



**Nyamai v Imara Steel Mills (Appeal E016 of 2025)
[2025] KEELRC 3738 (KLR) (17 December 2025) (Judgment)**

Neutral citation: [2025] KEELRC 3738 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MACHAKOS
APPEAL E016 OF 2025
JW KELI, J
DECEMBER 17, 2025**

BETWEEN

ALFRED MAKAYA NYAMAI APPELLANT

AND

IMARA STEEL MILLS RESPONDENT

*(Being an Appeal from the Judgment and Decree of the Hon. V.A. Kachuodho
(M) delivered on 13th December 2024 in Kajiado CMCC Cause No. 142 of 2016)*

JUDGMENT

1. The Appellant herein, being dissatisfied with the Judgment and Decree of the Hon. V.A. Kachuodho (M) delivered on 13th December 2024 in Kajiado CMCC Cause No. 142 of 2016 between the parties filed a Memorandum of Appeal dated the 13th of January, 2025 seeking the following orders: -
 - a. This Appeal be allowed.
 - b. The judgment of Judgment of the Hon. V.A. Kachuodho dated 13th December 2024 in Kajiado CMCC Cause No. 142 of 2016 in respect of liability and quantum be set aside and/or varied as the Court may deem fit.
 - c. This Honourable Court be pleased to set aside the judgment of the Hon. V.A. Kachuodho dated 13th December 2024 in Kajiado CMCC Cause No. 142 of 2016 in respect of liability and quantum and substitute it with this Honourable Court's judgment on the same.
 - d. The costs of this Appeal be provided for.

Grounds Of The Appeal

2. The Honourable Magistrate erred in law and in fact by finding that the Appellant did not prove his case against the Respondent on a balance of probability.



3. The Honourable Magistrate erred in law and in fact by awarding general damages so low as to be erroneous.
4. The Honourable Magistrate erred in law and in fact by considering and addressing irrelevant issues that were not canvassed before the Trial Court.
5. The Honourable Magistrate erred in law and in fact by using wrong principles in deciding on liability hence arriving at an erroneous decision on liability.
6. The Honourable Magistrate erred in law and in fact by not fully considering and/or appreciating all the facts before him.
7. In all the circumstances of the case, the finding of the Honourable Magistrate in liability and quantum was characterized with misapplication of the law and wrong exercise of discretion.

Background To The Appeal

8. The Appellant filed a suit against the Respondent vide a plaint dated 24th February 2016 seeking the following orders: -
 - a. General damages.
 - b. Special damages as per paragraph 6 above.
 - c. Interest at court rates from the date of filing suit.
 - d. Costs of this suit.(pages 3-5 of Appellant's ROA dated 6th March 2025).
9. The Appellant filed his verifying affidavit sworn on 24th February 2015, list of witnesses of even date, witness statement of even date, and list of documents together with the bundle of documents attached also of even date (pages 4-15 of ROA).
10. The claim was opposed by the Respondent who entered appearance and filed a statement of defence dated 16th December 2016 (pages 19-20 of ROA). They also filed lists of witnesses dated 16th December 2016, and 16th October 2017; and a list of documents dated 16th October 2017 with the bundle of documents attached. (pages 21-22, and 31-33 of ROA).
11. In response to the Respondent's statement of defence, the Appellant filed a Reply dated 27th January 2017 (page 23 of ROA).
12. The Appellant's case was heard on the 4th of April 2024 with one Dr. Titus Ndeti testifying as PW1 and producing a medical report dated 1st February 2016; and the Appellant testifying in the case as PW2. The Appellant relied on his witness statement as his evidence in chief, produced the documents attached to his list of documents, and was cross-examined by counsel for the Respondent Ms. Nini (pages 52-55 of ROA).
13. The Respondent's case was heard on the same day when DW1 Peter Mureithi testified on behalf of the Respondent. He relied on his filed witness statements dated 23rd February 2018 as his evidence in chief, and produced the Respondent's documents. He was cross-examined by counsel for the Appellant Mr. Biage (pages 55-56 of ROA).
14. The parties took directions on filing of written submissions after the hearing. The parties complied.



15. The Trial Magistrate Court delivered its judgment on the 13th of December 2024 dismissing the Plaintiff/Appellant's claim, with an order that each party bears their own costs (judgment at pages 62-64 of ROA).

DIVISION - Determination

16. The appeal was canvassed by way of written submissions. Only the appellant filed and served the respondent on the 16th July 2025.
17. As the first appellate Court, the role of this court is to revisit the evidence on record, evaluate it and reach its own conclusion in the matter. In *Selle & Another -V Associated Motor Boat Co. Ltd & Others* [1968] EA 123, this principle was enunciated thus: "...this court is not bound necessarily to accept the findings of fact by the court below. An appeal to this court ... is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions..."

