Mueni v China Road & Bridge Corporation (CRBC) (Civil Case 518 of 2016) [2026] KEMC 19 (KLR) (3 February 2026) (Judgment)

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REPUBLIC OF KENYA

IN THE MAKINDU LAW COURTS

CIVIL CASE 518 OF 2016

YA SHIKANDA, SPM

FEBRUARY 3, 2026

BETWEEN

MUTUKU MUENI .... PLAINTIFF

AND

CHINA ROAD & BRIDGE CORPORATION (CRBC) .... DEFENDANT

JUDGMENT

THE CLAIM

1. Mutuku Mueni (hereinafter referred to as the plaintiff) filed this suit on 29/11/2016 vide a plaint dated 18/11/2016. The plaintiff sued China road & Bridge Corporation (hereinafter referred to as the defendant) on account of an industrial accident that allegedly occurred on 16/8/2015 at Kathekani area, while the plaintiff was in the course of his employment with the defendant. The plaintiff averred that he was employed by the defendant as a labourer and that on the material day he had been assigned duties of laying stones on the slab. That due to negligence and/or breach of the terms of employment by the defendant or its agent, a workmate was overpowered by his stone which fell on the plaintiff's leg and crushed his toe completely.

2. The plaintiff pleaded the following particulars of negligence:

    a. Assigning duties to the plaintiff without due care and attention;

    b. Failing to take any or any adequate precautions for the safety of the plaintiff while he was engaged upon the said work;

    c. Failing to provide a safe place of work for the plaintiff;

    d. Failing to provide the plaintiff with the necessary tools, equipment, industrial gloves, clothing and/or apparatus necessary in the discharge of the said duty;

e. Exposing the plaintiff to a risk of which the defendant knew or ought to have known;

f. Failing to devise and/or provide and maintain a safe and proper system of work and/or instruct the plaintiff to follow that system;

g. Failing to provide a safe support system for employees whilst discharging the said duties;

h. Failing to warn and/or alert the plaintiff when offloading the stone, causing the accident;

i. Employing a negligent and careless employee thus causing the accident;

j. Failing to provide adequate and proper supervision in the process of discharge of the said duties.

3. The plaintiff further pleaded the particulars of injuries sustained as well as those of special damages and prayed for judgment against the defendant for:

a. General damages;

b. Special damages for Ksh. 3,000/=;

c. Costs of the suit and interest.

The Defendant's Defence

4. The defendant entered appearance on 30/3/2027 and filed a statement of defence on the same day. The defendant denied the allegations contained in the plaint and in particular denied that the plaintiff was its employee, denied that the plaintiff acted on its instructions and denied the occurrence of the accident. The defendant further denied the particulars of negligence pleaded by the plaintiff and denied that the plaintiff sustained injuries and suffered loss and damage. The defendant averred in the alternative that if the accident occurred, then the same was caused by or substantially contributed to by the negligence of the plaintiff. The defendant pleaded the following particulars of negligence as against the plaintiff:

a. Failing to observe the laid down safety guidelines while at work;

b. Failing to be alert and on the look out to avoid being injured at the work place;

c. Performing his duties in a lacklustre manner to the extent of allowing avoidable accidents to befall him;

d. Failing to wear protective gear while at work;

e. Exposing himself to avoidable danger and risk of injury at the work place;

f. Failing to take care of his own safety while at work.

5. The defendant further stated in the alternative that if the accident occurred, then it was inevitable and occurred despite the exercise of reasonable skill and due care on the part of the defendant. The defendant prayed that the plaintiff's suit be dismissed with costs.

The Evidence

The Plaintiff's Case

6. The plaintiff was the only witness who testified in support of his case. The plaintiff adopted his statement as part of his testimony in-chief. His testimony was that he was employed by the defendant

on 7/8/2015. That on 16/8/2015 he was on duty at Kathekani area laying stones on the slab where the railway lines were passing. As they were offloading stones from the lorry, a workmate was overpowered by a stone and the same fell on the plaintiff's left foot as a result of which his toe was crushed. The plaintiff was rushed to hospital where he was treated and discharged. The plaintiff stated that the accident occurred owing to negligence on the part of the defendant. The plaintiff produced documents to support his case.

The Defence Case

7. The defendant did not call any witness.

Main Issues For Determination

8. In my view, the main issues for determination are as follows:

   i. Whether the plaintiff was an employee of the defendant at the material time;

   ii. Whether the plaintiff was on duty in the defendant's employment on 16/8/2015;

   iii. Whether the plaintiff was involved in an industrial accident on 16/8/2015;

   iv. Whether the defendant is liable for the accident;

   v. Whether the plaintiff sustained injuries and suffered loss as a result of the accident;

   vi. Whether the plaintiff is entitled to damages and if so, the nature and quantum thereof;

   vii. Who should bear the costs of this suit?

