REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET
Civil Appeal 119 of 2003

RAIPLYWOODS (K) LIMITED …….....…… APPELLANT

VERSUS

AMBROSE ANDATI …….....…….. RESPONDENT

(Being an appeal from the Judgment and decree in Eldoret CMCC No. 122 of 2000 delivered on 17/9/2003 by S. Wamwamyi Esq. [C.M.])

JUDGMENT

AMBROSE ANDATI joined **RAIPLYWOODS (K) LIMITED** which I shall hereinafter refer to as "the company" as a cleaner in 1973. he left in 1996, during which time, he claims that he was exposed to dust, as a result of which he contracted bronchial asthma. Being of the view that the company was liable for his ailments, he decided to claim damages from it for in his view, it had acted in breach of its statutory duties and on the same token, it had acted negligently by failing to provide a safe working environment for him and had thereby exposed him to dust; that it knew of the risks which it exposed him to, all of which claims were denied by the company. He was awarded judgment against the company in the sum of Kshs. 405,000/- and Shs. 1,000/- for general and special damages respectively,

The company, which feels aggrieved by the said judgment, has preferred this appeal, which it bases on the grounds that the learned trial Magistrate erred in law and fact in:

1. failing to dismiss the respondent's claim on the grounds that it did not disclose any reasonable cause of action and was barred by the Limitation of Actions Act, Cap. 22, Laws of Kenya.

2. holding the appellant liable in negligence or at all without any or any sufficient evidence in that regard.

3. holding the Appellant liable for breach of statutory duty without any or any sufficient evidence in that regard.

4. failing to hold that no particulars of breach of statutory duty were pleaded by the respondent and hence there was no basis for holding the appellant liable in that regard.

5. failing to hold and find that if at all the respondent suffered damage as alleged, then the same was caused by factors not arising from the appellant's default.

6. arriving at a decision which was clearly against the weight of the evidence adduced before him.

I have taken the submissions of both counsel into account and I am alive to the legal position that parties are bound by their pleadings.

Section 4 (1) & (2) of the Limitations of Actions Act Cap 22 of the Laws of Kenya stipulates that actions founded on contract, may not be brought after the end of six years from the date on which the cause of action accrued, while an action founded on tort may not be brought after the end of three years from the date on which the cause of action accrued.

It is on record that though the respondent attributed blame to the respondent, his pleadings lacked in material particulars in that he had not specified when the cause of action arose. However, if as alleged, he discovered that he had contracted the medical condition in 1990, then it would be obvious that his claim, which was based on contract and the tort of negligence, was already time barred by the time when he filed suit in February 2000, and on that ground alone the learned trial Magistrate erred in proceeding with a matter where not only was the suit time barred, and that no reasonable cause of action had been disclosed in the circumstances.

Be that as it may, though the respondent admitted that he was supplied with dust masks, he failed to show that the company owed his a more special duty of care because of his medical condition. In my humble opinion, an employee who does not disclose his medical condition to his employer at the time when he is recruited cannot expect his employer to take any precaution to guard against the aggravation of his condition. The same principle will apply if while in employment, an employee falls sick, but fails to disclose his ailments to his employer. An employer cannot be expected to guard his employees against the unknown. In the circumstances, I find that the learned trial Magistrate erred by finding in the respondents favour for there being no reasonable cause of action against the liability on contract and in negligence could not lie at all.

This appeal is allowed and the judgment of the subordinate court is hereby set aside and the suit against the appellant is dismissed with costs.

Each party shall however bear its own costs of this appeal.

Dated and delivered at Eldoret this 11th day of July 2006.

JEANNE GACHECHE

Judge

Delivered in the presence of:

Mr. Kuloba for the appellant.

No appearance for the respondent.