

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
CIVIL APPEAL NO. E071 OF 2022

MANJI FOODS INDUSTRIES LIMITED.....1ST
APPELLANT
PATRICK MWITI.....2ND
APPELLANT

VERSUS

STANLEY WAMWEA MUGO.....1ST
RESPONDENT
JAPHET GITARI DANIEL.....2ND
RESPONDENT

JUDGEMENT

1. The Appeal arises from the Judgment and decree in the Chief magistrate's court at Meru Civil Case No. 157/2020. The background of this appeal is that the claim arose out of a road traffic accident. The second respondent who was the plaintiff in the suit in the Lower Court had sued the 1st respondent who was the driver, insured/beneficial owner and the registered owner of the motor vehicle registration number KCC 137E Toyota Harrier which was involved in

the said road traffic accident. The claim was based on negligence and the 2nd respondent had blamed the 2nd respondent for causing the accident where by his wife Veronica Kawira sustained fatal injuries.

2. The deceased was knocked down and killed by the 1st respondent on 19/5/2020 while in the course of her employment as a sales person with the first appellant. At the time of the accident the deceased was delivering the first appellants products to shops in Kiirua Area when she was knocked down.

3. The first respondent applied to join the appeal as a 3rd party in the suit, an order that was granted by the trial court. The appellant entered appearance and filed a defence as well as a counterclaim contending that after the demise of Veronica Kawira her dependants claimed compensation form her employer, who is the first appellant under the auspices **Work Injury Benefits Act (WIBA)** on the basis that she died in the course of her employment. The 1st appellant paid her claim as quantified by County Occupational Heath and Safety Officer Isiolo for Isiolo and Meru County. The 1st appellant had taken a

Work Injury Insurance Policy form Mayfair Insurance Company Limited which settled the claim as assessed which was a total of Kshs. 1,647,400.00.

4. The 1st appellant in the Counter Claim sought to recover Kshs. 1,647,400/= and an additional Kshs. 17,000/= from the 1st respondent who he claimed was solely to blame for the accident. The claim was based on the principle of subrogation as embodied under **Section 17** of the **Work Injury Benefits Act**.

5. The learned Magistrate in his considered Judgment held that the doctrine of subrogation cannot be invoked in personal accident claims and he rejected and dismissed the first appellant's claim. The appellant was dissatisfied with the decision of the learned magistrate and filed this appeal based on the following grounds:

(1) The learned magistrate erred in law by ignoring the provisions of Section 17 of the Work Injury Benefits Act of 2007 and hereby failed to apply the law stated therein to the facts of the case before her.

(2) The learned magistrate erred in law by failing to appreciate that Section 17 of the Work Injury Benefits Act of 2007 is a statutory incorporation of the insurance principle of subrogation in work injury claims and therefore reached the erroneous conclusion that subrogation was not applicable to the circumstances for the case before her.

(3) The learned magistrate ignored completely the Third Parties' submissions on issues of fact and law and therefore dismissed the Third Parties' counterclaim.

6. The 1st respondent opposed the appeal and prayed that it be dismissed with costs. The appeal was canvassed by way of written submissions. The parties have identified the issue for determination as follows:

(1) Whether the appellants met the threshold for invoking the doctrine of subrogation in this case to claim compensation.

(2) Whether the doctrine of subrogation applies to personal accident claims.

7. The appeal is therefore based on points of law as the facts are not in dispute. This is a first appeal and this court has a duty to analyze the evidence evaluate it and come up with its own independent finding. I note that the facts are not in dispute and I need not evaluate them in this appeal. I will go straight to the issues in dispute.

8. Whether the appellants have met the threshold for invoking the doctrine of subrogation

The doctrine of subrogation applies in situations where two parties are liable to compensate a claimant and one party compensates then realizes that the third party should have paid the claimant. The party compensate the claimant but seeks reimbursement from the party whose responsibility it was to settle the claim.

9. The definition of subrogation is defined under Black's Law Dictionary 9th Edition at page 1563 as follows:

“The substitution of one party for another whose debt the party pays, entitling the paying party to rights remedies or

securities that would otherwise belong to the debtor.”

