



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 387 OF 2000

KANYENYAINI TEA FACTORYAPPELLANT

VERSUS

CATHERINE KIREGU KIEHARESPONDENT

J U D G M E N T

This appeal arises from the judgment and order of the Resident Magistrate (Mrs. B.A. Olukoye) in Murang'a Magistrate's Court Civil Case No. 40 of 1998 delivered on 27th July 2000.

In that case one David Irungu (hereinafter referred to as "the first deceased") was hit by a motor vehicle belonging to the appellant wherein he sustained injuries from which he died. His father Kiragu Kieha (hereinafter referred to as "the second-deceased") filed the above suit at Murang'a Court as Administrator of the son's estate.

However, before the case was prosecuted, the second deceased died and his wife, the respondent, took out limited Letters of Administration for the purpose of filing suit and when she obtained them she went to the court at Murang'a and applied to be substituted as the plaintiff in Murang'a Resident Magistrate's Court Case No. 40 of 1998 which she was allowed to do.

The respondent then proceeded with the case No. 40 of 1998, in spite of objections by counsel for the appellant and the learned magistrate awarded the respondent damages in the sum of Kshs.270,000/=.

This decision did not go down well with the appellant and this is why this appeal was filed in this court on 2nd August, 2000 through a memorandum of appeal which listed 6 grounds of appeal.

These grounds complained that the learned magistrate erred in finding the defendant liable yet the said defendant had no capacity to sue or be sued, that she erred in holding against the defendant while vicarious liability was not established against the defendant, that she erred in awarding damages in favour of the plaintiff while she had no locus standi in the case; that she erred in awarding damages in excess of her jurisdiction; that she erred in establishing negligence when none was proved and that the magistrates award was excessive.

The appeal was placed before this court on 18th July 2002 for hearing when counsel for the parties appeared and submitted on it.

Counsel for the appellant submitted herein basing his arguments on the grounds stipulated in the appeal while counsel for the respondent opposed the appeal and said that the magistrate was right in awarding damages to the respondent and that the appellant was properly sued.

Once the appellant raised the issue of its capacity to sue or be sued well in advance, it was upon the respondent to adduce evidence to establish such capacity during the hearing of the case. Perusing through the record of the lower court, no such evidence was adduced to establish that the appellant had the capacity to sue or being sued.

Being a creation of Kenya Tea Development Authority (K.T.D.A), it is only a processing factory for tea and can be equated to an agent of the said K.T.D.A for the purpose of processing tea and that in the case subject to this case it should be the said KTDA to be held vicariously responsible for the wrongful acts of its agent.

It was upon the respondent to establish if the appellant could independently be sued as was done herein in view of the fact that this anomaly had been pointed out by counsel for the appellant in an earlier application.

Moreover, the respondent had applied to the court to be allowed to institute proceedings in respect to the estate of her deceased husband, the second deceased.

This limited grant had nothing to do with the proceedings the said second deceased had instituted in respect to the first deceased estate and it was a misdirection on the part of the learned Resident Magistrate to proceed with the case under the pretext that the respondent had taken out Letters of Administration in respect to the first deceased estate.

And much as the learned magistrate would have awarded damages under the Fatal Accidents Act without requiring acquisition of Letters of Administration she could not do so in respect to those under the Law Reform Act for lack of Letters of Administration.

But since this case fails on lack of locus standi by the respondent in the case subject to this appeal and lack of evidence to show capacity for the appellant to be sued, that the learned magistrate could have awarded the damages to the respondent without the necessity of producing Letters of Administration to the estate of the 1st 1st deceased does not make a difference.

Also I am not convinced a Resident Magistrate can award damages to the tune of Kshs.270,000/= without showing he or she has had his/her jurisdiction enhanced.

I allow this appeal and set aside the lower court order with costs on this appeal and the case below.

Delivered this 31st July 2002.

D.K.S. AGANYANYA

JUDGE