



REPUBLIC OF KENYA



**Atuga v Siafee Chemicals Limited (Cause 510 of 2018)
[2025] KEELRC 2200 (KLR) (24 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2200 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 510 OF 2018**

**L NDOLO, J
JULY 24, 2025**

BETWEEN

SHADRACK KIPKEMBOI ATUGA CLAIMANT

AND

SIAFEE CHEMICALS LIMITED RESPONDENT

JUDGMENT

Introduction

1. This is a mixed-grill claim of unlawful termination of employment and damages for a work injury, sustained by the Claimant in the course of employment by the Respondent. The claim is documented by a Statement of Claim dated 10th April 2018, and the Defence is dated 14th May 2018. The Claimant filed a Reply to Defence dated 7th August 2018.
2. With respect to the work injury part of the claim the parties recorded the following consent on 2nd April 2025:

“By consent liability is apportioned at 25% (Claimant) and 75% (Respondent). The Claimant to undergo a second medical examination within 30 days. Upon filing of the medical report parties will file final submissions.”

The Claimant’s Case

3. In his Statement of Claim dated 10th April 2018, the Claimant avers that he was employed by the Respondent in the year 2014, as a Machine Operator and Filler Maker, earning a starting monthly salary of Kshs. 10,800.
4. The Claimant states that at the time of employment, he was in good health, without any complication with his eyes. He claims to have been given a job which entailed mixing of highly corrosive and



dangerous chemicals, which required heavy duty protective gear and clothing. He contends that the Respondent failed to supply him with the requisite protective gear and clothing, thereby exposing him to harm, loss and damage.

5. The Claimant pleads that as result of exposure to harmful chemicals, his eyes have been damaged and/ or affected, rendering him unable to see well, causing him to have continuous tears and pain in his eyes, and making him reliant on medication.
6. According to the Claimant, he had complained to the Respondent's director and/or manager, on several occasions, about pain in his eyes and the fact that he could not see well. He avers that the Respondent failed to take action, by providing adequate protective gear until much later when his condition worsened. The Respondent is said to have then acknowledged the problem and sent the Claimant to a clinic for treatment for which the Respondent paid.
7. The Claimant states that the Respondent terminated his employment verbally on 19th December 2017, without any reason or justifiable cause, without notice or payment of accrued salary.
8. The Claimant asserts that he had done nothing wrong to warrant dismissal and claims that he was dismissed because of the injury to his eyes that he had sustained in the course of employment.
9. The Claimant's case is that his dismissal was wrongful and unfair; he points out that no reason was given for the dismissal and he was not availed an opportunity to state his case. The Claimant adds that he was grossly underpaid.
10. Regarding the injury to his eyes, the Claimant states that as a result of being exposed to dangerous and corrosive chemicals, he suffered life-long injury and damage. He cites the following particulars of negligence on the part of the Respondent:
 - a. Failure to supply the Claimant with appropriate protective gear and clothing; e.g. eye wear, helmet, face shields, gloves, protective suiting;
 - b. Failure to enact and put in place safety precautions;
 - c. Lack of training on safety precautions;
 - d. Failure to put in place eye washing equipment;
 - e. Poor working conditions, including inadequate ventilation;
 - f. Lack of safety inspection;
 - g. Failure to put in place a safe working environment;
 - h. Failure to train workers to enable them perform their duties in compliance with safety standards;
 - i. Failure to install quality and well maintained equipment and machinery;
 - j. Lack of procedures to correct dangerous practices;
 - k. Failure to provide workers with regular check-ups in view of the nature of work.
11. The Claimant avers that as a result of the Respondent's negligence, he sustained severe and debilitating injuries, particulars being; burning sensation in the eyes, excessive tearing, pain in the eyes, redness of the eyes, recurrent severe headache, blurred vision and inability to see properly.
12. The Claimant seeks the following remedies:



- a. General damages for wrongful dismissal;
- b. Salary in lieu of notice;
- c. Salary for days worked in December 2017;
- d. General damages for injuries sustained in the course of employment;
- e. Special damages being; Kshs. 25,000 in hospital expenses, Kshs. 15,000 for transport and Kshs. 7,000 for medical report.

The Respondent's Case

13. In its defence dated 14th May 2018, the Respondent denies having employed the Claimant as pleaded in the Statement of Claim.
14. In the same breath however, the Respondent claims to have provided the Claimant with the requisite protective gear. The Respondent states that the Claimant did not report any injury in the course of employment, adding that it became aware of the alleged injury upon service of court summons.
15. The Respondent assigns any injury to the Claimant's sole or contributory negligence or breach of the terms of employment, citing the following particulars against the Claimant:
 - a. Exposing himself to risk of injury and damage, which he knew or ought to have known;
 - b. Failing to take reasonable precautions to avoid exposure to damage and injury;
 - c. Causing the said accident and/or incident;
 - d. Failing to follow instructions properly as instructed by the supervisor;
 - e. Failing to wear protective devices accorded to him;
 - f. Being negligent;
 - g. Failing to report the alleged injury.
16. The Respondent denies dismissing the Claimant and accuses him of absconding duty. The Respondent adds that the Claimant was paid all his accrued dues.
17. The Respondent denies that the Claimant is entitled to general and/or special damages.

