



**Luke v Timsales Limited (Employment and Labour Relations Cause  
131 of 2017) [2023] KEELRC 3311 (KLR) (19 December 2023) (Judgment)**

Neutral citation: [2023] KEELRC 3311 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU  
EMPLOYMENT AND LABOUR RELATIONS CAUSE 131 OF 2017  
HS WASILWA, J  
DECEMBER 19, 2023**

**BETWEEN**

**MULAKU CHEKATA LUKE ..... CLAIMANT**

**AND**

**TIMSALES LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The Claimant sued the Respondent vide a plaint, dated 1<sup>st</sup> March, 2017, seeking to be compensated for the injuries sustained at work place.

**Claimant's case**

2. The background of the claim is that the claimant was employed by the Respondent as a labourer. That one of the terms of employment was that the Respondent was to take all reasonable precautions for safety of all its employees while performing the tasked assigned to them. Among the duties the Respondent was to undertake include; not to expose the Claimant to a risk of damage or injury, to provide and maintain a safe and adequate plant to enable the Claimant carry out his work safely, to take all reasonable measures to ensure workplace safety and to provide and maintain a safe and proper system of work.
3. It is stated that on 24<sup>th</sup> October 2016, the Claimant was lawfully carrying out his duties as a laborer, when the Respondent, their agent and/or servant provided him with unsafe, dangerous system of work that he was involved in an accident and Sustained severe injuries.
4. He particularized the injuries are follows; disarticulation of both small, ring and index fingers of the right hand, deep cut wounds to the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> phalanges of the right hand, crush injury to the right hand, cut tendons, Blood loss, physical and psychological pain and Soft tissue injury to the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> fingers.



5. The Claimant avers that the said accident was caused by the negligence and/or breach of the contractual and statutory obligation by the Respondent. He then particularized the negligence as follows; failing to take any adequate precaution for the safety of the Claimant while he was engaged upon the said work, exposing the Claimant to a risk of injury or damage of which they knew or ought to have known, causing or permitting the Claimant to carry out the said work without any adequate safety gear/clothing knowing the same to be dangerous, failing to take any or any adequate measures to ensure that the place where the Claimant carried out his work was safe, failing to provide or maintain a safe and proper system of working or to instruct their workmen including the claimant to follow that system, Causing or permitting the claimant to be exposed to danger that was likely to be injurious to him and Providing faulty equipment to the Claimant to use at work.
6. He stated that out of the said injuries, he incurred expenses being; Physiotherapy Review of Kshs. 1,230, Medical expenses Kshs. 10,800, Medical report of Kshs. 3 000 all adding up to Kshs 15, 030.
7. That despite demanding to be paid the damages incurred, the Respondent refused and or ignored his plea.
8. The claimant, therefore sought for the following reliefs; -
  - a. General damages for pain, suffering and loss of amenities
  - b. Special damages.
  - c. Cost of this suit.
  - d. Interest on (a), (b) and (c) above at court rates.
9. During hearing the claimant testified as CW-1 and adopted his witness statement of 1.3.2017, which reiterated the claim herein and produced the documents filed with the plaint, which were marked as Exhibit 1-11 respectively. He then prayed for the claim to be allowed as prayed.
10. Upon cross examination by Karuhaga Advocate, the claimant testified that the matter before court is an injury at work claim. He stated that work injury claims are usually reported by the employer to the Director of Occupational Safety and Health (DOSHS). He stated that the Respondent invited him to be re-examined by their medical Doctor, Dr. Malik, which he obliged. He stated that he has not yet healed but that he was not using any medication,
11. On re-examination, the claimant told this Court that he did not report the injuries because it was the duty of the employer to report. He reiterated that he has not healed and that he cannot fold his three fingers.

#### **Respondent's case.**

12. The Respondent entered appearance on the 5<sup>th</sup> May, 2017 and filed a defence on even date denying each and every allegation of law and fact contained in the plaint.
13. The Respondent denied ever employing the claimant and therefore that the claimant was not acting in the due course of his employment as alleged or at all, and the alleged accident was precipitated by him.
14. The Respondent stated in the alternative and without prejudice to the foregoing, that if at all the accident occurred as alleged, which is denied, the same was entirely caused by/or substantially contributed to by negligence on the part of the Claimant in carrying out the duties assigned to him.
15. The Respondent particularized the negligence by the claimant to include; failing to have any or due regard for his own safety, failing to keep any or any proper look out, failing to use protective devices



supplied to him by the Respondent therefore exposing himself to the risk of injury, exposing himself to a hazardous situation, volunteering to do the work that had not been assigned to him, failing to keep proper concentration while attending to his duties and failing to adhere to the instructions issued to him by his supervisor.

