REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NUMBER 196 OF 2014

DELMONTE (K) LTD..... APPELLANT

VERSUS

OBADIAH KARANJA MUTHONI.....RESPONDENT

(An appeal from the judgment of the Honourable Principal Magistrate J W (Onchuru (Ag) delivered on 30th April, 2014 at Thika CMCC No. 539 of 2007)

J U D G M E N T

Obadiah Karanja Muthoni, the Respondent herein, who was an employee of Delmonte (K) Ltd, the Appellant herein, sustained a cut wound injury to his left index finger on 10th February 2004, allegedly in the course of his employment. He filed a compensatory suit against the Appellant before the Resident Magistrate's Court, Thika. Hon. J. W. Onchuru, learned Ag. Principal Magistrate, heard the case and in the end he gave judgment in favour of the Respondent in the sum of Ksh.150,000/-

The Appellant was aggrieved by the aforesaid decision, hence he preferred this appeal and listed the following grounds in his appeal: -

a. That the learned trial magistrate erred in law and in fact in holding that the defendant was liable of breach of contractual obligations when evidence on record proves the contrary.

b. That the learned trial magistrate erred in law and in fact, in holding and finding that the Plaintiff proved his case against the defendant to the required standards.

c. That the learned trial magistrate erred in law and in fact in failing to consider the defense case.

d. That the learned trial magistrate erred in law and in fact in awarding the sum of Kshs.150,000/- as general damages which was manifestly excessive given the injuries sustained by the Respondent.

e. That the learned trial magistrate erred in law and in fact by applying wrong principles of law in assessing the general damages hence arriving at manifestly excessive damages.

f. That the learned trial magistrate erred in law and in fact by ignoring the Appellant's submissions in his judgment without proper reason to do so.

g. That the learned trial magistrate erred in law and in fact in coming to the conclusion that he did contrary to the evidence on record.

h. That the learned trial magistrate erred in law and in fact by arriving at the conclusion he did relying on extraneous material and/or facts which did not form part of the proceedings.

i. That the learned trial magistrate erred in law and in fact is coming to the conclusion that he did without any or any reason or sufficient.

When this appeal came up for hearing learned counsels appearing in the matter recorded a consent order 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 written submissions. Though the Appellant put forward a total of nine (9) grounds of appeal, two main grounds commend themselves for the determination of this court. Those two grounds revolve around the questions touching on liability and quantum.

On liability, the Appellant is of the submission that there was no cogent evidence to find it liable for the Respondent's injuries. The Respondent on the other hand is of the argument that the Appellant is solely liable for failing to issue him with protective devises like gloves. The evidence on record clearly show that the Respondent had told the trial court that he was last issued gloves made of cotton in the year 2003 and when those gloves got worn out the Appellant did not supply him with new ones. The Appellant further pointed out that it tendered evidence of DW 2 and DW 3 indicating that the Respondent was injured outside his work place. It is said that the Respondent was injured at home when he cut himself with a kitchen knife, therefore, the Respondent cannot claim for damages against it.

Having considered the rival submissions, it is clear from the recorded proceedings that gloves were issued to the Respondent in the year 2003 and those gloves were worn out and none were replaced. The Appellant produced in evidence the record showing the Respondent was issued with gloves to last for 4½ months. The truth of the matter is that by the time the Respondent got injured there was no protective gloves given to the Respondent. It would appear that the Respondent was hit by his supervisor while repairing a broken jembe. The Respondent further castigated the Appellant for failing to ensure that the jembe was useable and for failing to tender evidence on the mechanical condition of the suitability of the jembe.

Having considered the rival submissions, I am satisfied that the Respondent got injured when his supervisor who had been repairing the jembe which missed the target and wrongly hit the Respondent's index finger as he was holding the jembe. I am convinced that the Appellant became vicariously liable for the negligent acts of its supervisor.

In the end, I find that the trial magistrate correctly found the Appellant wholly liable. There is therefore no merit in the appeal as against liability.

The second aspect of the appeal is in respect of the quantum. The Respondent was awarded Kshs.150,000/- as general damages. It is the Appellant's submission that the aforesaid award is inordinately high and excessive. The Appellant proposed for the Respondent to be awarded Ksh.30,000/-. The Respondent urged this court not to interfere with the award since the same is neither high nor recessive.

Having considered the authorities cited and the rival submissions on quantum, there is no dispute that the Respondent sustained a lacerated wound on the left index finger. I find the authorities cited by the Appellant to suggest that this court has awarded figures ranging between Ksh.40,000/- to Ksh.100,000/- as compensation for such injuries. Considering the nature of injuries sustained by the Respondent, in my view, those injuries are not so severe. I am of the humble view that the award of Ksh.150,000/- is inordinately high. I think a figure of Ksh.60,000/- appears to be reasonable in the circumstances. Consequently, I find the appeal as against quantum to be meritorious.

In the end, the appeal against liability is dismissed. However, the appeal against quantum is allowed.

Consequently, the award of Ksh.150,000/- is set aside and is substituted with an award of Ksh.60,000/-.

In the circumstances of this appeal, a fair order on costs is that each party should meet its own costs. However, the Respondent is given costs of the suit.

Dated, signed and delivered at Nairobi this 13th day of July, 2018.

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J K SERGON

JUDGE

In the presence of

..... for the Appellant

.....for the Respondent