



**REPUBLIC OF KENYA**

**EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**CAUSE NO. 335 OF 2015**

**(Before Hon. Lady Justice Hellen S. Wasilwa on 18<sup>th</sup> January 2016)**

**KILONZO MUTUNGA.....CLAIMANT**

**VERSUS**

**LANDMARK HOLDINGS LIMITED .....RESPONDENT**

**JUDGMENT OF THE COURT**

1. The Claimant herein filed his Memorandum of claim on 13/3/2013 through the firm of Muttisya & Company Advocates. The Claimant's case is that he was employed by the Respondent at its Kitui branch in Kwa-Vonza area earning a salary of 5,200/= per month.
2. It is also the Claimant's case that there was an implied term of the employment contract between himself and the Respondent that, the Respondent would take all precautions for Safety of the Claimant while on duty and not to expose the Claimant to risk, damage, injury which they knew or ought to have known and to provide a safe and proper system of working and effective supervision of the same.
3. The Claimant avers that on 5/9/2009 while on duty, he was instructed to fill a cracked wall which wall collapsed hence occasioning him serious injuries. The Claimant has thus filed this case claiming general damages for injuries sustained, special damages plus costs and interest. He avers that he suffered a dislocation of the right knee joint, fracture of the right fibula bone and post traumatic arthritis.
4. The Respondent filed their reply to the Claim on 6/12/2013 through the firm of Wangari Muchemi & Company Advocates. In their reply, they denied that the Claimant was in their employment or at all and that no accident occurred on 5.9.2011 involving the Claimant.
5. They also denied all particulars of negligence, carelessness or breach of statutory duty and breach of terms of contract of employment attributed to it or its servants. They wholly denied the claim but only stated that if indeed the Claimant was injured, he was wholly to blame for failing to follow the laid down safety rules, regulations and procedures and failing to take precaution for his own safety. They asked this Court to dismiss this suit accordingly.
6. When this case came up for hearing however, the parties entered a consent on liability at 80:20 in favour of the Claimant. What remained for this Court is to assess the quantum of damage.
7. The parties have subsequently filed their submissions on quantum. From the records submitted in Court the injury suffered by the Claimant was dislocation of right knee joint, fracture of the right fibula bone, post traumatic arthritis and deformity of the lateral side of the right knee and excessive adduction of the right lateral side of the knee.

8. The Claimant submitted that the Claimant be awarded 850,000/= as damages for the injury sustained.

9. The Respondents didn't file any submission on quantum however, considering the nature of injuries sustained by the Claimant and relying on the cases cited, I refer to **Mbrose Micheni Kinyamu v Gilbert Bundi & Another (2012) eKLR** and **Carolyne Indasi Mwonyonyo v Kenya Bus Service Limited (2012) eKLR** where the Claimants were awarded 450,000/= and 350,000/= for similar injuries. I award the Claimant herein Kshs.600,000/= as general damages less 20% = 480,000/=. Special damages though pleaded were not proved and so nothing is awarded on this limb. The Claimant is also awarded costs of this suit.

Read in open Court this 18<sup>th</sup> day of January, 2016.

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

Odhiambo for Claimant

No appearance for Respondent