



REPUBLIC OF KENYA



KENYA LAW
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**Eastern Produce (K) Limited v Bisieri (Civil Appeal 25 of 2021)
[2024] KEHC 6767 (KLR) (6 June 2024) (Judgment)**

Neutral citation: [2024] KEHC 6767 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAPSABET
CIVIL APPEAL 25 OF 2021**

JR KARANJA, J

JUNE 6, 2024

BETWEEN

EASTERN PRODUCE (K) LIMITED APPELLANT

AND

SAFANIAH YORE BISIERI RESPONDENT

*(Being an appeal from the judgment and decree of the Hon. D. Alego,
Principal Magistrate dated and delivered on 19th February 2018
in Kapsabet Principal Magistrate's Civil Case No. 203 of 2014)*

JUDGMENT

1. The Appeal is against the decision of the Principal Magistrate at Kapsabet in PMCC Case No. 203 of 2014, in which the Appellant, Eastern Produce (K) Limited was sued by the Respondent, Safania Yore Bisieri, for damages arising from injuries sustained by the Respondent/ Plaintiff while in the course of his employment with the Appellant/ Defendant.
2. In the plaint date 15th October 2014, it was pleaded that the Plaintiff was at material time an employee of the Defendant Company and that it was a term of the employment contract that the Defendant would provide the Plaintiff with a safe system of work and with protective apparel while engaged in his work. Also to be provided by the Defendant was a safe working environment in which the Plaintiff would not be exposed to injury or harm.
3. The Plaintiff also pleaded that on or about the 7th April, 2014, while engaged in his work he fell into a ditch and suffered bodily injuries.

He blamed the Defendant for the injuries on account of its negligence and/ or breach of the statutory duty and/or breach of the employment contract.



The Plaintiff contended that he suffered loss and damages due to the injuries and prayed for both general and special damages against the Defendant together with costs of the suit and interest.

4. The Defendant/ Appellant's defence was a denial of the allegations made against itself by the Plaintiff/ Respondent and a contention that if the accident allude to by the Plaintiff occurred, that it was wholly caused or contributed to by the Plaintiff's negligence.

The Defendant also contended that the Plaintiff's claim was fraudulent and intended to unjustly enrich the Plaintiff. That, the injuries pleaded in this suit were similar to the injuries pleaded by the Plaintiff in Kapsabet Civil Suit No. 143 of 2013, in which the Plaintiff separately sued the Defendant.

5. The Defendant/ Appellant therefore prayed for the dismissal of the Plaintiff/Respondent's case with costs.

The trial court heard the case and received oral evidence from the Respondent (PW1) and his witness, a Clinical Officer, Tom Kipkosgei Kilel (PW2). The Appellant testified through its supervisor, Elijah, Kimanga Ombu (DW1) and health worker, Dennis Cheboi (DW2).

6. After the trial, the impugned judgment was rendered to the effect that the Plaintiff/Respondent had proved his case against the Defendant/ Appellant. The trial court therefore awarded the Respondent a sum of Kshs. 300,000/- as general damages but deducted 10% of the amount i.e. Kshs. 30,000/- as the Appellants contributory negligence. The total amount for general damages was thus placed at Kshs. 270,000/- and together with special damages in the sum of Kshs. 6,890/- the Plaintiff/ Respondent was entitled to the grand award of Kshs. 276,890/- together with costs and interest.

7. The Appellant/ Defendant was aggrieved by the outcome and preferred the present appeal on the basis of the grounds set out in the memorandum of appeal dated 16th March 2018, which are on both liability and quantum of damages.

The hearing of the appeal was by written submissions which were filed by the Appellant through Onyinkwa and Company Advocates.

The Respondent did not file his submissions nor appear in court on the date fixed for hearing of the appeal despite having been duly served with the necessary hearing notice.

8. The foregoing omission by the Respondent could be interpreted to mean a "no-contest" or concession of the appeal in its entirety.