16. The Respondent maintained that it had taken all the necessary measures to provide a secure and healthy working place and further that there was no breach of any statutory obligations.
17. Before the Respondent's case was heard, the parties commenced negotiations towards settling this matter out of Court and on 31<sup>st</sup> July, 2023, the parties recorded a consent on liability which is to be shared in the ratio of 85:15 in favour of the claimant against the Respondent. The parties further consented to submit on quantum.
18. Based on that consent, both the claimant and the Respondent filed their written submission on 9<sup>th</sup> October, 2023.

### **Claimant's Submissions.**

19. It was submitted for the claimant that during hearing the claimant produced as exhibits the documents as they appear in the Claimant's List of Documents dated 1<sup>st</sup> March 2017, which contain the evidence on the injuries he sustained as particularized in the Pleint and reiterated in the medical documents and reports.
20. He elaborated on the injuries sustained and stated that the injuries include; disarticulation of both small, ring and index fingers of the right hand, deep cut wounds to the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> phalanges of the right hand, crush injury to the right hand, cut tendons, blood loss, physical and psychological pain, soft tissue injury to the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> fingers. He added that these injuries are supported by the discharge summary from St. Josephs Maternity and Nursing Home dated 27<sup>th</sup> October 2016 which captures the date of admission as 24<sup>th</sup> October 2016 and the date of discharge as 27<sup>th</sup> October 2016 and the physiotherapy review from Webuye District Hospital dated 10<sup>th</sup> December 2016 which shows the various dates the Claimant went for review for instance, the 10<sup>th</sup> December 2016, 19<sup>th</sup> December 2016, 22<sup>nd</sup> December 2016 and 29<sup>th</sup> December 2016. He submitted that the injuries sustained and the expenses incurred are not contested by the Respondent as he has not filed any evidence or called any witness to challenge the injuries and expenses incurred.
21. It was submitted further that the claimant testified that he has not healed completely as he has been unable to continue with his work as a mechanic and the Medical Report by Dr. Roger Hannington Kayo dated 10<sup>th</sup> January 2017 confirms the injuries sustained by the Claimant and the fact that he had not healed. He argued that the doctor indicated in the medical report that the Claimant had numbness at the tip of both affected fingers, pains on both affected fingers when cold and could not carry heavy objects. The medical examination revealed that the Claimant could not make a fist with his right hand and had scars on the three affected fingers. Dr. Kayo concluded that the Claimant suffered grievous harm and would need finances to continue with physiotherapy of the right hand. The doctor stated that the injuries made working for gain impossible occasioning the Claimant loss of earning capacity and loss of amenities. He observed further that posttraumatic osteoarthritis was a long term complication following damage of internal joint structures and would require regular orthopedic follow up which would worsen with age.
22. Following the report by the Doctor and the fact that the claimant is a right handed person, it was proposed that a sum of Kshs. 950,000/= as general damages and for loss of amenities would be



adequate, taking into account the fact he is unable to carry out his duties as a mechanic, a job that he earned his daily bread.

23. To support that proposal, the claimant relied in High Court at Nairobi Civil Appeal No. 835 of 2001 *Woodtex (K) Limited v Moses Otiangala Solomon* [2005] eKLR, where the Respondent (Claimant in the lower Court) suffered an amputation of the 1<sup>st</sup> finger on the right hand, laceration of the third and fourth fingers of the right hand, stiffness of the digital interphalangeal and permanent scarring of the digital phalanges. The High Court as the appellate Court declined to disturb an award of Kshs. 290,000/= for the injuries suffered by the Respondent which sum was awarded in the year 2001.
24. He also cited the case of *Francis Ochieng & another v Alice Kajimba* [2015] eKLR, where the appellant was injured on the neck and had cut wounds on the right hand and knee. The Court found that the the injuries sustained by the respondent were multiple soft tissue injuries without any fractures. In considering the inflationary trends, it found that an award of Kshs. 350,000/= was reasonable in the circumstances as at that time.
25. He further relied on the case of *Tarmal Wire Products Ltd v Ramadhan Fondo Ndegwa* [2014] eKLR, where the Respondent therein had been awarded Kshs. 500,000/= as general damages for pain and suffering in a judgment delivered in 2010 and the High court upheld the damages in its decision rendered in 2014.
26. On the prayer for loss of amenities, the claimant cited the case of *Mwaura Muiruri v Suera Flowers and Another* [2014] eKLR, where the Learned Judge expressed the view that:

