



REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT AT NAIROBI

CAUSE NUMBER 2052 OF 2011

BETWEEN

WILBERFORCE KILIBWA.....
CLAIMANT

VERSUS

MUMIAS SUGAR CO LIMITED.....
RESPONDENT

Rika J

CC. Mr. Kidemi

Mr. Nyende instructed by Nyende & Company Advocates for the Claimant

Mr. Milimo instructed by Wetangula, Adan & Makokha Advocates for the Respondent

ISSUE IN DISPUTE: WORK INJURY COMPENSATION TO A FOOTBALLER

AWARD

1. Wilberforce Kilibwa was employed by Mumias Sugar Company as a footballer, between 2000 and 2002. He played for the Respondent's Football Club Mumias, a Club that was at the time competing in the Kenya Premier League.
2. On 7th October 2001, his team travelled to Mombasa to play the Coast Stars in a Premier League game, at the Mombasa Municipal Stadium. Kilibwa was fielded, and while vying for a high ball lobbed in his 'D' area, collided with an opponent, fell to the ground and injured his left knee.
3. He was treated at the Mater Hospital. He subsequently lodged a claim with his employer for compensation, under the repealed Workmen's Compensation Act Cap 236 the Laws of Kenya. On 25th September 2002, the District Labour Office Kakamega wrote to the Respondent, assessing compensation payable to Kilibwa at Kshs. 169,322. This amount has not been paid to-date, necessitating the filing of the Statement of Claim on 5th December 2011.
4. The Respondent filed its Statement of Response on 17th May 2012. The Claimant testified and closed his case on 12th February 2013. The Respondent testified through its Human Resources Officer Julius

Were, and closed its case on 18th June 2013.

5. Kilibwa asked the Court to order the Respondent to release his long delayed compensation. The Respondent has severally promised to pay compensation to Kilibwa. The Provincial Occupational Health and Safety Officer wrote to the Respondent on 18th February 2009, calling for payment. A reminder was sent out to the Respondent by the District Labour Office. The Respondent did not pay.

6. In early 2010, and later on in 2011, the Claimant went personally and talked to the Respondent's Legal Officer Ms. Emily Otieno, who promised that Kilibwa would be paid. The same promise was communicated by the Supervisor, Mr. Ashihundu. The employer has been promising Kilibwa that he would be paid compensation. No payment has been made.

7. In cross-examination, Mr. Kilibwa testified that he was paid a salary of Kshs. 13,350 per month. He was injured at a football game in Mombasa on 7th October 2001. He filed his claim ten years after the injury occurred. He stated that he did not seek leave of the Court to bring the Claim out of time. Emily promised the Claimant payment would be made. She did not do so in writing. The players were covered through Aon Minet Insurance Company. He knew the game involves risks. He loved the game and played voluntarily. Delay in filing the Claim was occasioned by the Respondent series of broken promises. The last promise was made in 2011.

8. Mr. Julius Were told the Court he was the Team Manager at the time Kilibwa was injured. All players had individual insurance covers through Aon Minet Insurance Company. Were received Kilibwa's Compensation Form from the Labour Office. The Form was forwarded to the Insurance Company for payment. The Insurance requested that Kilibwa avails a second medical opinion. The company asked Kilibwa to do this in 2004. He has not done so to-date. Mumias Sugar Football Club is no longer in place.

9. While answering questions from the Claimant's Advocate, Mr. Were testified that the claim was to be settled after documentation. The Secretary at Mumias requested Kilibwa to avail medical records. The witness did not have the letter written by the Respondent to Kilibwa, asking Kilibwa to avail further medical records. Were did not know of demands from the Labour Office, requiring the Respondent to release the Claimant's compensation. The Respondent did not inform the Labour Office that a second medical report was needed. There was a demand letter written by the Claimant's Advocates before commencement of the Claim; the witness did not know if the Respondent replied to the demand letter. The claim was supposed to be paid by the Insurance Company. Mr. Were testified that the Respondent does not dispute the Claim.

10. He closed his evidence with the clarification that the Respondent did not have all the documents relating to the claim, the injury having occurred ten years ago. The Respondent's role was to liaise with the Insurance Company in processing the claim. There is no evidence the letters from the Ministry of Labour and from the Claimant's Advocates were received by Mumias. The Respondent urges the Court to dismiss the Claim.

The Court Finds and Orders:-

11. Mr. Were conceded the Claim. He testified that the Claim is not disputed. The Court sympathizes with Kilibwa that the Respondent has kept him dangling in the wind for ten years, in a claim the Respondent ought to have settled many years ago. Once the Claim is admitted, the issue about whether the Claim is time-barred appears to this Court not to have any weight.

12. Professional footballers in Kenya and elsewhere have rights and obligations like any other employees. Labour and Employment laws, such as the Work Injury Benefits Act Number 13 of 2007 and the Employment Act Number 11 of 2007, apply to Professional Footballers as they do to all other employees. Professional Footballers are entitled to the protections afforded by these Legislations.

13. The World Football Governing body FIFA, has set the Professional Football Players Contract Minimum Requirements, to be observed by all FIFA Members. These Guidelines have been adopted by

the Kenya Football Federation in its Statutes. Like the Employment Act 2007, these Guidelines require that the Professional Footballer must have a written contract of employment. The document must be made available to the Club, the Player and the Football Federation charged with the football administration.

14. The contract must incorporate the mandatory labour and employment standards of the particular country. Salary and other financial and non-financial obligations of the Club to the Player must be made clear in the contract. The contract must explain the health and safety policy of the Club, which includes mandatory insurance coverage of the Player for illness and accident. The Clubs must ensure their Players have access to social security, so that when these Players' careers are over, they do not have to depend on friends, relatives and the government for handouts.

15. The Footballer on his/ her part is required under FIFA Guidelines to play to the best of his/her ability; participate in training in accordance with the instructions given by the employer; maintain a healthy lifestyle and standard of fitness; obey Club Rules; and avoid risky activities that are not covered by the Club's insurance. The Court has no doubt that Kilibwa faithfully played his part of the contract, and was injured in the line of duty.

16. The Court is satisfied from the evidence of both Parties that Wilberforce Kilibwa was a Professional Footballer employed by the Respondent Company. He was injured on his knee in the course of his duty. He lodged a claim for workmen's compensation under the repealed Workmen's Compensation Act. The amount payable is not doubted and has not been contested by the Respondent. It was calculated at Kshs. 169,322 by the Labour Office, communication

made to the Respondent to pay up, but no payment was made. The Respondent conceded the Claim, but argues that the Insurance Company was to pay the claim, upon the Claimant availing a second medical report. There was absolutely nothing from the Respondent to show the Claimant was asked to see any doctor for a second medical opinion, and that he failed to do so. This is a condition that has never been communicated to the Claimant or the Labour Office, and was in the view of the Court a flimsy line of response given by Mumias Sugar Company.

IT IS HEREBY ORDERED-:

[a] The Respondent shall pay to the Claimant compensation at Kshs. 169,322 within 14 days of the delivery of this Award;

[b] The said amount to attract interest at the rate of 14% from 25th September 2002, the date compensation was assessed by the Labour Office and communicated to the Respondent; and

[c] Costs to the Claimant

Dated and delivered at Nairobi this 17th day of **September, 2013**

James Rika

Judge