



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO.658 OF 2016

MARGARET WANJIRU IRAKI (suing as the Administratrix

of the Estate of CHARLES KARIUKI MWANGI (DECEASED)..... CLAIMANT

VERSUS

KUDHEIHA WORKERS UNIONRESPONDENT

JUDGEMENT

Issue in dispute – the payment of terminal benefit due to the dependants of the deceased.

The claimant is the administratrix of the Estate of the late Charles Kariuki Mwangi (the Deceased).

On 21st April, 2013 the deceased while in the course of his employment was involved in a fatal accident at Maji ya Chumvi in Mariakani Mombasa while travelling in the respondent's vehicle. He was the employee of the respondent for 19 years as assistant secretary general and on a basic wage of Ksh.36, 000 per month.

The respondent failed to pay the benefits due to the deceased and which have been assessed by the Minister at Ksh.3, 456,000.

The claim is for the payment of the payment of ksh.3, 456,000 with costs and interest.

The defence comprise of mere denials save that the suit should be struck out with costs.

Parties attended on 26th November, 2020 and directed to address the matter by way of written submissions.

Only the claimant complied.

The claimant submitted that the deceased was an employee of the respondent but on 21st April, 2016 got involved in a fatal road accident in Mombasa. The dispute was reported to the Minister and under the Work Injuries Benefits Act (WIBA) compensation was assessed at Ksh.3, 456,000 and of which the respondent has paid several instalments of Ksh.1, 575,000 and there is a balance of Ksh.1, 881,000. The respondent has since failed to pay the balance due.

The claimant also submitted that under section 36(1) (a) of WIBA compensation is payable for reasons deemed by the director to be due to an employee or the dependant of an employee or a person on his behalf. The payment in instalments is allowed as held in the case of **Lavington Security Limited versus Nairobi City Water & Sewerage Co. Limited [2014] eKLR; Commercial Bank of Africa Limited versus David Njau Nduati [2015] eKLR** and the respondent should be ordered to pay the outstanding balance.

Determination

The claim herein is premised under the provisions of WIBA following a fatal work injury to the deceased on 21st April, 2013.

The Director, Occupational Health and Safety assessed the work injury and made an award of Ksh.3,456,000 and which the respondent has paid several instalments with a balance of Ksh.1,881,000 being unpaid.

The Directorate of Occupational Safety and Health Services (DOSHS) having made the work injury assessment under Occupational Safety and Health Act, 2007 under WIBA, there is no enforcement mechanism and this being the court with mandate to address employment and labour relations claims and for connected purposes, the practice has been to file such claims under the provisions of section 89 of the Act as

the Work Injury Benefits Act, 2007 read with the Occupational Safety and Health Act, 2007 do not outline the enforcement mechanism and procedures save to address work place injury assessment and award by the Director. See **Richard Arama Nyambane versus ICG Maltauro Spa, Cause No.4 of 2020 (Nakuru)**.

On the total claim of Ksh.3, 456,000 the claimant has admitted receipt of Ksh.1, 575,000 and a balance of Ksh.1, 881,000 is unpaid.

Accordingly, judgement is hereby entered for the claimant against the respondent for the sum of ksh.1, 881,000. Each party shall bear own costs.

Delivered in open court at Nairobi this 18th day of February, 2021.

M. MBARU

JUDGE

In the presence of:

Court Assistant: Okodoi

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