



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
CIVIL APPEAL NO. 712 OF 2003

**CIRIO DEL MONTHE (K) LTD APPELLANT/
ORIGINAL DEFENDANT**

VERSUS

**NYAGA MBITI RESPONDENT/
ORIGINAL PLAINTIFF**

(Being an appeal from the Judgment delivered by the Hon. Mr Shem Kebongo Esq Senior Resident Magistrate, Gatundu Law Courts in Civil Suit No. 313 of 2000 on the 25th September, 2003)

JUDGMENT

I. INTRODUCTION

1. Nyaga Mbiti an employee of Cirio Del Monte (K) Ltd since 1993 sued his employers for an ailment sustained, being allergic dermatitis, as a result of working in the employer's fields. He alleged that he worked in the harvesting department, the culture and land preparation section of the vast farm belonging to his employers. In the process of his work, he would hold fruits and would come into contact with sulphur chemicals.
2. Between the year 1995 to 1999, 22nd October, he suffered a skin disease ailment and was treated at the employer's clinic, then transferred to Kenyatta National Hospital. He was referred to a Dr. Owili who confirmed that he had contracted allergic dermatitis physically as a result of the chemicals he had been in contact with during the course of his employment.
3. It transpired that in 1997, the said employee had contracted syphilis and had been treated. He was found to be HIV negative.
4. The employer showed that the ailment of the employee was caused by the chemicals. This could have been caused by the syphilis ailment. That other employees did not have the same complaint, working in similar conditions.
5. The employee doctor was of the view that if he had syphilis, then he would have been mentally ill and his brain affected. He had been treated and was completely cured.
6. It was brought out in evidence that the employee was never taken for a test that would have assessed his sensitivity of his skin to chemicals.

7. There was, argued the employer no need to have had the ailment at the work place as the employee had been given adequate apparel to safe guard him from the ailment e.g. gum boots, arm sleeves, leather apron and goggles. Spraying of chemicals was every 18 months.
8. The employee stated in evidence he had only been given gum boots to wear in 1998.
9. The trial magistrate on hearing the evidence before him entered judgment for the employee against the employer
(25th September 2003)

On Liability
at 100%

<u>On Quantum</u>	
General damages	
Pain and suffering	Ksh. 150,000/=
Special damages	Ksh. 7,500/=

10. Being aggrieved, the employer appealed on 25th October 2003.

II PROCEDURE

11. On filing the appeal, the Resident Magistrate Court at Gatundu burnt down all the records of this case in that court and the court house were destroyed in a fire.
12. The appellants applied in September 2010 for orders to reconstruct the file. This was by filing a Notice of Motion supported by an affidavit. On annexing all the pleading and typed proceedings (Simpson CJ 1984 rules.)
13. The file was reconstructed to enable the record of appeal to be prepared.

III APPEAL

14. The appellant's main dissatisfaction of the subordinate court's case is that the ailment was never caused by the place of work. The employee failed to prove that the chemical was as a result of the work place situation. That the respondent had pre-existing ailments not connected to his work place. There was therefore no negligence on the part of the employer.
15. As to the quantum, this was excessive.
16. The advocate for the employer, the appellant disputed the medical report produced to court by the employee. That there was no proof of the cause of ailment was due to sulphuric chemicals.
17. The employee was of the opinion that his evidence was never rebutted. He was examined by a reputable doctor. It was from Kenyatta Hospital that notified him of his ailment being that of contact of chemicals that caused the said ailment.
18. The employee prayed through his advocate that this appeal be dismissed.

IV OPINION

19. From the evidence before the trial court, there was a consistent history of ailment of the employee that began in the year 1995. This was caused by itching and treatment at the employer's clinic. It should be commended that the employer has a clinic for the workers and recommends their workers to the national hospital.

20. This case can be distinguishable in that the employee's complaint of his ailment was consistent. I would agree that the cause was not syphilis. This was treated and was cured. It was not due to HIV/Aids. If the employee was positive, then the likelihood of the skin disease would have been due to this cause. The only explanation the doctor gave was due to contact with chemicals. The employees sensitivity of his skin would have contributed to the ailment but had never been assessed prior to this.

21. I would find that liability at 100% was the correct conclusion that the court came to. I would find the award of Ksh. 150,000/= was not excessive.

22. As to the award of Ksh. 7,500/=, the plaint pleaded Ksh. 1,000/= for a medical report. Ksh. 7,500/= was never particularized or pleaded. I would hold that Ksh. 7,500/= was awarded to the employee in error. That the court awards the Ksh. 1,000/= as pleaded.

23. The appeal is otherwise dismissed with costs to the employee/original plaintiff.

In summary:

TORT/CONTRACT

- i) Male adult employee
- ii) Dermatitis disease
- iii) Liability
- iv) Quantum

General damages

Pain and suffering Ksh. 150,000/=

Special damages and
Medical report Ksh. 1,000/=

Total Ksh. 151,000/=

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24. There will be interest on general damages from the date of the subordinate court's judgment. Interest on special damages from the date of filing suit and costs to the respondent in subordinate court and in this appeal.

Dated this 28th day of September 2011

M. A. ANG'AWA
JUDGE

