**Munoko v Finlays Horticulture(K) Limited (Employment and Labour Relations Appeal E072 of 2024) [2026] KEELRC 422 (KLR) (13 February 2026) (Judgment)**

Neutral citation: [2026] KEELRC 422 (KLR)

**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU**

**EMPLOYMENT AND LABOUR RELATIONS APPEAL E072 OF 2024**

**AN MWAURE, J**

**FEBRUARY 13, 2026**

**BETWEEN**

**ALICE NANGILA MUNOKO ..... APPELLANT**

**AND**

**FINLAYS HORTICULTURE(K) LIMITED ..... RESPONDENT**

***(Being an Appeal from the Judgment and Decree of the Honourable Mr. Abdulqadiri Lorot, Chief Magistrate, delivered on 9th October 2024 in Naivasha MCELRC No. 599 of 2016)***

## JUDGMENT

1. The Appellant, being dissatisfied with the judgment and order of Chief Magistrate Hon. Mr. Abdulqadiri Lorot, filed this appeal vide a Memorandum of Appeal dated 25th October 2024, on the following grounds that:
    1. The learned Magistrate erred in law and fact in dismissing the Appellant's case when there was overwhelming evidence to support the Appellant's case.
    2. The learned Magistrate erred in law and in fact in failing to consider the Plaintiff/Appellant's evidence.
2. The Appellant prays that:
    1. The Appeal be allowed with costs.
    2. The decision of the Honourable Mr. Abdulqadir Lorot H.R (CM) delivered on 9th October, 2024 in civil case No. 599 of 2016 as regards to liability to set aside and/or varied and this court be pleased to come up with an appropriate finding in respect thereto.
    3. The Respondent do bear the costs of this appeal.

3. The appeal was disposed of by way of written submissions.

**Appellant's submissions**

4. The Appellant submitted that she filed a claim against the Respondent over an alleged workplace accident on 5th August, 2015, stating she slipped into an uncovered manhole while handling cuttings on slippery ground, which aggravated her existing back condition. Though she initially dismissed the incident, pain worsened leading her to seek treatment at the company clinic on 6th August 2015 and later at PCEA Kikuyu Hospital on 7th August 2015. Medical records revealed a three-year history of back problems, which she admitted during cross-examination but argued the accident intensified. The Appellant submitted that she informed her colleagues but not her supervisor and could not produce witnesses due to the nine-year delay in proceedings. Ultimately, the court dismissed the case, ruling she had not substantiated her claims and her back issues predated the alleged injury.

5. Being the first appeal, the court is required to consider the evidence from the trial court, evaluate it and come up with its own conclusion noting that the court did not see or hear the witness as set out in the cases of Selle v Associated Motor Boat Co. Ltd (1968) EA 123 and Peter M. Kariuki v Attorney General (2014) eKLR.

6. The Appellant submitted that the accident resulted from the Respondent's negligence in failing to ensure workplace safety and in not providing protective gear. Further, the defense did not produce a Personal Protective Equipment register to prove issuance of gear, and no evidence was presented to counter the appellant's allegations, leaving her claim of negligence unchallenged. The Appellant relied on the case of William Kabogo Gitau V George Thuo & 2 Others [2010] KEHC 4124 (KLR) and the court 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 which took place. In percentage terms, a party is said to have established their case to a percentage of 51% as opposed to 49% of the opposing party, is said to have established their case on a balance of probabilities. That is he has established their case on a balance of probabilities. That is, he has established that it is probable than not that the allegations he made occurred."

7. In Boniface Muthama Kavita v Carton Manufacturers Limited [2015] KEHC 6203 (KLR) the court held as follows:

> " The relationship between the Appellant and the Respondent as employer and employee creates a duty of care. The employer is required to take all reasonable precautions for the safety of the employee, to provide an appropriate and safe system of work which does not expose the employee to an unreasonable risk."

8. The Appellant submitted that the Respondent was required to provide for protective overall and relied on the case of Garton Limited v Nancy Njeri Nyoike [2016] KEHC 5371 (KLR) where Aburili J held that:-

> " In this regard, it is expected that the appellant employer when assigning its employees to work in an environment where there is potential risk of injury .... then it is prudent for them to provide proper appliances to safeguard the workers. The primary duty rests with the employer to prove that there were precautions put in place and brought to the attention of the employee but the employee failed to adhere and deliberately put himself in harm's

way..... In this case I find that the appellant owed a common law duty of care to ensure the safety of the respondent while she was engaged upon her duties in the appellant's employment.....For example, had the respondent been provided with a head gear and boots, she could not have injured her head on falling down and or the leg."

9. The Appellant submits that her case was proved on a balance of probabilities, the respondent failed to rebut her evidence, and the trial magistrate erred in dismissing her claim. She therefore urges the appellate court to set aside the dismissal and hold the Respondent 100% liable.

