



REPUBLIC OF KENYA



KENYA LAW
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**George v Dwa Estate Ltd (Civil Case 51 of 2017)
[2026] KEMC 87 (KLR) (7 April 2026) (Judgment)**

Neutral citation: [2026] KEMC 87 (KLR)

**REPUBLIC OF KENYA
IN THE MAKINDU LAW COURTS
CIVIL CASE 51 OF 2017
YA SHIKANDA, SPM
APRIL 7, 2026**

BETWEEN

MUSYOKA GEORGE PLAINTIFF

AND

DWA ESTATE LTD DEFENDANT

JUDGMENT

1. Musyoka George (hereinafter referred to as the plaintiff) filed this suit on 22/2/2017 vide a plaint dated 20/2/2017. The plaintiff sued Dwa Estate Limited (hereinafter referred to as the defendant) on account of an industrial accident that allegedly occurred on 15/8/2014 at Dwa Estate Limited, while the plaintiff was in the course of his employment with the defendant. The plaintiff averred that it was a term of the contract of employment between him and the defendant and/or it was the duty of the defendant to take all reasonable precautions for the safety of the plaintiff while he was engaged upon his work, not to expose him to a risk of injury that it ought to have known, to provide and maintain safe and adequate working conditions to enable the plaintiff carry out his work and to provide and maintain a safe and proper system of work.
2. The plaintiff further averred that on the material day, he was in the lawful course of his employment when the machine malfunctioned and threw him whereupon he landed on his back. That as a consequence, the plaintiff sustained serious injuries. The plaintiff averred that the said injuries, loss and damage were occasioned to the plaintiff by reason of the negligence and/or breach of statutory duty and/or breach of the said contract of employment on the part of the defendant, their servants or agents. The plaintiff pleaded particulars of injuries and those of special damages as well as the following particulars of negligence and/or breach of statutory duty of care:
 - a. Failing to take any or any adequate precautions for the safety of the plaintiff while he was engaged upon the said work;



- b. Exposing the plaintiff to a risk of injury or damage of which they knew or ought to have known;
 - c. Causing or permitting the plaintiff to carry out the said work without any or any adequate safety gear/clothing knowing the same to be dangerous;
 - d. Failing to take any or any adequate measures to ensure that the place where the plaintiff carried out his work was safe;
 - e. Failing to provide or maintain a safe and proper system of work or to instruct their workmen including the plaintiff to follow that system.
3. The plaintiff 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 23/5/2017 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 the existence of a contract of employment between the defendant and the plaintiff, denied that it was its duty to take all reasonable precautions for the safety of the plaintiff while engaged upon the said employment and denied the occurrence of the accident. The defendant further denied the particulars of injuries and special damages pleaded by the plaintiff as well as the particulars of negligence and/or breach of statutory duty.
5. In the alternative, the defendant averred that if indeed the accident occurred as alleged, which was denied, then the same occurred outside the premises and was due to circumstances beyond the control of the defendant and despite the exercise of duty of care and diligence, the same could not be avoided. The defendant further averred in the alternative that the said accident, if at all, was solely caused by and/or substantially contributed to by the negligence/recklessness of the plaintiff. The defendant pleaded the following particulars of negligence as against the plaintiff:
- a. Working without due care and attention;
 - b. Failing to follow and/or exercise the laid down safety regulations when carrying out his duties;
 - c. Carrying out his duties in a rush and without the safety procedures;
 - d. Exposing himself to the danger of being injured;
 - e. Failing to take any evasive action in order to avoid the said accident;
 - f. Carrying out duties which he had not been instructed to perform;
 - g. Being on a frolic of his own;
 - h. Being negligent and/or reckless in the circumstances;
 - i. Exposing himself to the risk of injury which he knew or ought to have known;
 - j. Causing the said accident.
6. The defendant prayed that the plaintiff's suit be dismissed with costs.



The Evidence

The Plaintiff's Case

7. The plaintiff's case was heard by another Magistrate who was subsequently transferred. Only the plaintiff testified in support of his case. The plaintiff adopted his statement as part of his testimony in-chief. His testimony was that on 15/8/2014 he was working at Dwa Estate in the course of his employment with the defendant and was injured while fastening conveyor belts. That the faulty hydraulic machine blew up and he was thrown back and landed on the conveyor belts. The plaintiff testified that he was injured and was treated at the company's clinic for two weeks. That he sustained a blunt trauma on the lower back. The plaintiff blamed the defendant for failing to provide him with gloves or any other safety clothing and for poor supervision. The plaintiff produced several documents in support of his case. The medical report by Doctor Mwendu Ndibo was produced by consent of the parties.

The Defence Case

8. The parties agreed by consent that the witness statements filed by the defendant be admitted in evidence without calling the makers. The first statement is that of Titus Mbuva. He indicated that he worked as the Headman at the defendant's company premises. That on the material day, he was supervising the plaintiff together with other workers who were tying sisal bales with the pressing machine. It was stated that the machine developed mechanical problems and the workers were expected to step aside immediately. That the plaintiff hang on the machine which made a loud blast and that prompted the plaintiff to jump off and landed on his back. Titus stated that he escorted the plaintiff to the company clinic where he was given first aid. He blamed the plaintiff for the reason that he was negligent as he ought to have taken precautionary measures just like the other workers, so as to avoid the accident. The second statement was that of Johnny Mumo. He stated that he was a Clinical officer at the defendant's premises. That on the day of the accident, he attended to the plaintiff who complained of pain in the hip. That on 25/8/2014, the plaintiff returned to the clinic complaining of pain in the lower back. Johnny was of the opinion that the plaintiff sustained soft tissue injuries which healed completely.

