

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

HIGH COURT CIVIL APPEAL NO. 82 OF 2012

EASTERN PRODUCE (K) LIMITED

(SIRET TEA ESTATE).....APPELLANT

VERSUS

BENECKO ARONYA AYONDI.....RESPONDENT

(Being an Appeal from the Judgment and Decree made by the Honourable B. Mosiria PM dated and delivered on 12th July, 2012 in Kapsabet PMCC No.76 of 2011)

JUDGMENT

On 3/3/2011 the Respondent sued the Appellant at Kapsabet Law Courts in Civil Suit No.76 of 2011, whereby he claimed for both Special and General damages against the appellant. His case is that on 15/10/2007 he reported on duty at Siret Tea Estate at 7:00 am. He was assigned the work of picking tea. There were holes within the tea bushes, dug by workers to prevent soil erosion and of which holes were covered by tea plants, blocking them from view. The Respondent fell into one while carrying a basket filled with tea. He sustained a blunt trauma to the chest, spinal column and abdomen. He was treated at Nandi Hills District Hospital as an outpatient on the very same day. By 1/3/2011 when he was seen by Dr. Samuel Aluda, he had fully healed.

The appellant through the evidence of the supervisor, one Earnest Shamola, concedes that the Respondent was on duty on 15/10/2007 and did not work the whole day. He however disputes the allegation that he was injured as the Supervisor notes for the day does not show he was referred to the dispensary. The dispensary Register does not show he was treated there on the particular day and referred to District Hospital as should be the case.

The trial Court evaluated the evidence and apportioned liability in the Ratio of 80% to 20% in favour of the Respondent. General Damages award was settled at Kshs140,000/= and Special damages at Kshs.1,500/=. Judgement was therefore entered for the Respondent against the Appellant in the sum of Kshs.141,500/= less 20% contribution which gives Kshs.113,200/= plus costs and interest.

The appellant dissatisfied with the said finding appealed to this Court vide a Memorandum of Appeal dated 8/8/2012. The main grounds of Appeal are that the Respondent had not proved appellant's liability on a balance of probabilities and the appellant's evidence was unjustifiably rejected. The appellant further contended that the award of General Damages was inordinately high leading to a wholly erroneous estimate.

I have re-evaluated the evidence adduced in the Subordinate Court both on facts and points of law. As was held in the case of *Selle and Another -vs-*

Associated Motor Boat Company Limited and Others (1968) EA 123, A Court on appeal will not normally interfere with the finding of fact by a Trial Court unless it is based on evidence, or on a misapprehension of the evidence, or the Judge is shown demonstrably to have acted on wrong principles in reaching his conclusion. The Lower Court Record and the Judgment shows the finding by the Trial Magistrate is based on no evidence that was placed before him and the applicable provisions of the law. This Court therefore has no ground or cause to interfere with it.

The Appeal for the reason fails and it dismissed with costs to the Respondent.

Dated and Delivered at Eldoret this 12th day of March, 2019

S. M. GITHINJI

JUDGE