10. This mostly applies where there is a contract of Insurance and following crystallization of the risk insured the insurer compensates its insured for financial loss suffered usually by a third party. The insurer then seeks indemnity from the tortfeasor(insurer). See **Kenya Power & Lighting Company Limited -vs- Julius Wambale & Another (2019) eKLR.**
11. In this case the 1st respondent was held to be 100% liable for the accident that led to the death of the deceased Veronica kawira. The 1st appellant’s insurer paid the dependants of the deceased Kshs. 1,647,000/= and the policy taken by 1st appellant who was the employer of the deceased Veronica Kawira.
12. The 1st appellant filed the claim under Work Injury Benefits Act. He seeks to recover the that he paid from the respondent. **Section 17 of Work Injuries Benefits Act** deals with claims against third parties and provides as follows:

“If an occupational accident or disease in respect of which compensation is payable, was caused in circumstances resulting in another person other than the employer concerned (in this Section referred to as third party) being liable for damages in respect of such accident or disease -

(a) The employer may claim compensation in accordance with the Act and may also institute an action for damages in a court against the third party, and

(b) The employer or insurer by which compensation in respect of that accident or disease is payable may institute action in court against the third party for recovery of compensation that the employer or insurer, as the case may be is obliged to pay under this Act.

(2) In awarding damages in an action referred to in subsection 1(c) the court

shall have regard to the compensation paid in accordance with this Act.

(3) In an action referred under sub-section (1) (b) the amount recoverable may not exceed the amount of damages, if any which in the opinion of the court would have been awarded to the employee but for the provision of this Act.

(4) For the purpose of this Section compensation includes the cost of medical aid already incurred and any amount paid or payable in accordance with the provisions of Section 15 and in the case of an allowance, the capitalized value of the allowance, irrespective of whether a lump sum is at any time paid 'in Lieu' of whole or portion of such allowance."

13. The appellant relies on this provision to claim the sum of Kshs. 1,664,500/= which was supposed to be paid by the insurance company of the party that was liable to compensate the deceased. The claim is under the principle

of subrogation. The appellant contends that **Section 17 of Work Injury Benefits Act (supra)** is a statutory incorporation of the insurance principle of subrogation which allows an insurer to recover its outlay from the tortfeasor after it has compensated its insured. This he submits is the case even if the Act does not expressly say so because the effect of the provision is quite simply to allow the insurers to recover their outlay which is the essence of the principle of subrogation.

14. In **Speeday Interpreight (K) Limited -vs- Lacheka Lubricants Limited & Another (2021)** which was cited in **Leli Chaka Ndoro -vs- Maree Ahamed & S.M, Laradhib (HC)** the Judge stated as follows on the doctrine of subrogation:

“The principle of subrogation applies where there is a contract of insurance. If the “insured risk” takes effect and the insurer settles the insured’s claim, the insurer is entitled to diminish the loss suffered by its insured by seeking compensation from the party who caused the loss. The assumption is that the

loss would have accrued due to the acts of a 3rd party. By the principle of subrogation, the insurer is put in the position of the insured and is entitled to claim compensation from the third party tortfeasor. The extend of compensation is not more than what has been paid to the insured.”

15. The principle of subrogation allows the insurance company to step in the shoes of its insured to establish liability against a third party’s negligence. It is my view that by dint of **Section 17** of the **Work Injury Benefits Act** the principle of subrogation is incorporated in the Act to allow an insurer to recover what it paid form the person who was liable to pay as the tortfeasor. The wording of Section can be interpreted to mean that the insurer is empowered to pursue claims against 3rd parties who have been as tortfeasors.

16. I am inclined to agree with the appellants submissions that since **Section 17** is silent on the procedural aspects of the cause of action it creates it is not

implausible to argue that the already settled principles of subrogation can readily file the ga.

17. In this appeal it is not in dispute that the 1st respondent was held 100% liability for the accident that killed Veronica Kawira. The party who has been found liable is the who is supposed to settle the claim.

18. In this case the learned magistrate held that by the principle of subrogation, the insurer is put in the position of the insured and is entitled to claim compensation from the 3rd party tortfeasor. He held that the doctrine of subrogation does not apply in claims of personal injuries. The learned magistrate erred as he ignored **Section 17** of the Work Injury Benefits Act which allows claims based on occupational accident.

19. Contrary to what the respondents submits that the money was not paid by the insurance, the documents annexed show that the insurance paid compensation. See page 95 of the record, there are discharge vouchers and bank statement to support the claim. Evidence was also adduced in court to prove that compensation was paid to the dependants of the decease under Work Injuries

Benefits Act. The learned Magistrate held that there was no dispute that the 2nd third party's insurer (Mayfair Insurance).

20. The 3rd party was supposed to apply for compensation from the 2nd defendant's insurer. The claim was properly before the court under. The learned Magistrate erred by failing to apply the principle of subrogation which is proved under **Section 17** of the Work Injury Benefits Act. For these reasons I find that the appeal has merits.

Disposition

21. The appeal is allowed. The order dismissing the counter claim is set aside and substituted with an order allowing the counter claim of Kshs. 1,664,500/= against the defendant. I award the appellant the costs of the appeal and of the proceedings before the Lower Court.

Dated, signed and delivered at Meru this 13th day of March, 2026.

**HON. LADY JUSTICE L. GITARI
JUDGE**