



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI (NAIROBI LAW COURTS)**

**Civil Appeal 21 of 2005**

**KAKUZI LIMITED.....APPELLANT  
VERSUS  
NANCY NYAMBURA MUBAA.....RESPONDENT**

*(Appeal from the judgment of Mr. D. Morara Resident Magistrate in Gatundu SRMCC No.516 of 2004 dated/delivered on  
2<sup>nd</sup> December, 2004)*

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

1. This appeal arises from a suit which was filed in the magistrate's court at Gatundu by Nancy Nyambura Mubaa (hereinafter referred to as the respondent). She had sued Kakuzi Limited (hereinafter referred to as the appellant). The respondent claimed general and special damages arising from injuries suffered by her during the course of her employment with the appellant, as a result of the appellant's negligence.
2. The appellant filed a defence to the respondent's claim in which it denied that the respondent was its employee, or that an accident occurred, or that the appellant was negligent as alleged. In the alternative, the appellant averred that if the respondent was injured then her injuries were wholly caused and or substantially contributed to by her own negligence.
3. During the trial in the lower court, the respondent testified that she was employed by the appellant as a farm hand between 1996 and April, 2004. She explained that she was a casual worker earning a salary of Kshs.127/= per day. On the material day the respondent was digging a Block 2 at about 1.00 p.m. when she was stung by bees. The respondent explained that the appellant was keeping bee hives. The respondent reported the matter to one Mr. Nyoike Kabuga. She was referred to the company clinic. Later she was examined by Dr. Kiama Wangai who was also called as a witness. Dr. Kiama testified that the respondent suffered bee sting injuries and soft tissue injuries from which she had recovered.
4. At the close of the respondent's case, the appellant did not offer any evidence. However, written submissions were duly filed in which it was submitted that the respondent's claim was not based on any solid evidence and that she failed to discharge the onus of proving that she was employed by the appellant, or that she was injured at work. It was further submitted that the respondent had not proved that she was injured or treated.
5. It was therefore contended that her claim was a fraud. It was further submitted that if the court were to find the appellant liable then liability should be apportioned at 50/50 as the respondent acknowledged that she knew of the presence of the bees. It was contended that a sum of Kshs.10,000/= would suffice as general damages.
6. For the respondent it was submitted that the evidence adduced was sufficient to prove her case. It was maintained that the respondent's evidence that she was stung by bees was not challenged as no evidence was called by the appellant to contradict that evidence. It was contended that the appellant did not maintain a safe working environment as the respondent was allocated to work near the beehive, without being given any protective clothing. The court was therefore urged to find the appellant fully liable and award the respondent general damages of Kshs.200,000/=.
7. In his judgment, the trial magistrate found that the respondent had proved her case on a balance of probabilities and gave judgment in her favour for Kshs.80,000/= as general damages less 10% contribution.
8. Being aggrieved by this judgment the appellant has lodged this appeal raising 8 grounds as follows:
  - (i) That the learned magistrate erred in law and in fact in failing to take into consideration of the defendant's defence and especially paragraphs 5, of the said defence.
  - (ii) That the learned magistrate erred in law and in fact in failing to consider or ever adequately adopt and appreciate the written submissions of the appellant's record.
  - (iii) That the learned magistrate erred in law and in fact in finding against the defendant in view of the circumstances of the case.
  - (iv) That the learned magistrate erred in law and in fact in basing his judgment on the wrong premises given the facts of the case.
  - (v) That the learned magistrate erred in law and in fact in entering judgment for the plaintiff's in the absence of the plaintiff's advocate written submissions.
  - (vi) That the learned magistrate erred in law and in fact in failing to find that the defendant was not liable for a swarm of bees that flew into his compound.
  - (vii) That the learned magistrate misdirected himself in finding that the plaintiff is entitled to general damages of Kshs.80,000/=.

(viii) That the said amount is excessive and punitive to the defendant in the circumstances.

9. During the hearing of the appeal the respondent, though served did not attend court. Hearing therefore proceeded ex-parte. Mr. Onyancha who argued the appeal on behalf of the appellant, submitted that the respondent failed to prove liability on the part of the appellant as she did not prove that she was employed by the appellant nor did she prove her alleged injuries. Counsel maintained that the respondent did not prove that the appellant kept the bees or was in control of the bees. Therefore no negligence was established. Finally, Mr. Onyancha submitted that the sum of Kshs.80,000/= awarded was excessive and urged the court to set the same aside.

10. I have carefully reconsidered and evaluated all the evidence which was adduced before the trial magistrate. I have also considered the submissions made before the trial court and the submissions made before me. I find that there was credible evidence given by the respondent to the trial magistrate that she was at the material time employed by the appellant, and that she was injured during the course of her work, as a result of being stung by bees kept by the appellant. The trial magistrate who saw the demeanour of the witness believed the respondent, and I have no reason to fault the trial magistrate in that regard.

11. The appellant denied the respondent's allegations and claimed that the accident was caused by the respondent's negligence. Nevertheless, the appellant did not offer any evidence and therefore although the defence was rightly rejected, there was no justification for the apportionment of liability against the respondent at 10%. I note that in his judgment the trial magistrate did not make any specific findings or give any reasons for his judgment. Notwithstanding this anomaly, there was sufficient evidence before the trial magistrate upon which the appellant's liability could be anchored.

12. As regards the issue of quantum, the respondent testified that she was stung by bees. Although she testified that she was treated at the appellant's Clinic there were no treatment notes produced to confirm the extent of her injuries. The medical report prepared by Dr. Kiama Wangai who examined the respondent about 8 months after the accident was not very helpful in this regard. I therefore concur with the appellant that there was no basis upon which the award of Kshs.80,000/= was based. The respondent appear to have suffered minor insignificant injuries and the award of Kshs.80,000/= was thus excessive. A sum of Kshs.25,000/= was sufficient compensation for the pain and injury suffered from the bee sting.

13. The upshot of the above is that I allow the appeal to the extent of setting aside the judgment of the trial magistrate and substituting thereof, judgment in favour of the respondent in the sum of Kshs.25,000/= as general damages and Kshs.3,000/= as special damages (Kshs.3,000/= was the amount pleaded even though kshs.7,000/= was proved).

14. The respondent shall have costs of the suit in the lower court, but each party shall bear his own costs in this appeal.

**Dated and delivered this 21<sup>st</sup> day of April, 2010**

**H. M. OKWENGU**

**JUDGE**

In the presence of: -

Anzalla H/B for Mrs. Otieno for the appellant

Movisa H/B for Ms Mburu for the respondent

Eric - Court clerk