Issues for determination

18. The court having perused the grounds of appeal was of the considered opinion that the issues for determination in the appeal were-
- a. Whether the trial learned magistrate applied the correct principles of law and available facts in dismissing the Appellant's suit.
 - b. Whether the learned trial magistrate applied the correct principles of law and available facts in assessment on damages payable to the Respondent.

Whether the trial learned magistrate applied the correct principles of law and available facts in dismissing the Appellant's suit.

The Appellant's submissions

19. On liability -Section 107(1) of the *Evidence Act*, Cap 80 Laws of Kenya 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. This is of course the legal burden of proof. In this regard the Appellant testified before the trial magistrate under oath, produced documents as per the plaintiff's list of documents in support of his case save for the medical report that was produced by PW1 Dr. Titus Nzina. It was the Appellant's testimony before the trial court under oath that on 6th March, 2013, he sustained serious injuries while performing duties of carrying a heavy metal bar which was to be charged into the furnace when before charging the same, the furnace thrashed out a molten metal with a pop sound and in the bid of escaping a colleague released a metal bar on his side where the metal bar fell on his right leg occasioning him serious bodily injuries. On the other side the defence opted to call one witness, DW1, Peter Mureithi, who adopted his statement and on cross examination he confirmed that indeed he did not have proof of ever given the plaintiff protective gears and confirmed that indeed the plaintiff was their employee. That from the witnesses' testimonies and documents produced before trial court, it is not in doubt that;
- a) Indeed, the Appellant was the employee of the respondent.
 - b) That indeed the Appellant got injured in the course of his employment as stated at page 57 of the record appeal, this is the courts record upon cross examination of the Respondent witness as DW1.



- c) That indeed the Appellant herein sustained serious bodily injuries occasioned by the negligence of the Respondent.
20. It is our humble submission that the learned trial magistrate erred in finding that the Appellant had not proven liability upon the Respondent. It is clear that the court relied on issues that were not even raised at the hearing, since at page 63 of the Record of appeal, the judgment of the court, the court indicates that on cross examination of the Respondent he indicated that the Appellant was not injured at the work place which is a contradiction of the proceedings at page 57 of the record of appeal. It is clear that indeed the court misdirected here self and relied on hearsay evidence as to the immediate supervisor assertions whereas the supervisors were never called to testify in court on whether they were aware of the occurrence or not, as such the honourable trial court relied on irrelevant issues not canvassed before court. The trial learned magistrate err in law and fact when finding that indeed there is no denial on the occurrence of the accident but still goes ahead to indicate that negligence could not be apportioned to the Respondent where the Respondent indicates that the Appellant was his employee and was injured at the work place. The Learned Magistrate stretched out of the Appellant and Respondent case and mentioned other workers and immediate supervisor who were never called to testify The standard of proof in civil cases is on a balance of probability and not behind reasonable doubts, in this scenario the trial magistrate standard of proof was so high that the same was even surpassing the criminal cases standard of proof. In the case of in William Kabogo Gitau v. George Thuo & 2 Others [2010] 1 KLR 526, Kimaru, J stated that: "In ordinary civil cases, a case may be determined in favour of a party who persuades the court that the allegations he has pleaded in his case are more likely than not to be what took place. In percentage terms, a party who is able to establish his case to a percentage of 51% as opposed to 49% of the opposing party is said to have established his case on a balance of probabilities. He has established that it is probable than not that the allegations that he made occurred." Guided by the evidence before court, the testimony of the witnesses before court cited authority presented before the learned trial magistrate, it our humble submission that the Respondent is wholly to blame for the occurrence of the subject negligence case and that the learned trial magistrate erred in dismissing the Appellant suit. We rely on the case of Mwanyule v Said T/A Jomvu Total Service Station [2004] 1 KLR 47, where the court affirmed that-"the employer owes no absolute duty to the employee, and the only duty owed is that of reasonable care against risk of injury caused by events reasonably foreseeable, or which would be prevented by taking reasonable precaution" We pray that this honourable court do set aside the trial court determination on this head and hold the Respondent 100% liability for the occurrence of the subject road traffic accident and the injuries sustained by the Appellant.

Decision on liability.

