



**Munywoki v China Road and Bridge Corporation Limited (Appeal  
11 of 2021) [2025] KEELRC 126 (KLR) (23 January 2025) (Judgment)**

Neutral citation: [2025] KEELRC 126 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MACHAKOS  
APPEAL 11 OF 2021  
MA ONYANGO, J  
JANUARY 23, 2025  
(FORMERLY MACHAKOS HIGH COURT CIVIL APPEAL NO. 43 OF 2018)**

**BETWEEN**

**NICHOLAS NZUKI MUNYWOKI ..... APPELLANT**

**AND**

**CHINA ROAD AND BRIDGE CORPORATION LIMITED ..... RESPONDENT**

*(Being an Appeal from the decree and judgment of the C.A. OCHARO, Principal Magistrate  
(PM) delivered on the 17TH day of APRIL, 2018 in CMCC No. 520 of 2015 at Machakos)*

**JUDGMENT**

1. The Appeal herein arises from the decision of Hon. C. A Ocharo, Principal Magistrate in Machakos CMCC No. 520 of 2015 delivered on 17<sup>th</sup> April, 2018. In the plaint dated 20<sup>th</sup> July, 2015, the Appellant herein (Plaintiff in the lower Court suit) sought general and special damages for injuries he allegedly sustained as a result of an industrial accident that allegedly occurred in the course of his employment with the Appellant.
2. The Appellant attributed the accident to negligence, breach of statutory duty and/or carelessness on the part of the Respondent and/or its agents. The Appellant claimed for general damages, special damages and costs of the suit together with interest at court rates.
3. The Respondent filed a defence denying any liability as alleged and attributed the accident (if at all) to negligence on the part of the Appellant.
4. In his judgment delivered on 7<sup>th</sup> September, 2015 the Trial Magistrate dismissed the suit with costs.
5. The Appellant being dissatisfied with the Judgment of the Trial Magistrate filed the instant Appeal vide his Memorandum of Appeal dated 30<sup>th</sup> April, 2018 in which it raised the following grounds THAT:



- i. The learned trial Magistrate erred in law and fact in failing to find the Respondent liable for causing the accident at all;
  - ii. The learned trial Magistrate erred in law and fact by failing to appreciate and consider the evidence adduced by the Appellant;
  - iii. That the learned Magistrate erred in law and in fact in failing to appreciate that the evidence adduced by the Appellant was not challenged and/or or controverted by the Respondent;
  - iv. That the learned Magistrate erred in law and in fact in not giving sufficient consideration to the weight of the evidence by the appellant;
  - v. The learned trial magistrate erred in law and fact in failing to appreciate that the appellant was not to be blamed for the accident;
  - vi. The trial in the lower court to be considered a ministerial and a fresh hearing be ordered.
6. The Appellant prayed that the appeal be allowed with costs; judgment entered in the lower court on liability be set aside and the court finds the Respondent 100% liable.
  7. The Appeal was originally filed in the Civil Division of the High Court at Machakos as High Court Civil Appeal No. 43 of 2018. Directions were made that the appeal be transferred to this court and that the same proceeds by way of written submissions.

### **Appellant's Submissions**

8. The Appellant submits that he filed suit against the Respondent in respect of an industrial accident that occurred on 7<sup>th</sup> May 2015 at the Respondent's premises while he was lawfully conducting his assigned duties. That after hearing the parties the Trial Magistrate dismissed the suit with costs for reasons that the Appellant failed to establish that he was in the employment of the Respondent at the time of the alleged industrial accident.
9. The Appellant sets out two issues for determination being whether the Appellant was injured while in the course of his duties as an employee of the Respondent and what is the reasonable compensation for the injuries he sustained.
10. It is the submission of the Appellant that this court can interfere with the trial court's findings of fact as crystallised in the Court of Appeal decision in *Ephantus Mwangi & Another v Duncun Mwangi Wambugu CA 77 of 1982* where the court stated:
 

“A member of an Appellant court is not bound to accept the findings of fact, if it appears either that (a) he has clearly failed to take account of particular circumstances or probabilities material to an estimate of the evidence, or (b) if the impression based on the demeanour of a witness is inconsistent with the evidence in the case generally.”
11. The Appellant further relied on the decision of Hancock JA in *Mwanasokoni v Kenya Bus Services Limited* where the Judge stated “an appellant court would disturb a finding of fact only when the finding of fact that is challenged on appeal is based on no evidence, or on misapprehension of the evidence or the judge is shown demonstrably to have acted on wrong principles in reaching the finding he did.
12. It is submitted that during the trial the Appellant produced a pay slip for the month of February, 2015 that proved that he was an employee of the Respondent at the time he sustained the injuries that were



the subject of the suit and that the Learned Trial Magistrate erred in holding that the pay slip was not sufficient evidence as it was not the latest one.

