



**REPUBLIC OF KENYA**

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

**CIVIL APPEAL NO. 157 OF 2013**

**(Being an appeal arising from Decree and judgment in Eldoret Chief Magistrate's Court Civil suit No. 234 of 2010 delivered by B. Kasavuli Ag. Senior Resident Magistrate on 26/11/2013)**

**MEDIHEAL HOSPITAL FERTILITY CENTRE.....APPELLANT**

**VERSUS**

**DERRICK OGOLLA.....RESPONDENT**

**J U D G M E N T**

1. The Respondent according to the undisputed facts was employed by the Appellant as a cook. He was on duty on 5/7/2007 when he slipped and fell and sustained the following injuries;

- 1. Head injury was immediately unconscious**
- 2. Cut wound on the scalp which was tender**
- 3. A cut wound on the left upper eye.**

He was admitted, treated and later discharged. He filed the suit claiming general and special damages. The court found the appellant 100% liable and awarded the Respondent general damages of Kshs 150,000/-.

2. The facts of his employment and the accident were not disputed. The only issues for determination was the question of damages and the award given to the appellant.

3. I have perused the proceedings as well as the submissions by the rival parties herein.

4. The first issue that is worth consideration as raised in the grounds of appeal is the question of negligence.

5. It is apparent that the respondent slipped and fell. DW1 stated that it had rained that day and the slaps were wet. This was not rebutted. The respondent seems to suggest that there was an ongoing cleaning exercises. The respondent dispute this. Be it as it may it appears that from the respondent to have slipped the floor was wet. Most probably from the rain water or at least the cleaning.

6. If this is the case, what should a prudent adult do? If it had rained or there was cleaning exercise, how does the appellant control the respondent movements? How does it control his steps.

7. This court does not want to minimise the injuries suffered by the Respondent, but nonetheless on a practical sense, does one have control of another persons motion? Even if the Respondent had been supplied with cloves, helmet or boots, would the appellant control his leg movements? Would the employer control what he chooses to see and not to see?

8. It is expected, that an hospital, and this court takes judicial notice, is a busy place with patients and their attendants milling around. One would obviously not be expected to be working while running. More particularly the Respondent who had served at the said hospital for a while. Infact I presumed that he knew all the corners and corridors..

9. My critical indictment of the Respondent is due to the fact that he did not call any other eye witness to the incident. More particularly, if he was carrying food to the patients he ought to have been more careful.

10. In essence therefore I do find the Respondent being an adult of sound mind to have been wholly responsible for the accident. Infact what

the appellant did in treating the respondent was purely out of its own duty of care to its employees.

11. As regards damages I could have awarded similar amount as per the trial court. The authorities cited and the reasoning by the trial court was consistent and taking into consideration the element of inflation I find that award to have been appropriate.

12. For the foregoing reason I do not find the trial court addressed itself properly on the question of negligence. The respondent in my view was the author of his own misfortune. There was nothing the appellant would have done to stop the carelessness exhibited by the Respondent.

13. This appeal is therefore allowed. The lower court Judgment is hereby set aside. Each party shall bear its own costs.

**Delivered, signed and dated at Eldoret in open court on this 19<sup>th</sup> day of October, 2018.**

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**H.K. CHEMITEI**

**JUDGE**

**19/10/18**