“Damages for loss of amenities are therefore awarded when the ability to the Plaintiff to enjoy certain aspects of his life as a result of the accident are diminished. Essentially the quality of life of plaintiff is reduced due to the inability to do things he would otherwise have done had it not been or the injured...In addition to damages for the subjective pain and suffering sustained by a plaintiff by reason of his injuries, damages are awarded for the objective losses thereby sustained by him. These may include loss of the ability to walk or see, the loss of a limb or its use the loss of congenial employment, the loss of pride and pleasure in one’s work, loss of marriage prospect and loss of sexual function. Damages under this head are awarded whether the plaintiff is aware of it or not: damages are awarded for the fact of deprivation rather than the awareness of it.”
27. Based on the above case law, the claimant submitted that damages ought to be awarded for both pain and suffering and for loss of amenities separately, which justifies the amount of Kshs 950,000 sought, more so factoring in the inflation rate of the Kenya currency as held in the case of *PN Mashru Limited v Omar Mwakoro Makenge* [2018] eKLR where the Court stated that;

“Courts have a responsibility to keep themselves apprised of recent authorities. This is not to say that reliance on old authorities is acting on the wrong principle. However, courts are also required to take into consideration inflation which has taken a toll on the value of the Kenyan shilling.”
28. On special damages the claimant submitted that special damages were pleaded in the Plaint and receipts in support of the same produced by the Claimant as particularized below; Physiotherapy Review Kshs 1,230, Medical expenses Kshs. 10,800 and Medical Report Kshs 3,000 all adding up to Kshs. 15,030. He therefore urged this Court to allow the claim for special damages as prayed.



## Respondent's Submissions.

29. The Respondent on the other hand submitted that the parties in this matter recorded a consent on liability at 85:15 in favour of the Claimant as against the Respondent herein on 31<sup>st</sup> July, 2023 and therefore the only issue pending for determination before this court is the quantum of damages payable.
30. On quantum, the Respondent argued that a medical report by Dr. Roger Hannington Kayo dated 10.01.2017 indicated that the Claimant sustained the following injuries: crush Injury right hand, disarticulation of both the small ring and index fingers on the right hand and cut tendons, blood loss and soft tissue injuries. Dr. Kayo further described the injuries that the Claimant suffered as soft tissue injuries of moderate severity that would take a short time to heal. Further that St. Joseph Maternity and Nursing Home found that the claimant cannot make a fist with his right hand and he had scars that affected his three fingers.
31. Dr. M.S. Malik, on the other hand prepared a 2<sup>nd</sup> Medical report dated 19.03.2018 which indicated that the Claimant sustained the following injuries; multiple cuts and abrasions on the right middle, ring and little fingers. Dr. Malik, further states that the Claimant 's wounds healed without any complications and notes that his vital signs are normal.
32. Based on these medical reports, the Respondent submitted that it is evident that the injuries sustained by the Claimant are soft tissue injuries that have healed as stated by Dr. Malik even though Dr. Roger Hannington Kayo states that the Claimant requires to continue with physiotherapy of the right hand and currently needs assistance in carrying out his duties.
33. It was argued that considering the nature of the injuries and the recovery taken, the damages that can be awarded is Kshs. 350,000. To support these damages, they relied on the case of *Duncan Mwendu & 2 others vs Silas Kinyua Kithela* [2018] eKLR where an award of Kshs. 350,000/= was made for the Claimant who sustained severe head injury with intracerebral haemotoma, damage to the extensor tendon of the left middle finger and soft tissue injuries on the chest wall.
34. They also cited the case of *Francis Ochieng & Another vs Alice Kajimba* [2015] eKLR, where the Appellant was injured on the neck, cut wounds on the right and the head. The Court found that the injuries that were sustained by the Respondent were multiple soft tissue injuries without any fractures. The court awarded Kshs. 350,000/ = under this head.
35. With regard to special damages, the Respondents submitted that special damages are subject to what is pleaded and the documentary proof thereof. On that note, he stated that the claimant has sought a sum of Kshs. 15,030/= in the pleadings but has proved Kshs 13,800 in the receipts produced before this Court, as such special damages to be awarded is Kshs 13,800.
36. In conclusion, the Respondent submitted that general damages of Kshs 350,000 plus special damages of Kshs 13,800 add upto Kshs 363,800 less contributory negligence of 15%, equal to Kshs 309,230, which the Respondent urged this Court to award to the claimant.
37. I have considered the submissions of the parties herein following a consent to apportion liabilities at 85:15 against the respondent.
38. I have also considered the authorities cited by the parties and the medical reports indicating that the claimant suffered soft tissue injuries but would require some physiotherapy treatment.
39. In this regard considering the injuries suffered, I find an award of kshs.500,000/= reasonable for the said injuries.



40. In view of the consent then, the award of general damages in favour of the claimant leaves the portion of kshs.425,000/=.
41. In terms of special damages, I award as pleaded and proved kshs.13,800/=.
42. The respondent will pay costs of this suit plus interest at court rates with effect from the date of this Judgment.

**DATED AND DELIVERED IN OPEN COURT THIS 19<sup>TH</sup> DAY OF DECEMBER, 2023.**

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

In the presence of:-

Amimo for Claimant – present

Karuhaga for Respondent – present

