

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
NAIROBI
ELRC CAUSE NO. 2568 OF 2016

JOSEPH SILA OTIENO.....CLAIMANT

- VS -

CYKA MANPOWER SERVICES LTD.....RESPONDENT

JUDGMENT

The suit was filed by a statement of claim dated 14th December 2016. The Claimant seeks: -

- (a) General damages**
- (b) Special damages of Kshs. 2,000/-**
- (c) Costs of the suit**
- (d) Interest on (a), (b) and (c)**
- (e) Any other or further relief that this Honourable Court may deem fit to grant**

The Claimant testified under oath and adopted his witness statement dated 14th December 2016 as his evidence in chief and produced documents marked as exhibits '1' to '9' in support of his case.

The Claimant's case is that he was employed by the Respondent as a general worker. His grievance is that on or about 15th December 2014, he was performing his duties at the Respondent's premises carrying bags of coffee weighing 61kgs into the store, having received instructions to pack

them near the rooftop. The reason why the Claimant was performing this task was because the machine that carried the said bags had broken down so the workers were directed to carry the bags up manually. There were no ladders provided to assist the workers lift up the bags, but instead they were provided with a makeshift wooden pallet that was not properly supported.

The Claimant states that as he was climbing up, the wooden pallet slid causing him to fall and sustained severe injuries. The Claimant blames the Respondent for failing to provide a safe system of work, and seeks compensation

The claimant called Dr. Okere Okoth as CW2 to produce a medical report in support of the case. CW2 testified that he examined the claimant on 27/9/16 and confirmed that he had sustained injuries described in the medical report he prepared and produced before court. He stated that he charged ksh. 3000 for the report and ksh. 10,000 for the court attendance. He produced two receipts in this respect. The Dr testified that the injury was on the left Knee joint. He said he relied on an MRI scan from Metropolitan Hospital, the workmen Injury Form and Clinical Abstract. He said that the injury would heal but the claimant would have permanent incapacity of 15% of the leg after rehabilitation.

Upon cross-examination he said he was a specialist in Lungs and Tuberculosis illnesses.

DETERMINATION

The parties filed submissions which the court considered together with the testimony by the claimant the respondent having called no witnesses. The respondent had earlier filed a notice of preliminary objection to wit that the court lacks jurisdiction to determine this matter which ought to be resolved by the Director of Occupational Safety and Health (DOSH) by dint of section 16 of the WIBA, which reads

“ No actions shall lie by an employee or any dependant of an employee for the recovery of damages in respect of any occupational accident or disease resulting in disablement or death of such employee against such employee’s employer, and no liability for compensation on the part of such an employer shall arise save under the provisions of this act in respect of such disablement or death”

The issue the court first has to deal with is whether this matter falls within the exceptions set out by the supreme court in the case of **The Law Society of Kenya v Attorney General and another, Petition 4 of 2019 KESC 16 (KLR) [2019] (3rd December 2019)**. The supreme court held that compensation claims for workplace injury and illness must first be adjudicated by the Director under WIBA, not the courts. The Supreme Court further held cases filed before WIBA came into effect and during the period decisions by the High Court and Court of Appeal had been stayed are to proceed before the courts to conclusion.

This case falls within the exceptions defined by the Supreme Court for hearing of WIBA cases by the civil courts up to conclusion despite the decision by the court reversing the High Court and Court of Appeal decisions that had declared WIBA unconstitutional having been filed within the window when the decision by the High Court was stayed by the Court of appeal which partly reversed the decision by the High Court but held that sections 7 and 10(4) of the Act were unconstitutional.

The respondent in this case did not tender any evidence in defence of the matter. The evidence on liability of the respondent adduced by the claimant is not controverted and the court relies on the case of **Manutiga Kamai v Pius Muthuri Mukaria [2020] eKLR** per Mabeya J. as follows:

“The moment the Appellant failed to tender any evidence in support of his defence, the defence became a mere piece of paper on record with mere allegations that could not rival tested testimony of the Plaintiff. The Plaintiff’s evidence was in the circumstances uncontroverted and the trial court was entitled to rely on the same.”

The court finds that this case falls within the description in the case of **Tridev Construction v Charles Wekesa Kasembeli, Civil Appeal 121 of 2002 (Eldoret)** where it was held as follows:

“The common law duty of care of an employer towards an employee is clearly stated in the case of Clifford – vs Charles & Sons Ltd {1951} Aller 72. An employer is not merely required to provide a safe system of work but to ensure that employees complied with that system of work. In my view, the nature of work described by witnesses both for the Respondent and Appellant was potentially dangerous. Even if it is true that a belt would not be of assistance the duties of the employer to provide a safe system of work were not discharged.”

The Court finds that the respondent failed to provide a safe environment and system of work including failure to provide protective gear while doing the arduous work of carrying heavy coffee bags to the roof top.

The case of Kathambi v Safaricom LTD (cause 1986 of 2014) [2023] KEELRC 1772(KLR) (25 July2023) (Judgment) is on point on this as follows:

“An employer has a duty to take reasonable care, so as to carry on operations, in a manner that did not subject an employee to unnecessary risk. That included the duty to avail to an employee, adequate equipment and a safe system of work”

In conclusion the respondent is liable 100% for the injury suffered by the claimant and so the claimant did not contribute to the damage suffered by him in the course of duty.

Quantum

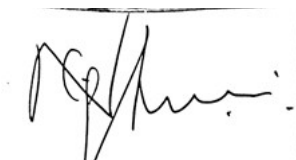
The Doctor adduced evidence that the claimant will have 15% permanent disability on his knee joint upon healing and rehabilitation. The court relies on the evidence and the comparable case of **Dominic Mutie Katoo v Jacob Muigai Karanja & another [2020] eKLR** where the court awarded ksh. 1,000,000.00 for dislocation of the knee joint/sprain on the ligaments; torn lateral/medial meniscus left knee joint to award the claimant general damages in the sum of ksh.1,000,000.00

The court would have awarded special damages of ksh.13,000 to cover Doctor's fees for the medical report and court attendance but for the pleadings by the claimant which only sought Ksh. 2,000.00.

In the final analysis Judgment is entered in favour of the Claimant against the respondent as follows:

- (a)Ksh. 1,000,000.00 General damages**
- (b)Ksh. 2,000 Special damages as per the pleadings by the claimant.**
- (c)Interest at court rates from date of judgment till payment in full**
- (d)Costs**

Dated, and signed at Nairobi this 14th April 2026



Nderi Nduma

JUDGE

Delivered at Nairobi in open court this 22nd day of April 2026.

Dr. Gakeri J.

JUDGE

Appearance:

Mr. Mugambi for Claimant

Mr. Chegesa for Respondent

Court Asst. Kemboi

ORIGINAL