

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
CIVIL APPEAL NO. E008 OF 2024

BETWEEN

**MANPOWER
LIMITED.....APPELLANT**

NETWORKS

AND

**HADLEY
RESPONDENT**

MMULA

WANYONYI.....1ST

**BAMBURI
RESPONDENT**

CEMENT

LIMITED.....2ND

*(An appeal from the judgment and decree of the Principal
Magistrate's Court at Mavoko (E.K. Suter, PM.) delivered on
30th November 2023 in PMCC No. 304 of 2016)*

JUDGMENT

1. In his plaint dated 21st March 2016, the 1st respondent averred that he was employed by the appellant and deployed to work for the 2nd respondent at its cement manufacturing plant located in Athi River. He contended that the appellant acted as an agent of the 2nd respondent. It was a term of employment contract that both the appellant and 2nd respondent would take reasonable precautionary safety measures to protect him while at work. On 3rd November 2015, while operating a rotary drive, where he was required to bend and carry 50kgs bags of cement, and placing them in bundles of 200. After two hours of this strenuous workload, he sustained a back injury. For those reasons, he sought general damages,

special damages of Kshs.3,000.00 costs of the suit and interest.

2. In its judgment dated 30th November 2023, the trial court found the appellant liable but dismissed the suit against the 2nd respondent. It awarded the respondent general damages in the sum of Kshs.180,00000 and special damages of Kshs.3,000.00 together with costs and interest. These findings precipitated the present appeal.
3. The appellant filed its memorandum of appeal dated 17th January 2024. It raised five grounds. In summary, the appellant argued that; the trial court failed to consider that the 1st respondent negligently contributed to the accident; the court improperly relied on extraneous evidence; the finding of 100% liability against the appellant was erroneous; the award of general damages was excessive and disproportionate to the injuries sustained by the respondent. Accordingly, the appellant prayed that the appeal be allowed, the impugned judgment be set aside and costs of the appeal be awarded in his favour.
4. The appeal was canvassed through written submissions. The appellant relied on its submissions, list, and bundle of authorities dated 8th October 2025, arguing that the trial court's findings were flawed. It submitted that evidence was adduced showing the appellant had provided the respondent with protective gear, safety training, and a trolley to assist with the workload. This evidence was not rebutted. The appellant contended that the respondent

violated established safety protocols, thereby exposing himself to risk. Consequently, the appellant maintained that liability should have been apportioned and that the damages awarded were manifestly excessive.

5. The appellant contended that the trial court's award on quantum was manifestly excessive and failed to take into account the evidence presented. It argued that no medical records or treatment notes were produced to substantiate the extent of the injuries allegedly sustained by the 1st respondent. On the contrary, the injuries were limited to soft tissue trauma, with no indication of permanent disability. Indeed, the respondent was certified fit to resume his duties merely two days after the incident. The appellant further submitted that the trial court relied on authorities that were not comparable to the facts and circumstances of this case. It urged this court to revise the award on general damages to **Kshs. 30,000.00**, citing ***Sokoro Saw Mills Limited v. Grace Nduta Ndung'u*** (Nakuru High Court Civil Appeal No. 99 of 2003). The appellant therefore prayed that the appeal be allowed with costs.
6. The 1st respondent opposed the appeal through written submissions and a list and bundle of authorities dated 7th August 2025. He dismissed the appellant's claim that his injuries were self-inflicted as baseless and unsubstantiated. He maintained that the injuries were sustained as a direct consequence of the appellant's

negligence in failing to provide a safe working environment.