**Respondent's written submissions**

10. The Respondent stated being the first appeal, this court did not have the privilege to hear the evidence at first hand and observing the demeanor of witnesses. The Respondent relied on the case of Jacob Momanyi Orioki v Kevian Kenya Ltd [2018] KEHC 9854 (KLR) where the court cited the case of Selle and Another V Associated Motor Boat Company Ltd & others(supra) where the court stated that:

> " This being a first appeal, this court is under a duty to re-evaluate and assess the evidence and make its own conclusions. It must, however, keep at the back of its mind that a trial court, unlike the appellate court, had the advantage of observing the demeanor of the witnesses and hearing their evidence first hand."

11. The Respondent submitted that the trial magistrate rightly dismissed the Appellant's claim for lack of proof of negligence. The Respondent emphasize that under Kenyan law, liability cannot be established without fault, citing the case of Eunice Wayua Munyao v Mutilu Beatrice & 3 Others [2017] KEHC 1452 (KLR) the court cited the case of East Produce (K) Limited V Christopher Astiado in Civil Appeal No. 43 of 2001 where the court stated as follows:

> " It is trite law that the onus of proof is on he who alleges and in matters where negligence is alleged the position was well laid in the case of Kiema Mutuku –Vs- Kenya Cargo Hauling Services Ltd 1991 where it was held that "there is as yet no liability without fault in the legal system in Kenya, and a plaintiff must prove some negligence against the defendant where the claim is based on negligence."

12. In the case of Stanley Oguti Attai v Peter Chege Mbugua [2019] KEHC 4940 (KLR) the court citing the case of Grace Kanini Muthini V Kenya Bus Services and another where Justice Ringera held that:

> " It is common position that where a plaintiff has not proven negligence against the defendant on a balance of probabilities, then the court cannot find fault without evidence; that the court cannot decide the matter by adopting one or the other probability without supporting evidence."

Judge Ringera in his conclusion stated as follows:

> " I can only decide the case on a balance of probability if there is evidence to enable me to say that it was more probable than the second defendant wholly or partly contributed to the accident."

13. The Respondent submitted that the Appellant's medical records showed a pre-existing back problem and did not link her injuries to the alleged accident of 5th August 2015. However, the evidence the Appellant presented undermined her case: a referral letter dated 7th August 2015 only referenced treatment for a recurring backache that had persisted for three years, with no mention of the alleged

accident, and a medical note from February 2014 predated the incident entirely. These inconsistencies raised doubts about whether the Appellant's injuries were linked to the alleged accident, leaving her burden of proving negligence unfulfilled.

14. The Respondent submitted that the Appellant had back pains before the accident. The Respondent relied on the case of Hamwe Limited v Isaac Nyaacha Bwekeria [2020] KEELRC 1891 (KLR) where the court stated that the trial court erred in finding the appellant negligent without evidence of injury to the respondent on the material date of 22nd December 2012. It stresses that medical records relied upon did not show any injury and thus could not support the claim. Citing the cases of Kiema Mutuku v Kenya Cargo Hauling Services Ltd 1991 and Nickson Muthoka Mutavi v Kenya Agricultural Research Institute [2016] eKLR, the court reiterates that liability in negligence requires proof of fault, breach of statutory duty, and causation. Since the respondent failed to establish a causal link between the alleged injury and the appellant's conduct, the burden of proof was not discharged, and the suit ought to have been dismissed.

15. The Respondent submitted that the trial court rightly dismissed the Appellant's suit due to lack of evidence establishing the Respondent's liability. It emphasizes that the burden of proof lies with the Appellant, who must demonstrate on a balance of probabilities both the occurrence of injury and that it resulted from the respondent's negligence. Since the appellant failed to discharge this duty, the claim of negligence was not sustained.

16. The Respondent submitted that in civil cases, damages cannot be awarded merely out of sympathy; a claimant must prove negligence or breach of statutory duty. Justice Koome in Amalgamated Saw Mills Ltd V Tabitha Wanjiku [2006] KEHC 1191 (KLR) highlighted the principle of res ipsa loquitur where it applies and its exception. Similarly, in Twin River 1 Estate v Teresia Mutheu Nzui [2018] KEHC 2040 (KLR) the court clarified that the standard of proof is on a balance of probabilities, meaning the court must be satisfied that an event is more likely than not to have occurred, with stronger evidence required for serious allegations. Applying these principles, the Appellant failed to meet the evidentiary threshold, as no sufficient proof was provided to establish negligence or causation.

17. In Libyan Arab Uganda Bank v Adam Vassiliadis [1986] UG CA6 where the Court of Appeal of Uganda cited Lord Denning's dictum in Jones v National Coal Board [1957] 2 QB 55, stressing that judges must remain impartial and avoid descending into the arena of dispute. Similarly, in IEBC v Stephen Mutinda Mule [2014] eKLR, the court held that parties are bound by their pleadings and a judge errs by deciding matters not properly before the court.

18. The Respondent urged the court to dismiss the appeal with costs.

**Analysis and determination**

19. Being the first appellate, the court has a fiduciary duty to re-examine the evidence presented, evaluate it independently, and determine whether the trial court's findings align with both the evidence and the law. In Selle and Another V Associated Motor Boat Company Ltd & others (supra):

> " .....this court must reconsider the evidence, evaluate it. itself and draw its own conclusions, though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular, this court is not bound necessarily to follow the trial judge's findings of fact if it appears either that he has clearly failed on some point to take into account of particular circumstances or probabilities materially to estimate the evidence."

