



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT ELDORET**

**Civil Appeal 64 of 2000**

**ELDORET STEEL MILLS LTD..... APPELLANT**

**VERSUS**

**PETER NYAATA MIRANGA ..... RESPONDENT**

**JUDGMENT**

Peter Nyaata Miranga, was injured by several people who he described as his co-workers on 1/10/1995, when he stopped them from gaining access to a farm which he was guarding on behalf of his employee. He attributed the blame to Eldoret Steel Mills Ltd., which he proceeded to sue on 29/5/1997, and claimed that the said company, which had employed him acted negligently for inter alia, failing to take adequate precautions to ensure his safety while at work, to provide a safe working environment, all of which allegations were denied. Eldoret Steel Mills Ltd., which also denied that he was their employee, alleged that he had acted negligently in that he failed to adhere to the set work rules, by provoking his co-workers. He filed a reply to the said defence.

After a full hearing in which both parties adduced evidence, the learned trial Magistrate found that Miranga had proven his case and awarded him general damages.

Eldoret Steel Mills Ltd., which feels aggrieved by the said finding, has preferred this appeal which is based on several grounds, namely that that the learned trial Magistrate erred in law and in fact:

1. *in failing to hold that failure to file a reply to defence constituted an admission by the plaintiff and therefore necessitated the dismissal of the case.*
2. *in failing to hold that the plaintiff was not assaulted while on duty.*
3. *in relying on hospital chits whose authenticity was in question.*
4. *in failing to hold that the failure by the plaintiff to report the alleged assault to the police cast serious doubt on the alleged assault and was therefore unbelievable especially in the absence of the production of P.3 form.*
5. *in failing to hold that the plaintiff had failed to prove his case on a balance of probabilities.*
6. *in holding the defendant liable when the record does not show that the plaintiff led evidence of negligence against the defendant.*

7. *in awarding the plaintiff damages when it is clear the plaintiff was not entitled thereto, having failed to prove his case.”*

I shall now refer to Eldoret Steel Mills Ltd., as the (“the appellant”), and to Miranga as (“the respondent”).

I have taken the submissions of both counsel into account and I find that the first ground of the appeal cannot lie as there was a reply to the defence on the record, in which the respondent denied the allegations of negligence which the appellant had attributed to him.

Be that as it may, it was incumbent upon the respondent to prove on a balance of probability that he was injured while on duty, and also that the appellant had neglected in its duties, and that had it taken the necessary precautions, the situation which the respondent claims led to the incident, would not have occurred.

The respondent’s case was that he was attacked by a group of workers when he stopped them from collecting maize from a farm which he was guarding. He claimed to have sustained injuries for which he was treated at the Eldoret District Hospital, yet he was not able to provide proof to that effect. The report which was produced by the doctor whom he consulted on 17/10/1995 (PW2) could not, on its own lie for it was meant to corroborate a report by the doctor who treated him initially at the first instant and who the respondent claimed treated him soon after the incident. Further thereto, the fact that the respondent did not file any reports with the police in a matter which, would clearly appear to have been that of assault, should have sent warning signals to the learned trial Magistrate especially as pertains to the authenticity of his claim.

Faced with such glaring gaps in the respondent’s evidence, the only logical conclusion should have been that the respondent, who was not even sure who his employer was in a matter which is based on contract and negligence, had not proved his case to the expected standards. In my humble opinion, the case ought to have been dismissed for want of proof.

I do in the circumstances allow this appeal and set aside the judgment of the subordinate court, with costs to the appellant.

Each party shall however bear its costs of this appeal.

Dated and delivered at Eldoret this 10<sup>th</sup> day of July 2006.

**JEANNE GACHECHE**

**Judge**

Delivered in the presence of:

Mr. Igosi holding brief for Mr. Nyachiro for the respondent

Mr. Kuloba for the appellant