REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL 292 OF 2012

KPP PLANT PRODUCTION GHBH &

CO. KG LTD...APPELLANT

VERSUS

JACKLINE MORAA MAGANGI...........................RESPONDENT

(Being an appeal from the judgment and decree of the Hon. Magistrate D. A. Orimba delivered on 15th May 2012 in Thika CMCC No.479 of 2009)

JUDGMENT

The respondent was the plaintiff in the lower court who sued the appellant as the defendant following what she pleaded to be injuries sustained while in the employment of the appellant. The appellant denied the respondent's claim but after a hearing the court found in favour of the respondent and held the appellant fully liable for the respondent's claim.

The trial court proceeded to award Kshs. 800,000/= general damages plus Kshs. 3000/= special damages. The respondent was also awarded costs of the suit. Aggrieved by the said judgment the appellant filed this appeal faulting the trial court for finding the appellant 100% liable disregarding the evidence and submission made. The lower court was also faulted for failing to find that the respondent did not prove particulars of negligence pleaded. The trial court was also faulted for holding that the injuries were as a result of chemicals sprayed by the appellant contrary to the evidence tendered.

On quantum, the court was faulted for awarding exorbitant general damages and failing to appreciate and be guided by prevailing comparable awards for related injuries. In so doing, he acted on wrong principles of law.

Both parties have filed submissions and cited some authorities which I have noted. As the first appellate court it is my duty to evaluate the evidence adduced before the trial court with the view to arriving at independent conclusions. This I have done. There is no dispute that the respondent was employed by the appellant going by the evidence adduced. She worked in the farm owned by the appellant and her duties involved among others the spraying of flowers. It was alleged that she was not provided with a safe system of work as a result of which she was affected by the toxic chemicals sprayed which led to her loss of sight.

The court found that the respondent was not provided with protective gear and had that been done, she would not have sustained the injuries complained of. On the evidence, I have come to the same conclusion.

The lower court observed that both medical reports prepared by Dr. Ikonya Jane and Dr. Yusuf Kodwavwala confirmed that the respondent had complete loss of sight to both eyes. This loss of sight was irreversible. I have noted in the medical report prepared by Dr. Kodwavwala that some doubt was cast as to whether or not the respondent lost her sight during her employment with the appellant saying,

> **"Her blindness is, in my view, permanent and it is difficult for me to say what caused it. I doubt if her job has a flower sprayer can be held responsible."**

Going by the medical report prepared by Dr. Ikonya, the history recorded of the respondent's employment is that she was working for the appellant from 2001 to 2009. She was exposed to some chemicals used in the farm around the year 2007. She was treated in the company clinic with eye drops and developed poor vision from the year 2008.

Proof in civil actions is on a balance of probability. Considering the period the respondent worked for the appellant, and the time she developed the symptoms leading to loss of sight, it is more probable than not that her loss of vision was as a result of her duties in her employment with the appellant.

The report by Dr. KodwavWala was produced at the instance of the appellant. I note that both reports were admitted in evidence by consent. The report by Dr. Kodwavwala suggested that the respondent be examined by a specialist who was named therein as Dr. A.K. Shah, a senior eye specialist. This was not done even by the time the respondent testified in April 2011.On my part, I find that the injuries were consistent with the duties assigned to the respondent by the appellant.

Several authorities were cited before the trial court, which the trial magistrate referred to in his judgment when he said he had considered the entire evidence on record, the authorities cited, the injury sustained and the inflation rate. I have also looked at the authorities cited by counsel in the submissions including **Devki Steel Mills Limited vs. Francis Musyoki Mgumbim (2010) e KLR** where the respondent had lost sight of his right eye and an award of Kshs. 500,000/= was made in terms of general damages. In **Fred Ben Okoth vs. Equitor Bottlers limited (2015) e KLR** the plaintiff was awarded Kshs. 650,000/= general damages for total loss of the left eye.

An appellate court may not interfere with an award of damages made by the trial court unless it is inordinately high or low so as to represent an entirely erroneous assessment. There has to be some proof shown that the trial court proceeded on wrong principles or that material facts were left out and in place thereof immaterial considerations applied.

Having evaluated the record before me, I am not persuaded that I should disturb the findings of the lower court. I hold that the appeal is lacking in merit and therefore dismissed with costs to the respondent both in the lower court and in this appeal.

Dated, signed and delivered at Nairobi this 28th day of November, 2018.

A. MBOGHOLI MSAGHA

JUDGE