



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

CIVIL APPEAL NO. 131 OF 2006

WILDFIRE LIMITED.....APPELLANT/ORIGINAL DEFENDANT

VERSUS

**BRITHA KWAMBOKA.....RESPONDENT/
ORIGINAL PLAINTIFF**

Editorial Summary

- 1. Civil Appeal**
- 2. Subject of Subordinate Court Case**

INDUSTRIAL ACCIDENT

2.1 Employee/employer relationship

2.2 Employee sustains injuries the course of Employment

- a) Casual labourer at flower farm**
- b) Provided with gum boots, dust coat and gloves**
- c) Walks between flower bed and trips into a hole and falls 28th August 2003**
- d) Sustains injuries to left ankle**

Plaster of Paris

e) *Employer states no report made to supervisor of company*

f) *Doctor for employer.*

No X-ray taken till 6th September 2004

Reveals osteoarthritis

g) *Employee still in pain to left ankle*

Report 25th March 2005

2.4 *Related case filed RMCC 912/04 in Naivasha*

M/s S.B. Mheche & Co Advocates withdrawn by employee as same filed without the court

2.5 *Trial magistrate after hearing evidence awards*

Ksh. 80,000, general damages pain and suffering

Special damages 2,000/=

2.6 *Liability 80% against employer*

20% against employee

2/7 *Ksh. 10,000/= not pleaded for doctor
Same dismissed.*

3. *Appeal:*

3.1 *Hon. Magistrate erred in giving award*

3.2 *Award excessive*

3.3 *Medical report not adequately considered*

3.4 *There was no negligence proved on part of employer
Nor report made*

4. *In Reply:*

4.1 *Appeal has no merits
Respondent employee slipped and fell*

5. *Held:
Appeal allowed suit be and is hereby dismissed.*

6. *Case Law:*

7. *Advocates :*

1 *N.J. Munyua instructed by M/s Ngonyo Munyua & Co Advocates for the appellant/ original defendant*

2. *S. M. Kariuki instructed by M/s Muriuki Njagagua & Co Advocates for the respondent/original plaintiff*

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(Being an appeal against the Ruling of the Hon. N. N. Njagi Esq Senior Resident Magistrate delivered on 7th February 2006

at the Senior Principal magistrate's Court at Naivasha Civil Suit No. 145 of 2005.)

JUDGMENT

I. **BACKGROUND**

1. The relationship between the parties is that of employer/employee. The employee Britha Kwamboka, a female adult aged 32 years old in 2003, worked for the appellant defendant as a casual worker. She worked at the flower farm where she was provided with gumboots, dust coat and gloves.
2. On the material day of 28th August 2003, she was walking between the flower beds when she slipped and fell due to a hole in the ground. She sustained injuries to the left ankle and went to the hospital where she was applied a "Plaster of Paris" to the said ankle.
3. The employer disputed this evidence and stated there at no time was a report ever made to the employer of the accident.
4. There may not have been any injury sustained.
5. The employee's doctor stated that the employee was still in pain as of 25th March 2005. Her left ankle was swollen.

6. The employee's doctor examined the employee on 6th September 2004 and noted that the employee was working normally. As of 25th March 2005, she was reported as having a slight swollen tender left foot ankle joint.
7. The trial magistrate after hearing the evidence awarded a sum of Ksh. 80,000/= for general damages, pain and suffering. Special damage was assessed at Ksh.2000/=
8. The liability was awarded at 80% against the employer and 20% against the employee.
9. The trial magistrate then dismissed the prayer of Ksh.10,000/= as not having been pleaded for the doctor.

II SUBMISSIONS

10. The appellant original defendant herein argued that no negligence had been proved against them. The evidence did not show that the accident had been proved.
11. The trial magistrate erred in giving an award. The award given was excessive.
12. In reply, the respondent argued that the appeal had no merits. The respondent sustained injury and was seen by the doctors.
13. The witnesses were heard by the trial magistrate and were believed.

III FINDINGS

14. The issue of liability and quantum herein is being questioned by the appellant.
15. The appellant states that no proof was established to prove negligence on the part of the appellant. It is essential that this be so established by the said respondent.
16. The respondent stated there was a hole on the ground causing her to fall. The employer was unable to trace this hole and subsequently were not able to recall any report made of the injury to them.
17. The trial magistrate ought to have weighed this evidence herein. The respondent failed to prove that she had fallen as a result of the applicant's negligence.
18. As to the issue of quantum, the injury to the said ankle was contradictory. In any industrial accident case, the first documented entry should be in the employer's doctor reporting that the employee had come to work and was on duty on that day. That the employee had made report and a chit given to go to the clinic/ hospital for treatment.

19. I would hereby agree with the appellant that no negligence had been attributed herein on the employee on liability. This dismissed appeal is allowed.

20. I am required to state what award would have been given if the appeal was not successful. I would find an award of Ksh. 10,000/= adequate for injuries that did not involve any broken bones and Ksh. 2,000/= on special damages.

21. The appeal is allowed with orders that the judgement of the subordinate court is set aside and orders that the suit be and is hereby dismissed.

22. There will be costs to the appellant from the subordinate court case and for this appeal.

Dated this 30th Day of September 2011 at Nairobi

M. A. ANG'AWA
JUDGE

Advocates :

i) N.J. Munyua instructed by M/s Ngonyo Munyua & Co Advocates for the appellant/ original defendant

ii) Kariuki S M instructed by M/s Muriuki Njagagua & Co Advocates for the respondent/original plaintiff