7. Turning to the award on general damages, the 1st respondent submitted that the awarded was consistent with recent jurisprudence, as was held in Wafula vs. JGN [2023] eKLR, Onyango vs. Obura [2024] eKLR, Pamella vs. Mokaya & another [2023] eKLR and Serem vs. Chepkurui [2025] eKLR. He argued that the short period taken to resume work did not diminish his entitlement to compensation, as damages are assessed not only on the duration of incapacity but also on the pain, suffering, and risk endured. He therefore prayed that the appeal be dismissed with costs as it was devoid of merit.
8. I have considered the parties' submissions, examined the record of appeal and analyzed the applicable law. The Court of Appeal in Kenya Tourist Development Corporation vs. Sundowner Lodge Limited [2018] KECA 312 (KLR) succinctly explained the role of this court sitting as a first appellate court in the following words:

“We have given due consideration to those submissions, the authorities cited before us and the entire record of appeal in keeping with our duty as a first appellate court to re-evaluate and reassess the entire evidence with a view to arriving at our own inferences of fact and independent conclusions thereon. See ABOK JAMES ODERA T/A A.J ODERA &

ASSOCIATES vs. JOHN PATRICK MACHIRA T/A MACHIRA & CO. ADVOCATES [2013] eKLR; MWANA SOKONI vs. KENYA BUS SERVICES LTD [1985] 931. We are mindful that we do not have the advantage the trial court had of hearing and observing the witnesses as they testified and are therefore generally slow to disturb findings of fact arrived at, to which we pay due respect. We also pay some deference to decisions made in exercise of discretion but this is not say we follow them slavishly. Where there is a basis for upsetting such decisions we shall do so and that would be the case if the findings in question are based on no evidence, or a misapprehension of the evidence; a consideration of irrelevant matters of a failure to consider what ought to have been considered; or if the Judge is shown demonstrably to have acted on wrong principles in reaching a particular finding of fact or conclusion of law or if the decision is generally perverse and unsupportable.”

9. According to the record before us, PW1 (the 1st respondent), testified that he was employed as a rotary drive operator from January 2015. On 3rd November 2015, while performing his duties of bending and carrying 50kg

bags of cement continuous period of eight hours. Two hours into the job, the 1st respondent developed back pains after carrying 200 bags. As he attempted to continue, a sharp pain struck him causing him to fall down in the store. The store clerk reported the incident to the foreman Mr. Korir.

10. PW1 was rushed in an ambulance to Shalom Community Hospital where he was treated and discharged. He blamed the appellant and 2nd respondent for failing to provide a trolley carrying the bags and a table to place the bags. PW1 relied on his treatment notes dated 18th January 2016 and 29th January 2016 and a gate pass and a recommendation for physiotherapy. He testified that prior to the accident, he was in good health, but upon resuming work he was assigned lighter duties.
11. PW2 Dr. Mwende K. Ndibo, examined PW1 on 12th February 2016 and prepared a medical report of similar date that was adduced in evidence, together with a receipt of Kshs.3,000.00 dated 12th February 2016. PW2, confirmed that the 1st respondent sustained a muscle spasm with nerve root compression. He was advised to wear a lumbar cosset, was administered treatment and discharged the same day with recommended medical checkups later. He had mild tenderness on his back and complained of reduced sexual activity. His opinion was that the injuries to his back were caused by the accident. That he suffered grievous harm that caused him pain and

suffering but with no long-term disability as he had recovered.

12. DW1, Moses Wakaba Waithaka, testified that the 1st respondent was the appellant's employee as a bag pacer responsible for carrying empty bags from the consumption store for packing cement. He maintained, that all bag pacers were provided with trolleys and protective gear during working hours and safety training. He relied on the 1st respondent's medical certificate dated 9th November 2015 and certificate of fitness dated 25th August 2015. He produced photographs of the working area insisting that the allegations were false and intended to taint the image of the appellant.
13. DW1 further recalled that on the material day, the 1st respondent was diagnosed with TB. He stated that the appellant, liaised with the 2nd respondent, to take the 1st respondent to hospital after he was injured during working hours. He produced the 1st respondent's clinic summary dated 5th November 2015 and claimed that the 1st respondent was carrying 200 bags weighing 80kgs. He clarified that the appellant supplied the 2nd respondent with laborers, who were its employees, and that the appellant was responsible when they were injured.
14. DW2 Julia Wamweru, the 2nd Respondent's plant administrator, confirmed that the appellant provided them with casual labourers under contract of service, dated 1st November 2011, and renewed on 1st November 2014 by a Deed of Addendum, for 6 months. She testified that the

appellant was fully responsible for employees' welfare, insurance and provision of safety gear and a safe working environment.