20. In the case of Abok James Odera T/A A.J Odera & Associates V John Patrick Machira T/A Machira & Co. Advocates [2013] KECA 208 (KLR), the Court of Appeal held in part that:-

> " This being a first appeal, we are reminded of our primary role as a first appellate court namely, to re- evaluate, re-assess and re-analyze the extracts on the record and then determine whether the conclusions reached by the learned trial Judge, are to stand or not and give reasons either way."

21. Having considered the grounds of the memorandum of appeal together with the rival submissions by both counsels, the issue for determination is whether the appeal is merited.

22. Section 107 of the *Evidence Act* provides as follows:

> " 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.
>
> When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person."

23. In the case of CMM (Suing as next friends of and on behalf of CWM & 6 Others) & 6 Others v Standard Group & 4 Others [2022] KECA 586 (KLR) the Court of Appeal stated as follows:

> " The law is clear that the duty to prove any alleged violations of constitutional rights and consequential damage rests on the person alleging breach, (see section 107, 108 and 109 of the *Evidence Act*). It was therefore manifestly incumbent upon the appellants to discharge and surmount the burden as set out under section 107, 108 and 109 of the *Evidence Act*."

24. In this instant case, the Appellant was dissatisfied with the judgment of the trial court stating that the trial court did not consider the evidence therein while the Respondent is in agreement with the trial court decision in dismissing the Appellant's claim.

25. The Appellant's case is that she fell in a manhole at the place of work and injured her back. It was late afternoon and she went home after work only to experienced more pain and the following day she went to the Respondent's clinic. Then she was referred to Kikuyu hospital for specialised treatment.

26. The referral letter from Finlays Medical Centre seemed to suggest she had three years old persisting back problem. The same however was not a diagnosis after thorough scientific investigation. The court is reluctant to adopt that referral note as evidence that the Appellant had previous injuries before this accident.

27. There are documents to confirm that the Appellant was attending at P.C.E.A. Kikuyu hospital.

Dr. Obed wrote a report dated 7th June 2016 which report is consistent with blunt injury to the lumbar region of the back. He gave an opinion that she suffered a permanent disability of ten percent and in his opinion, he did say the injury was consistent to grievous harm.

28. The court held in the case of Sokora Saw Mills Lts -vs- Benard Muthimbi Njenga HCCC 38 of 1995 that-

> " That the duty of an employer is to provide a safe place of work to the employee. This duty comprises, not merely to the employee against unusual dangers known to them, but also

to take the place of employment as safe as the exercise of reasonable skill and care would permit."

29. The Appellant pleaded negligence on the part of the Respondent who had left an open manhole in the premises. He had not provided protective gears to the Appellant. The claim for negligence was not challenged otherwise by the Respondent.

30. In the case of Oguti Attai -vs- Peter Chege Mbugua (2019) eKLR the court held:-

> " It is common position that where a plaintiff has not proven negligence against the defendant on a balance of probabilities, then the court cannot find fault without evidence: that the court cannot decide the matter by adopting one or the other probability without supporting evidence."

31. The court finds there is support of negligence in this case as the Respondent did not provide protective gears to its employees. As the dictum goes" things speak for themselves- Res ispa Liquator."

32. In the case of GARTON LIMITED -VS- NANCY NJERI NYOIKE 2016 the court held: -

> " In this regard, it is expected that the Appellant employer when assigning its employees work in an environment where there is potential risk of injury....then it is prudent for them to provide proper appliances to safeguard the workers. The primary duty rests with the employer to prove that there were precautions put in place and brought to the attention of the employee but the employee failed to adhere and deliberately put himself in harm's way...In this case I find that the Appellant owed a common law duty of care to ensure the safety of the Respondent while she was engaged upon her duties in the Appellant's employment... For example, had the Respondent been provided with a head gear and boots, she could not have injured her head on falling down and or the leg."

33. The court agrees with Appellant that the trial magistrate in this case erred in his judgment in failing to consider the Appellant's evidence.

34. On analyzing the pleadings and the respective submissions, the court is satisfied the Appeal is merited and is allowed appropriately.

35. The Appellant is awarded the following reliefs now that judgment is entered in her favour.

    a. 10% is the level of injuries captured by Dr. Omuyoma and the court will grant her general damages at Kshs.250,000/= considering the clam by the Appellant of Kshs.600,000/= and 100,000 by the Respondent. The Kshs.250,000/= is sufficient for injuries suffered.

    b. Costs of the medical report at Kshs.7,000/=.

    c. Each party will bear their costs of the lower court proceedings but Appellant is awarded costs of this appeal.

    d. Interest will accrue at 14% per annum from date of judgment until full payment.

    Order accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 13TH DAY OF FEBRUARY, 2026.**

**ANNA NGIBUINI MWAURE**

**JUDGE**

Order

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of *the Constitution* which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.