



REPUBLIC OF KENYA



KENYA LAW
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**Msula v Pwani Logistics Kenya Limited & another (Cause 175 of 2011)
[2022] KEELRC 13538 (KLR) (15 December 2022) (Judgment)**

Neutral citation: [2022] KEELRC 13538 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 175 OF 2011
B ONGAYA, J
DECEMBER 15, 2022**

BETWEEN

PETER ADINO MSULA CLAIMANT

AND

PWANI LOGISTICS KENYA LIMITED 1ST RESPONDENT

GA INSURANCE LIMITED 2ND RESPONDENT

JUDGMENT

1. The claimant filed the memorandum of claim on October 17, 2011 through Karanja Kiarie & Company Advocates. He filed an amended memorandum of claim on April 14, 2019. He claimed enforcement of compensation awarded to him under the *Work Injury Benefits Act*, 2007. The claimant prayed for judgment against the respondent for:
 - a. Payment of the outstanding hospital bill by the respondents.
 - b. Compensation of Kshs 2,088,000.00 awarded by the Director of Occupational Safety and Health Services under the *Work Injury Benefits Act*, 2007 (WIBA).
 - c. Compensation in form of general damages.
2. Despite service the 1st respondent did not enter appearance, file a response or attend court.
3. The 2nd respondent filed on August 28, 2019 a reply to the amended memorandum of claim through Iseme Kamau & Maema Advocates.
4. The claimant has pleaded as follows. He was employed by the 1st respondent as a driver in March 2011 at a salary of Kshs 20, 000.00. The 2nd respondent issued an insurance cover in favour of the 1st respondent's employees pursuant to provisions of *WIBA*. On June 30, 2011 the claimant was on duty allocated to drive motor vehicle No KBN 617X when motor vehicle No RAA 292P and trailer No



RL 265M lost control and collided with the vehicle the claimant was driving. The claimant thereby sustained serious bodily injuries. He was treated at Mulango Hospital Complex, Uganda and the 1st respondent paid the hospital bills in the sum of Kshs 1, 393,000.00. On July 15, 2011 he was transferred and admitted at the AIC Kijabe Hospital for further surgery and treatment. The medical bill was Kshs 220,684.54 plus Kshs 1, 200.00 for every extra night till payment was made in full and being a sum of Kshs 279, 410.00 not paid but secured by title deed for LR No East Alego/Ulafu/343 deposited with the hospital. A demand letter dated September 26, 2011 issued. An assessment under WIBA was awarded at Kshs 2,088,000.00 for the injuries suffered. The respondents were served with the award but failed to satisfy it.

5. The 2nd respondent denied the claim and pleaded that it was a stranger to the alleged accident and injuries. It pleaded that it was ever notified about the same and it became aware of the claim after the court papers were served upon it. Further, even if the award was made for the claimant as pleaded, it did not have an obligation to satisfy it as there was not privity to a contract with the claimant. The alleged demand letter was not served and the suit be dismissed with costs.
6. The claimant testified to support his case and final submissions were filed through Gulenywa Jonathan & Company Advocates. The court has considered the claimant's testimony. By the AIC Kijabe Hospital patient credit agreement dated November 10, 2011 the claimant has shown that the outstanding medical bill was Kshs 279,410.00 secured by land title No East Alego/Ulafu/343. On a balance of probability that amount is payable by the 1st respondent. The claimant has also shown that by the exhibits on record the assessment awarded under WIBA in compensation and not paid was Kshs 2,088,000.00 and the claimant is entitled accordingly.
7. On December 6, 2022 counsel for the claimant and 2nd respondent submitted in agreement that liability rests with the 1st respondent and the court returns accordingly. The claimant has succeeded in his claim and the 1st respondent will pay costs of the suit.
8. In conclusion judgment is hereby entered for the claimant against the 1st respondent for:
 1. An order that the compensation awarded by the director under WIBA for Kshs 2,088,000.00 be enforced as a decree of the court and to be paid by February 1, 2023 failing interest to be payable thereon at court rates till full payment.
 2. The 1st respondent to pay the claimant's hospital bill at AIC Kijabe Hospital being Kshs 279,410.00 as unpaid hospital expenses.
 3. The 1st respondent to pay the claimant's costs of the suit.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS THURSDAY 15TH DECEMBER, 2022.

BYRAM ONGAYA

PRINCIPAL JUDGE

