

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU

Civil Appeal 125 of 2006

LONDRA LTD.....APPLICANT

VERSUS

KENNETH K. BUKISA.....RESPONDENT

JUDGMENT

This is an appeal against the judgment of the Senior Resident Magistrate delivered on 17th July 2006 in Nakuru CMCC No.750 of 2005 in which the learned trial magistrate held the appellant 70% liable and awarded the respondent a sum of Kshs.62,500/-.

Mr. Murimi for the appellant submitted that there was absolutely no basis for holding the appellant liable. Besides the fact that in his evidence the respondent contradicted his pleadings, he submitted that the original treatment record having not been produced the plaintiff had not proved his injury.

On his part Mr. Maragia for the appellant submitted that the trial magistrate's apportionment of liability was based on sound evidence and that Dr. Kiamba's report which was based on the treatment record sufficed and urged me to dismiss this appeal with costs.

Having considered these submissions and read the record, I find that this appeal can be disposed of on just one point. In paragraph 6 of his plaint the respondent averred:-

“On or about 7th July, 2003 while the plaintiff was dully performing his duties the defendant so negligently provided him with an unsave system of work that while he was operating the boyd machine the top loose cover came off and fell on him causing him severe injuries.”

In his testimony the respondent said he was injured by a bobbing he was carrying in a torn paper bag some 50 metres away from the boyd machine. That is not operating the boyd machine as the learned trial magistrate found. I agree with counsel for the appellant that that evidence clearly did not support the respondent's above pleading. The trial magistrate had therefore no basis for holding the appellant liable. Consequently I allow this appeal and set aside the judgment of the learned trial magistrate. The appellant shall have the costs of this appeal and those of the lower court.

DATED and DELIVERED this 2nd day of July, 2010.

D. K. MARAGA
JUDGE