REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

CIVIL APPEAL NO. 80 OF 2003

(Appeal from the decision of Honourable Mr. Shem Kebong'o, Resident Magistrate delivered on 23rd January 2003 in Gatundu CMCC No 120 of 2001)

REDLANDS ROSES LIMITED..............................APPELLANT

V E R S U S

ANITA GACHERI RIUNGU…………………......RESPONDENT

JUDGMENT

This is an appeal by the Defendant in the lower court against liability and quantum of damages. The Respondent's claim was based on negligence and/or breach of statutory duty of the Appellant. The Respondent had suffered injury to her person by reason of exposure to farm chemicals while in the course of her duties.

The main grounds emanating from the memorandum of appeal are:-

i. That the learned Magistrate erred in finding that the Respondent sustained injuries in her eyes by reason of exposure to chemicals while there was no evidence tendered to sustain the finding,
ii. That the learned Magistrate erred in failing to appreciate that the ailment suffered by the Respondent could only be ascertained by an immunologist which had not been done,
iii. That the learned Magistrate erred in concurring with a medical report by Dr. G.K. Mwaura in the absence of sensitivity tests by an immunologist.
iv. That the learned Magistrate erred in awarding general damages so manifestly excessive as to amount to an erroneous estimate of the loss suffered by the Respondent.

The appeal was heard by way of written submissions from the Appellant. The Respondent did not file submissions even after being given an opportunity to do so.

Being a first appeal, this Court must re-evaluate the evidence before the trial court in order to come up with its own independent decision.

The court has revisited the lower Court's proceedings. It is trite that an employer ought to provide a safe working environment for its employees. The Appellant's case was that it provided reasonable protection to the Respondent in order to ensure that the chemicals she was exposed to did not harm her health. According to the Appellant, the Respondent did not handle chemicals at all in the course of her work.

However, it was clear from the testimony of DFW1 (Assistant Production Manager of the appellant) that

before the Respondent was employed by the Appellant she underwent routine medical check-up and was found to be physically fit. The question was whether there was a link between the work carried out by the Respondent and her ailment.

The Respondent in her evidence before the lower Court spoke of chemicals entering into her eyes while harvesting flower then later in her testimony claimed that 'the eye problem started when I was sweeping and particles entered in the left eye…'

The evidence of the Doctors who prepared medical reports and those who testified (PW II and DFW II) is consistent that the real cause of her ailment could not be established. It could not be connected to the negligence of the Appellant. (on cross-examination PW II concurred that he had made inference that chemicals caused the Respondent's ailment through the earlier medical reports which were not conclusive)

In **Wilsher vs Essex Area Health Authority (1988) 2WLR 557**, it was held that where a Plaintiff's injury could have been caused by six possible factors of which the Defendant's negligence was only one, the onus was on the Plaintiff to establish 'causation'.

A link between the Respondent's injury and the Appellant's negligence was not proved considering that a connection between the two was not established. The real cause of her ailment could not be ascertained even by experts in that field (Doctors).

In **Cummings vs Sir Willian Arrol (1962) 1 AER 623** it was held –

> ***'…even assuming the defendants were in breach of their duty in not providing a safety belt to their deceased employee, nevertheless they were not liable in damages because their breach of duty was not the cause of the damage suffered.'***

Similarly in this case, there was no evidence offered to the learned Magistrate to enable him draw a fair conclusion that the ailment was caused by the negligence and/or breach of duty of care by the Appellant. In the absence of the evidence of the immunologist (who would have given a comprehensive report on the cause of her ailment), the medical reports were not sufficient to prove the Respondent's case.

The appeal is therefore allowed, as the evidence in the lower court was inadequate to sustain a conclusion that the conditions in the Appellant's flower farm caused the Respondent's ailment.

All orders made by the learned trial magistrate are accordingly set aside.

I order that each party in the appeal shall bear their own costs.

Dated, Signed and Delivered at Nairobi this 18th Day of March, 2015.

A. MBOGHOLI MSAGHA

JUDGE