The Plaintiff's Submissions

9. The plaintiff relied on his testimony and documents produced in evidence and contended that he had proven being an employee of the defendant at the material time. He also submitted that his evidence was not controverted by the defendant. On the occurrence of the accident, the plaintiff also relied on his evidence and argued that the defendant had not challenged his evidence at all. On liability, the plaintiff relied on his uncontroverted evidence and submitted that the defendant owed the plaintiff a duty of care and acted in breach of the same. That the defendant failed to provide a safe working environment and to provide safety gear to the plaintiff. The plaintiff argued that it was the duty of the defendant to prove that he had provided safety gear to the plaintiff but it did not do so. That the defendant did not also prove that he had provided a safe system of work. The plaintiff relied on several authorities whose copies were annexed.

10. On quantum, the plaintiff submitted a sum of Ksh. 200,000/= and relied on the authorities of Wahinya v Lucheveleli [2022] KEHC 13762 (KLR) and Midans Services Limited & another v Ronald Kapute [2022] eKLR. The plaintiff further prayed for special damages of Ksh. 3,000/= as well as costs of the suit and interest.

The Defendant's Submissions

11. The defendant submitted that going by the testimony of the plaintiff, the defendant was not to blame for the accident. That the plaintiff did not call the workmate who caused the stone to fall on the plaintiff's foot. The defendant invoked the doctrine of volenti non fit injuria and stated that since the plaintiff voluntarily agreed to work without protective gear, he is estopped from claiming against the defendant. The defendant also argued that the protective gear could not prevent the stone from falling.

That the defendant was not under duty to baby sit the plaintiff and his colleagues and that the plaintiff and his colleagues were bound to be careful. The defendant relied on several authorities.

12. The defendant argued that the plaintiff was to prove a causal link between the defendant's negligence, the accident and his injury. It urged the court to dismiss the claim with costs. On quantum, the defendant proposed a sum of Ksh. 50,000/= and relied on the authorities of Bud and Bloom v Lawrence Emusugut Obwa [2016] eKLR, Eastern Produce (K) Limited v Mamboleo Khamdi [2015] eKLR and Kipkebe Limited v Peterson Ondieki Tai [2016] eKLR. The defendant had no issue with the special damages claimed. However, the defendant urged the court to dismiss the plaintiff's suit with costs.

Analysis And Determination

13. I have carefully considered the evidence on record and given due regard to the submissions made by the parties. It is the duty of the plaintiff to establish or prove negligence on the part of the defendant. It is trite law that it is not enough to adorn the plaint with particulars of negligence. The plaintiff must adduce evidence to prove such particulars of negligence and it is from the evidence that the court can make a finding on liability. The above position appears to be anchored on the provisions of sections 107 and 109 of the *Evidence Act* which basically provide that the burden of proof lies on the person who alleges the existence of facts upon which he desires the court to give judgment in his favour. In the case of Kirugi & Another v Kabiya & 3 Others [1987] KLR 347, the Court of Appeal held thus:

> " The burden was always on the plaintiff to prove his case on the balance of probabilities even if the case was heard on formal proof."

Liability

14. Was the plaintiff an employee of the defendant at the material time? In his plaint, the plaintiff indicated that he was an employee of the defendant at the material time. Under Kenyan law, an employee has been defined under Section 2 of the *Employment Act* as:

> " Employee" means a person employed for wages or a salary and includes an apprentice and indentured learner."

15. An employer has also been defined under the same section to mean;

> " employer" means any person, public body, firm, corporation or company who or which has entered into a contract of service to employ any individual and includes the agent, foreman, manager or factor of such person, public body, firm, corporation or company."

16. Therefore, an employee and an employer may enter into a contract of service as;

> " ... an agreement, whether oral or in writing, and whether expressed or implied, to employ or to serve as an employee for a period of time, and includes a contract of apprenticeship and indentured learnership but does not include a foreign contract of service to which Part XI of this Act applies."

17. The testimony of the plaintiff indicates that he was an employee of the defendant at the material time. He even produced a copy of the certificate of employment. There is no contrary evidence. I have no doubt that the plaintiff was an employee of the defendant at the material time. The plaintiff also testified that he was on duty in the course of his employment with the defendant at the material

time. His testimony was not controverted. According to section 143 of the *Evidence act*, no particular number of witnesses will be required to prove a certain fact. It was not mandatory for the plaintiff to call his workmates to prove that he was on duty on the material day. The plaintiff's testimony on the occurrence of the accident is also not controverted. It is thus my finding that the plaintiff was on duty on the material day and that he was involved in the accident as alleged.

