



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL APPEAL NO. 203 OF 2016

REMAX CONSTRUCTION COMPANY LIMITED.....APPELLANT

- V E R S U S -

PATRICK MWISIAHI SHIPUKU.....RESPONDENT

(An appeal from the judgement delivered on 24th March 2016 at Nairobi

by the Hon. E. Usui, SPM in Chief Magistrate's Civil Case no. 2774 of 2014)

JUDGEMENT

1) Patrick Mwisiah Shipuku, the respondent herein, filed a compensatory suit seeking to recover damages from Remax Construction Co. Ltd, the appellant herein, for the injuries he suffered while in the course of the employment of the appellant. The appellant filed a defence to deny the respondent's claim. Hon. E. K. Usui, learned Senior Principal Magistrate heard the suit and determined the same in favour of the respondent. The respondent was awarded ksh.124,000/= representing both general and special damages.

2) The appellant being aggrieved, preferred this appeal and put forward the following grounds in its memorandum:

- 1. The learned trial magistrate erred in fact and law by ignoring and failing to consider that the appellant was not the employer to the respondent.***
- 2. The learned trial magistrate erred in making a finding that the respondent proved that the appellant was his employer on a balance of probabilities notwithstanding that no evidence of such a relationship was adduced.***
- 3. The trial magistrate erred in law and in fact in finding the appellant 100% liable for the accident whereas negligence and breach of contract was not proved against it.***
- 4. The learned trial magistrate erred in law and in fact in failing to make a concise statement of the case, the points of determination and reasons for her decision in her judgment delivered on 24th March, 2016.***
- 5. The trial magistrate erred in law and fact in failing to consider relevant authorities and submissions by the appellant.***
- 6. The judgement is manifestly unreasonable.***

3) When the appeal came up for hearing, learned counsels recorded a consent order to have the same disposed of by written submissions. I have re-evaluated the case that was before the trial court. I have also considered the rival submissions filed by learned counsels. Though the appellant put forward a total of six (6) grounds of appeal, those grounds revolve around the question of liability and quantum. It is the submission of the appellant that the trial court failed to note that there was no evidence to prove the existence of employer-employee relationship between the appellant and the respondent. The appellant argued that the respondent failed to discharge the burden of proof of the existence of such a relationship

so that liability can be assigned. It was pointed out that the respondent was an employee of a sub-contractor and not the appellant. The record shows that the appellant testified and also summoned an independent witness to testify in support of his case while the respondent closed its case without summoning witnesses to testify in support of its defence.

4 The respondent told the trial court that at the time of the accident he had worked for the appellant for a year. He said he had been employed as a casual labourer with no letter of employment and earning ksh.500/= per day.

5) The appellant did not deem it fit to summon an independent witness to controvert the respondent's evidence. In the absence of other evidence, I have no reason to doubt the respondent's evidence. I am convinced that the respondent was a casual labourer employed by the appellant.

6) The appellant also argued that the respondent had failed to prove the particulars of negligence against the appellant. It is stated that the respondent failed to prove that the injury complained of was sustained while he was engaged in the employment of the appellant therefore no statutory obligation was breached. The respondent submitted that he tendered credible evidence linking the appellant with the injury he sustained therefore the trial court was right in holding the appellant wholly liable. I have carefully perused the proceedings of the trial court and it's clear that the respondent presented evidence which were not rebutted. The respondent told the trial court that he slipped and fell while walking down stairs within the appellant's premises and that there were no lights along the stairway. He also stated that he was not issued with protective gears to prevent him from sliding and falling on the wet stairs. Again, I am convinced that the respondent proved liability against the appellant on a balance of probabilities.

7) On quantum, the appellant made a general submission that the judgment was manifestly unreasonable. It is argued that the judgment stems from facts which were never proved in court. The appellant was not explicit as to whether or not it was challenging the award on damages. With respect, I agree with the submissions of the respondent that the appellant failed to lay any legal basis for its assertion that the trial magistrate applied the wrong principles on its decision on liability and quantum.

8) In the end, I find no merit in the appeal. The same is dismissed in its entirety with costs being awarded to the respondent.

Dated, Signed and Delivered in open court this 25th day of May, 2018.

J. K. SERGON

JUDGE

In the presence of:

..... for the Appellant

..... for the Respondents