REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU

Civil Appeal 126 of 2005

BUDS & BLOOMS LIMITED……..…….APPELLANT

VERSUS

JAMES SAWAMI SIKINGA……RESPONDENT

JUDGMENT

This an appeal against the judgment of B. Mongare, Resident Magistrate at Nakuru delivered on 7th July 2005 in Nakuru CMCC No. 2523 of 2003 in which she found the Appellant 100% liable for the injuries the Respondent allegedly suffered at the Appellant's place of work on the 6th of August 2001. The main points raised in the seven grounds in the memorandum of appeal are that the learned trial magistrate erred in failing to find that the respondentt having ceased working for the Appellant in 1996, his claim that he suffered an accident at the Appellant's premises on 6th August 2001 was fraudulent; that even if the Respondent was in the Appellant's employment at the material time, the learned magistrate erred in finding the Appellant 100% liable and that, given the injuries the Respondent allegedly suffered, the award Kshs.97,500/- was inordinately high.

In his submissions on behalf of the Appellant, Mr. Murimi contended that the judgment appealed from fouled the provisions of **Order 20 Rule 4** of the **Civil Procedure Rules**. As that is not one of the grounds of appeal I ignore that submission together with all the authorities cited in support thereof.

The first ground of appeal is that the respondent's claim was fraudulent as he ceased working for the Appellant on 15th September 1996. The learned trial magistrate found that the Appellant failed to produce relevant documents to prove that the Respondent was not in its employment at the material time. That is, however, incorrect as the Appellant produced employment records which show that the Respondent was on its payroll upto and including that date. It also produced records for July and August 2001 which show that the Respondent was not on its payroll. The learned trial magistrate had therefore no justification for that finding. The Respondent's name was not on the Appellant's injury register for the 6th August 2001. Having been a casual employee with no letter of appointment he could not have been served with a letter of dismissal as he alleged. The letter of dismissal which he unsuccessfully attempted to produce was clearly a forgery. He did not produce the treatment card. Other than his contention there is nothing on record to prove that the Respondent was in the appellant's employment at the material time. Dr. Omuyoma's report is based on what the Respondent told him and the healed scars he saw on him. It does not therefore prove that the Respondent suffered any injuries on 6th August 2001.

The learned trial magistrate harped on the fact that the issue of the Respondent having been dismissed as a result of his involvement in the strike in 1996 was not put to him and that the defence witnesses said they knew the Respondent. Neither of these points could have assisted in the Respondent's case. The defence witnesses knew the Respondent because they worked with him upto 1996 when he was dismissed according to them as a result of his involvement in the strike against the Appellant.

Having perused the employment documents produced by the Appellant and the entire record of appeal, I am satisfied that the Respondent was not in the Appellant's employment on or around the 6th August 2001. This being my view of the matter, the consideration of the other points raised will be otiose. Consequently I allow this appeal with costs to the Appellant.

DATED and delivered at Nakuru this 16th day of October, 2008.

D. K. MARAGA

JUDGE