



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

CAUSE NO. 237 OF 2013

(Before Hon. Lady Justice Maureen Onyango)

ALLOYCE OBUNGA AMAM.....CLAIMANT

VERSUS

ABYSSINIA IRON AND STEEL LIMITED.....RESPONDENT

JUDGMENT

By statement of claim dated 16th August and filed on 20th August 2013, the claimant avers that he sustained injury while working as a casual employee for the respondent a limited company registered in Kenya operating a steel mill along Kibos Road, Kisumu City when a metal rod pierced his right forearm occasioning severe injury and bleeding. He avers that the injury was occasioned due to the negligence of the respondent and breach of his employment contract. He has listed the particulars of negligence as follows—

- a) Failing to take adequate precautions for the safety of the claimant while he was engaged upon the said work
- b) Exposing the claimant to a risk of injury or damage of which they knew or ought to have known.
- c) Causing or permitting the claimant to carry out the said work without any or any adequate safety gear knowing the same to be dangerous.
- d) Failing to take any or adequate measures to ensure that the place where the claimant carried out his work was safe.
- e) Failing to provide or maintain a safe and proper system of working or to instruct their workmen including the claimant to follow that system.
- f) Causing or permitting the claimant to be exposed to danger that was likely to be injurious to him.
- g) Allowing the claimant to work with defective machines.

He prays for the following reliefs –

- a) General Damages.
- b) Special damages.
- c) Interest on (a) and (b) at court rates.
- d) Such further relief as the court may deem fit.

The respondent filed a defence denying the averments of the claimant and states that if any injury occurred it was due to the negligence of the claimant.

At the hearing of the case, the claimant testified that he was employed by the respondent as a cooling bed attendant. He stated that there were two claimants through which hot metal was produced. His work was to arrange the hot metal on a cooling belt. He worked with 6 (six)

colleagues. He testified that on 16th August 2012 a piece of metal was produced that was longer than the normal length. It flew and landed on his right hand causing him injury. He was taken to Jaramogi Oginga Odinga Referral Hospital after being given first aid at work. He produced a cash receipt for the Hospital dated 28th August 2012, a patient attendance card, a prescription and receipt from Ramogi Chemists. The prescription and receipt are also dated 28th August 2012. The claimant testified that he still feels a burning sensation on the site of injury when it is hot. At the time of giving evidence, the claimant was working at Steel Force Kenya Limited in Nairobi.

For the respondent Onesmus Mwinzi, the Human Resource Manager testified that he knew the claimant who was employed by the respondent as a cooling belt attendant. He denied receiving any report of injury on 17th August 2012. He further denied that the respondent failed to provide safety gear to the claimant. He testified that at the cooling belt workers use metal tongs to hold the metal bars and are provided with hand gloves to hold the metal tongs. He further testified that the claimant was issued with overalls.

He denied that the claimant was given sick off of 7 days and was laid off upon reporting for work. He stated that the respondent has a vehicle that takes injured employees to hospital and sick leave given until the employee recovers.

Determination

The issues for determination are whether there was any injury to the claimant that arose while he was in the course of employment on 17th August 2012, whether the injury was caused by the negligence of the respondent and if the claimant is entitled to the remedies sought in the claim.

The claimant did not produce any treatment records to show that he was injured and treated at Jaramogi Oginga Odinga Referral Hospital on 17th August 2012 as alleged. He did not produce a medical report to show that he has any injuries or permanent incapacity arising from injuries sustained on 17th August 2012. The Hospital attendance card, receipts and prescription are all dated 8th August 2012 and not 17th August 2012 when he alleges that he was injured.

I find no evidence of injury to the claimant on 17th August 2012 attributable to negligence of the respondent or at all with the result that the claim is dismissed. There shall be no orders for costs.

DATED AND SIGNED AT NAIROBI ON THIS 8TH DAY OF OCTOBER 2018

MAUREEN ONYANGO

JUDGE

DATED AND DELIVERED AT KISUMU ON THIS 25TH DAY OF OCTOBER 2018

MATHEWS NDERI NDUMA

JUDGE