



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**CAUSE NO. 458 OF 2019**

**(Formerly Nairobi High Court Civil Case No. 1726 of 1999)**

**(Originally Nairobi Chief Magistrates Court Civil Case No. 234 of 1997)**

**PETER MAINA GACHIGI.....CLAIMANT**

**v**

**CHINGA TEA FACTORY LTD.....RESPONDENT**

**JUDGMENT**

1. Peter Maina Gachigi (Claimant) sued Chinga Tea Factory Ltd (Respondent) before the Chief Magistrates Court in 1997 alleging breach of statutory duty/negligence in the workplace leading to injuries.
2. On 9 July 1999, the High Court ordered that the suit be transferred to it from the Chief Magistrates Court for hearing and determination.
3. The High Court heard the suit and in a judgment delivered on 23 July 2002, ordered the suit dismissed.
4. The Claimant sought a review of the dismissal order, and in a Ruling rendered on 22 May 2003, the application was dismissed.
5. The Claimant appealed to the Court of Appeal and the Court ordered a fresh hearing.
6. On 7 May 2019, the High Court directed that the suit be transferred to this Court.
7. When the parties appeared before this Court on 9 October 2019, they proposed that the Cause be determined on the basis of the record and submissions to be filed.
8. The Claimant filed his submissions on 8 November 2019 while the Respondent filed its submissions on 26 November 2019.
9. The Court has considered the pleadings, documents filed and the submissions.

**Liability**

10. The Respondent did not contest that the Claimant was injured in the workplace on 30 June 1993.
11. The Respondent also did not dispute that the Claimant was entitled to special damages of Kshs 7,000/-. It was also not disputed that the Claimant was paid compensation of Kshs 35,419/- under the Workmen Compensation Act.
12. Nevertheless, the Respondent denied liability in its Response but it did not present any witness before the High Court or file any witness statement before this Court to show an intention to call any witness to place liability on the shoulders of the Claimant.
13. The Respondent also failed to make any submissions in regard to liability.
14. The Court, in the circumstances, finds that the question of liability is not up for determination.

**Quantum**

15. The Claimant filed a witness statement and 4 medical reports.
16. The first medical report dated 15 November 1994 indicated that the Claimant sustained a crush injury to the right hand and that he had a deformity of the right hand (bonny swelling of the 3<sup>rd</sup> to 5<sup>th</sup> fingers though healed). The doctor assessed the degree of disablement at 30% (the doctor discounted an assessment of 60% proposed as too high).
17. The second medical report was dated 1 March 1999 and it indicated that the Claimant sustained a fracture of the proximal phalanges of the middle, ring and little fingers of the right hand and a compound fracture dislocation at the base of the 3<sup>rd</sup> to 5<sup>th</sup> metacarpal bones of the right hand.
18. The doctor assessed a permanent incapacity of 60% for purposes of the Workmen Compensation Act.
19. The third medical report was issued on 16 October 1999 and it was a reassessment. It confirmed that the Claimant had a deformity of the right hand. The doctor opined that the 60% disability was high and could only be viable if the Claimant had completely lost the right hand at the wrist joint.
20. The last medical report dated 13 June 2017 considered the first three reports and assessed disability at 50%.
21. In terms of general damages, the Claimant relying on *Benard Mutisya Wambua v Swaleh Hashii* (2017) eKLR and *Grace Beldina Adhiambo v Bowers Okelo & Ar* (2017) eKLR urged the Court to award Kshs 2,500,000/-.
22. In the *Wambua* case, the Plaintiff had sustained fractures to the right-hand side collar bone, right-hand metacarpals, complete paralysis of the right limb, dislocation of the right shoulder among other injuries while in the *Beldina* case, the Plaintiff had the left arm amputated.
23. It is clear that the decisions cited by the Claimant addressed much more severe injuries, and thus not comparable to the injuries he sustained.
24. The Court also notes that the decisions were made some 24 years after he sustained his injuries.
25. The Respondent urged the Court to rely on the third medical report and conclude that disability of 30% was more factual, and also to consider *Africa Apparel EPZ Ltd v Rhoda Nyambura Weru* (2017) eKLR where general damages of Kshs 220,000/- was made for a crush injury to the distal phalanx of the right index finger, and *Crystal Industries Ltd v Sevvas Mutunga Kilonza* (2015) eKLR where the Court awarded Kshs 400,000/- for a crush injury resulting in multi fracture, loss of middle finger and fixed deformity of the right index finger.
26. The Respondent urged the Court to award general damages of Kshs 400,000/-.
27. The decisions cited by the Respondent had near similar injuries to the ones sustained by the Claimant.
28. But, again, they were delivered over 20 years after the Claimant's injuries.
29. Considering the authorities cited by the Respondent, factoring inflation and considering that the Respondent had proposed general damages of Kshs 400,000/- (which the Court finds high in light of the cited comparable case law), the Court would assess and award general damages of Kshs 400,000/-.

#### **Lost income**

30. The Claimant sought in the submissions, the sum of Kshs 1,800,000/- on account of lost income/lost or diminished earning capacity.
31. In the view of the Court, evidence should have been led in support of this head of the claim, and because the parties opted to go the way of record and submissions without leading evidence, relief is declined.

#### **Conclusion and Orders**

32. From the foregoing, the Court enters judgment for the Claimant as follows

(a) Special damages	Kshs 7,000/-
(b) General damages	Kshs 400,000/-
<b>TOTAL</b>	<b>Kshs 407,000/-</b>

33. The other reliefs are declined.
34. Since no evidence was led, Court directs that each party bears own costs.

**Delivered, dated and signed in Nairobi on this 14<sup>th</sup> day of February 2020.**

**Radido Stephen**

**Judge**

**Appearances**

For Claimant Ameka & Co. Advocates

For Respondent Riunga Raiji & Co. Advocates

Court Assistant Lindsey