Facts Not In Dispute:

8. From the evidence of both parties, the following facts are not in dispute:
- a. The plaintiff was an employee of the defendant at the material time;
 - b. The plaintiff was on duty in the defendant's employment on 15/8/2014;
 - c. The plaintiff was involved in an industrial accident on 15/8/2014;
 - d. The plaintiff sustained injuries as a result of the accident;

Main Issues For Determination

9. In my view, the main issues for determination are as follows:
- i. Whether the defendant is liable for the accident;
 - ii. Whether the plaintiff is entitled to damages and if so, the nature and quantum thereof;
 - iii. Who should bear the costs of this suit?



The Plaintiff's Submissions

10. The plaintiff relied on the evidence on record and submitted that the totality of the evidence indicates that the defendant breached its duty to provide a safe environment to the plaintiff. The plaintiff relied on the provisions of section 6(1) and (2) of the *Occupational Safety and Health Act* and contended that the defendant did not provide a safe working environment for the plaintiff. That the defendant did not provide any evidence of having trained the plaintiff on handling of the equipment. On quantum, the plaintiff submitted a sum of Ksh. 400,000/= in general damages and relied on an authority whose copy was not filed. The plaintiff further prayed for special damages of Ksh. 3,000/= as well as costs of the suit and interest.

The Defendant's Submissions

The defendant did not file submissions.

Analysis And Determination

11. 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

12. It is agreed by both parties that the machine which the plaintiff was working on developed mechanical problems. It is also agreed that the machine behaved in a manner that caused the plaintiff to be thrown away. The defendant's Headman stated that it was expected that the employees would move back when the machine developed mechanical problems. Section 6 of the *Occupational Safety and Health Act* provides in part as follows:

“

- “(1) Every occupier shall ensure the safety, health and welfare at work of all persons working in his workplace.
- (2) Without prejudice to the generality of an occupier's duty under subsection (1), the duty of the occupier includes—
- (a) the provision and maintenance of plant and systems and procedures of work that are safe and without risks to health;
 - (b) arrangements for ensuring safety and absence of risks to health in connection with the use, handling, storage and transport of articles and substances;



- (c) the provision of such information, instruction, training and supervision as is necessary to ensure the safety and health at work of every person employed;
- (d) the maintenance of any workplace under the occupier's control, in a condition that is safe and without risks to health and the provision and maintenance of means of access to and egress from it that are safe and without such risks to health;
- (e) the provision and maintenance of a working environment for every person employed that is, safe, without risks to health, and adequate as regards facilities and arrangements for the employees welfare at work.”

Section 99(1) thereof provides:

“No person shall be employed at any machine or in any process, being a machine or process liable to cause ill health or bodily injury, unless he has been fully instructed as to the dangers likely to arise in connection therewith and the precautions to be observed, and—

- a. has received sufficient training in work at the machine or in the process; or
- b. is under adequate supervision by a person who has a thorough knowledge and experience of the machine or process.”

13. The plaintiff testified that there was no proper supervision by the defendant. There is no evidence from the defence to show that the employees were under proper supervision and had been properly instructed before using the machine and/or on what to do when the machine malfunctions. The Headman's statement which was adopted in evidence merely indicates that when the machine developed a mechanical problem, all the employees were expected to step aside immediately. It is not clear whether they had been properly instructed on what to do in case of such an incident. I find that the plaintiff's evidence was not successfully rebutted by the defence. Consequently, I find that the defendant acted in breach of its statutory duty and the duty of care towards its employees, and in particular the plaintiff. There is no evidence to show that the plaintiff acted negligently or contributed to the malfunctioning of the machine. I hold the defendant 100% liable for the accident.

Quantum

14. On quantum of damages the court has to bear in mind the following cardinal principles in the assessment of damages namely:

- 1. Damages should not be inordinately too high or too low;
- 2. Damages should be commensurate to the injury suffered;
- 3. Damages should not be aimed at enriching the victim but should be aimed at trying to restore the victim to the position he was in before the damage was suffered;
- 4. Awards in past decisions are mere guides and each case depends on its own facts.

15. I have considered the medical evidence on record. The plaintiff sustained a blunt trauma on the lower back. There is no contrary evidence. On my part, I have considered the following authority:



- a. Ndungu Dennis v Ann Wangari Ndirangu & another [2018] KEHC 8799 (KLR), wherein the plaintiff and respondent in the appeal sustained minor bruises on the back; blunt injury to the right leg and tenderness on the right leg. On appeal, the court awarded Ksh. 100,000/= on 1/2/2018;
16. Given the age of the award in the above authority coupled with the vagaries of inflation, I find that an award of Ksh. 130,000/= in general damages would suffice. I award the same.
17. The plaintiff pleaded special damages of Ksh. 3,000/= being payment for the medical report. A receipt for the same was produced in evidence. I thus award Ksh. 3,000/= as special damages.

Disposition

18. 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. 130,000/=
 2. Special damages.....Ksh. 3,000/=
 - Total.....Ksh. 133,000/=
19. The plaintiff is also awarded interest on the damages as well as costs of the suit.
20. 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.”
21. In the case of Jane Wanjiku Wambui v Anthony Kigamba Hato & 3 others [2018] eKLR, the court stated that:

“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.

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.”
22. Odoki, Ag. JSC, writing for the majority of the Supreme Court in the Ugandan case of Omonyokol 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 appellants interest on general damages at the court rate from the date of judgment.” (Emphasis supplied)
23. 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/decreed 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 7TH DAY OF APRIL, 2026.

Y.A SHIKANDA

SENIOR PRINCIPAL MAGISTRATE.

