



REPUBLIC OF KENYA

**IN THE HIGH COURT OF KENYA**  
**AT MACHAKOS**

**Civil Appeal 59 of 2002**

**DWA ESTATE LIMITED :::::::::::::::::::::::::::::::APPELLANT**

**VERSUS**

**LYDIA MUNYIVA MUNYAO:::::::::::::::::::::::::::::RESPONDENT**

**JUDGMENT**

1. The Appeal herein is now limited to the issue whether in fact liability could attach to the Appellant in the obtaining circumstances and if so then the award of Kshs. 40,000/= in damages is conceded.

2. In the Plaintiff dated 3.7.2000 the present Respondent averred that on 8.6.2000 she was in the course of her employment in the Appellant's sisal farm when she was pricked by a sisal thorn while she was weeding the plants. It was her case that the injury occurred because of the Appellant's negligence. The particulars of negligence given at paragraph 5 of the Plaintiff are:-

***“a) Failing to provide a safe and/or system of work at the premises/site of work.***

***b) Failing to take adequate precautions towards the Plaintiff's safety while she was engaged in their employment.***

***c) Exposing the plaintiff to a risk of injury which they knew or ought to have known.***

***d) Causing or permitting the plaintiff to a work in a place which was not safely secured.***

***e) Failing to provide the plaintiff with protective wear.***

***f) Neglect and/or refusing to adhere to deeming provisions of safety of workers.”***

3. The evidence tendered by the Respondent was that she was not provided with any “***protective gear***” and that although she had a “***coffee digger and hoe plus a panga***” She was not provided with gloves. She explained that the panga was for clearing any bush near the sisal plant while the jembe (hoe) was for removing the suckers.

4. In the Statement of Defence dated 31.7.2000, the Appellant averred that it was not negligent as alleged and that any injury suffered by the Respondent were caused by her own negligence. The particulars thereof are given at paragraph 4 thereof as:-

- “a. Undertaking her duties caressly and recklessly**
- b. Undertaking her duties in total disregard of her own safety**
- c. Failing to heed known and specific instructions on safety**
- d. Failing to wear protective gear.”**

5. One Proscach Mwaange testified on behalf of the Appellant in the subordinate court and his evidence was that on 8.6.2000 she was supervising 30 workers at the sisal farm and each had a panga, jembe and sealhook or coffee digger as well as a sickle. That gloves are not provided but the items mentioned were all equipment for work. That a worker is supposed to remove sisal thorns before he desuckles the plant.

6. It was her evidence that all workers were properly instructed on how to work and that the Respondent was only injured because she failed to follow those instructions.

7. I have heard the submissions by Mr. Mulwa for the Appellant and Mr. Onyancha for the Respondent. I have also perused the decision of Wendoh, J. in **DWA Sisal Estate Ltd vs Monica Komu HCCC 61/2001** where the learned judge found that in a case similar to the present one, the Plaintiff had exposed herself to risk and should bear 30% liability.

8. My own view is this; it is not enough to give an employee a jembe, panga, sealhook and sickle and expect that those implements are akin to **“protective gear”** I say so because as many as they are, only one and at most two can be used at any one time and the risk of injury exists whether one has instructions on what to do and follows them to the letter. In a place literally teeming with sisal thorns the presence of **“equipment for work”** coupled with **“instructions on how to work”** would still necessitate provisions of **“protective gear”** whether or not the employee demands them. The best example would be to tell a person employed to harvest honey, that since he has fire and smoke to scatter the bees, he needs nothing else! The truth is that without **“protective gear”** all other tools of the trade cannot prevent a bee sting.

9. Once it is admitted therefore that in fact neither boots, gloves or an apron were provided to the Respondent, a duty that is reasonably imposed by law on the Appellant, any injury occasioned to the Respondent unless by clear evidence of negligence on her part must be the responsibility of the Appellant to atone for.

10. I hold the firm view that there was no contributory negligence on the part of the Respondent and that 100% negligence was properly proved on the part of the Appellant.

11. Since the appeal on quantum was withdrawn, it follows that I find no merit in the entire appeal and the same is dismissed with costs to the Respondent.

12. Orders accordingly.

Dated and delivered at Machakos this **14<sup>th</sup>** day of **October 2008**

**Isaac Lenaola**

**Judge**

In the presence of: Mr. Makau h/b Mr. Mulwa P.M. for Appellant

No appearance for Respondent

**Isaac Lenaola**

**Judge**