



**REPUBLIC OF KENYA**

**High Court at Eldoret**

**Civil Appeal 134 of 2000**

**EASTERN PRODUCE (K) LIMITED.....APPELLANT**

**VERSUS**

**BARNABAS KIPTANUI SONGOK .....RESPONDENT**

***(Appeal from the Judgment of Principal Magistrates Court at Kapsabet, the Hon. F.A. Mabele (PM),  
PMCC No. 175 of 1999 dated on 28<sup>th</sup> September 2000)***

**JUDGEMENT**

The Appellant before this Court, Eastern Produce (K) Ltd is aggrieved by the decision of the Trial Magistrate at Kapsabet in Civil Suit No. 175 of 1999 filed in the Principal Magistrate's Court at Kapsabet, against the Appellant by the Respondent herein Barnabas Kiptanui Songok in which he was seeking general and special damages arising from an accident that occurred while he was on duty on 25<sup>th</sup> February 1997.

It was Respondent's case that while doing an experiment as to how the tea would be pruned, a stick jumped and hit him on his right eye. His claim was based on negligence, the employee's failure to provide him with protective gear such as spectacles or goggles.

In a judgment delivered on the 24<sup>th</sup> August 2000, the Learned Trial Magistrate Mr. F. A. Mabele held the Appellant liable and awarded the Plaintiff/Respondent a sum of Kshs. 130,000/= plus special damages which were assessed at Kshs. 1,500/= making the total of Kshs. 131,500/=. He was also awarded the costs of the suit together with interest. Being dissatisfied with that judgment and the award of damages, the Appellant filed this appeal on the 15<sup>th</sup> November 2000, seeking that the said judgment be set aside in its entirety and substituted with another order dismissing the suit with costs.

It was the Plaintiff/Respondent's case before the Trial Court that he was injured while on duty and that his employer failed to provide him with protective gear. He testified that he used to work at Kapsumbeiwa Tea Estate. That on 25<sup>th</sup> February 1997, while doing experiment as to how the tea would be pruned a stick jumped to hit him on his right eye. That he sustained injury. He informed his supervisor who allowed him to seek medical assistance. That he went Nandi Hills District Hospital where he was treated.

The Appellant has admitted at the trial Court that it did not provide necessary tools such as goggles to the Respondent. The Appellant had even proposed damages of Kshs. 30,000/=.

At the trial court, DW1 John Kibet Kipkemei who is employed by the Appellant as a clerk stated under oath and confirmed that:

***“On 25.02.99, he was on duty with the Plaintiff who was pruning tea around 11.00 a.m. when a small branch hit his eye.***

***And that the Plaintiff only required a pruning and plucking cap. There was no need to provide goggles for that work, although he had not been provided with any. Also that workers or employees are not provided with goggles.”***

It was the defendant’s case that the accident was as a result of act of God which was not foreseen by the defendant. Those protective gears such as goggles are not used in tea pruning activities.

The trial magistrate after closing of the case delivered judgement in which he stated inter alia:

**“after going through the evidence on the record with the submissions so made, I find that for the plaintiff ‘s injury eye which was tender, sore and tearing and which resulted in blurred vision with inability to see for objects clearly; and will remain permanent disability, I would award genaeeral damages of Ksh. 130,000/-. I also award the Plaintiff Ksh. 1, 500/- for the medical report. He shall also get the cost of this suit together with interest. It is so ordered’**

It is this judgment that gave rise to the present Appeal. The Appellant asserted in his Memorandum of Appeal dated 26<sup>th</sup> October 2000 as follows:

1. That the learned Trial Magistrate erred in law and fact in awarding damages that were manifestly excessive in the circumstances.
2. That the learned Trial Magistrate erred in law and in fact in holding that the Appellant herein was negligent to a very high extent as decided contrary to the evidence of the Plaintiff and defence witnesses.
3. That the learned Trial magistrate erred in law and fact in disregarding the submissions of the defendant without any or any proper reasons to do so.
4. The Learned Trial Magistrate erred in failing to give due regard to the plaintiff’s failure to comply with Order 6 Rule 9 of the Civil Procedure Rules.
5. The learned trial magistrate erred in law and in fact in ignoring the authority presented to him by the defence.

I have had an opportunity to read the proceeding, pleadings and submissions by the parties during the trial. To my mind, it is clear from the above synopsis of the proceedings in the lower court that:

1. That it is not in dispute that the accident has indeed occurred;
2. That the plaintiff sustained injuries as a result of the accident;
3. That the plaintiff was on duty when the accident occurred;
4. That the plaintiff was not provided with protective gears by the defendant

On appeal, Mr. Kuloba Counsel for the Appellant submitted that the Respondent had failed to demonstrate sufficient risk to warrant the Appellant to provide goggles. I respectfully disagree. There is an obligation on employers to ensure that those in their employment work in a safe environment. The Court will be failing its duty to the general public if it does not make pronouncements that ensure that employers provide employees with protective gear such as goggles, gumboots, gloves when working in an environment in which there is possibility of an accident occurring.

I have considered the pleadings and the judgment of the Learned Principal Magistrate. I have also considered the Submissions by the Counsel appearing for the parties. I am satisfied that the Learned

Principal Magistrate was correct in arriving at the decision that he had made.

I am persuaded that the Learned Principal Magistrate had correctly considered the evidence and the law.

The role of this court in appeal matters is limited to interfere with decisions from the lower courts where the court is satisfied that the trial court failed to do justice or to do justice sufficiently between the parties by applying wrong principles of law, misdirection, taking into account irrelevant factors, failing to take into account relevant factors etc. as I have stated in other matters in the past, matters determined by the lower courts will not be whimsically interfered with by this court. I have no reason to interfere with the decision of the trial magistrate in this matter.

Accordingly, this appeal is dismissed with costs to the Respondent. Orders accordingly.

Dated AND signed at Nairobi on this 23<sup>RD</sup> Day of AUGUST 2012.

**M. K. Ibrahim**  
**Judge**

DATED AND Delivered at Eldoret on this 17<sup>TH</sup> .Day of OCTOBER 2012.

**F. AZANGALALA**  
**Judge**

In the presence of : Mr. Okalo h/b for Mr. Nyairo for the Plaintiff

Mr. Yego h/b for Mr. Gitonga for the Respondent