



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL APPEAL NUMBER 484 OF 2005

GLOBAL APPARELS KENYA EPZ LIMITED. APPELLANT

VERSUS

REDEMPTA KALUKI WAMBUA. RESPONDENT

(From the Judgment, decree and Orders of T W C Wamae (Mrs.) Senior Resident Magistrate in Milimani CMCC No. 8229 of 2003).

J U D G M E N T

In a claim by **Redempta Kaluki Wambua** for general and special damages arising from an industrial injury, the learned trial magistrate believed the evidence of the Respondent and established liability against the Appellant, **Global Apparels Kenya EPZ Limited**. She awarded a sum of Ksh.2000/- as special damages and Ksh.60,000/- as general damages the latter, being for pain and suffering.

The facts as narrated by the Plaintiff/Respondent are that she was an employee of the Appellant in the latter's factory at EPZ Zone in Nairobi. Her duties were to operate a snap machine in an apparel manufacturing factory using her hands and legs. On the 27th September, 2002 her said machine malfunctioned in that it was not responding at the moments it was being operated to snap or it was irregularly snapping earlier or without a physical command. The Respondent testified that she reported to her supervisor the relevant morning. She was told to continue working with the same machine until it would be replaced soon.

It was as she continued to work that the machine snapped without warning, caught her right index finger and inflicted a spiking injury. Her supervisor, one Monicah gave her first aid and then provided her with a gate-pass to EPZ Medical Clinic for medical treatment. She went there and was therein medically treated, after which she was given a treatment card in which she was given a review appointment for the 25th October, 2002.

It was the Respondent's further evidence that any cost of such medical treatment in such cases were being met by the specific individual company employing the injured employee. That she was forced to leave her gate pass and treatment card at the Medical clinic so that the clinic could first use the card to claim the medical cost. That on 25th October, 2002, the Respondent had to seek another Gate Pass to get a review treatment at the said EPZ Medical Clinic and once again the Respondent's supervisor, Monicah, gave one to her. She said that she again got treatment and this time she kept both the gate pass and the treatment card. She produced both in evidence.

On 18th February, 2003, the Respondent saw Dr. Michael Kuria Kamau who examined her and noticed a faded scar on the dorsal aspect of the middle and distal phalanges of the right index finger. He concluded

that she had suffered a mild soft tissue injury but had received proper treatment which healed her well without deformity. Respondent paid Ksh.2000/- for the examination and doctor's report, which she also produced in evidence. For coming to give evidence, the Respondent paid Dr. Kuria Ksh.3000/-, a receipt of which was produced in evidence.

In her evidence to prove her claim, the Respondent stated the above evidence in support and proof of her pleadings in the plaint. Her case was that her employer was negligent in allowing her to continue operating a defective machine which she was unable to control, even after she reported the malfunction. There were also allegations that she was not provided with gloves or protective clothes which could have prevented or minimized the effect of the injury. She called Dr. Michael Kuria Kamau who testified about her injury, examined about five months after it was inflicted.

The Appellant's defence was that it was not negligent. It called the Respondent's supervisor, Monicah whose evidence was to deny that the Respondent was at any material time, injured in the course of her duty. She denied giving any Gate Pass to the Respondent at the material time and she questioned the Respondent's story that the 29th September, 2002 gate pass and related treatment cards, were surrendered at the EPZ Medical Clinic to facilitate claims.

At the end of the day, the claim depended whether or not the learned trial magistrate should or should not believe the Respondent's evidence. It happened that she believe her evidence.

I have carefully considered the evidence independently, after examining the gate pass dated 25th October, 2002, and the appointment chit dated 25th October, 2002. The appointment chit, clearly shows on it that the appointment was for a 2nd check-up. That presupposes that a first check-up existed. That ties well with the Respondents evidence that the 25th October, 2002 visit was a review visit. Monicah, DWI'S version that respondent did not explain to her why she wanted to visit the EPZ Medical Clinic, is not credible, nor does it make sense. As a supervisor, she would only allow a worker to go to the clinic if the worker claimed she was truly sick. So the Respondent must have explained her, the purpose for the visit. Her evidence appears straight forward and ties well with her larger story of injury and later, injury review. Furthermore, the Respondent had been given an outpatient (OP) number, W/0035102. It cannot have been issued unless there was reason to seek the visit to the medical clinic. I find no reason to doubt the Respondent's story.

Having made the above conclusions, the only question remaining is whether the Respondent's evidence proved her case on the balance of probability.

I have considered the issue. There is sufficient evidence that she got injured in her right index finger. She was in the course of her employment. She was careful in the performance of her operation of the machine. She had reported a malfunction of the machine but was directed to continue working with the defective machine. She had a daily target performance imposed by Appellant. She did not wish to lose her job. She had no better or easier option but to continue as directed. Unfortunately, the machine again malfunctioned, as she worked on it, leading to the injury above stated.

I have considered the totality of evidence. I am satisfied that in failing to exchange the snap-machine when the Respondent reported malfunction, the Appellant was not only negligent but failed in its duty to allow its workers to operate on or with safe factory machines. It also failed to exchange the machine immediately, thus negligently exposing the Respondent to a probable danger, which indeed occurred. The Appellant, after the report of machine malfunction, took the risk. The risk unfortunately occurred. The Appellant thereafter must bear the consequences.

The trial magistrate awarded Ksh.60,000/- as general damages for pain and suffering. I find it reasonable in the circumstances. Plus Ksh.2000/- as doctor's service report. She should have awarded her an additional Ksh.3000/- for doctor's court attendance. However, since there was no cross-appeal the court will not interfere with the total figure of Ksh.62,000/- awarded.

The result is that the Appeal is dismissed with costs to the Respondent. Orders accordingly.

Dated and delivered at Nairobi this 16th day of March 2012.

.....

D A ONYANCHA

JUDGE