



**Musyimi v Kenya Suitcase Manufacturers Limited (Appeal
E148 of 2024) [2025] KEELRC 784 (KLR) (6 March 2025) (Judgment)**

Neutral citation: [2025] KEELRC 784 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
APPEAL E148 OF 2024
M MBARÚ, J
MARCH 6, 2025**

BETWEEN

STEPHEN PETER MUSYIMI APPELLANT

AND

KENYA SUITCASE MANUFACTURERS LIMITED RESPONDENT

*(Being an appeal from the judgment of Hon. R. N. Akee in
Mombasa CMEELRC Cause No.84 of 2017 delivered on 26 June 2024)*

JUDGMENT

1. The appeal arises from the judgment delivered on 26 June 2024 in Mombasa CMEELRC Cause No.84 of 2017. The appellant is seeking that the appeal be allowed with;
 - a. Reassessment of the general damages;
 - b. An award for damages for future medical care.
 - c. An award for damages for loss of earning capacity.
 - d. An award of costs.
2. The background of the appeal is a claim filed by the appellant on the basis that the respondent employed him as a machine operator. There was a duty of care to work in a safe and secure environment, but on 25 July 2016, while he was at work, a machine jammed and pushed his hand, and he sustained serious injuries. He fractured various parts of his hand and had to seek treatment and incurred special damages of Ksh.5, 900. He further has to secure medical care at Ksh.80, 000 and claimed damages for further medical care. The respondent also acclaimed that he was 23 years old at the time and was earning Ksh.15, 000 per month and has hence suffered loss of earning capacity and claimed damages for loss of future earnings. His claims were for;



1. General damages for loss of earning capacity;
 2. Special damages Ksh.5,900;
 3. Damages for future medical care;
 4. Costs of the suit.
3. In response, the respondent denied the claims and that the accident leading to the injury arose from negligence by the appellant. No statutory duty of care was alleged, and the claims made were unjustified. In his duties, the appellant is solely to blame for substantially contributing to his negligence for failing to take any or adequate precautions for his safety while at work and carrying out his duties without due care and attention.
4. In the judgment of the trial court, the learned magistrate held that on the claims made, the injuries suffered, the following awards were issued;
1. General damages Ksh.600,000;
 2. Special damages Ksh.5.900;
 3. Costs and interests will be determined from the date of instruction.
5. Aggrieved, the appellant filed this appeal, arguing that the general damages should be reassessed and that he should be awarded damages for future medical care and loss of earning capacity.
6. The parties addressed the appeal by way of written submissions.
7. Only the appellant complied and filed submissions dated 25 October 2024 [marked not paid].
8. The appellant submitted that the trial court erred in assessing general damages following injury arising out of work injury to the appellant. He sustained serious injuries with a displaced fracture of the 2nd to 5th metacarpal bone, proximal phalanx of the 3rd figure, and several deep-cut wounds on both sides of the hand and fingers. The injuries were corroborated by the evidence of Dr. Ndegwa who examined the appellant twice and prepared medical reports. As a result of the accident and injuries, the Doctor established a 45% permanent disability, rendering the appellant unable to resume his duties as a machine operator or use the right hand as before. The injuries sustained were severe on multiple bones and soft tissue injuries.
9. The award of Ksh.600, 000 was too low and an erroneous estimate of damages. In view of the severity of the injury and similar case law analyzed, an award of Ksh.2, 500,000, as held in *G.N. Plastics Limited v Stephen Kaleli Ndeto* [2017] eKLR, would be appropriate.
10. The appellant submitted that Doctor Ndegwa's evidence regarding future medical expenses showed that the appellant required Ksh.80 000 per month to undergo occupational rehabilitation on the use of his left hand at Port Ritz Hospital at a cost of Ksh.50 000. The judgment of the trial court was silent on this claim, which should be assessed with an award.
11. Due to injuries suffered, the appellant is unable to work as a machine operator and has lost future earning capacity. This was not addressed in the judgment. In *Gichuki v TM-AM Construction Group* [2003] EA, the court held that the claimant, having been injured to the extent of not continuing employment or being able to find suitable employment, had lost his capacity to earn for the rest of his working life due to the negligence of the employer. Compensation for lost years was awarded.



