposure, which the medical doctors confirmed could be ingested from the environment. The court found that it had a basis to interfere with the decision of the trial court on finding that the appellant had breached the duty of care, which was not based on evidence before the court but on conjecture (Mbogo v Shah).

**Whether the trial court erred in relief awarded.**

The respondent was awarded general damages for Kshs. 250,000. Having held no prove of breach of duty of care/negligence the consequent order is that the award of general damages is set aside.

**Conclusion**

37. The appeal is allowed, the Judgment and Decree of the Hon. L.A. Mumassaba (PM) delivered on 30th April 2025 in Nairobi MCCC No. 22 of 2018 is set aside and substituted with Judgment that the claim is dismissed with costs to the respondent.

38. On appeal, taking into consideration the long period of service of the respondent and the claim arising from the employment relationship, to temper justice with mercy, I make no order as to costs in the appeal. Each party to bear own costs in the appeal.

39. It is so Ordered.

**DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 10th DAY OF DECEMBER, 2025.**

**J.W. KELI,**

**JUDGE.**

**IN THE PRESENCE OF:**

Court Assistant: Otieno

Appellant – Ms Makhoha

Respondent – Kipsang h/b Theuri