Nonetheless, the duty of this court at this juncture was to reconsider the evidence availed at the trial and draw its own conclusions bearing in mind that the trial court had the advantage of seeing and hearing the witnesses.

9. Such is the acceptable principle of Law which was succinctly enunciated by the court in the leading case of *Selle and Another Vs. Associated Motor Boat Company Limited and Another* (1968) EA 123, where it was held as follows: -

"This Court is not bound necessarily to accept the findings of fact by the court below. An appeal to this court is by way of trial and the principles upon which this court acts in such an appeal are well settled. Briefly put, they are that this court must reconsider the evidence, though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect."

10. In applying the principles aforementioned to this case, this court, on the question of liability finds that there was no particular or substantial dispute that the Plaintiff/ Respondent was at the material time



employed by the Defendant/ Appellant as a tea plucker at the Defendant's Kapchorwa Tea Estate and that he was in the course of his normal duty when he fell into a deep uncovered hole and sustained injuries to his back and chest as well as left leg.

11. The Clinical Officer (PW2) indicated that the Respondent suffered soft tissue injuries and the Second Clinical Officer (DW2) indicated that the Plaintiff complained of chest pain, cough and breathing problems and was treated for asthma.

The medical report by Dr. Joseph Sokobe (P. Exhibit 4(a) was produced by consent of both parties. It was dated 1st October 2014 and confirmed that the Plaintiff suffered severe soft tissue injuries to his lower back, neck and right leg. These were classified as blunt injuries.

12. The allegation by the Appellant/ Defendant that the Plaintiff/ Respondent was not on duty on the alleged date of the material accident was clearly disproved by the Plaintiff as corroborated by his witness (PW2).

This court therefore agrees with the trial court that the Appellant/Defendant was liable at a higher degree to the Respondent/ Plaintiff for injuries suffered while in the course of this employment.

13. However, considering that the Plaintiff/Respondent had a duty to exercise proper lookout and take care of his own safety while performing his assigned duties, his contributory negligence to the occurrence of the accident was, in the opinion of this court, much higher than 10% and is hereby placed at 30% meaning that the appellant's liability was at 70% rather than 90% as held by the trial court.

14. In the circumstances, this court apportions liability in the ratio of 70:30%, in favour of the Appellant.

On the question of quantum of damages, these were hinged on the nature of the injuries sustained by the Respondent and according to the medical evidence availed it was evident that the Plaintiff suffered minor soft tissue injuries which appeared to have healed without any permanent residual effect.

15. The proposal made by the Plaintiff/ Respondent under the head was Kshs. 600,000/- together with Kshs. 100,000/- being costs for further treatment.

The Appellant/ Defendant proposed a sum of Kshs. 40,000/-.

Both parties cited necessary authorities in support of their respective submissions. But the trial court settled for the sum of Kshs. 300,000/- less 10% contributory negligence i.e. Kshs. 270,000/-.

16. Consideration being given to the nature of the Respondent's injuries and the authorities cited by both sides, this court would affirm and hereby affirms the award made by the trial court respecting general damages as it was neither unreasonable nor inadequate and was in keeping with the principles of law applicable to awards of such nature.

17. The trial court did not award the claimed costs of future treatment and this was proper since there was no evidence or justification for such award.

The special damages of Kshs. 6,890/- were duly established and proved by production of the necessary documentary evidence in the form of the medical report and payment receipts.

18. In the end result, this appeal partly succeeds to the extent that the Plaintiff/ Respondent contribution to the accident and indeed, his injuries is hereby upgraded to 30% rather than 10% which means that he is entitled to general damages of Kshs. 210,000/- only hence total damages in the sum of Kshs. 216,890/- inclusive of special damages.

The Appellant shall have the costs of the appeal.

Ordered accordingly.



DELIVERED AND DATED THIS 6TH DAY OF JUNE 2024.

J. R. KARANJAH,

JUDGE

