

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT EMBU

Civil Appeal 9 of 2005

BEATRICE WANGARI KIBUI.....APPELLANT

VERSUS

JAMES NGARI NJERU.....RESPONDENT

JUDGMENT

On the day fixed for hearing this appeal the Respondent did not attend. The hearing Notice was served. Therefore the appeal was argued by the Appellant in absence of the Respondent. The dispute is about employment contract between the Appellant and the Respondent that the Appellant failed to provide adequate security at the place of work.

In his Judgment the Trial Magistrate found the plaintiff 20% to blame and Defendant 80% and Judgment on award was made accordingly. The Appellant (Defendant in the lower Court) has filed 4 grounds of appeal saying that the Trial Magistrate misdirected himself in finding that adequate measures were taken to provide security to the plaintiff at the place of work (a Petrol Station) and that the Respondent was not the right person to be sued and that medical evidence did not state the extent of the injuries sustained and therefore arrived at the wrong conclusion on the nature and extent of the same and reached at an erroneous estimate of general damages. A perusal of the proceedings shows that the Plaintiff (Respondent) first witness was a medical doctor who testified as to the injuries suffered by the Respondent. He was cross-examined by the Appellant and in my view he gave sufficient evidence to prove the extent of injuries. These were soft tissue injuries and it was the finding of the Trial Magistrate which was not erroneous.

On the issue of security the 2 pump attendants were attacked as they said by 3 robbers at the Petrol Station. The employer had employed a night watchman who was not present when attack took place. No protective gear was provided but there were security lights around. The Defendant claimed that she was employee of the Total Oil Co. Ltd and there was wire fence around the Petrol Station. After considering all the evidence the Trial Magistrate found that both parties were guilty of negligence and he apportioned at 20:80% liability. The Respondent sustained soft tissue injuries as shown by medical evidence and the assessment of the Trial Magistrate does not warrant any interference. The amount is not so high or so low as to be said it was reached on wrong principle of law. I do not see any reason to interfere. If the Defendant was an employee of Total Oil Co. Ltd. She was an agent and was not wrongly sued. After considering all the record I find the appeal has no merit. The same is dismissed with no order as to costs.

Dated this 18th January, 2008.

J. N. KHAMINWA

JUDGE

18/1/2008

Khaminwa – Judge

Njue – Clerk

Mr. Kathungu

N/A

Read in open court.

J. N. KHAMINWA

JUDGE