18. What is to be determined is whether the defendant, being an employer of the plaintiff at the material time, is liable in negligence or breach of statutory duty as claimed. The law is fairly clear that an 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. This was the position in the Court of Appeal authority of Mwanyule v Said t/a Jomvu Total Service Station [2004] 1 KLR 47. The position is also clear in common law as propounded in paragraph 562, Halsbury's Laws of England, 4th Edition Vol. 16, that:-

> " It is an implied term of the contract of employment at common law, that an employee takes upon himself risks necessarily incidental to his employment. Apart from the employer's duty to take reasonable care, an employee cannot call upon his employer, merely upon the ground of their relation of employer and employee, to compensate him from an injury which he may sustain in the course of his employment in consequence of the dangerous character of the work upon which he is engaged. The employer is not liable to the employee for damage suffered outside the course of his employment. The employer does not warrant the safety of the employee's working conditions, nor is he an insurer of his employee's safety; the exercise of due care and skill suffices. The employer does not owe any general duty to the employee to take reasonable care of the employee's goods; the duty extends to his person."

19. As already indicated, the onus of proving any alleged negligence, breach of statutory obligations and/or lack of exercise of due care and skill as dictated under common law, lies on the employee. As stated in Halsburys Laws of England 4th Edition, Pg 662:

> " The burden of proof in an action for damages for negligence rests primarily on the plaintiff who, to maintain the action, must show that he was injured by a negligent act or omission for which the defendant is in law responsible. This involves the proof of some duty owed by the defendant to the plaintiff, some breach of that duty, and an injury to the plaintiff between which and the breach of duty a causal connection must be established."

20. Further, in Clerk and Lindsell on Torts, 18th Edition, pg 600 paragraph 4, the essentials on an action for breach of statutory duty are outlined as follows:

> " (1) The claimant must show that the damage he suffered falls within the ambit of the statute mainly that it was of the type that the legislation was intended to prevent and that the claimant belonged to the category of persons that the statute was intended to protect. It is not sufficient to imply that the loss could not have occurred if the defendant had complied with the terms of the statute.

21. This rule performs a function similar to that of remoteness of damages.

    (2) It must be proved that the statutory duty was breached. The standard of liability varies considerably with the wording of the statute, ranging from liability in negligence to strict liability.

(3) As with other torts, the claimant must prove that the breach of statutory duty caused his loss, which he will fail to do if the damage caused would have occurred in any event.

(4) Finally there is the question whether there are any defences available to the action."

22. In the case of Purity Wambui Murithii v Highlands Mineral Water Co. Ltd [2015] eKLR, the Court of Appeal stated thus:

> " Section 6(1) of the *Occupational Safety and Health Act* provides:-
>
> "Every occupier (employer) shall ensure the safety, health and welfare at work of all persons working in his workplace."

23. It, therefore, follows that as a general rule the employer is liable for any injury or loss that occurs to his employees while at the workplace as a result of the employer's failure to ensure their safety. Does this mean that the employer would always be liable in all circumstances regardless of what caused the accident in question? We do not think so. We say so because where an accident happens due to the employees own negligence it would be unfair to hold the employer liable. Further Section 13(1) (a) of the *Occupational Safety and Health Act* provides:-

"13(1) Every employee shall, while at the workplace –

(a) ensure his own safety and health and that of other persons who may be affected by his acts or omissions at the workplace."

Therefore, the employee is also required to take reasonable precaution to ensure his/her safety at the workplace while performing his/her duties."

24. No employer in the position of the defendant would warrant the total continuous security of an employee engaged in the kind of work the plaintiff was engaged in. But, however inherently dangerous, an employer is expected reasonably to take steps in respect of the employment, to lessen danger or injury to the employee. Paragraph 560, Halsbury's Law of England, 4th Edition, Vol 16, states, inter alia:

> " At common law an employer is under a duty to take reasonable care for the safety of his employees in all the circumstances ... so as not to expose them to an unnecessary risk".

25. In my view, just because an employee accepts to do a job which happens to be inherently dangerous is no warrant or excuse for the employer to neglect to carry out his side of the bargain and endure the existence of minimum reasonable measures of protection. The defendant relied on the doctrine of Volenti non fit injuria. This is a Latin legal maxim meaning; "To a willing person, no injury is done." In simple terms, if someone freely and knowingly consents to a risk, they generally cannot later complain if harm results from that risk. The key elements of the doctrine, which the defence must prove, are as follows:

a. The claimant had full knowledge of the nature and extent of the risk; and

b. The claimant voluntarily agreed to accept that risk (expressly or impliedly). Mere knowledge of risk is not enough, there must be true consent.

