



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
OF KISII  
Civil Appeal 297 of 2004**

**KENYA TEA DEVELOPMENT AGENCY LIMITED.....APPELLANT**

**VERSUS**

**PETERSON NYARIKI ..... RESPONDENT**

**JUDGMENT:**

The respondent filed a suit against the appellant and stated that on 31<sup>st</sup> August, 2003 while he was engaged in the appellant's employment he was involved in an accident as a result of which he suffered chest contusion. He alleged that the accident was occasioned by breach of statutory duty on the part of the appellant. He prayed for general damages.

The appellant filed a statement of defence and denied the respondent's claim in total.

During the hearing the respondent testified that he had been in the appellant's employment since 1999. On the material date he was putting tea in a tank when he slipped and fell down. He alleged that there were some metals on the ground and he was injured on the chest. He was taken to Kegogi dispensary for treatment. He produced the treatment notes and a sick sheet that was issued to him. Thereafter he was attended at Nyamira District hospital. He also produced treatment notes from the said hospital. The respondent was also examined by Dr. Ajuoga who prepared a medical report which was tendered in evidence by the said doctor.

In cross examination, the respondent stated that he had not been engaged in the task of putting tea in tanks prior to the date of the accident. He said that his usual place of work was at the sorting section. He added that he should have been provided with gum boots by his employer.

The respondent did not call any other witness and neither did the appellant adduce any evidence.

The trial court found the appellant fully liable for the said accident and awarded general damages in the sum of Kshs. 70,000/=.

The appellant was aggrieved by the said judgment and filed an appeal against the same. The main thrust of the appeal was that the respondent had not established his claim and therefore the award of damages was erroneous.

The respondent's advocate was served with a hearing notice which clearly indicated that the appeal was to be heard on 19<sup>th</sup> February, 2009. The respondent's advocate's office acknowledged service of the hearing notice by stamping the same but on the hearing date they did not attend court.

Mr. Nyambati for the appellant made brief submissions and urged the court to allow the appeal.

From the respondent's evidence it appears that he was indeed involved in the accident that occurred on 31<sup>st</sup> August 2003 at his place of work. The respondent was a factory worker at Tombe Tea Factory. On 1<sup>st</sup> September, 2003 the respondent was given a sick sheet at the appellant's Kegogi dispensary. However the circumstances surrounding the occurrence of the accident were not clearly explained. The respondent testified that he was working in the sorting section but on the material day he was required to put tea in a tank which work he had not done before. It is not clear whether the respondent was given clear instructions as to how he was to climb the said tank. Even though the respondent alleged that he had not been supplied with gum boots it was not shown that the same were necessary for the kind of work which he was instructed to do.

In the circumstances as aforesaid liability ought to have apportioned between the appellant and the respondent. I will proceed to apportion the same on a 50:50 basis.

As regards the damages that were awarded to the respondent, it was not demonstrated that the same were excessive or that the trial court took into account issues which were inapplicable or applied wrong principles in awarding the same. I will not therefore disturb the award.

I allow the appeal, set aside the judgment by the trial court and substitute therefore judgment for the respondent in a sum of Khs. 35, 000/= plus costs and interest. The appellant will be entitled to ½ of the costs of the appeal.

**DATED, SIGNED AND DELIVERED AT KISII THIS 9<sup>TH</sup> DAY OF JULY, 2009.**

**D. MUSINGA**

**JUDGE.**

**9/7/2009**

Before D. Musinga. J

Mobisa –C.c

No appearance for the Appellant.

No appearance for the Respondent.

**Court:** Judgment delivered in open court on 9<sup>th</sup> July, 2009.

**D. MUSINGA**

**JUDGE.**