

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 194 OF 2010

LANDMARK HOLDING LIMITED APPELLANT

VERSUS

MARTIN MUTINDA KAMULARESPONDENT

Being an appeal against the judgment of Honourable W. Mokaya P.M. delivered on 13th May, 2010 at Milimani commercial Courts)

JUDGMENT

This appeal follows a decision by the lower court in which the respondent sued the appellant for injuries sustained while in the cause of employment. The appellant had denied the claim but after the trial the lower court found in favour of the respondent by holding that the appellant was liable to 100% and awarded Kshs. 60,000/= general damages plus Kshs. 1,500/= special damages.

The appellant was aggrieved by the said judgment and lodged this appeal. The grounds of appeal in summary were that the trial magistrate erred in law and fact in holding that, the respondent was an employee of the appellant and that the appellant was liable to him.

The trial magistrate was also faulted for her interpretation of the evidence of the respondent who was the sole witness in his case. The award of Kshs. 60,000/= general damages was also said to be manifestly excessive in view of the injuries sustained by the respondent.

I have reviewed the lower court record with a view to arriving at independent conclusions. Both learned counsel for the appellant and respondent have filed submissions and cited some authorities. Only the respondent testified in support of his case while the appellant did not call any evidence in defence.

The respondent testified that he was employed by the appellant as a casual worker and on the day he was injured, he was operating a concrete machine which he said was defective. In the process of doing so, he was injured and the particulars of his injuries were set out in the report prepared by Doctor Cyprianus Okoth Okere and produced in evidence.

According to the said report the respondent suffered laceration injury to his right little finger, right middle finger, right index finger and right ring finger. He was managed as an outpatient at Mlolongo health care services where the wounds were cleaned and dressed. He was given analgesics, antibiotics and tetanus toxoids.

At the time of examination he had healed from the injuries without any disability anticipated. His evidence, in the absence of any rejoinder from the appellant, remained uncontroverted. The learned trial magistrate was therefore correct in holding the appellant liable to to the respondent.

I have looked at the authorities cited relating to quantum and with respect, the learned trial magistrate cannot be faulted because the award was neither inordinately high nor low to give a wrong impression of the estimate, and the court did not act on wrong principles. I find no merit in the appeal which is hereby dismissed with costs to the respondent.

Dated and delivered at Nairobi this 18th Day of January, 2017.

A.MBOGHOLI MSAGHA

JUDGE