



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KISII**

**Civil Appeal 172 of 2003**

**SOUTH NYANZA SUGAR COMPANY LTD. .... APPELLANT**

**VERSUS**

**ONGONO RAUTE ..... RESPONDENT**

**JUDGMENT**

The respondent stated in his plaint that on/or the 14<sup>th</sup> day of February 2000 while engaged as a sugarcane cutter by the appellant he cut himself with a panga on the left hand. He alleged that the said accident was caused by breach of statutory duty and negligence on the part of his employer. He claimed general damages as well as special damages in the sum of Kshs. 3,500/= for a medical report.

The appellant filed a statement of defence and denied the respondent's claim. The appellant further stated that if the alleged accident ever occurred, the same was occasioned by the respondent's negligence in that he performed his duties carelessly and exposed himself to danger.

The respondent testified that on the material day he was using a panga to cut sugarcane when in the course of his work he cut himself on the left hand. He blamed his employer for failing to provide him with gloves. He further alleged that the panga did not have a good handle. However, in cross examination, the respondent said that he cut himself by bad luck and the appellant could have done nothing to prevent the accident from occurring. Dr. Ezekiel Ogando Zoga also testified and produced the respondent's medical report.

The appellant did not adduce any evidence. The learned trial magistrate apportioned liability at 90:10 in favour of the respondent and awarded general damages in the sum of Kshs. 110,000/= which after contribution was reduced to Kshs. 100,000/=.

Being aggrieved by the said judgment, the appellant preferred this appeal. It was contended that the respondent did not sufficiently prove his case and that the learned trial magistrate ought not to have found for him.

Both parties filed their respective submissions which I have carefully perused. Mr. Ogwenyo for the respondent urged the court to find that there was no competent appeal before this court because the decree that was filed does not accord with the judgment that was delivered as required, see Dr. Ezekiel Ogando Zoga. The decree does not show that "the defendant do pay a sum of Kshs. 100,000/= to the plaintiff as general damages". There was apportionment of liability as aforesaid. It merely states that I do not think that the alleged defect can render this appeal incompetent. Order XX rule 7 (5) of the expressly states that in the subordinate court the decree shall be drawn up and signed by the magistrate who pronounced it or by his successor. The aforesaid decree was not drawn by the appellant's advocate. The mistake therein is attributable to the learned trial magistrate who drew the same. In any event, the decree is

not misleading in any way. It shows the amount that the appellant was ordered to pay. I therefore reject the respondent's contention as aforesaid.

Turning to the merits of the appeal, there is no dispute that the respondent was in control of the panga that he was using to cut sugarcane with. He knew or ought to have known that a sharp panga could inflict injuries on him if it was not well handled. The panga slipped out of his right hand and cut his left hand. Although he alleged that he had not been supplied with gloves, there was no evidence that such gloves were required for the kind of job he was doing and further, that if he had put on gloves the panga would not have slipped out of his hand. In my view, the respondent cannot blame the appellant for what he admitted was bad luck on his part. If the respondent had been more diligent, the said accident would not have occurred. My finding is that the respondent did not prove that there was any negligence or breach of statutory duty on the part of the appellant. The trial court's finding on liability cannot therefore be sustained.

All in all, I allow this appeal and substitute therefor an order dismissing the respondent's suit before the subordinate court. The respondent shall bear the costs of that suit as well as the costs of this appeal.

**DATED, SIGNED AND DELIVERED AT KISII THIS 11TH DAY OF JUNE, 2010.**

**D. MUSINGA**  
**JUDGE.**  
**11/6/2020**

Before D. Musinga, J.

Mobisa – cc

N/A for the Appellant

Mr. Ogweno for the Respondent

**COURT:** Judgment delivered in open court on 11<sup>th</sup> June, 2010.

**D. MUSINGA**  
**JUDGE.**