

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT NYERI

CAUSE NO. 86 OF 2017

JOHN WAITITU MACHARIA.....CLAIMANT

VERSUS

BOARD OF TRUSTEES ARCHDIOCESE OF NYERI...RESPONDENT

JUDGMENT

1. The Claimant herein was injured at work and after the accident was reported to the Director Occupational Safety and Health, the Director assessed the injury at Kshs. 396,000/- on 24th September 2013. The Claimant avers that the Respondent failed and/or refused to make good the payment. He thus seeks for a judgment for the payment of the sum of Kshs. 396,000/-, costs of the suit and interest.

2. The Respondent in its defence denied the Claimant's claim and averred that the injury was caused largely or solely by the Claimant on account of his carelessness. The Respondent averred that the Claimant was therefore not entitled to the award and put him to strict proof on the averments that he was entitled to the amount and heaped the blame on him for causing the accident.

3. The Claimant was the only one who participated in the hearing as the Respondent failed to turn up on the date set for hearing. He adopted his statement and asserted that the amount that was assessed by the Directorate of Occupational Safety and Health Services was unpaid despite the Respondent being notified of the sum due. He produced the LD 104 Form as well as the DOSH/WIBA 4 addressed to the Respondent which is the demand for payment issued by the Directorate of Occupational Safety and Health Services.

4. The Claimant was entitled to receive payment the moment the matter was dealt with by the Director and assessed. If the Respondent was unwilling to pay for whatever legitimate reason, an appeal against the decision of the Director should have been preferred at first instance to the Director in terms of Section of the Occupational Safety and Health Act. Having failed to appeal the decision then it was only meet and just for the Respondent to pay the Claimant the assessed sum. In my view, the Claimant's claim is merited as the Respondent failed to meet its obligations under the Work Injury Benefits Act. The Claimant is therefore entitled to a judgment against the Respondent for:-

i. Kshs. 396,000/-

ii. Costs of the suit

iii. Interest on the sum of Kshs. 396,000/- at court rates from 29th September 2013 till payment in full.

It is so ordered.

Dated and delivered at Nyeri this 23rd day of July 2019

Nzioki wa Makau

JUDGE

I certify that this is a true copy of the Original

Deputy Registrar