



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 998 OF 2005

SOCFINAF COMPANY LIMITED..... APPELLANT

VERSUS

SAMUEL KARIUKI KIHU.....RESPONDENT

JUDGEMENT

1. Samuel Kariuki Kihui, the Respondent herein, filed a suit against Socfinaf Co. Ltd, the Appellant herein, vide the plaint dated 23rd February 2005 before the Chief Magistrate's Court, Thika. In the foresaid plaint, Respondent claimed both general and special damages arising from an industrial accident. The respondent stated that he was an employee of the appellant at the material time and that he had sustained injuries while working or in the course of employment and he attributed the accident to have been caused by the appellant's negligence. The Appellant filed a defence and denied all the Respondents allegations. The suit was heard and in the end Hon. S. M. Mokuu, the then learned SRM, found the Appellant liable and proceeded to enter judgement in favour of the Respondent in the sum of Ksh.55,000/= as general damages. The Appellant being dissatisfied filed this appeal.
2. On appeal, the Appellant put forward the following grounds in its memorandum of appeal.
 1. *The Learned trial Magistrate misdirected himself and erred in law and fact by writing and delivering a judgement against the weight of evidence.*
 2. *The Learned trial Magistrate misdirected himself and erred in law and fact by disregarding the truthful, cogent and reliable testimony of the Appellant's witnesses and instead relying on the untruthful, contradictory testimony of the Respondent's witnesses.*
 3. *The Learned trial Magistrate misdirected himself and erred in law and fact by finding that the respondent was involved in an accident and injured on the Appellant's premises, holding the Appellant 100% liable and entering judgment in favour of the Respondent in the face of flaring, credible and convincing testimony by the Appellant's witnesses to the contrary.*
 4. *The Learned trial Magistrate misdirected himself and erred in law and fact by failing to consider the Defendants written submissions on court record.*
 5. *The Learned trial Magistrate misdirected himself and erred in law and fact by assessing and awarding unreasonable, excessive general damages at Ksh.55,000/= against the weight of evidence while there was no evidence or basis at all in law or fact in support of such award.*
 6. *The Learned trial Magistrate erred in law and fact by delivering judgment wholly unsupported by evidence on record.*
 7. *The Leaned trial Magistrate erred in law and fact and misdirected himself on the ration decided, or disregarded the trend in award of damages in HCC No. 4150 of 1991, Loise Nyambeki Oyugi v Omar Haji Hassan, (unreported), and HCCC No. 778 of 1991, Evanson Babu Njuru v. Paul*

Nyamotenyi (unreported)

3. When the appeal came up for hearing, learned advocates appearing in this appeal recorded a consent order to have the appeal disposed of by written submissions. At the time of writing this judgement the Respondent was the only party who had filed his submissions. I have considered the submissions filed by the respondent in response to the grounds put forward by the appellant. In response to grounds 1 – 4 the Respondent argued that there was no evidence tendered by the Appellant to controvert the respondent’s assertion that he was injured while in the course of the appellant’s employment. The Respondent further faulted the testimony of the Appellant’s witness (DW 1) claiming that she was unable to tender documentary evidence of those employees who got injured or sick on the material date. He also dismissed D.W.1’s assertion that he got injured while he was at home. The Respondent also claimed that the testimony confirmed his evidence that he was treated for fresh eye injury. The respondent further discounted the evidence of D.W. 3 which was to the effect that the witness as a field supervisor failed to produce in evidence the record showing those who got injured while on duty. The Appellant was also accused of failing to present credible evidence to prove that it provided the Respondent and other employees with a safe working environment and with protective gears like goggles. For the above reason this court was urged to find that the Appellant breached the statutory duty of care to its employees.
4. The Respondent also argued against grounds 5 to 8 together. It was submitted that the awards given were not excessive nor low. It is argued that the trial magistrate considered previous awards for near similar injuries.
5. I have carefully re-evaluated the evidence tendered before the trial court. It is clear from the evidence of the Respondent and that of the first witness (DW 1) summoned the Appellant that the Respondent had fresh eye injuries on 23rd July 2003. The evidence tendered by DW 1 did not controvert the Respondent’s assertion that he was injured while on duty. There was no evidence to show that he was injured outside the work place. I find that the respondent was injured in the course of employment. On this account the trial magistrate cannot be faulted.
6. The Respondent specifically stated that he was not issued with goggles or any protective gear. This is a requirement which the Appellant did not meet as the Respondent’s employer. The trial magistrate rightly found the Appellant liable.
7. The appeal as against liability cannot therefore stand.
8. The Appellant argued claiming that the award of kshs.55,000/= was high and excessive. I have re-evaluated the evidence . it is not in dispute that the Respondent suffered the injuries stated on paragraph 6 of the plaint. There were evidence tendered by both sides confirming the injuries. I have also looked at this court’s previous awards over similar injuries and I am convinced that the trial magistrate applied the correct principles in assessing quantum of damages. The award of ksh. 55,000/= is not excessive.
9. In the end, I find no merit in the appeal. It is dismissed with costs to the Respondent.

Dated and delivered in open court this 2nd day of July 2015

J. K. SERGON

JUDGE

In the presence of:

..... for the Appellant

.....for the Respondent

