



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

Civil Appeal 59 of 1998

EASTERN PRODUCE (K) LIMITED APPELLANT

VERSUS

WILFRED KISIVULI FUGISI RESPONDENT

JUDGEMENT

This is an appeal from the Judgement of the Principal Magistrate's Court at Kapsabet in SPMCC. No. 20 of 1997.

The Respondent was an employee of the Appellant. He claimed that on or about 14th November, 1996 while he was lawfully on duty and in the course of his duties he sustained severe bodily injuries due to the negligence of the Appellant and that of its agent. He claimed that he suffered loss and damage as a result.

The Respondent's claim was that while he was plucking tea at the Appellant's premises, he was bitten by a spider. He said that the Appellant Company did not spray the tea plantation and fields to eliminate spiders. Also that he was not provided with gloves for protection against such eventualities. He further claimed that as a result of being bitten by the spider on his right forearm, the arm and hand became swollen and tender. That he suffered severe pains due to the injury.

The Trial Court found the Appellant as the employer to be liable. The Honourable Magistrate had this to say:-

“..... I am not sure that the gloves could be used when plucking and neither am I sure that the tea bushes can be sprayed to get rid of the spiders. I am however certain that the presence of spiders in the tea bushes poses a great danger and the Company should devise a way of getting rid of the spiders. If the Company cannot get away of riding them of the tea bushes then it must always be prepared to pay compensation to victims for exposing them to the risk as it has a duty to ensure the safety of its employees.”

The Court, however was of the view that the employee was under a duty to be on the look-out for such dangers. He found the employer liable but apportioned the liability on a 50% -50% basis. The Court awarded a sum of Shs. 35,000/= as general damages and special damages of Shs. 1,500/=.

The Defendant Company in the said suit filed this Appeal and pleaded the following grounds, that:-

1. The Learned Magistrate erred in law and fact in holding the Defendant negligent in the absence of any

evidence to that effect.

2. The Learned trial Magistrate erred in law in holding that the Plaintiff was hurt while on the Defendant's duty when there was clear evidence by the Defendants to the contrary.
3. The Learned trial Magistrate erred in ignoring the clear evidence adduced by the defence.
4. The trial Magistrate erred in law in attributing liability contrary to the laid down principles on remoteness of damage.
5. The trial Magistrate erred in law in failing to address himself to the fact that the Plaintiff had failed to file a reply to defence to traverse the allegations on negligence leveled against him hence he admitted the particulars of negligence.
6. The damages awarded were excessive in the circumstances of the case.

At the hearing of the appeal, the appellant abandoned ground 7 relating to the amount of the award.

I have considered the proceedings, Judgement and submissions by Counsel. The Respondent went to the Company's dispensary on the material day and was treated. There is no reference or description of the nature of the ailment. However, this Court will not interfere with the finding of the trial Court that indeed he sustained a spider bite on his arm.

Was the Company liable for the incident? The Learned Magistrate stated that he was not sure that the tea bushes can be sprayed to get rid of spiders. In view of this doubt, I do not see how he could arrive at the decision that the Company was under a duty to get rid of spiders in the tea bushes. There was no evidence on record that the existence or presence of spiders in tea bushes was prevalent or common at the Defendant's tea farm. It was necessary for the Plaintiff to prove that the presence of spiders was common and that it was danger known to the Defendant. In the Charlesworth on Negligence 6th Edition it is stated:-

"When an employer is obliged to send his workmen to work outside in the open air, for example, in the countryside he cannot reasonably be expected to do much which would effectively protect his servant from the ordinary and natural risk of working at such a place."

The presence of insects like ants, spiders etc are ordinary and natural risks in a tea plantation. For the employer to be obligated to spray the tea bushes it must be shown that the presence of such insects are known, common and dangerous to the employee. It must also be established that it is possible to spray or remove such insects without any adverse effect on the tea bushes or crop.

It would be placing such a high standard of duty of care on tea farmers to expect them to spray all tea bushes to eradicate insects. One must know whether it is possible to do so and the effect on the tea from an agricultural point of view. One must assess the commonality or prevalence of the danger of spiders biting tea pluckers.

I think this is a case of remoteness. It is my view that in the circumstances, it was too remote for the Defendant Company to foresee that a spider would bite the Plaintiff and he would be so injured. I think the Respondent should have invoked the Workmen's Compensation Act rather than make a claim of negligence.

I do hereby allow the appeal and set aside/quash the Judgement of the trial Court. I do hereby dismiss the suit in the said Court with costs to the Defendant.

The Respondent shall pay the costs of this appeal.

DATED AND DELIVERED AT ELDORET ON THIS 11TH DAY OF SEPTEMBER, 2008.

M. K. IBRAHIM

JUDGE

In the presence of:

Mr. Nabasenge for the Respondent

No appearance for the Appellant