Republic of Malawi

IN THE HIGH COURT OF MALAWI

CIVIL DIVISION

PRINCIPAL REGISTRY

PERSONAL INJURY CASE NUMBER 192 OF 2019

BETWEEN

PAUL SUWEDI.....CLAIMANT

AND

YH COMPANY LTD.....DEFENDANT

BEFORE: Hon Jack N'riva, Judge
Counsel for the claimant Mr Kumpita
Counsel for the defendant Mr Nyamwela
Count Clerk: Ms D Nkangala

JUDGMENT

The claimant was working for the defendant a manufacturer of plastic shoes. The claimant's job involved, among others, removing materials from a shoe-making machine. while so working on 7 May, 2019, his hand got trapped into the machine and got injured leading to its amputation. Commencing this action, his claim is that the injury occurred due to negligence on the part of the first defendant namely failure to provide him with protective gear; failure to provide him with properly working equipment. Further, he claimed that the defendant compelled him to work in a dangerous environment.

He suggested that the defendant was in breach of Occupational Safety, Health and Welfare Act, Sections 13, 58 and 64. He thus sought damages for

- pain and suffering

- loss of amenities of life
- loss of earning capacity
- loss of earnings
- special damages
- cost of this action

The claimant argued that he can no longer carry out manual work and farm to feed his family. He further stated that he has difficulties in carrying out household chores.

The defendant effectively denied all the allegations. At the same time, they stated that if there was an injury, it was wholly caused or largely contributed to by the claimant's own negligence.

In his evidence, the claimant argued that the machine had a faulty sensor and failed to detect his hand. Thus, he argued that the first defendant provided him with a faulty machine. He said, thereby, he was exposed to an unsafe environment and exposed him to a dangerous working environment.

In cross-examination, the claimant said that he stopped the machine. He further said that fixing the machine was not his job: it was the job of supervisors. He said the supervisors were present. He said he did not call the engineers. He denied the allegation that he took it upon himself to fix the machine.

He said he was properly trained to operate the machine. He further said was he was not given protective wear. He said he had no gloves. He said again that it was not true that he got injured while trying to carry out a task he was not assigned to do. He said his hand was trapped at the point where the machine releases materials.

In re-examination, the claimant stated that it was his duty to remove shoes from the machine. He said he was injured while he was doing his job. He said the machine was faulty and it was stopped after he got injured. He reiterated that the machine and the sensor were faulty. He reiterated that he was trained and went on to say he was not given materials.

At the scene he amended the witness statement to say that the claimant was properly trained. He also demonstrated where the operator of the machine was supposed to stand and where the accident took place. Apparently, the witness was suggesting that the claimant stood on a wrong place. He demonstrated further where the materials are put and how the changes to the materials colour are made. He demonstrated that a button that the claimant was not supposed to touch. He

showed the correct the button that the claimant was supposed to touch and said that that was the duty of an engineer to stop the machine.

In the witness statement he stated that the claimant was attempting to change colour of the shoes being manufactured and got injured in the left hand in the process due to his own negligent actions. The witness said that the claimant was neither trained nor qualified to perform the task. This is the part of the statement that he amended to say that the claimant was properly trained. Thus, we should take it that the claimant was trained and qualified to perform the task. He said that upon the employment of staff members such as the claimant, they attend training for a period of two to three months on how to safely and effectively operate the machines. He said that the defendant provided the claimant with protective wear which are given to all employees. He said the claimant knew that the defendant strictly forbids its machine operators from performing tasks only delegated to Chinese Supervisor. He further said that they were instructed to seek assistance of the Chinese supervisor when the machine is malfunctioning. He said that the company procedures required the machine to be operated by four people and when the machine malfunctions they have to tell the Chinese supervisor. He said that the claimant was trained in operating the machine together three of his colleagues. He said that it was not his job description to change the colour of the shoes.

He said that the claimant clearly exposed himself to injury by attempting to change the colour of the shoes when he was not authorised to do so. He said that the incident was captured by a CCTV. He said therefore said that he believed that the claimant was making a false claim. He further said that he was not being truthful about what exactly happened for the injury to occur.

In cross-examination, he said that the claimant was a machine operator. His further said that there are off cuts or damaged production. He said that the off cuts must be removed from the machine. He said that it is the duty of the operator to remove the off cuts. He said there was no machine and they use hands to remove the off cuts. He said that the machine cannot run unless switched on and it stalls when switched off. He said that if it switched on said that its own, that means there is a problem. He further said that he had seen the machine being fixed a number of times.

He said that when the accident was happening, he was close to the scene. He said that he was supervising at that point in time. He said that one cannot remove off cuts when the machine is switched on. He said that the machine is supposed to be switched off. He said that the machine could not start by itself unless it was faulty. He further said that the claimant was provided with gloves. He said that he did

not have evidence to show that he was given and signed for the receipt of the gloves. He said they did not make him sign. He said that the machine had to be operated by three people. He said that when the machine pulled his hand, he was alone.

