



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 4516 OF 1990

MARTIN AWOCHÉ OKOTH.....PLAINTIFF

VERSUS

RASCO LIMITED.....DEFENDANT

JUDGMENT

Evidence

The plaintiff's case is that he was attacked by some robbers when he was on duty. He was an accounts clerk employed by the defendant. The attack took place on 17.12.87 at about 7.30 p.m. The robbers after they had immobilized the guards at the main entrance entered into his office when he opened the door for the supervisor Hesborn Aura who had requested him to open the door. The supervisor told him he wanted to verify some discrepancies in the accounts of the vendors with the records which were in his office. The vendors used to enter the office before this incident if there was need. The robbers beat him demanding the keys and money and caused him injuries. On cross examination he said that the supervisors were allowed to come to his office and that the instructions not to allow them into his office were issued after this incident in the letter of 22.12.87.

There was no circular or instructions forbidding the vendors to come into his office.

The defendant did not call any evidence but judging from the line of questioning of the plaintiff and from the defence filed the defence is that:

- (1) The plaintiff was negligent in that he left the doors to his office open.
- 2) The defendant was not negligent in that he had employed guards at the main entrance and provided steel doors. 3) The defendant was under instructions to keep his doors to his office locked all the time.
- 4) There was no breach of duty by the defendant.
- 5) The plaintiff had been fully compensated in another case HCCC No.1664 of 1988.

2. FINDINGS

From the facts as related by the plaintiff in his evidence it appears that the robbers had tied up the guards in the main entrance and had gained entry into the compound leading to the office of the plaintiff. There

is no evidence that the supervisor was aware of the presence of the robbers when he asked the plaintiff to open for him. The plaintiff said that the robbers had tied up the guards. It is correct to state that the defendant owed a duty of care to the plaintiff as an employee while at work. Such a duty of care with regard to attacks by robbers would refer to the provisions of guards and secure doors. These seem to have been provided by the employer inform of the guards. If the guards were overpowered I do not think this can be termed as being negligence on the part of the employer. The manner in which the supervisor was forced into the plaintiff office cannot be said to amount to negligence on the part of the employer as the supervisor was not aware of the presence of the robbers within the compound. There was an attempt by the defence through the letter of 22.12.87 to assert that there existed instructions to the plaintiff not to allow the vendors or any body else into his office. This was denied by the plaintiff who explained that this letter with instructions was written after the accident.

On this issue I believe the plaintiff and I find that this letter was written after the robbery. The main issue in this case is whether the defendant was negligent to the extend he can be held liable for the attack to the plaintiff by the robbers. It is common grounds that there was robbery and the plaintiff was attacked and received injuries but for the plaintiff to succeed against the defendant he would need to show that the defendant had not provided any safety measures against entry into the premises by robbers and that the plaintiff was totally exposed to such dangers. The defendant having provided the guards and steel doors would appear to meet what it was supposed to do under these circumstances. By the time the supervisor asked the plaintiff to open the door the robbers had already entered into the compound. The attack could not therefore be attributed to the lack of adequate necessary provisions against robberies. This attack would appear to have been part of the professional hazard in this kind of job the plaintiff undertook to do for the employer , the defendant.

I therefore find that the defendant had by providing guards and steel doors provided what was practically adequate security measures. The employer was not therefore negligent.

3. Judgment

Having found that there was no negligence on the part of the defendant, I would

dismiss the suit with no order as to costs.

Delivered and dated at Nairobi this 8th day of February, 2000.

KASANGA MULWA

JUDGE