REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Civil Appeal 456 of 2004

SPENOMATIC (K) LTD……..……APPELLANT

VERSUS

SAMWEL MUREITHI MBAE……..……RESPONDENT

JUDGMENT

This is an appeal from the judgment of the learned Principal Magistrate delivered on 26th June 2004 in Milimani CMCC NO. 10,008 of 2003.

Briefly the facts of the case were that the Respondent was working for the Respondent Company at a Tea Factory where they were fixing a boiler. The Respondent was asked to climb the ladder to assist fix a metallic rod to the boiler. A rope was used to lift the rod while the Respondent was on top of the chimney waiting to tie the metal. The rope got cut and the metal rod and the metal bat fell and hit the ladder on which the Respondent was and he fell on to a rough verandah and sustained head injuries. He was rushed to Chogoria Hospital by the appellant where he was admitted for treatment for one week. The Appellant paid all the bills for his treatment amounting to Shs.450/=.

DW1 Wilson Odundo gave evidence on behalf of the Defendant. He admitted that the Respondent sustained injuries when working for the Defendant at Meru Tea Factory where the Defendant had been contracted to fix a boiler. He testified that the Respondent was only engaged as a casual labourer assigned to give spanners to the technicians who were fixing the boiler. He admitted that after the accident his company rushed the Respondent to the hospital for treatment and met all the treatment expenses on humanitarian grounds. The learned trial Magistrate after considering the evidence entered judgment for Shs.150,000/= but apportioned liability at 75% - 25%.

The Appellant was dissatisfied with this judgment and hence this appeal. The Appellant filed 4th grounds of appeal namely:-

(1) That the learned trial Magistrate erred in law by finding that the Appellant was liable for the injuries sustained by the Respondent yet there was no contractual obligation between them.

(2) That the learned trial Magistrate erred in law by apportioning liability at 75% - 25% in favour of the Respondent while it was glaring that the Respondent exposed himself to the dangers he knew were serious.The learned trial Magistrate erred in law and fact by finding the Appellant responsible for the injuries sustained by the Respondent yet the foreman who was on the site denied having employed by the Respondent.

(3) The learned Magistrate erred in law and fact by awarding an exorbitant amount to the Respondent while injuries were of minor nature.

The main ground of this appeal is that the Appellant did not employ the Respondent. But it is conceded that the Respondent was working at the factory and that he had sustained the injuries when he fell from the ladder where he was assisting to fix the metal rod. It is also admitted that the metal rod hit the ladder where the Respondent was standing when the sisal rope got cut.

The Appellant also admits that when the Respondent was injured he rushed him to the hospital where he received treatment and paid the hospital bills. It is also admitted that the Respondent was paid for the work done. With all these admissions the foreman of the Appellant who was at the site cannot be heard to say that he did not employ the Respondent. It was proved that the Respondent was working for the Appellant for gain and he sustained the injuries while working. Liability was proved. On the issue of damages, the Appellant submitted that the amount awarded was exorbitant while the injuries were of minor nature.

There was evidence by Dr. Wokabi who attended and treated the Respondent. The Respondent was diagnosed to have suffered head injuries. There was history of loss of consciousness. The Respondent had convulsion and confused when he gained consciousness. He had lacerations on the right side of the head. He also suffered pain on right shoulder and right pelvis. He had lapses of concentration. The doctor formed opinion that the Respondent had suffered head injury of a major category. The confusions and headaches of such a nature ordinarily last for 5 years. The total sum of disability was 12%.

Based on this medical evidence it cannot be said that an award of Shs.150,000/= general damages was exorbitant. Special damages were proved at Shs.2000/=.

The other ground of Appeal is that the learned Magistrate erred in law and fact by apportioning liability at 75% negligence to the Appellant while it was glaring that the Respondent exposed himself to the dangers he knew were serious. With due respect to the learned counsel I do not see how the Respondent contributed to the accident. He was asked to climb the ladder to assist with the work. He did not slip but while the metal rod was being lifted while tied with a sisal rope the rope got cut and the metal rod hit the ladder which caused the Respondent to fall. The Respondent is not the one who tied the metal rod with a sisal rope. I hold that the Respondent did not contribute in any way to the accident and therefore the learned Magistrate erred in apportioning liability which ought to be born wholly by the Appellant. On reasons stated above the Appellant's appeal is dismissed and the order for apportionment on liability is set aside and consequently judgment is entered for the Respondent for a sum of Shs.152,000/= special damages inclusive with costs.

Dated and delivered at Nairobi this 21st day of June 2007.

J.L.A. OSIEMO

JUDGE