13. The Appellant submitted that in the case of Kenya Nut Company Limited v Sarah Nanjala Wambogo the learned judge held that a payslip was sufficient evidence of employment relationship and stated:

The Respondent alleged that she got injured while working for the Appellant. She produced her pay slip as proof of the employment (Exh. No. 4). In spite of it not being current as it is dated January, 2013 the evidence that she was an employee to the Appellant at the material time was not rebutted in court. Therefore, the trial Magistrate did not err when he found that the Respondent was an employee of the Appellant.

14. It was submitted that the Respondent's allegation that the Appellant was not its employee is not founded on facts as it did not tender any evidence to rebut the Appellant's evidence. The Appellant also relied on the decision in *Abednego Ngwabe Were v East African Safaris Air Express Ltd [2020]* where the Judge stated

"...the payslip also corroborates the said employment relationship despite the lack of signature. Consequently, I find that the claimant has proved on a balance of probability that he was an employee of the respondent. On the other hand, I find that the respondent has failed to prove that the claimant was an independent contract as alleged. She did not produce any evidence to prove that the remuneration she was paying the claimant during the said period was not salary..."

15. The Appellant further relied on the decision in *North End Trading Limited (Carrying on the Business Under the Registered Name of Kenya Refuse Handlers Ltd v City Council of Nairobi (2019) EKLK*, in which the learned Judge adopted the decision in *Edward Muriga through Stanley Muriga Vs. Nathaniel D. Schulter Civil Appeal No. 23 of 1997* in which it was held as follows:

"... it was held that where a defendant does not adduce evidence the plaintiff's evidence is to be believed, as allegations by the defence are not evidence."

16. The Appellant further relied on the decision in *Motrex Knitwear Limited Vs. Gopitex Knitwear Mills Limited Nairobi (Milimani) Hccc No.834 of 2002*, Lesiit J. Citing the Case of *Autar Singh Bahra Anor Vs. Raju Govindji, Hccc No. 548 of 1998* appreciated that:

"...Although the defendant has denied liability in an amended defence and counterclaim, no witness was called to give evidence on his behalf. That means that not only does the evidence rendered by the plaintiff's case stand unchallenged but also that the claims made by the defendant in his defence and counterclaim are unsubstantiated. In the circumstance, the counter claim must fail."

17. On quantum the Appellant submitted that according to the medical report of Dr. Mwende K Ndibo the Appellant sustained a deep cut wound on the parietal area and a blunt trauma on the anterior chest. That according to the doctor the Appellant suffered a lot of pain and lost a lot of fluid from the multiple soft tissue injuries which caused moderate harm. That being right handed the Appellant suffered temporary incapacity and was further left with ugly scars on the right hand and foot which are of cosmetic significance.



18. It was submitted that compensation of Kshs. 200,000 would be reasonable in the circumstances. The Appellant relied on the decisions in Samuel Martin Njoroge v Mildred Okweya Barasa [2020] where an award of Kshs. 350,000 was given for soft tissue injuries to the head, shoulder, chest and pelvis.
19. The Appellant further relied on the decision in Elizabeth Wamboi Gichoni v Benard Ouma Owuor [2019] eKLR where an award of Kshs. 175,000 was made for soft tissue injuries to the head and knees.
20. The Respondent did not file submissions on the appeal.

### **Analysis and Determination**

21. This being a first appeal, this Court has a singular duty to re-evaluate the entire case and come up with its own findings in the matter. This is as was set out in the case of *Selle v Assorted Motor Boat Company 1968 EA Company 1968 EA 123-126* where the Court stated as follows:

“Briefly put they are that this Court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular this Court is not bound necessarily to follow the trial. Judge’s findings of fact appear earlier that he has clearly failed on some part to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanor of a witness is inconsistent with the evidence in the case generally.”

