



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT**  
**NAIROBI(MILIMANI LAW COURTS)**

**Civil Appeal 120 of 2008**

**KARTAR SINGH DHUPAR. .... APPELLANT**

**VERSUS**

**PIUS MUTIE MICHAEL. .... RESPONDENT**

*(From the judgment and decree of D K Ole Keiwua in Nairobi CMCC No. 5432 of 2004)*

**J U D G M E N T**

The Respondent was the Plaintiff and the Appellant the Defendant in the lower court suit. The Plaintiff/Respondent, in a plaint dated 30<sup>th</sup> March, 2004, claimed for general and special damages arising from an accident which occurred in a construction site. He pleaded that he was injured on his leg by a falling ladder while in the course of his employment as a general worker, at Eastleigh on 8<sup>th</sup> December, 2003.

It was the Respondent/Plaintiff's case that the Appellant was negligent because he supplied the Plaintiff for his work, an unsafe and defective ladder which gave way and fell on him, causing serious injuries on him.

In his defence, the Appellant denied employing the Plaintiff at the material time and also denied being negligent or in breach of its statutory or common law duty. The Appellant, in the alternative, averred that the Respondent's injuries were inflicted due to the Respondent negligent conduct in respect of which, he should bear liability or apportioned liability.

During the trial of the suit in the lower court, the Respondent/Plaintiff testified and called one witness. The Appellant also called one witness.

In his short judgment the Hon. trial magistrate found that the Defendant had employed the Respondent at the material time as a casual worker. He also found that the Defendant had allowed the Plaintiff to work on a defective system where the lintel collapsed pushing the ladder off and the ladder fell on and injured the Plaintiff on the right knee and toes. He concluded that the Defendant was negligent and/or in breach of common law or statutory duty and was, therefore, liable to pay compensation in apportionment of 70% to 30% against the Defendant.

He awarded Ksh.100,000/- as general damages and allowed special damages of Ksh.1500/- Total

damages came to Ksh.71,500/-. That is what triggered this appeal.

The grounds of appeal can be summed up in a sentence: - that the honourable trial magistrate decided the case against the weight of evidence.

I have carefully perused the pleading, the evidence from both sides, the written submissions before the trial court and in this court. First, the Appellant had denied employing the Respondent at the material time. yet in his evidence he admitted knowing the Respondent well to enable him state that the Respondent was not on duty on the material day. The Defendant's witness's admission on record that he was not on site the whole material day, also disqualified him from being in a position to be categorical that the Plaintiff was not on duty.

Finally, the Appellant did not dispute the fact that that he paid the Plaintiff Kshs.200/- after the accident. Nor was the witness who testified the one who was supervising work on the material day. It would be difficult without sufficient reason, for this court to overturn a finding of fact made by the trial court which had opportunity to observe the demeanor of the witnesses who testified at close range.

In the above circumstances and for the reasons stated above the trial court's findings on liability as also independently established by this court is confirmed as correct.

As to quantum of damages, I hear little complaint. I accordingly also confirm the sum awarded of Ksh.70,000/- as general damages after apportionment and Ksh.1500/- as special damages.

The appeal is accordingly dismissed with costs. Orders accordingly.

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

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**D A ONYANCHA**

**JUDGE**