



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL APPEAL NO. 237 OF 2003**

**UNI PLASTICS LTD.....APPELLANT**

**VERSUS**

**VIGITA MUBUA MULI.....RESPONDENT**

**(Appeal From The Judgment And Decree Of Mrs. A.N. Awino Senior Resident Magistrate Delivered On 17<sup>th</sup> April, 2003 in Nairobi  
RMCC NO. 10672 OF 1999)**

**JUDGMENT**

The appellant was the defendant in the lower court while the respondent was the plaintiff. This was a personal injury claim where the respondent was injured in the course of employment with the appellant. The respondent blamed the appellant for the injuries he sustained. After a full trial the lower court found that the appellant was 90% to blame while the respondent contributed 10% in that case. She proceeded to award Kshs. 140,000/= general damages subject to 10% contributory negligence, Kshs. 1,000/= for the medical report, costs and interest.

The appellant was aggrieved by that judgment and filed this appeal. In the Memorandum of Appeal the appellant faulted the lower court for finding that it was liable for the accident despite evidence showing that it was not. It was also the case of the appellant that the decision was against the weight of evidence produced and that the respondent was wholly to blame for the accident

It is the prayer of the appellant that the appeal be allowed and judgment set aside. Both parties have filed written submissions which I have on record. As the first appellate court it is my duty to evaluate all the evidence adduced before the trial court with a view to arriving at independent conclusions. In deciding in favour of the appellant the trial magistrate said as follows,

**“... the fact that the plaintiff was an employee on duty with the defendant company is not denied. The injuries are also not denied. It is also admitted that the rubbers that separate the belts were missing leading to overlapping of the belts. To this extent the defendants have to take responsibility for failing to replace the rubber immediately this confirms too that the machine was faulty. It is clear the plaintiff had worked on this machine for 8 years. She had sufficient experience to run the machine and avoid any eventuality of an accident. There she failed to utilise her experience. She was to take part of the blame. Thus I do apportion liability between the plaintiff and defendant at 90- 10 %.”**

Going by the observations by the trial court it was clear that the respondent had no responsibility of replacing the faulty rubbers that led to the overlapping of the belts. This was clearly the duty of the appellant. However, having worked there for eight (8) years she ought to have known if there was any deficiency in the working of this machine. There is no evidence that she alerted the appellant in that regard. That notwithstanding, maintenance and inspection of the machine was the responsibility of the appellant. The apportionment of liability cannot be faulted in the circumstances of this case.

There is no appeal against quantum or the damages awarded by the trial court. I observe in passing however, that going by the injuries sustained by the respondent, the award made in general damages is in line with similar awards for comparable injuries.

The end result is that this appeal is dismissed with costs to the respondent.

***Dated, signed and delivered at Nairobi this 30<sup>th</sup> day of May, 2018.***

**A. MBOGHOLI MSAGHA**

**JUDGE**