

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

APPEAL NO. E040 OF 2025

(Before D. K. N. Marete)

KIMULI MWANGI..... CLAIMANT

VS

ALPHARAMA LIMITED..... RESPONDENT

JUDGMENT

This matter comes to court by way of a Memorandum of Appeal dated 7th February, 2025. It comes out as follows;

- i) The trial court erred in law and fact by finding that the Appellant failed to prove and dismissed the evidence tendered by the Appellant.
- ii) The trial court erred in law and fact by dismissing the Appellant’s medical letter dated 16th April, 2018 as not being primary medical notes, which medical letter confirmed that the Appellant was treated at Agape medical Services on the 26th August 2016 and the medication given particularized after the Appellant sustained an injury on the left leg.
- iii) The trial court erred in law and fact ignoring the fact that a secondary medical report dated 23rd May, 2018 was also produced as prepared by the Appellant’s medical doctor, Titus Ndeti, which confirmed that the Appellant sustained the said injury on the left leg.

- iv) The trial court erred in law and fact ignoring the fact that the Respondent failed to avail medical report from the Respondent's medical doctor despite the fact that the Appellant underwent medical re-examination by the Respondent's medical doctor.
- v) The trial court erred in law and fact by ignoring the fact that the Respondent did not rebut and confirmed during hearing the fact that the Appellant was at work when the Appellant sustained the injury on the Appellant's left leg on the 26th August, 2016.
- vi) The trial court erred in law and fact by relying on a work injury record produced by the Respondent which had no signatures of the employees listed therein to confirm having reported and sustained the alleged injuries. The Respondent confirmed during hearing to have solely prepared the work injury record.
- vii) The trial court erred in law and fact by ignoring the fact that the Respondent's witness did not rebut the fact that the Appellant sustained an injury on the left leg on the 26th August, 2016 while at work and only claimed that the said injury was not reported to the Respondent by the Appellant.
- viii) The trial court erred in law and fact by in apparent contradiction of findings, properly awarding the Appellant special damages as pleaded and on the other had dismissing the Appellant's suit for lack of sufficient proof.

Reasons wherefore, the Appellant prays for orders that;

1. *The Appeal herein be allowed and judgment of the lower court set aside.*
2. *Costs of the appeal.*

3. *The Appellant be awarded special damages of Ksh4,000.00 general damages for pain and suffering, interest and costs in the lower court as pleaded in the Appellant's plain dated 25th May, 2018.*

The Appellant's case and submission is that the trial court erred in law and fact in finding that the Appellant had not proved their case on a balance of probabilities and therefore dismissed the claim.

This is followed by a narration of the facts of the case which come out that on 26th August, 2016, the Appellant's left leg sustained a cut from a wooden billet that fell from a stuck of wooden billet at the Respondent's premises and place of work. He had been instructed to arrange skin on wooden billets and in the process of getting one wood billet from the stuck of wooden billets, one fell causing a cut on the Appellant's left leg.

The Appellant further faults the trial court for dismissing the suit on grounds that the Appellant did not report the work injury accident to the Respondent's witness. Besides, the Respondent's witness availed a false work injury report that they had solely prepared and was not signed by the alleged employees listed therein as proof of authentication of the report and further that the Appellant did not report the incident to the office for recording. This is despite the fact that the Appellant had availed treatment note and a medical report confirming that the Appellant sustained the said injuries and received medical treatment for the same.

The Respondent counters the Appellant's case and submissions in support of the appeal by submitting that the trial court did not in any way err in finding that the Appellant failed to prove its case and the claim.

It is their case that PW1, the Appellant testified that he was employed by the Respondent since February, 2015 but provided no evidence to prove the same. It was his testimony that he was a casual labourer and that on 26th August, 2016 in the course of duty, a stuck of wooden billets fell hitting him thereby resulting in injuries for which he seeks compensation. On cross-examination the witness testified that he was employed in February, 2015 but altogether failed to produce any letter of appointment. He did not either adduce any other evidence or invite witnesses who were at work with him on the material day as is pronounced in the authority of **Mutua Muasya vs Meera Constructions Limited (2019) eKLR**.

Overall, the Appellant at all times bore the burden of proof of employment. He was duty bound to satiate this burden and prove that he indeed was the Respondent's employee. This is also mandated by Sections 107 and 108 of the Evidence Act, Chapter 80, Laws of Kenya which require that parties who require a court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exists.

The trial court did not either err in dismissing the Appellants medical letter dated 16th April, 2018. It was the Appellant's testimony that after the injury, he was treated at Agape Hospital the same day in the evening. He claims that the supervisor referred him to first aid but in the same breath further claims that he was given first aid by the supervisor which contradicts his earlier testimony. The witness confirmed that he had not produced the initial treatment notes from

Agape Hospital and again his name does not appear in the accident register produced by the Respondent. The totality of this testimony casts out on the occurrence of the accident and any resultant testimony of the same.

A scrutiny of the proceedings and the judgment of the trial court cements the findings of the trial court. It is clear that the Appellant fell short of proving a case of employment and injury at the work premises, or at all. The judgment of court is eloquent on this and would in any way be faulted.

I am therefore inclined to dismiss the appeal with orders that parties bears their costs of the same.

Delivered, dated and signed this **17th** day of **April** 2026.

D. K. Njagi Marete
JUDGE

Appearances:

1. Mr. Okumu instructed by Agnes & Mathews Law LLP for the Appellant
2. Mr. Ogola instructed by Mukite Musangi & Company Advocates for the Respondent