



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 346 OF 2015

REDLANDS ROSES LIMITED APPELLANT

- V E R S U S -

ELOSY WANJA NGAI..... RESPONDENT

(Being an appeal from the judgement and decree of Hon. S. N. Mbungi (Mrs) Principal Magistrate in Nairobi (Milimani Law Court) in CMCC No. 151 of 2010 dated 24/02/2015)

JUDGEMENT

1. Elosy Wanja Ngai, the respondent herein, filed a compensatory suit against Redlands Roses Limited, the appellant herein for a medical condition of the joints she developed while in the employment of the appellant which the respondent alleged was due to the nature of the working conditions when in employment. It is alleged vide the plaint dated 28th January, 2010 that the respondent was an employee of the appellant in its flower farm, where she worked as a harvester in the field department and later redeployed to the production department that involved grading and packaging of the flower. The respondent averred that the later work involved a lot of standing for long hours and working in very cold temperatures. The respondent was diagnosed with degenerative osteoarthritis that was treated by a total knee replacement surgery procedure that was done to her right knee.

2. The appellant filed its defence dated 9th March, 2010 in which it denied the Respondent's allegations. The suit was heard on various dates and in the end, Hon. S.N Mbungi, the learned Chief Magistrate found the appellant wholly liable and awarded him Ksh.400,000/= in general damages.

3. Being aggrieved by the award, the appellant preferred this appeal and put forward the following 7 grounds of appeal in its memorandum of appeal.

1. The learned magistrate erred in law and fact by finding the appellant 100% liable for the injury sustained by the respondent.

2. The learned magistrate erred in law and fact by failing to find the respondent was liable for her own injuries.

3. The learned magistrate erred in law and fact by failing to apportion liability to the respondent when the appellant could not be entirely blamed for her injuries.

4. The learned magistrate erred in law and fact by failing to take into account the submissions of the appellant in the lower court on the issue of liability.

5. The learned Magistrate erred in law and fact by awarding general damages that are inordinately high in the circumstances.

6. The learned Magistrate erred in law and fact by making a decision on quantum that was against the weight of evidence.

7. The learned magistrate erred in law and fact by taking into account irrelevant factors in awarding general damages.

4. The aforesaid grounds may be summarised into two main grounds namely;

i. Whether or not the trial magistrate erred in law and fact on apportionment of liability

ii. Whether or not the trial magistrate erred in law and fact in awarding general damages.

5. When the appeal came up for hearing, learned counsels recorded a consent to have the appeal disposed of by written submissions. I have re-evaluated the case that was before the trial court. I have also considered the rival submissions.

6. The first ground of appeal touches on the issue of liability.

The appellant submits that the law is clear that “he who alleges must prove”. The appellant is of the argument that the respondent did not adduce sufficient evidence to prove that there was a breach of duty of care from the appellant. That, immediately after the respondent’s treatment, the appellant moved her to the production department where she continued working while sitting down. The appellant further submits that it fully discharged its duty towards the respondent, therefore it could be presumed that the alleged illness was occasioned by some other causes not known by the respondent. The appellant states that they provided the respondent with the appropriate working gear for the prevailing work conditions at its premises.

The respondent on the other hand submits that the trial court finding on liability should not be disturbed because it is well reasoned.

Looking at the evidence before the trial court, it is apparent that the respondent was an employee of the appellant. Before she started her employment, she was taken through a medical examination by the appellant to confirm her medical fitness before starting work and the respondent was found to be Osteoarthritis free. The defence witness stated that the respondent’s problem started after working for 7 years for the appellant. Dr. Ikonya’s medical report stated that the cause of the condition was due to over use of the knee joint, long standing hours as well as cold working conditions like the one the respondent was working in and which conditions are known to worsen cases of osteoarthritis. I am convinced that the appellant was wholly liable for the osteoarthritis of the respondent due to the work conditions she was exposed to while working as an employee at Redlands Roses. I find no merit in this ground of appeal, therefore the trial court finding on liability will not be disturbed.

7. The second ground of appeal is whether or not the trial Magistrate erred in law and fact in awarding general damages. The appellant submits that the award on damages was manifestly excessive, taking into account that the appellant fully paid for the respondent’s treatment bills, thus an award of ksh.100,000/= would be sufficient to compensate the respondent. The respondent on the other hand submits that the award of Ksh.400,000/- was inordinately low in the circumstances and it should therefore be revised upwards. The respondent also sought for loss of earning capacity which the trial court dismissed on grounds that the knee replacement surgery did not render the respondent incapacitated not to be in gainful employment. I find that the award on damages was reasonable and ought not to be disturbed.

8. In the end, I find no merit in the appeal, it is hereby dismissed with costs to the respondent.

Dated, Signed and Delivered in open court this 6th day of April, 2018.

J. K. SERGON

JUDGE

In the presence of:

..... for the Appellant

..... for the Respondent