



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Appeal 557 of 2004

MENENGAI FARMERS LIMITED.....APPELLANT

VERSUS

NZOMO MUIYA..... RESPONDENT

J U D G M E N T

On 4/2/05, appellant herein, Menengai Farmers Limited, moved to this court, by way of an appeal against the judgment of the S.R.M; Limuru delivered on 29/6/04 in SRMCC No. 331 of 2004 consolidated with 332 of 2004 on the following grounds:

1. The Learned Magistrate erred in law and in fact in holding that the appellant was liable to the same extent of 90% on two different occasions without any justification.
2. The Lower Court erred in law and in fact in failing to deliver two different judgments on the issue of liability.
3. The Lower Court erred in law and in fact in failing to give reasons for his findings on liability.
4. The Learned Magistrate erred in law and in fact in failing to consider the evidence of the defendant's witness while deciding on liability.
5. The Lower Court erred in law and in fact in finding that the Defendant was 90% to blame for the two farm accidents.
6. The Learned Magistrate erred in law and in fact in giving high awards without citing the authorities he relied on.
7. The Lower court erred in law and in fact in arriving at a uniform judgment on quantum in each case which was erroneous and without any reasons.

Wherefore the appellant prays for the setting aside of the Learned Magistrate's judgment, and for costs of this appeal.

Judgment

I have carefully gone through the pleadings and submissions in the appeal, and considered the entire documentation in the record of the Subordinate Court, and I order as follows:

1. There was no rationale or legal basis upon which the two suits: SRMCC No. 331 of 2004 and SRMCC No. 332 of 2004 were consolidated.

The two incidences involved the same Plaintiff/Respondent and Defendant/Appellant. That was the end of similarities – that is same parties. BUT the incidences arose from two totally different sets of facts; on two different dates; involving totally different sets of work implements. The injuries were totally different.

In brief, it was an error to consolidate the two suits.

2. I accordingly refer the two cases – suits – back to the Subordinate Court – at Limuru - for the two suits to be tried separately by a Magistrate other than the one who tried the two suits herein, earlier on.

3. Some of the confusions and blurred findings; conclusions; and holdings, arose because of the irregular consolidation of two different suits where the causes of action are totally different.

Separate re-trial of the two suits will bring out clearer factual and legal situations, especially on the issue of contributory negligence and the apportionment of liability between the parties in each suit.

DATED and delivered in Nairobi, this 12th Day of July, 2006.

O.K. MUTUNGI

JUDGE