



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

OF KISII

Civil Appeal 51 of 2004

SOUTH NYANZA SUGAR CO. LTD.....APPELLANT

VERSUS

EVANS KIRAI LIKAYU.....RESPONDENT

JUDGMENT

This appeal arises from the judgment of Kariuki Mwaniki, RM in Migori SRMCC No. 114 of 2003. In the said case the respondent was the plaintiff. The case arose out of an accident that was alleged to have taken place on 9th January 2003 involving the appellant's motor vehicle registration No. KAA 416 P which was said to have been carrying about 61 cane cutters.

In the trial court a consent was recorded to the effect that the judgment in the case was to apply to several other cases being Migori SRMCC Nos. 56 to 114 of 2003 where the plaintiffs were alleged to have been passengers in the aforesaid motor vehicle.

The appellant herein preferred an appeal arising out of the trial court's judgment in Migori SRMCC No. 86 of 2003, **SOUTH NYANZA SUGAR CO. LTD. -VS- PHILIP OUMA LWANDE**, HCCA No. 9 of 2004 at Kisii. That appeal was heard and determined on 30th March 2009.

The court held that the said accident did take occur and the appellant's motor vehicle was found to have been defective prior to the occurrence of the accident. The driver of the motor vehicle lost his control following brake failure.

A list of the people who were in the said motor vehicle had been prepared by **Jairus Oguttu Otieno, DW3**, who had been contracted by the appellant to recruit cane cutters. He said that he took down names of the cane cutters before they boarded the appellant's motor vehicle. He produced the list before the trial court. He was also travelling in the said motor vehicle together with cane cutters. He further testified that following the said accident only a few of the cane cutters sustained injuries. He named them as **William Juma, Moses Otieno Olel, Jairus Oguttu, Daniel Odhiambo Obundi, Francis Chacha and Josephat Kiburi Chumba**. He added that most of the people who had been involved in the said accident did not sustain any injuries and they worked throughout the day. He produced a record of the people who were on duty after the said accident. It was contended that there were several cases that were filed by people who were either not in the said lorry at the material time or who were passengers therein but had not sustained any injuries.

Anthony Njoroge Ngumba, DW4, was employed by the appellant as an investigator. He visited the scene of the accident and compiled a list of 61 cane cutters who were in the appellant's lorry.

The respondent herein is not shown to have been one of the people who sustained injuries following the said accident. The documents that he produced in support of his claim were suspect. The reasons thereof are stated in Civil Appeal No. 9 of 2004 aforesaid.

The award of Kshs.73,000/= that was made in his favour is unsustainable. Consequently, I allow this appeal and set aside the judgment that was delivered by the trial court and substitute therefor an order dismissing the respondent's case before the subordinate court. I make no order as to costs.

DATED, SIGNED AND DELIVERED AT KISII THIS 24TH DAY OF MARCH, 2010.

D. MUSINGA
JUDGE.
24/3/2010

Before D. Musinga, J.

Mobisa – cc

Mr. Odhiambo for the Appellant

N/A for the respondent

Court: Judgment delivered in open court on 24th March, 2010.

D. MUSINGA
JUDGE.