



KIPKEMBE LTDAPPELLANT

VERSUS

GLADYS MORAA KABA RESPONDENT

(An Appeal from the Judgment/Decree of Hon. L.N. Mugambi, Resident Magistrate Sotik

delivered on 3rd October, 2006 in Sotik RMCC No. 232 of 2004)

JUDGMENT

I: Background

1. The original defendant M/S Kipkebe Ltd was the employer of the original plaintiffs on Gladys Moraa Kaba. The said Plaintiff sued them in the Subordinate Court at Sotik on 21st September, 1994 and claimed that she sustained injuries to her right leg as a result of being pricked with a tea bush whilst weeding.
2. The trial court delivered its judgment on 3rd October, 2006 and found that the employer was liable in damages at 90%. The said plaintiff's employee contributed 10%. It seems that the injuries sustained attracted an award of Kshs. 100,000/= apportioned at 72,000/= for the plaintiffs with 8,000/= for the defendant.
3. The employer/defendant appealed against the said decision.

II: Appeal

4. In the said appeal the appellant /employer original defendant stated that there was no evidence to show that the respondent/plaintiff was actually injured.
5. The Plaintiff/respondent stated there was sufficient evidence.

III: Opinion

6. The said evidence before the lower court show that the Appellant was the one who held records of work done by the Respondent. That the work assigned was plucking tea not weeding. She had plucked sixteen (16) kilos of tea that day.
7. No report was given to any of the workers of the Appellant that the Respondent had been injured. The Respondent never attended any clinic. Her medical records does not show she attended the clinics on the 10th June, 2000. There is though record of her going to the clinic on 19th June, 2000 in which she stated she had an eye problem sustained at home and not at work.
8. At all times the said evidence did not support the facts that the Respondent was initially injured and treated.

9. I would state that the issue of Limitation of Action does not arise herein. An employer/employee have a unique relationship where the cause of action is six (6) years. The trial magistrate was correct in this aspect.

10. I find there is merits in this appeal. The Judgment of the trial magistrate is set aside. The appeal is allowed with costs to the Respondents.

DATED this 26th day of May, 2009 at KERICHO

M.A. ANG'AWA

JUDGE

Advocate

M/S P.K. Murimi advocate instructed by the firm of M/S Mukite Musangi & Co. advocates for the Appellant – present

M/S K. Ochieng advocate instructed to hold brief by the firm of M/S S. Munyao & Co. advocates for the Respondent - present