Findings and Determination

18. There are three issues for determination in this case:
 - a. Whether the Claimant has proved a case of unlawful termination of employment;
 - b. The impact of occupational disease on the Claimant;
 - c. Whether the Claimant is entitled to the remedies sought.

Unlawful Termination?

19. In denying the Claimant's claim of unlawful termination, the Respondent states that the Claimant himself absconded or deserted duty.



20. Not every unauthorised absence from work translates to desertion of duty. A clear distinction was made in the South African case of *Seabolo v Belgravia Hotel* (1997) 6 BLLR 829 (CCMA) as follows:
- “...desertion is distinguishable from absence without leave, in that the employee who deserts his or her post does so with the intention of not returning, or having left his or her post, subsequently formulates the intention not to return.”
21. An employer alleging that an employee has deserted duty must therefore demonstrate that efforts have been made to reach the deserting employee so as to put them on notice that termination of their employment on account of desertion is being contemplated (see *Stanley Omworo Onchwari v Board of Management Nakuru YMCA Secondary School* [2015] eKLR and *Dickson Matingi v Db Schenker Limited* [2016] eKLR).
22. In its decision in *Felistas Acheba Ikatwa v Charles Peter Otieno* [2018] KEELRC 2491 (KLR) this Court stated as follows:
- “The law is therefore well settled that an employer claiming that an employee has deserted duty must demonstrate efforts made towards getting the employee to resume duty. At the very least, the employer is expected to issue a notice to the deserting employee that termination of employment on the ground of desertion is being considered.”
23. In this case, there was no evidence of any effort made by the Respondent to reach out to the Claimant. The defence that the Claimant himself deserted duty therefore crumbles. The corollary is that the Claimant’s averment that his employment was unlawfully terminated after he fell ill at work, was not controverted. The Claimant is therefore entitled to compensation for unlawful and unfair termination of employment.
24. I therefore award him six (6) months’ salary in compensation. In arriving at this award, I have considered the Claimant’s length of service and the finding that he did not contribute to the termination.
25. I have also taken into account the Respondent’s failure to avail the Claimant an opportunity to be heard, prior to termination.
26. I further award the Claimant one (1) month’s salary in lieu of notice.

Occupational Disease

27. By virtue of the consent on apportionment of liability, recorded before me
- On 2nd April 2025, the issue of liability was settled. I will therefore sidestep this issue and proceed to determine the quantum of damages due to the Claimant, taking account of the agreed apportionment of 25% (Claimant) and 75% (Respondent).
28. A medical report issued by Mr. W.M. Wokabi. MB, ChB. M. MED, Consultant Surgeon on 12th April 2022, gave the following prognosis on the Claimant’s condition:
- “Examination revealed that both eyes are inflamed. His eyes very averse to bright light (photophobic)
- OPINION



From the history that he gave I conclude that he suffered from chemical irritation of both eyes (chemical conjunctivitis).

Exposure led to progressive deterioration of his eyes.

This was definitely an occupational affliction over a long period that affected the eyes to an extent that the damage did not reverse even after exposure ceased.

Permanent disability in each eye at 8% (eight percent).

Total sum of permanent disability is 16% (sixteen percent).”

29. The guiding principles in assessing damages for personal injury were established by the Court of Appeal in *Kigaragari v Aya* [1985] KECA 47 (KLR) as follows:

“In awarding damages for personal injury, the courts should consider that there is need to develop consistency in the awards and that the awards should be within limits of decided cases and avoid the effect of making insurance cover and fees unaffordable to the public.”

30. In his written submissions dated 20th May 2025, the Claimant relied on the decision in *Savannah International Ltd v Ruth Asuko Olusala* [2021] eKLR

where the High Court upheld an award of Kshs. 245,850 in favour of the Respondent, who had suffered injury in the right eye, through an accidental spill of disinfectant. This award was net of 20% contributory negligence assigned to the employee.

31. The Claimant also cited *P.J. Dave Flowers Limited v Ben Wabomba Walubukha* [2018] eKLR where the Employment and Labour Relations Court upheld an award of Kshs. 180,000, in favour of the Respondent who had suffered eye injury leading to localised occasional pain and bilateral photophobia.

32. The Claimant asks the Court to factor in inflation and award him Kshs. 400,000 in general damages. In my view, the circumstances and injuries suffered by the Claimant in this case are similar to those in *P.J. Dave Flowers Limited v Ben Wabomba Walubukha* (*supra*).

33. Taking into account the agreed contributory negligence as against the Claimant and the factor of inflation, I award him Kshs. 200,000 in general damages.

Remedies

34. In addition to the foregoing awards in compensation, notice pay and general damages, I allow the claim for special damages to the tune of Kshs. 9,580 which was supported by receipts filed by the Claimant.

35. The claim for service pay in the sum of Kshs. 35,000 was admitted and is payable.

36. Finally, I enter judgment in favour of the Claimant as follows:

- a. 6 months’ salary in compensation.....Kshs. 105,000
- b. 1 month’s salary in lieu of notice.....17,500
- c. General damages.....200,000
- d. Special damages.....9,580
- Total.....332,080

37. This amount will attract interest at court rates from the date of judgment until payment in full.



38. The Claimant is also entitled to a certificate of service plus costs of the case.

39. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 24TH DAY OF JULY 2025

LINNET NDOLO

JUDGE

Appearance:

Mr. Njeru for the Claimant

Mr. Omwenga for the Respondent