15. He confirmed that the 1st respondent underwent training as per the training form dated 9th September 2015 and was taken to hospital by the 2nd respondent employees as per the clinic summary dated 5th November 2015.
16. It is undisputed that PW1 was injured at the 2nd respondent's premises on 3rd November 2015 while carrying heavy cement bags. He suffered back pain and was rushed to hospital. The appellant was notified.
17. The evidence shows that under the contract of service, the appellant was responsible for injuries sustained by its staff, provision of safety gear, and ensuring equipment was in good working condition. This contractual obligation absolves the 2nd respondent from liability, regardless of where the accident occurred.
18. It was incumbent upon the appellant to furnish PW1 with safety gear. While the appellant claimed to have done so, no credible evidence was adduced. The photographs produced did not prove provision of safety equipment and lacked a certificate of electronic evidence under the Evidence Act. That evidence must therefore be rejected.
19. What is apparent is that on the fateful day, the 1st respondent was working at the 2nd respondent premises. He was employed by the appellant. On account of the appellant's lapse to provide the necessary safety equipment, the 1st respondent suffered a muscle spasm

with nerve root compression. there is no evidence that the 2nd respondent was accountable for those injuries. He cannot be held liable. Accordingly, I concur with the trial court's finding on liability and will not interfere.

20. On quantum, this court is reminded not to interfere with the award of damages unless it is so inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the judge proceeded on wrong principles, or that he misapprehended the evidence in some material respect, and so arrived at a figure which was either inordinately high or low [See ***Butt vs. Khan*** [1978] KECA 24 (KLR)].
21. According to PW2, Dr. Mwende K. Ndibo, 1st respondent sustained a muscle spasm with nerve root compression. He was advised to wear a lumbar cosset, was administered treatment and discharged the same day with recommended medical checkups later. The injuries caused pain and suffering but no long-term disability as he had recovered. The treatment notes further advised physiotherapy treatment.
22. Indeed, the 1st respondent sustained soft tissue injuries on account of the appellant. It is not material that he had resumed duties two days later. The appellant urged this court to award Kshs. 30,000.00 in general damages as provided in ***Sokoro Saw Mills Limited vs. Grace Nduta Ndung'u*** Nakuru High Court Civil Appeal No. 99 of 2003 of Kshs. 30,000.00. In my view, that decision was delivered along time ago and is not comparable. The 1st respondent

was injured in 2016. The circumstances are glaringly not comparable.

23. In awarding general damages of Kshs. 180,000.00, the trial court relied on **Ndung'u Dennis vs. Ann Wangari Ndirangu & another** [2018] eKLR where the respondent was awarded Kshs. 100,00.00 for suffering bruises on the neck, tenderness on the right leg, blunt injury to the chest, hands and back. The court also considered the case of **Nyambati Nyaswabu Eric vs. Toyota Kenya Limited & 2 others** [2019] eKLR where the appellant was awarded Kshs. 90,000.00 for a deep cut on the scalp, blunt injury to the chest and contusion on the back and legs.
24. I find that the trial court considered the authorities while taking into account market inflation. The court bore in mind that the injuries were soft tissue in nature. I therefore see no reason to disturb those findings as the court applied the correct principles. In view of the foregoing, I find that the present appeal lacks merit. It is hereby dismissed with costs to the 1st Respondent.

It is so ordered.

Dated, signed and delivered at Machakos this 9th day of April,
2026

RHODA RUTTO

JUDGE

In the presence of;

.....Appellant

.....Respondent

Selina Court Assistant

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