REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CIVIL APPEAL NO. 102 OF 2009

MAUA AGRITECH LIMITED ……..…….....APPELLANT

VERSUS

WYCLIFE MUCHURU BARASA …….....RESPONDENT

(Being an appeal from the original Ruling in Kajiado Senior Resident Magistrate's Court Civil Case No. 3 of 2007 by W.N. Kaberia , SRM on 12/11/2009)

JUDGMENT

1. The background of this appeal is that the Respondent was an employee of the appellant. It was a term of the contract of employment that the appellant takes reasonable precaution for the safety of the respondent while in the course of his employment. On the 18th October, 2006 the respondent was injured while undertaking the appellant's duties. He blamed the appellant for negligence and instituted a suit against it seeking special and general damages
2. The appellant denied having been negligent. He averred that he provided the respondent with a safe working environment and attributed negligence to him. He prayed for the dismissal of the case.
3. The trial court evaluated evidence adduced and found the appellant to be 100% liable for the accident. The court awarded him Kshs. 100,000/= in general damages and Kshs. 3,000/= in special damages plus costs and interest.
4. Being dissatisfied with the judgment of the Court the Appellant appealed on grounds that; The learned trial magistrate erred in law and fact-

i. In awarding the plaintiff the sum of Kshs. 100,000/= in general damages that was manifestly excessive in view of injuries sustained;
ii. By ignoring the evidence adduced by the respondent and his employer on his injures thus making an award that is manifestly erroneous.

5. It prayed for orders setting aside the judgment on general damages in order for the same to be substituted by an award that is fair and just.
6. The appeal was canvassed by way of written submissions.
7. This being the first appeal, as a first appellate court, I am duty bound to reconsider the evidence afresh and come to my own conclusions and inferences. (see ***Selle***

-versus- Associated Boat Co. Limited (1968) E.A. 123)

8. Courts have held severally that:-

> ***"An appellate court will not disturb an award of damages unless it is so inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the judge proceeded on wrong principle , or that he misapprehended the evidence in some material respect and so arrived at a figure which was inordinately high or law" (See Bashir Almed Butt -versus- Uwais Ahmed Khan Nairobi Civil Appeal No. 40 of 1977).***

9. In reaching its decision the trial court took into consideration rival submissions of both counsels. The appellant proposed a global sum of Kshs. 15,000/= in general damages. There was no basis provided upon which the amount was to be given. The respondent on the other hand adduced medical evidence. It was proved that he sustained a cut wound on the left parietal region of the head. The doctor opined that the respondent sustained soft tissue injuries which subjected him to pain and loss of blood.
10. In reaching its decision the trial court was guided by past awards in similar cases. The appellant provided no authority that would guide the court in reaching a decision in support of the sum of money proposed. In a persuasive decision, **Azangalala, J**(*as he then was*) grappled with such a case in ***Eldoret Steel Mills Limited***

-versus- Benard Asikoye [2012) eKLR and held thus –

> ***"In order to disturb an award of damages by a trial court the appellant must show that the reis an error of principle that was committed. The appellant has complained generally that the award was high. No case law was provided to support the contention. Excessiveness can only be judged in comparison with comparable awards. The award of general damages is a matter of discretion to be exercised judiciously. An appellate court will not interfere with the exercise of discretion of a trial magistrate unless the usual circumstances outlined in Mbogo -versus- Shah exist."***

11. In the instant case the trial magistrate exercised his discretion judiciously. The sum awarded was not inordinately high.
12. The appellant having failed to demonstrate that the learned magistrate erred in principle, I have no reason to interfere with the decision reached.
13. In the result the appeal fails. The same is dismissed with costs to the respondent.
14. It is so ordered.

DATED, SIGNED and **DELIVERED** at **MACHAKOS** this **29th** day of **JANUARY, 2015.**

L.N. MUTENDE

JUDGE