



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO 310 OF 2014

JOSEPHAT NYAKERIGA ASIAGO.....CLAIMANT

VS

GUARDEX SECURITY SERVICES LIMITED.....RESPONDENT

JUDGMENT

Introduction

1. By a Memorandum of Claim dated 3rd March 2014 and filed in court on even date, the Claimant sought payment of medical bills and salary arrears. The Respondent's defence is dated 14th March 2014.
2. Upon taking evidence from the parties, the Court took note that the Claimant's claim carried a work injury component and therefore referred the Claimant to the Director for Occupational Safety and Health for assessment. In its judgment delivered on 20th December 2016, the Court withheld its ruling on the other heads of the claim pending receipt of the report by the Director.
3. On 17th October 2017, the Claimant filed an incomplete DOSH 1 form in court. From this form, it would appear that the Claimant did not present himself to the Director for Occupational Safety and Health because Part III of the form, which was to be filled by an Occupational Safety and Health Officer, is blank.

Findings and Determination

4. By his conduct, the Claimant failed to present himself to the Director for Occupational Safety and Health for assessment as directed by the Court. Instead, the Claimant went ahead to file extensive submissions by which he sought to justify a work injury claim under the Work Injury Benefits Act. Yet, in his Memorandum of Claim dated 3rd March 2014, the Claimant only sought payment of medical bills and salary arrears. He made no claim for general damages.
5. In this judgment, the Court will only consider the two prayers pleaded in the Memorandum of Claim.
6. In its written submissions, the Respondent states that the Claimant had worked for only three (3) weeks and is therefore not entitled to the benefits of an employee, including medical benefits. In this regard, the Respondent relies on the case of *Carole Nyambura Thiga v Oxfam [2013]eKLR* on the rights of an employee serving probation.
7. The Respondent further states that there was no causal link between the accident and any negligence on its part. On this, the Respondent relies on the decisions in *Statpack Industries v James Mbithi Munyao [2005] eKLR* and *South Nyanza Sugar Co. Ltd v Omwando Omwando [2011] eKLR*.
8. The Court found no evidence that the Claimant's entitlement to medical attention was dependent on his employment status or period. Consequently, the only question to determine is whether the Claimant has established a claim for medical expenses as pleaded.
9. Both the claim for medical expenses and salary arrears are in the nature of special damages and as reiterated by the Court of Appeal in *Capital Fish Kenya Limited v The Kenya Power & Lighting Company Limited [2016] eKLR* special damages must be specifically proved. The Claimant did not produce any payment receipts to justify the claim for refund of medical expenses. Similarly, he did not lay any basis for the claim for salary arrears. Both claims were therefore not proved and must fail.
10. As already stated there is no claim for general damages. The question of causation is therefore a non-issue.
11. Overall, the Claimant's entire claim fails and is dismissed.

12. Each party will bear their own costs.

13. Orders accordingly.

DATED AND SIGNED AT MOMBASA THIS 2ND DAY OF OCTOBER 2018

LINNET NDOLO

JUDGE

DELIVERED AT NAIROBI THIS 12TH DAY OF OCTOBER 2018

MAUREEN ONYANGO

JUDGE

Appearance:

Mr. Areba for the Claimant

Mr. Gichure for the Respondent