



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**Civil Appeal 185 of 2006**

**MAY FLOWER LIMITED ..... APPELLANT**

**VERSUS**

**DORIS NYACHERA MACHABA ..... RESPONDENT**

(An Appeal from the Judgment of Hon. N. N. Njagi, Ag. Principal Magistrate,  
in Naivasha S.P.M.C.C.No.115 of 2006 dated 30<sup>th</sup> November, 2006)

**JUDGMENT**

The only two questions this appeal raises are whether the respondent was injured at her place of work and whether the quantum of damages awarded to her by the court below were commensurate with the injuries allegedly suffered. It is the appellant's contention that the respondent's case being that she was granted permission to go to the hospital at 7, her claim that the accident occurred at 1.00 p.m. can only lead to the conclusion that she was injured elsewhere before reporting on duty to obtain permission to go the hospital.

Relying on both the **Muster Roll** and the **Accident Record** for **5<sup>th</sup> January, 2006**, learned counsel for the appellant further submitted that on that day the respondent was not on duty. It is further stated that there was no evidence of the nature of the chemical that caused injury to the respondent.

On quantum it was argued that the trial court did not state the basis of awarding 90% liability to the appellant and further that the award of Kshs.110,000/= was excessive in view of the injuries suffered.

In response counsel for the respondent submitted that the trial court found no evidence to support the applicant's assertion that the respondent was on duty. It was further submitted that the award of damages was not based on any wrong principle and the same was not excessive.

Being the first appeal I must re-evaluate the evidence in order to arrive at my own independent decision. The respondent brought the action giving rise to this appeal against the appellant seeking damages for chemical burns, alleged to have been inflicted at her place of work. She was given a day off to go to the hospital. After being attended at a private (company's) clinic, she also went to Naivasha District Hospital.

Subsequently she resigned on health grounds attributed to the chemical effects at the appellant's flower farm.

The appellant denied that the respondent suffered any burns at the farm and that indeed she was not on duty when the accident is alleged to have occurred.

The learned trial magistrate found as a fact that the accident indeed happened and the burns were sustained by the respondent while on duty. He blamed the appellant for failing to ensure the safety of the respondent. He also blamed the

respondent for not taking care of herself and apportioned liability at 90% and 10% as against the appellant and the respondent respectively.

Relying on the case of **Japheth Lusuli Lihobo V Doble Co. Ltd. & Another** HCCC No.2316 of 1982, the learned trial magistrate awarded the respondent Kshs.110,000/= as general damages and Kshs.2,500/- in special damages. The appellant has challenged both the finding on liability and the quantum of damages arguing that there was no evidence of injury or when the accident occurred; that the award was excessive.

It is not denied that the respondent was employed by the appellant as a general worker with effect from 3<sup>rd</sup> January, 2006.

On the question of whether the respondent sustained the burns complained of the only contention is that the hospital permission slip shows that on 5<sup>th</sup> January, 2006 at 7 the respondent was given off duty to go to the hospital. That if that be so, then she must have suffered the burns elsewhere before coming to the farm at 7 to seek permission. The slip was produced by the appellant but the author, Joyce was not called. The slip does not state whether the time was 7.00 a.m. or 7.00 p.m. That is why it was necessary to call Joyce.

The respondent has maintained that she was injured at 1 p.m. and was granted off to go to the hospital. Without the evidence of Joyce who recorded the time this court finds that irrespective of the time the appellant allowed the respondent to go for treatment on that day, a fact also confirmed by the Muster Roll that reflects **S.O.** translated during the hearing to mean "**sick off.**" The respondent led evidence that she used to report on duty at 1.00 p.m. and would work through to 4.00 p.m. That on the day in question she had only reported on duty when the accident occurred hence the entry "**sick off.**" For these reasons I find that the occurrence of the accident was proved.

Turning to quantum, the learned magistrate correctly observed that the injuries suffered by the plaintiff in **Japheth Lusuli** case (*Supra*) were more severe than those suffered by the respondent. The plaintiff in **Japheth Lusuli** case suffered burns all over his right shoulder, right wrist area. He was hospitalized for 2 months and underwent skin grafting with skin taken from his thighs.

Compare that with the respondent's chemical burns on the right hand and face. Consider also the reports by **Doctors Kiamba and Malik** that are unanimous that there are no prominent scars.

Dr. Malik noted that the chemical burns were very superficial.

As also held in **Butler Vs. Butler** (1984) KLR 225 assessment of damages is an exercise of discretion and an appellate court will be slow to reverse the trial judge (magistrate) unless he either acted on wrong principles or awarded so excessive or so little damages that no reasonable court would; or he has taken into consideration matters he ought not to have considered, or not taken into consideration matters he ought to have considered and in the result arrived at a wrong decision.

In this matter in view of the injuries suffered and the damages awarded, bearing in mind that the decision of **Japheth Lusuli** was made in 1993, I think the learned trial magistrate awarded so excessive damages in the circumstances. It is also not clear on what basis the apportionment of liability was done. The appellant did lead evidence as to the respondent's negligence.

I will, in the circumstances, allow the appeal to the extent that the award of Kshs.110,000/= is reduced to and substituted with an award of Kshs.30,000/= in general damages and Kshs.2,500/= in special damages. The award of special damages has not been challenged. I also set aside the apportionment. I award half the costs of this appeal to the

appellant and I award the costs in the court below to the respondent with interest from the date of the lower court's judgment.

**Dated Signed and Delivered at Nakuru this 19<sup>th</sup> day of July, 2010.**

**W. OUKO**  
**JUDGE**