



**REPUBLIC OF KENYA**

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

**CIVIL APPEAL NO. 511 OF 2015**

**SUPA HAULIERS LTD..... APPELLANT**

**- V E R S U S -**

**DAVID MASINDE MUSUNGU.....RESPONDENT**

**(Being an appeal from the judgement and decree of Hon. R. Ngetich, Chief Magistrate in CMCC No. 5787 of 2012 delivered on the 14<sup>th</sup> July 2015)**

**JUDGEMENT**

1. David Masinde Musungu, the respondent herein, filed an action claiming compensation for work injury he alleged sustained while working for the appellant company namely Supa Hauliers Ltd. The respondent alleged that on 17<sup>th</sup> January 2012, he was electrocuted by live wires whilst moving an axel thereby causing him to fall as a result thus sustaining severe bodily injuries. The appellant filed a defence denying the respondent's claim and blamed the respondent for wholly or substantially contributing to the accident. On 14<sup>th</sup> July 2015, Hon. Ngetich, learned Chief Magistrate delivered a judgement in which she found the appellant wholly liable and proceeded to awarded the respondent a sum of ksh.400,000/= as general damages and ksh.1,000 as special damages.

2. The appellant was dissatisfied with the aforesaid decision hence it preferred this appeal and put forward the following grounds:

- 1. The learned magistrate erred in law and fact by finding the appellant 100% liable for the injury sustained by the respondent.**
- 2. The learned magistrate erred in law and fact by failing to find the respondent was liable for his own injuries.**
- 3. The learned magistrate erred in law and fact by failing to apportion liability to the respondent when the appellant could not be entirely blamed for his injuries.**
- 4. The learned magistrate erred in law and fact by failing to take into account the submission of the appellant in the lower court on the issue of liability.**
- 5. The learned magistrate erred in law and fact by awarding general damages that are inordinately high in the circumstances.**
- 6. The learned magistrate erred in law and fact by making a decision on quantum that was against the weight of evidence.**
- 7. The learned magistrate erred in law and fact by taking into account irrelevant factors in awarding general damages.**

3. When the appeal came up for hearing, learned counsels recorded a consent order to have the same disposed of by submissions. I have re evaluated the case that was before the trial court. I have also considered the rival submissions. Though the appellant put forward a total of 7 grounds of appeal, those grounds revolve around the question of liability and quantum.

4. On **liability**, the appellant is of the submission that the respondent had failed to produce any documentary evidence to show that he was the employee of the appellant company at the time of the accident. The appellant pointed out that the respondent did not produce any letter of appointment or certificate of employment. It is also argued that the respondent had failed to tender any evidence to prove his injury in form of treatment notes. In response to the appellant's submissions, the respondent stated that the learned Chief Magistrate gave reasons in support of her findings that the appellant was wholly to blame for the accident. The recorded evidence show that the respondent produced as an exhibit in evidence the **notice by employer of an occupation accident/disease of an employee filed** on 6.6.2012. It was signed by Ishamael Wamalwa on behalf of the employer who is indicated as Supa Hauliers Ltd, the appellant. The name of the employee is shown as

one David Masinde Musungu, the respondent herein. In my view, the respondent tendered credible evidence showing he was the employee of the appellant. The form filed by Ishamael Wamalwa clearly shows the date of the accident to be on 17.1.2012 at 15.30hrs. It even indicates the nature of the injury the respondent sustained. The form shows the respondent lost two front teeth which evidence tallies with what the respondent told the trial court. I am satisfied that the respondent tendered documentary evidence to show he was the employee of the appellant. That piece of evidence is not controverted by the appellant who failed to summon witnesses to state otherwise. The appellant has also complained that the respondent did not present evidence showing the link between the accident and the appellant. The record shows that the respondent specifically stated that the respondent had failed to supply him with protective gadgets like gloves, an overall or gumboots. He also blamed the appellant for leaving naked wires without placing warning signs. In the end, I find that the respondent established liability against the appellant on a balance of probabilities. The trial Chief Magistrate correctly found the appellant wholly responsible.

5. On **quantum**, the appellant argued that the award of kshs.401,000/= as general damages was inordinately high given the injuries the respondent suffered. The respondent urged this court to find that the award was reasonable, just and fair. In her judgment, the learned Chief Magistrate stated that she considered the injury sustained by the respondent with comparable awards and found the award of ksh.401,000/= as reasonable. I have also considered the authorities cited by the parties. The respondent cited the case of **Raphael Oloo vs= Industrial Plant Ltd, H.C.C.C. no. 4400 of 1987** where this court awarded ksh.1,000,000/= as general damages for injury on the hand, lower back and loss of 6 teeth. This authority shows the plaintiff suffered severe injuries than the respondent herein. I think an award of ksh.401,000 in the circumstances suffices. Consequently, I find no merit in the appeal against quantum.

6. In the end, the appeal is found to be unmeritorious. It is dismissed with costs to the respondent.

**Dated, Signed and Delivered in open court this 18<sup>th</sup> day of May, 2018.**

**J. K. SERGON**

**JUDGE**

In the presence of:

..... for the Applicant

..... for the Respondent