21. The Appellant claimed he was injured while at work at the respondent's premises. The appellant produced before the trial court as his evidence a demand letter dated 28th October 2015, but the receipt was denied by the respondent. He further produced a treatment note from Manna Medical center dated 6th March 2013 and a medical report by Dr Ndeti dated 1st February, his job card and receipts for special damages. The accident was denied by the respondent who through its witness Peter Mureithi produced the accident register for the period. The proceedings before the trial court were produced in the record of appeal (pages 53-56 of ROA). The trial court found that the appellant had not proved his case on the balance of probabilities on the basis of the injury register, attending hospital outside the one designated by the employer, and the lack of a witness to corroborate the allegation that he was injured at the workplace.
22. The accident register is a statutory requirement and more so for manufacturers like the respondent. Section 21 of the [Occupational Safety and Health Act](#) provides that –'21(5) An employer shall cause



all workplace injuries to be entered in the general register specified in section 122.” Section 122 reads-
‘122. General register

- (1). There shall be kept in every workplace a register, in the prescribed form, called the general register, and there shall be entered in or attached to that register—
 - (a). the certificate of registration of the workplace;
 - (b). every other certificate issued in respect of the workplace by the Director under this Act;
 - (c). the prescribed particulars as to the washing, whitewashing, colour washing, painting or vanishing of the workplace;
 - (d). the prescribed particulars as to every accident and case of occupational disease occurring in the workplace of which notice is required to be sent to an occupational safety and health officer under the provisions of any law for the time being in force;
 - (e). all reports and particulars required by any provision of this Act to be entered in or kept with the general register; and
 - (f). such other matters as may be prescribed.
- (2). The occupier of a workplace shall send to an occupational safety and health officer such extracts from the general register as the occupational safety and health officer may from time to time require for the purpose of the execution of his duties under this Act.
- (3). The occupier of a workplace who contravenes the provisions of this section commits an offence.”(Emphasis given) The authenticity of the injury register produced before the trial court was not in question. The witness for the respondent was unshaken on his testimony that there was no accident at the work place on the 6th March 2023, the alleged date of the injury. The appellant in witness statement adopted as evidence before the trial court stated the injury occurred on the 6th March 2013 at 10.00pm and first aid was administered. Later, the following day, he visited Manna medical clinic for treatment. As per the statement, the court established that the appellant said the following day was 7th March 2013. The Manna Medical Center note is dated 6th March 2013. This claim was brought to court almost three years later. For the foregoing reasons, the court finds that the injury register, being a statutory requirement, outranks the oral testimony of the appellant, which was not corroborated by a witness. The court then found no basis to interfere with the trial court's finding on liability.

General Damages

Appellant’s submissions

23. To prove his case on this head, the Appellant testified before the learned trial magistrate under oath and produced treatment notes in support of his case. On the contrary, the Respondents produced none. It is not in dispute that the Appellant suffered serious bodily injuries as particularized in the plaint. According to medical report by Dr. Titus Ndeti the Appellant sustained the following injuries; Deep cut on the lower extremity of the right leg and Severe Pain on the right leg. In his written submissions before the trial court, the Appellant had proposed for an award Kshs. 350,000/= (Three Hundred Thousand Kenya shillings) will be sufficient to compensate the Plaintiff. In so submitting we are guided by the following annexed authorities: -we are guided by the annexed authority of Justice T. W. Cherere, 31 Day Of July 2018, Mogaka Sydney t/a Kenya Bus Services v Faith Ndunge Nyundo [2018] Civil Appeal 20 of 2017. Where the plaintiff was awarded Kshs. 300,000/-. We are also guided by the



annexed authority of Hon. Justice J. M. Khamoni in Civil Suit No. 320 of 1998 Catherine Wanjiku Kingori & Another v Gibson Theuri Gichubi where the Plaintiff was awarded Kshs. 350,000/=. We are also guided by the annexed authority of Justice W. KORIR, 18th day of October, 2018, Amal Hauliers Limited v Abdulnasir Abubakar Hassan [2018] Civil Appeal 18 of 2017. Where the plaintiff was awarded Kshs. 250,000/-. Guided by the above authorities and having established that indeed the Appellant had suffered severe injuries. It is our humble submission that the learned trial magistrate intended award of Kshs. 100,00 was too low to sufficiently compensate the Appellant. It is our humble submission that authorities cited by the Appellant before the trial court were relevant and comparable to the injuries sustained by the Appellant and as such we humbly pray that this Honourable Court do adjust the award of the learned trial magistrate and award the Appellant a fair and reasonable compensation for pain and suffering in line with the awards in the cited authorities adjusted to the inflation trend of the Kenyan Shillings.

Decision

24. Having upheld the decision of the trial court on lack of proof of liability and the court having doubted the authenticity of the medical treatment notes, I find it is superfluous and a waste of judicial time to determine the issue of quantum of damages.
25. In conclusion, the appeal is held to lack merit and is dismissed with no order as to costs, as the respondent did not file response submissions. The Judgment and Decree of the Hon. V.A. Kachuodho (M) delivered on 13th December 2024 in Kajiado CMCC Cause No. 142 of 2016 is upheld.
26. It is so Ordered.

DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 17th DAY OF DECEMBER, 2025.

J. W. KELI,

JUDGE.

In The Presence Of:

Court Assistant: Otieno

Appellant – absent

Respondent – absent

