



**Doshi Enterprises Limited v Angwenyi (Appeal 19 of 2020)  
[2023] KEELRC 1328 (KLR) (25 May 2023) (Judgment)**

Neutral citation: [2023] KEELRC 1328 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
APPEAL 19 OF 2020  
M MBARÚ, J  
MAY 25, 2023**

**BETWEEN**

**DOSHI ENTERPRISES LIMITED ..... APPELLANT**

**AND**

**WALTER OKERO ANGWENYI ..... RESPONDENT**

*(Being an appeal against the judgment of Hon. H. Nyakwemba in Civil Suit No.887 of 2014  
in the Senior Resident Magistrate's Court, Mombasa delivered on 24th November, 2017)*

**JUDGMENT**

1. The appeal was initially filed at the High Court as Mombasa Civil Appeal No.254 of 2017. By consent dated 18<sup>th</sup> September, 2018 and adopted by the court on 18<sup>th</sup> November, 2019 parties agreed to have the appeal transferred to this court for hearing and determination since it related to work injury.
2. Once the court was seized of the matter, it was registered and allocated ELRC Appeal No.19 of 2020.
3. Parties did not move the court for the hearing of the appeal and on 30<sup>th</sup> March 2023 a notice to show cause why the appeal should not be dismissed for want of prosecution issued requiring attendance on 17<sup>th</sup> April, 2023. On the due date, both parties were in court and agreed to address the appeal by way of written submissions and timelines were allocated with a mention date for 15<sup>th</sup> May, 2023. There was no compliance. The court allowed the parties to file written submissions by close of day. There was no compliance.
4. The court is left with the Memorandum of Appeal and the Record of Appeal only.
5. The appeal is that following judgement by the trial court in Mombasa Civil Suit No.1338 of 2017 delivered on 21<sup>st</sup> November, 2017 the appellant was aggrieved by the fact that the court awarded the respondent general damages of Ksh. 650,000 which was excessive and there was failure to take note that Dr. Udayan Sheth's medical report dated 16<sup>th</sup> February, 2015 was adduced in evidence by consent of



the parties and consequently it was not necessary for him to testify or be cross-examined. The award of damages was made without the court giving any reasons but on the basis of 100% liability. The various facts of Dr. Udayan Sheth's report and that of Dr. Ajoni Adede were not addressed and appreciated and the findings on quantum were therefore erroneous and the judgment should be set aside and appropriate orders be issued with costs.

6. As noted above, no written submissions were filed to address the appeal.
7. The background to the appeal is a claim filed by the respondent before the trial court on the grounds that the respondent was employed by the appellant as a general worker and it was an implied term of employment that the appellant had a duty to take all reasonable precautions to ensure the safety of the respondent and not to expose him to risk, danger or injury which they ought to have known and to provide and maintain adequate and suitable working environment to enable the respondent carry out his duties in safety. Due to failure in such legal duty, on 23<sup>rd</sup> March, 2014 while the respondent was working on rollers he got trapped, slipped and fell with his back on top of rollers/appliances causing him serious injuries, loss and damage and for these reasons he claimed general damages for pain and suffering, special damages of Ksh. 2,000 and costs of the suit.
8. In response, the appellant's case was that there was a duty to take all reasonable precautions for the safety of the respondent while at work but it was also his duty to take all reasonable precautions for his own safety while engaged upon such work. The respondent was involved in an accident while at work due to negligence on his part for failing to take adequate precautions for his own safety and the claims made had no merit.
9. In the judgment, the Honourable magistrate made findings that when the matter came for hearing on 27<sup>th</sup> October, 2015 judgment on liability was agreed at the ratio of 25:75% in favour of the respondent/plaintiff and the only matter pending was the quantum of damages. In assessing damages, the trial court looked at the medical report and evidence of Dr. Ajoni Adede and the medical report of Dr. Udayan Sheth produced by consent and found that the respondent had suffered a 2% permanent disability due to compression fractures of the vertebral back bones no. L1 and L2; stiffness of the back; accelerated post fracture wear and tear; and fracture sites remain weak for life.
10. The learned magistrate then considered the submissions by the respondent and case law with a claim for payment of Ksh. 1,000,000 as general damages and considering the evidence, made a finding for general damages at Ksh. 650,000.
11. This being a first appeal the court has the duty to analyse the evidence on record and make own findings.
12. The learned magistrate is faulted for making an excessive award and without any written submissions giving reasons for this assertion, the pleadings and findings well considered, the court find no matter to fault the trial court.
13. On the challenge that the trial court failed to address and consider the medical report of Dr. Udayan Sheth, such matter is taken into account and the fact that the report was produced in evidence by consent and there are no other reasons addressed as to why such findings were in error.
14. The assessment of damages was on a background that liability had been agreed by consent at 25:75% in favour of the respondent herein and on this basis the award of Ksh. 650,000 factored such consent and this is not at 100% as alleged in the Memorandum of Appeal.
15. The totality of the pleadings addressed, the judgment of the learned magistrate delivered on 21<sup>st</sup> November, 2017 cannot be faulted.



16. Accordingly, the appeal is hereby found without merit and is hereby dismissed. Each party to bear own costs.

**DELIVERED IN OPEN COURT AT MOMBASA THIS 25<sup>TH</sup> DAY OF MAY, 2023.**

**M. MBARŪ**

**JUDGE**

**In the presence of:**

Court Assistant: Japhet Muthaine

..... and .....