26. It is the duty of the defendant to prove the doctrine. The defendant did not plead the doctrine in its statement of defence nor call a witness. Therefore, it was not shown that the plaintiff had full knowledge of the nature and extent of the risk. Furthermore, there is no evidence to show that the defendant provided a reasonable safe working environment for the plaintiff and that it provided safety

gear which the plaintiff declined to use. There is also no evidence to show that the plaintiff was negligent in any manner. There mere fact that the plaintiff agreed to work without being provided with safety gear does not mean that he was the author of his own misfortune. There was unequal power relationship between the plaintiff and the defendant. Upon analysis of the evidence on record, I find that the doctrine of volenti non fit injuria is not applicable in this case.

27. The defendant argues that the lack of provision of safety gear did not cause the accident. That may be so. However, as already indicated, there is no evidence to show that the defendant had put in place a safe system of work to curb or minimize risks and accidents. I agree with the plaintiff that safety boots may have alleviated the injury. The injury to the plaintiff was not self-inflicted. It was caused by an act by an employee of the defendant, acting in the course of his employment. I find that the defendant acted in breach of its duty towards the plaintiff. A causal link has been established between the accident and the defendant herein. In the circumstances, I hold the defendant 100% liable for the accident.

Quantum

28. I have considered the medical evidence on record. The same reveals that the plaintiff sustained a deep cut wound on the left big toe. The same injury was pleaded in the plaint. There is no contrary evidence with respect to the plaintiff's injury. The injury was classified as harm in the medical report. There is sufficient evidence to prove that the plaintiff sustained an injury as a result of the accident. Given the fact that the defendant has been held 100% liable for the accident, the plaintiff is thus entitled to damages as against the defendant. It is well established that the assessment of quantum of damages in a claim for general damages is a discretionary exercise and that such discretion must be exercised judicially having regard to the facts of the case within the context of existing legal principles. A case is decided purely on its own peculiar facts, although comparable injuries should receive similar awards. This Court has to bear in mind the principles that guide assessment of damages as espoused in West (HI) and Sons Ltd v Shepherd [1964] AC 326 where Lord Morris said:

> " But money cannot renew a physical frame that has been battered and shattered. All that judges and courts can do is to award sums which must be regarded as giving reasonable compensation. In the process there must be the endeavour to secure some uniformity in the general method of approach. By common constant, awards must be reasonable and must be assessed with moderation. Furthermore, it is eminently desirable that so far as possible, comparable injuries should be compensated by comparable awards. When all this is said it still must be that amounts which are awarded are to a considerable extent conventional".

29. I am also guided by Lord Denning's decision in Kim Pho Choo v Camden & Islingtom Area Health Authority, [1979] 1, ALL ER 332 which was adopted in the case of Nancy Oseko v Board of Governors Masai Girls High School [2011] eKLR where Wendoh, J stated that:

> " In assessing damages, the injured person is only entitled to what is in the circumstances, a fair compensation, for both the plaintiff and the defendant. ....the plaintiff cannot be fully compensated for all the loss suffered but the court should aim at compensating the plaintiff fairly and reasonably but in the process should not punish the defendant."

30. The following principles are germane in assessing damages for personal injury claims:

    i. An award of damages is not meant to enrich the victim but to compensate such a victim for the injuries suffered;

    ii. The award should be commensurate to the injuries suffered;

iii. Awards in decided cases are mere guides and each case should be treated on its own facts and merit;

iv. Where awards in decided cases are to be taken into consideration then the issue of or element of inflation has to be taken into consideration;

v. Awards should not be inordinately too high or too low.

31. Based on the above principles, I proceed to assess the damages payable as follows.

General Damages for pain, suffering and loss of amenities

32. I have considered the injuries sustained by the plaintiff. The medical evidence produced by the plaintiff indicates that the plaintiff was treated as an outpatient. I have further considered the submissions made by the parties on quantum as well as the authorities relied upon. The authorities relied upon by the parties are relevant. On my part, I have considered the following authority:

a. Kenblest Limited v John Mutisya Wambua [2016] eKLR.

33. The plaintiff and respondent in the appeal sustained cut wounds on the head and left forearm. The trial court awarded Ksh. 220,000/= in general damages in 2010. On appeal, the award was reduced to Ksh. 150,000/= on 2/3/2016.

34. The plaintiff herein sustained a single injury. Given the age of the awards in the above authorities coupled with the vagaries of inflation, I find that an award of Ksh. 120,000/= in general damages would suffice. I award the same.

