



**REPUBLIC OF KENYA**

**High Court at Kakamega**

**Civil Appeal 50 of 2010**

***(Appeal against the judgment of [MR. P.N. ARERI, R.M.] in Kakamega Chief Magistrate's Court Civil Case No. 429 of 2006)***

**ALI OKATA WATAKO.....APPELLANT**

**V E R S U S**

**MUMIAS SUGAR CO. LTD.....RESPONDENT**

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

This is an appeal from the judgment of P. N. ARERI, R.M. in Kakamega CMCC No.429 of 2006. The appellant's grounds of appeal are that the appellant's suit was erroneously dismissed on account of typographical error yet the evidence on record was otherwise consistence, that the trial magistrate grossly erred in *suo moto* amending the date of the accident under **Section 100** of the **Civil Procedure Act** and that the trial court erred in failing to make any findings on quantum.

Parties agreed to file written submissions and in his one page submission the appellant reiterated the grounds in his appeal. On his parte the defendant in its one paragraph submission submitted that the appellant did not prove his case in view of his pleadings as stated in paragraph 5 of the plaint and the dates on the documents produced as exhibits.

The record of the trial court shows that the appellant testified as PW. His evidence was that on the 24<sup>th</sup> of April 2004 while working at the defendant's premises at about 2.00 p.m. he was injured when together with other employees were told to remove cane remains from a conveyer belt. He produced a copy of his sick sheet dated 24<sup>th</sup> April 2004, letter of temporary employment indicating that he was employed for the period 2<sup>nd</sup> April 2004 and his contract was to end on 30<sup>th</sup> April 2004. He also produced a temporary pass card for casual workers from the defendant giving the date of 2<sup>nd</sup> April 2004 and it was to expire on 30<sup>th</sup> April 2004. **PW2**, was **DR. CHARLES MASINDE ANDAYI** who testified that he examined the appellant on 20<sup>th</sup> of March 2005.

The defendant did not call any evidence. The trial court dismissed the appellant's suit mainly on the ground that whereas the plaint indicated that the date of accident was 24<sup>th</sup> April 2002, the evidence on record was for an accident that occurred on the 24<sup>th</sup> of April 2004. The trial court held that the defence denied that there was an accident on 24<sup>th</sup> April 2002 and it was up to the appellant to prove his case by adducing evidence and producing documents relating to that date.

From the evidence on record I do find that the date of accident was 24<sup>th</sup> April 2004 and not 24<sup>th</sup> of April 2002. The supporting documents produced by the appellant did indicate that the accident occurred on 24<sup>th</sup> of April 2004. Although the respondent's defence denied that the appellant was its employee, there was evidence by way of their own letter showing that the appellant was employed on temporary basis between 2<sup>nd</sup> April to 30<sup>th</sup> April 2004. I do find that the pleadings in paragraph 5 of the plaint showing the date of accident as 24<sup>th</sup> April 2002 was a typographical error which could have been amended orally or by the court itself as provided for under Section 100 of the Civil Procedure Act. Justice is being fair to all the parties and I do find that dismissing the appellant's suit on account of the discrepancy on the date of accident was not fair. The appellant adduced evidence showing that the accident did occur and he sustained injuries as a result of the accident.

In the end I do find that the appeal is merited and the same is allowed. The judgment of trial court is hereby set aside. I do not wish to evaluate the evidence and make an award on damages. I will refer the matter back to the trial court to hear the case afresh. Each party shall pay its own costs.

*Delivered, dated and signed at Kakamega this 14<sup>th</sup> day of November 2012*

**SAID J. CHITEMBWE**  
**J U D G E**