In re-examination he was asked to clarify on removing of off cuts. His response was that the place where the claimant was, was not where he was supposed to be working. He was further asked to clarify on the question whether the machine could turn by itself and he said it was impossible. He further confirmed that the claimant was putting on protective wear. He said that he put on gloves.

Coming to the contention in this matter, *i.e.*, who was at fault, this Court makes the following findings: First, this Court finds that the claimant was trained to operate the machine. The defence, initially, made a contrary allegation but later amended it. Perhaps, they meant to pursue the theory that the claimant was on a prolific of his own. I repeat, this Court finds that the claimant was trained to operate the machine. The claimant argued that the machine had a faulty sensor which had to sense his hand. This was not disputed. I find it as a fact. After all, our finding is that the claimant was properly trained for the job. One would assume that he knew the dynamics of the machinery, that it had to have a sensor.

The same applies to the assertion that the machine was being repaired every now and then. This Court believes the claimant knew, and takes it as a fact, that the machine was faulty and received constant repairs. This was even conceded by the defence witness when he was undergoing cross-examination. This Court hardly believes the defence's assertion that the claimant's negligence was the cause of the claimant's injury. It is hardly convincing that the claimant caused the accident by doing an act which he was not supposed to do. The opposite is, in my judgment, true.

There was an apparent assertion by the defence witness was that the claimant stood on a wrong place. In other words, he was not supposed to stand at the place where the accident took place. However, the witness fell short of showing how wrong the claimant was. Even if he proved that the claimant was wrong, *i.e.*, that he stood on a wrong place, that would be an enhancement of the claimant's theory that the machine was faulty.

The witness further demonstrated where the materials are put and how the changes to the materials colour are made. He demonstrated the button that the claimant was not supposed to touch. He showed the correct the button that the claimant was supposed to touch. Again, here, it was unclear how negligent the claimant was. Buttons, in basic terms are supposed to assist one to operate a

machine and not to be a hazard to the operator. In any event, a human being is fallible. If touching a machine part would lead to one losing a limb, an employer is under a duty to provide extra caution. Talking g extra caution, it was in evidence that the employees use hands to pull out off cuts from the machine. That is, looking at how the machine was designed, evidently deleterious.

As the witness said in the witness statement that the claimant was attempting to change colour of the shoes and got injured in the left hand in the process due to his own negligent actions. Again, it is not clear how one could attribute wrong doing on the clamant. The other defence was that the workers were instructed to seek assistance of the Chinese supervisor when the machine is malfunctioning and that there were supposed to be four people.

If working alone was an anomaly, it begs a question as to what the defence witness did since he said he was a supervisor. The further allegation in defence as that it was not the claimant's job description to change the colour of the shoes. This defence line leaves alone to be desired. Further, the defence said they were supposed to run a CCTV footage to demonstrate how negligent the claimant was. They did not.

This Court saw the machine and how it operates. In my judgment, I doubted if the machine was up to standard in as for as safety is concerned. I am alive to the fact that the parties did not raise this issue. I do not think I would go overboard to make this observation. As did the Court in, *Mzunga v Plastic Industries Ltd* Civil Cause Number 236 of 1995, the Judge made observation on the state of the machine in issue therein.

The Court observed thus:

> In this case, the machine which this Court saw in operation was of considerable antiquity. The evidence suggests that it was 31 years old. This was not really disputed. By its design, according to the evidence, it was not supposed to accumulate waste, and therefore it was not provided with any guard against touching the jack. It was also in evidence, by both sides, that the machine accumulates waste due to age and faults. The defendant also gave evidence that when waste accumulates it causes the machine to operate at a slower rate and to eventually stop. The defendant contended that the plaintiff was required to remove the waste when the machine stops. I don't accept the defendant evidence on this point. I prefer the evidence of the plaintiff that, he was required to remove the waste while the machine was in motion and not to allow it to accumulate, or to stop the machine because the defendant's order was that such operations reduced production. This court observed that the machine was indeed operated that way when, it visited the scene. There was no guard provided to protect the operator from injury.

In this matter, to say the least, the safety of the machine left much to be desired. It was raised, and admitted, in cross-examination, that the claimant was required to remove off cuts using bare hands. This points to the direction that the claimant got injured while in line of his duty. It was said that the clamant was provided with gloves. There was no convincing evidence on that. Even observing other employees in the factory, they had no gloves. Most importantly, it is doubtful if the use of gloves would be of any help to the claimant.

In all this, this Court finds on a balance of probabilities that the defendant exposed the claimant to an unsafe working environment. His injuries were as a result thereof. The claimant's claim succeeds against the defendant.

The claim succeeds with costs to the claimant. The costs shall be assessed by the Registrar. Provided that it is open for the parties to discuss and agree on the costs.

The claimant made a submission on cists. The defendant is free within 18 days of this judgment to respond or make submissions thereon. The Court then shall make a determination on damages.

MADE the 29th day of August, 2022

J. N'RIVA

JUDGE