



SOUTH NYANZA SUGAR CO.
LTD.....APPELLANT

-VERSUS-

JAMES J.
NYABWARI.....RESPONDENT

**(Being an appeal from judgment and Decree of Mr W N Kaberia Resident Magistrate in Kilgoris
RMCC No. 51 of 2003**

dated and delivered on the 23rd day of May 2006)

RULING

This is an appeal from the judgment of **Hon. Kaberia**, Resident Magistrate, Kilgoris in Civil Case No. 51 of 2003 issued on May 2006. The plaintiff had sued the defendant claiming special and general damages, together with costs of the suit. The defendant had alleged that he sustained injury on his right leg while lawfully engaged as a cane cutter by the defendant at Transmara field 56 Sector 4. He blamed the defendant for breach of statutory duty and negligence. The trial court found in favour of the plaintiff/respondent and gave an award of Kshs.70,000/= as general damages plus costs of the suit and interest. He however, apportioned liability at 50:50 owing to his finding of contributory negligence on the part of the plaintiff.

The appellant being dissatisfied with the judgment has lodged the present appeal. The main grounds of the appeal are that:-

- 1) *The learned trial Magistrate erred in both law and in fact in holding that the appellant owed both contractual and statutory duty of care to the respondent when in fact there was no evidence led in that regard.*
- 2) *The learned trial Magistrate erred in both law and in fact in not holding that the respondent had failed to prove any contractual or employment relationship with the Appellant.*
- 3) *The learned trial Magistrate erred in both law and in fact in failing to hold that it was the respondent's responsibility to ensure that he did not cut himself with the panga, and that by his own negligence the respondent was the author of his own misfortune.*
- 4) *The learned trial Magistrate erred in both law and in fact in failing to find that the respondent having injured himself, could thus not blame the appellant.*
- 5) *The learned trial Magistrate erred in both law and in fact in failing to dismiss the respondent's suit with costs.*
- 6) *The learned trial Magistrate erred in both law and in fact in awarding to the respondent general damages in the excessive, unrealistic and exorbitant sum of Kshs.70,000/= for basically soft tissue, self inflicted injuries which the respondent allegedly suffered.*

The grounds listed above are basically on liability and quantum.

As a first appellate court, I am under duty to review the evidence adduced before the trial court to determine whether the conclusions reached can stand. If there is no evidence to support a particular conclusion or it is shown that the trial court had failed to appreciate the weight or bearing of circumstances admitted or proved, or has plainly gone wrong, the appellate court will not hesitate to interfere with the decision.

The appellant has contended that the trial court erred in finding that the appellant had a statutory duty towards the respondent since the respondent was not employed by the appellant. The trial court heard that the respondent/plaintiff was engaged as a cane cutter by an independent contractor and not by the Sony Company. The defendant however was not able to produce the cane cutter agreement to demonstrate that it was the independent contractor who bore the statutory duty.

While trying to absolve the defendant Company of liability, DW 1 testified that cane cutters are usually casual labourers. The trial court took judicial notice that casual labourers are usually not given contracts. Indeed the court took note of the delivery note produced by the DW1 where the respondent was given a work Code no. 31 and arrived at the conclusion that there was sufficient evidence to hold that the respondent was working as a casual labourer for the company.

Having reviewed the evidence I agree with the holding of the trial court in respect of the liability of the appellant company. See ***Kisii HCCA No. 11 of 2005 Sony vs Peter Kerongo (Unreported)*** With respect to apportionment of liability, I entirely agree with the decision of the trial court that the plaintiff was also to blame for being careless in using a faulty implement in cutting the cane.

With respect to quantum, I find an award of Kshs.70,000/= for soft tissue injuries proved to be reasonable and find no reason to interfere with it. The appellant shall also have special damages of Kshs.3,500/= which was proved as well as interest on the award from the date of judgment.

Accordingly, I find the appeal unmerited and dismiss it with costs to the respondent.

Ruling dated, signed and delivered at Kisii this 23rd day of August, 2012.

R. LAGAT-KORIR

JUDGE

In the presence of :

Edwin Mongare Court clerk

.....Counsel for the plaintiffs/Appellant

.....Counsel for the defendants/respondent

R. LAGAT-KORIR

JUDGE