



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI
CIVIL APPEAL NO. 104 OF 2008

OL JOGI LIMITED.....PLAINTIFF/APPELLANT

VERSUS

JAMES NDEGWA KIOPIRA.....DEFENANT/RESPONDENT

(Being appeal against the judgment of H. N. Ndungu Senior Principal Magistrate in Nanyuki Senior Principal Magistrate's Civil Case No. 18 of 2004 delivered on 18th June 2008)

JUDGMENT

James Ndegwa Kiopire the Respondent herein, filed an action against **OI-Jogi Ranching Limited**, the Appellant herein, by the amended plaint dated 4th June 2004 at the Nanyuki P.M.'s court. In the aforesaid Plaint, the Respondent sought for judgment in the following terms:

- (a) General and special damages.**
- (b) General damages under the Law Reform Act and under the Workman's Compensation Act.**
- (c) Costs of the suit.**
- (d) Interest.**

The Respondent claimed he was an employee of the Appellant as a game scout when on 16th December 1993 due to the negligence of the Appellant, he was attacked by a giraffe and as a result he sustained serious injuries. He alleged that the Appellant did not take precautionary measures to keep him safe at his place of work which it knew was dangerous. He claimed he was not provided with protective gadgets. The respondent alleged that he sustained cut wound injuries on the right pelvis. The Appellant filed a defence to deny the Respondent's claim. The suit was heard by Hon. Ndungu, learned Senior Principal Magistrate. In the end, the trial Magistrate entered judgment in favour of the respondent in the following terms:

- (a) General damages - Ksh.200,000/=.
- (b) Costs and interest.

The Appellant was aggrieved hence this Appeal. On appeal, the Appellant listed the following grounds in his Memorandum of Appeal:

- 1. The learned Principal Magistrate erred in law in entertaining a case which was clearly time barred.**

- 2. The learned Magistrate erred in law and in fact in holding that the plaintiff was involved in an accident when there was no evidence to support that.**
- 3. The learned Magistrate erred in law and in fact by believing that the plaintiff was involved in an accident when there was no evidence to support that.**
- 4. The learned Magistrate erred in law in putting any weight on fake medical documents.**
- 5. The learned Magistrate erred in law in failing to consider or put any weight on the defendant's defence or the written submissions of the defendant together with the supporting authorities.**
- 6. The learned Magistrate erred in law in awarding the plaintiff any damages while the plaintiff had not suffered any injuries and was not in any way involved in any accident.**
- 7. The learned Magistrate erred in law in blaming the defendant for the alleged accident while the plaintiff had not proved any negligence on the part of the defendant.**

When the Appeal came up for hearing, this court directed that the Appeal be disposed of by written submissions. The Appellant was the only party who filed its submissions at the time of writing this judgment.

I have carefully re-evaluated the case that was before the trial court. I have also considered the submissions. It is obvious from the recorded evidence that the Respondent had sued the appellant for both special and general damages arising out of the injuries he allegedly suffered when the Respondent was an employee of the appellant. It was the respondent's case that he sustained the injuries complained of on 16th December 1993. The trial court gave the Respondent leave to file an action out of time on 12th June 2003. Though the appellant has listed seven grounds of appeal in its Memorandum of appeal, it is apparent those grounds revolve around the question as to whether or not the Respondent had proved his case to the required standards in civil cases. The respondent tendered the evidence of five witnesses to support his case. **John Kiloko** (P.W. 3), claimed he worked with the Respondent at the Appellant's farm. He said he saw a giraffe kick the Respondent on 16th December 1993 while he was feeding it at 5.00 p.m. He said he called for help to take the respondent to Marura for treatment. P.W. 3 said he quit the appellant's employment in the year 1995. In cross-examination, P.W.3 confirmed that the Appellant's records indicate he had been dismissed from the appellant's employment on 31st July 1993. He confirmed he left the employment of the Appellant in 1993. In re-examination, he contradicted himself by claiming he left the appellant's employment in December 1993. Dr. Wihinya Mwangi (P.W.3) stated he examined the respondent on 24th October 2004. He stated that the Respondent was involved in an accident on 16th September 2005. In cross-examination P.W. 4 admitted that he had not seen the Respondent prior to the year 24th October 2004. He said the Respondent gave him his history and documents. A critical analysis of the evidence indicates that the Respondent witness i.e. P.W. 3 was inconsistent hence it cannot be relied on. The medical evidence tendered by P.W.4 and P.W. 5 do not in any way create a nexus between the injuries examined and treated in 2003 and those suffered in 1993. The Respondent was treated after ten (10) years from the date of the alleged accident. The Police abstract form was collected and filled in the year 2003 yet the injuries was allegedly suffered in 1993. In my view I find no evidence showing that the respondent was injured on 16th December 1993. There is also no link between the medical reports relied upon and the date of injury. There is also no evidence that the medical reports were prepared on the basis of treatment notes so that one can infer that that the medical reports were prepared from the medical history of the Respondent.

In the end and on the basis of the above reasons, I allow the Appeal. The judgment of the subordinate court is set aside and is substituted with an order dismissing the suit. I grant the Appellant costs of the Appeal and the suit.

Dated and delivered at Nyeri this 29th day of July 2011.

J. K. SERGON
JUDGE

In open court in the presence of Miss Keli h/b for Nganga for Applicant and Kimunya h/b for Mugambi for Respondent.

J. K. SERGON
JUDGE