12. In this case, the appellant, aged 23, cannot secure new employment. The loss of future earnings should be applied with a multiplier of 36 years. In the *Mumias Sugar Limited v Francis Wanalo* [2007] eKLR case, the court held that an employee unable to secure future employment due to injury was entitled to compensation. In *Mombasa High Court 230 of 2009 – Samuel Musinga* was awarded damages. The claim is for Ksh.15, 000 x 12 x 36 x 45% permanent disability = Ksh. 2,196,000.
13. As outlined above, the respondent did not file any written submissions.
14. The appellant's submissions are not paid for, which indicates that this is not a formal record for the court to address. However, the issues in the appeal are noted as set out above.

Determination

15. This being a first appeal, the court must reassess the record, re-evaluate the findings, and make a conclusion. However, consider that the trial court could hear the witnesses give evidence in open court.
16. The case before the trial court related to facts that on 26 July 2016, while the appellant was at work, he suffered injury and fractures to his right hand.
17. The Work Injuries Benefits Act (WIBA) covers work-related injuries. Upon injury at work, an employer is required to report the matter to the Director for investigation, assessment, and compensation award.
18. The WIBA came into force on 20 December 2007. It is meant to offer protection to employees should they get injured or contract disease in the course of their duties. The WIBA replaced what was Workman's Compensation Act Cap 236 by giving it wider provisions and reach, including the office of the Director to address work-related injuries and disease with compensation.
19. However, the provisions of WIBA were challenged before the High Court in *H.C. Petition 185 of 2008 Law Society of Kenya v The Attorney General*, with a suspension of Sections 4, 16, 21 (1), 23(1), 25 (1) (3), 52 (1) (2) and 58(2) of the Act for being inconsistent with the former constitution. These were declared unconstitutional.
20. There was an appeal in *Attorney General v Law Society of Kenya & Central Organization of Trade Unions* [2017] KECA 176 (KLR) and the high court judgment was set aside on 17 November 2017.
21. A petition to the Supreme Court, *Law Society of Kenya v Attorney General & Central Organization of Trade Unions* Petition No.4 of 2019 affirmed the Court of Appeal judgment.
22. The appellant was injured on 25 July 2016 when the high court's judgment declared various provisions of WIBA unconstitutional. His case was heard, and the judgment was delivered on 26 June 2024.
23. It is imperative to note that the appellant's evidence was taken on 2 December 2019, when the judgment of the Court of Appeal delivered on 17 November 2017 was still fresh. The matter was alive and active before the Supreme Court, where the judgment was delivered on December 3, 2019.
24. This being a work-related injury claim, the motions of the WIBA were imperative to address. This became a legal issue for a determination that the parties or the court did not go into. The Court of Appeal, in its judgment cited above, recognized the orders and directions of the High Court and held that;

We agree that claimants in those pending cases have legitimate expectations that upon the passage of the Act, their cases would be concluded under the judicial process they had invoked.



Indeed, as a result of this concern, the learned Judge, in a ruling on an interlocutory application, directed that:

On the foregoing grounds, I will order that pending the hearing and determination of the leading cause, all pending litigation which had been commenced based on either the Workmen's Compensation Act... or the common law or of a combination of both regimes of law, shall continue to be prosecuted and, in a proper case, finalized based on the operative law before the entry into force of the *Work Injury Benefits Act*, 2007...

25. In this regard, the appellant filed his case post-WIBA on 24 January 2017.
He was governed and regulated under the WIBA.
26. His case was heard after the Court of Appeal judgment on 17 November 2017.
27. His judgment by the trial court was delivered on 26 April 2024 in the context of the High Court, Court of Appeal, and Supreme Court judgments. These judgements were bidding on the trial court to apply in its proceedings, particularly the fact that the claim had been filed after WIBA came into force on 20 December 2007.
28. The trial court lacked jurisdiction to hear the claim as the original forum for litigation over work injury-related claims, which, as of 25 July 2016, were regulated under the WIBA. Under the Act, the Director is the repository to investigate, assess, and award compensation. The Office of the Director would have well addressed the claim for compensation for loss of earnings and future medical care under the WIBA.
29. Without jurisdiction, the trial court should have downed its tool as held in *Samuel Kamau Macharia & Another v KCB & 2 Others - Supreme Court Civil Application No. 2 of 2011* and the case of *Muguna v Muhu Holdings Co Ltd [2024] KECA 1465 (KLR)*.
30. The analysis above considered, the appeal has no merit and is dismissed. There is no order on costs.

DELIVERED IN OPEN COURT AT MOMBASA THIS 6TH DAY OF MARCH 2025.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet

..... and