Special Damages

35. The plaintiff pleaded special damages as follows:

a. Medical report..................................Ksh. 3,000/=

36. It is trite law that special damages must be specifically pleaded and strictly proved. In Nizar Virani t/a Kisumu Beach Resort- v - Phoenix of East Africa Assurance Co. Ltd the court said: -

> " It has time and again been held by the Court in Kenya that a claim for each particular type of special damage must be pleaded"

37. In Ouma v Nairobi City Council [1976] KLR 304 after stressing the need for a plaintiff in order to succeed on a claim for specified damages, Chesoni J (as he then was) quoted in support the following passage from Bowen L. J's Judgment on page 532 and 533 in Ratcliffe v Evans [1832] 2Q.B. 524 an English leading case on pleading and proof of damage:

> " The character of the acts themselves which produce the damage, and the circumstances under which those acts are done, must regulate the degree of certainty and particularity must be insisted on, both in pleading and proof of damage, as is reasonable having regard to the circumstances and to the nature of the acts themselves by which the damage is done. To insist upon less would be to relax old and intelligible principles. To insist upon more would be the vainest pedantry."

38. The special damages were proven as pleaded. Consequently, I award Ksh. 3,000/= as special damages.

Disposition

39. In summary, I hold that the plaintiff has proven his case on a balance of probabilities as against the defendant. Consequently, I make the following awards:

    1. General damages for pain, suffering and loss of amenities...........Ksh. 120,000/=

    2. Special damages..Ksh. 3,000/=

    Total...Ksh. 123,000/=

40. The plaintiff is also awarded interest on the damages as well as costs of the suit.

41. The guiding principles in respect of interest are set out in section 26 of the *Civil Procedure Act* which provides that:

    (1) Where and in so far as a decree is for the payment of money, the court may, in the decree, order interest at such rate as the court deems reasonable to be paid on the principal sum adjudged from the date of the suit to the date of the decree in addition to any interest adjudged on such principal sum for any period before the institution of the suit, with further interest at such rate as the court deems reasonable on the aggregate sum so adjudged from the date of the decree to the date of payment or to such earlier date as the court thinks fit.

    (2) Where such a decree is silent with respect to the payment of further interest on such aggregate sum as aforesaid from the date of the decree to the date of payment or other earlier date, the court shall be deemed to have ordered interest at 6 per cent per annum."

42. In the case of Jane Wanjiku Wambui v Anthony Kigamba Hato & 3 others [2018] eKLR, the court stated that:

43. First, at all times a trial court has wide discretion to award and fix the rate of interests provided that the discretion must be used judiciously. Given this discretion, an appellate Court is, therefore, enjoined to treat the original decision by a trial court with utmost respect and should refrain from interference with it unless it is satisfied that the lower court proceeded upon some erroneous principle or was plainly and obviously wrong. See New Tyres Enterprises Ltd v Kenya Alliance Insurance Company Ltd [1988] KLR 380.

44. Second, Under Section 26(1) of the *Civil Procedure Act*, the Court has discretion to award and fix the rate of interests to cover two stages namely:

    a. The period from the date the suit is filed to the date when the Court gives its judgment; and

    b. The period from the date of the judgment to the date of payment of the sum adjudged due or such earlier date as the court may, in its discretion fix."

45. Odoki, Ag. JSC, writing for the majority of the Supreme Court in the Ugandan case of Omunyokol Akol Johnson v Attorney General (CIVIL APPEAL NO.6 of 2012, UGSC 4 (8th April 2015) stated in part, as follows:

> It is well settled that the award of interest is in the discretion of the court. The determination of the rate of interest is also in the discretion of the court. I think it is also trite law that for special damages the interest is awarded from the date of the loss, and interest on general damages is to be awarded from the date of judgment.........Therefore, the trial judge should

have awarded the appellant interest on general damages at the court rate from the date of judgment." (Emphasis supplied)

46. From the foregoing expositions of the law on this point, it is clear that much as the award of interest is discretionary, interest rates on special damages should be with effect from the date of the loss till payment in full while with regard to general damages this should be from the date of judgement as it is only ascertained in the judgement-see Jane Ovuyanzi Raphael (Suing as Legal Representative of Estate of Japheth Amaayi v Salina Transporters [2020] KEHC 618 (KLR). Consequently, interest on general damages shall accrue at court rates from the date of judgment/decree until payment in full whereas interest on special damages shall accrue from the date of filing suit to the date of judgment.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MAKINDU THIS 3RD DAY OF FEBRUARY, 2026.

Y.A SHIKANDA

SENIOR PRINCIPAL MAGISTRATE.