22. The award of general damages is discretionary and an appellate Court will only interfere with quantum where the Trial Court arrived at the quantum after taking into account irrelevant factors, or failing to take into account relevant factors or where the quantum is inordinately low or inordinately high as to amount to an erroneous estimate of damages. Refer to the case of *Bashir Ahmed Butt v Uwais Ahmed Khan (1977) 1 KAR* where the Court held as follows:

“An Appellant Court will not disturb an award for damages unless it is inordinately high or low as to represent an entirely erroneous estimate. It must be shown that 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.”

23. The duty of this Court is thus to consider whether the award of the lower Court was inordinately high as to warrant interference by this Court.
24. I have carefully considered the grounds of appeal, the record of appeal and the submissions of the Appellant. The issue arising from the material on the record is whether the Appellant was injured in the course of employment with the Respondent and whether he is entitled to compensation for the injuries.
25. The Appellant testified as PW1. In his testimony before the trial court the Appellant testified that on the material day he was assigned the duty of backfilling a culvert up on a railway line. It was at night. He slid and fell from the railway line to the ground and was injured on the head and chest. He was treated at Athi River Shalom where he was admitted from 7<sup>th</sup> to 9<sup>th</sup> May, 2015.
26. Under cross examination the Appellant stated that he had not produced a paylip for May, 2015. He stated the accident occurred at about 8 pm. That they were using light from a tractor to fill the culverts. That the lighting was not sufficient but he continued working because he was afraid of being fired. That he had no safety gear and knew about the danger involved. That a helmet would have prevented the chest injury



27. In re-examination the Appellant stated that if he had a safety belt he would not have fallen. That if he had gum boots he would have avoided the slip. That the company did not provide any safety gear.
28. The Appellant called Dr. Mwende Ikolia Ndibo who testified as PW2 and produced the medical report she prepared after examining the Appellant. She confirmed the injuries sustained by the Appellant being a deep cut wound parietal area and blunt trauma on the anterior chest.
29. In the judgement the reason for dismissing the Appellant's case was that he did not produce the payslip for the month of April, 2015 as what he produced was the payslip for the month of February, 2015.
30. The Respondent did not call any witness to controvert any of the evidence adduced by the Appellant at the trial and especially that he was an employee of the Respondent at the time of the injury. No evidence was adduced to controvert the Appellant's evidence that he was injured on the material day, that he was taken to hospital or that he suffered the injuries while in the course of employment. No evidence was adduced or contest the medical report produced by the Appellant.
31. I find that there was no basis upon which the trial Magistrate made a finding that the Appellant was not an employee of the Respondent at the time of the injury. The finding that the payslip adduced by the Appellant was not proof of employment in the absence of evidence to controvert the same was in my view a misapprehension of the evidence adduced before the court which led to the trial court arriving at the wrong conclusion and finding.
32. It is my finding that the Appellant proved that he was an employee of the Respondent at the material time through the payslip, that he proved that he was injured in the course of such employment and that he produced a medical report as proof of the extent of his injuries.
33. On quantum, the trial court made a finding that had he found that the Appellant was an employee of the Respondent he would have awarded Kshs. 80,000 and Kshs. 3000 as special damages.
34. The Appellant has prayed for general damages of Kshs. 200,000 relying on the decisions in Samuel Martin Njoroge v Mildred Okweya Barasa [2020] where an award of Kshs. 350,000 was given for soft tissue injuries to the head, shoulder, chest and pelvis and Elizabeth Wamboi Gichoni v Benard Ouma Owuor [2019] eKLR where an award of Kshs. 175,000 was made for soft tissue injuries to the head and knees.
35. It is my view that an award of Kshs. 150,000 is reasonable taking into account the injuries sustained by the Appellant and the authorities cited. I have further taken into account the evidence of PW2 that the Appellant was likely to fully recover.
36. On liability I find the Respondent liable at 100% for causing the Appellant to work at night with no adequate lighting in a dangerous environment and without any safety gear.

### **Conclusion**

37. In conclusion I find that the Trial Court erred in dismissing the Appellant's claim and in assessing the quantum at Kshs. 80,000 as already stated herein above.
38. I accordingly set aside the whole of the judgment of the trial court and enter judgment in favour of the Appellant.
39. I award the Appellant general damages for pain and suffering in the sum of Kshs. 150,000 and special damages of Kshs. 3000.
40. The Appellant shall have costs in both the appeal and in the trial court.



41. The award shall accrue interest from the date of filing appeal.

**DATED, SIGNED AND VIRTUALLY AT ELDORET ON THIS 23<sup>RD</sup> DAY OF JANUARY 2025**

**MAUREEN ONYANGO**

**JUDGE**

