



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NO. 1445 OF 2015**

**QUINTO WABWIRE OSWARO.....CLAIMANT**

**V**

**METAL CANS & ENCLOSURES LTD....RESPONDENT**

**JUDGMENT**

1. This Cause was heard on 30 January 2020 when Quinto Wabwire Oswaro (Claimant) testified and called another witness before he closed his case. Metal Cans & Enclosures Ltd (Respondent) opted not to call any witness.
2. Although the Court gave the parties time to attempt out of court settlement, no resolution was reached.
3. The Claimant filed his submissions on 6 May 2020 (should have been filed/served before 20 March 2020) while the Respondent's submissions were not on record by this morning.
4. The Court has considered the pleadings, evidence and submissions.
5. The Claimant was employed by the Respondent as a machine operator. He got injured in the workplace on 18 March 2015. He attributed negligence to the Respondent.
6. According to the Claimant, the Respondent failed to put in place a safe and healthy work environment, failed to service the compressor machine he was operating, failing to ensure adequate lighting and failure to provide protective equipment.
7. The Claimant called a doctor to testify as to the injuries he sustained. The doctor produced a medical report showing that the Claimant sustained injuries leading to amputations of the right index finger, middle finger, ring finger and little finger at the proximal phalanges.
8. The doctor assessed permanent incapacity at 40%.
9. The Respondent did not present any contrary evidence and therefore the question of liability is moot.
10. However, there has been a ringing legal question on jurisdiction over injuries sustained in the workplace and subject to Work Injury Benefits Act.
11. The Supreme Court dealt with the questions in *Law Society of Kenya v Attorney General & Ar* (2019) eKLR and invoked the principle of *legitimate expectation* in guiding on how pending disputes should be dealt with.
12. The assessment of compensation under the Work Injury Benefits Act is founded upon certain criteria which the Director of Occupational Safety and Health Services rather than the Courts is an expert in.
13. In the circumstances, the Court will send the parties to the Director of Occupational Safety and Health Services for purposes of assessment of compensation based on the medical reports which were presented in Court.
14. The Claimant further produced receipts for medical costs/expenses worth Kshs 7,000/-.
15. The Court will allow the same.

## **Conclusion and Orders**

16. From the foregoing, the Court orders

- (a) The Director of Occupational Safety and Health Services to assess the compensation payable to the Claimant and cause a report to be filed with the Court within 45 days.
- (b) The Respondent to cooperate with the Director of Occupational Safety and Health Services.
- (c) Mention date to be scheduled for further directions.

**Delivered through video/email, dated and signed in Nairobi on this 22<sup>nd</sup> day of May 2020.**

**Radido Stephen**

**Judge**

**Appearances**

For Claimant Mr. Nyabena instructed by Nyabena Alfred & Co. Advocates

For Respondent Ms. Munyao instructed by Ngaywa Ngigi & Kibet Advocates

Court Assistant Judy Maina