



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISUMU

CIVIL APPEAL NO. 87 OF 2012

PETER OLUNGURU OBUINI.....APPELLANT

VERSUS

CHEMELIL SUGAR COMPANY LTD.....RESPONDENT

(Being an Appeal from the Ruling of Hon D. Chepkwony SPM in Nyando SPMCC No.250 of 2009 delivered on 13th June 2012)

JUDGMENT

Peter Olunguru Obuini (*hereinafter referred to as appellant*) sued Chemelil Sugar Company Ltd (*hereinafter referred to as respondent*) in the lower court claiming damages for injuries allegedly suffered on 13th November 2008 whilst he was lawfully working for the respondent.

Defendants/appellants filed a statement of Defence and denied the claim and urged the court to dismiss the respondent/plaintiff's claim with costs.

When the matter came up for defence hearing, respondent's counsel Mr. Ragot raised a preliminary objection that the court had no jurisdiction. He relied on Section 87(1) the Employment Act and Section 2, 11 and 12 of the Labour Institutions Act. In reply, Mr. Abari for the appellant submitted that the preliminary objection had been overtaken by events following direction issued by the Chief Justice issued on 27.6.11. In a ruling delivered on **12th June 2012**; the learned trial court upheld the preliminary objection and struck out the appellant's case with costs to the respondent.

The Appeal

The Appellant being dissatisfied with the lower court's decision preferred this appeal and filed the Memorandum of Appeal dated 9th July 2012 which set out 6 grounds which I have summarized into 5 grounds to wit:-

- 1) The Learned trial Magistrate erred in law and in fact in striking out the appellant's case**
- 2) The Learned trial Magistrate erred in law and in fact in entertaining the preliminary objection when the case was coming up for defence hearing that had been pending for over 1 year**
- 3) The Learned trial Magistrate erred in law and in fact in confirming that the trial court had no jurisdiction**
- 4) The Learned trial Magistrate erred in law and in fact in disregarding the Hon. Chef**

Justice's Directives in the Kenya Gazette

5) The Learned trial Magistrate erred in law and in fact misinterpreted the law in regard to Industrial injuries

Plaintiff's suit

At paragraphs 3-6 the plaintiff's claim is set out as follows:

3. At all material times relevant to this suit, the plaintiff was an authorized employee of the defendant working as a welder at the juice treatment section

4. It was a term employment contract between the plaintiff and the defendant and/or it was the duty of the defendant to take all reasonable precautions for the safety of the plaintiff, while engaged upon his work with the defendant, not to expose the plaintiff to a risk of damage or injury, which the defendant knew or ought to have known, and to provide and maintain a safe and proper system of work

5. On 13th November 2008 or thereabout while the Plaintiff was lawfully on duty with the defendant doing his authorized work in the circumstances, he was seriously burnt by gas

PARTICULARS OF NEGLIGENCE/BREACH OF STATUTORY DUTY

a. Exposing the plaintiff to danger and/or injury which it knew or ought to have known

b. Failing to provide plaintiff with proper and/or safe system of work

c. Failing to provide plaintiff with protective devices

d. Permitting the defendant to be burnt

e. Failing to warn plaintiff of the imminent danger

f. Permitting the plaintiff to work under unfavorable environment

In upholding the preliminary objection on jurisdiction, the trial court ruled that the court had no jurisdiction under the Employment Act and the Labour Institutions Act.

I have considered the submission for both parties and the cited cases. In the case of *Rwaken Investments Limited & Another v The Ministry Of Labour & 2 Others [2012] eKLR* Mbaru J. held as follows:

“Article 162 (2) and 163 (3) of the Constitution of Kenya, 2010 established the Industrial Court and Superior Courts respectively. Under these powers; the Industrial Court had original jurisdiction to hear all labour relations disputes in Kenya. The Labour Institutions Act and the Industrial Court Act also granted the Industrial Court jurisdiction to entertain all disputes between employees and employers.

However, these provisions notwithstanding, Article 161 of the Constitution, which was supreme, granted the Chief Justice powers in the capacity as the head of the judiciary to make practice directions to facilitate the work of the High Court and indeed of the Industrial Court as constituted, the above provisions notwithstanding. Thus by these powers the Chief Justice under provisions outlined in Section 16 of the Labour Institutions Act designated lower courts presided over by officers of the rank of Senior Resident Magistrate and above as Special Courts to hear labour relations matters specifically on work injury related matters.

These practice directions were issued vide Kenya Gazette Notice No. 9243. Subsequent to these

directions the lower Courts had handled all matters of employee and employer as outlined under the gazette notice.

Even with the coming into force of the industrial Court Act, 2011, the powers granted to the Senior Resident Magistrates to operate with relation to labour relations under the Labour Institutions Act, 2007, Employment Act, 2007, Occupational Safety and Health Act 2007 and Labour Relations Act 2007 was not revoked and or repealed by the operation of the Industrial Court Act.”

I wholly associate myself with the holding in the above cited case. To hold otherwise would amount to denying justice to the appellant whose case has been pending in court for the last 5 years.

The appeal therefore succeeds and the order of the trial Court is set aside and in its place an order overruling the preliminary objection is granted.

This case is submitted to the trial court for hearing and determination on the merits. Each party shall bear its own costs of this appeal.

DATED AND DELIVERED THIS 24th DAY OF August 2017

T. W. CHERERE

JUDGE

Read in open court in the presence of-

Court Assistant - Felix

Appellant - Mrs. Onyango h/b for Mr. Oduor

Respondent - N/A