



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**  
**CAUSE NO. 962 OF 2018**

**(Originally Nairobi Chief Magistrate's Court Civil Case No. 27 of 2008)**

**PETER M. LUBANGA**

**CLAIMANT**

v

**DAYALAL BHANTI & SONS LTD**

**RESPONDENT**

**JUDGMENT**

1. Peter M. Lubanga (Claimant) was employed by Dayalal Bhanti & Sons Ltd (Respondent) as a driver.
2. On 9 January 2008, the Claimant instituted legal proceedings against the Respondent seeking Kshs 273,420/-, said to be wages for 31 months when the Claimant was hospitalised/on sick leave.
3. In a *Response* filed on 7 March 2008, the Respondent denied being liable to the Claimant.
4. Pursuant to an order of this Court given on 9 May 2018, the Cause was transferred from the subordinate Court to this Court for hearing and determination.
5. The Cause was heard on 19 February 2019 when the Claimant testified and closed his case. The Respondent opted not to lead any evidence.
6. The Claimant filed his submissions on 8 March 2019 while the Respondent filed its submissions on 25 March 2019.
7. The Court has considered all the material placed before.

**Wages during absence/ill health**

8. In terms of section 6(1)(c) of the Employment Act, cap. 226 (now repealed), an employer was authorised to deduct wages for any period(s) that an employee was absent without lawful cause or permission.
9. Although testifying that he was away because of injuries sustained as a result of a road accident which occurred in the course of employment on 30 August 2008, the Claimant did not produce any medical certificate to show that he was admitted in hospital or was granted sick leave.
10. Without that evidence, the Court finds that the Claimant failed to prove his case to the required standard.

**Compensation under Workmen Compensation Act**

11. The Court notes that the Claimant admitted that he instituted legal proceedings under the Workmen Compensation Act (now repealed).
12. The Act comprehensively dealt with the type of cause of action the Claimant is now attempting to advance under the common law, and the then law of general application, the Employment Act, cap. 226 (now repealed).
13. The Act provided for compensation or damages due to an employee rendered incapable of work, and the Claimant was compensated. The Claimant cannot now claim compensation on the same ground.
14. The Court finds no merit in the Cause herein and orders it dismissed with costs to the Respondent.

**Delivered, dated and signed in Nairobi on this 29<sup>th</sup> day of March 2019.**

**Radido Stephen**

**Judge**

**Appearances**

For Claimant Mr. Omondi instructed by Nzavi & Co. Advocates

For Respondent Mr. Muli instructed by Munyalo Muli & Co. Advocates

Court Assistant Lindsey