



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
OF KISII**

Civil Appeal 75 of 2004

SOUTH NYANZA SUGAR COMPANY LIMITED..... APPELLANT

VERSUS

PETER OKERO MIRUKA RESPONDENT

JUDGMENT:

This judgment arises from the respondent's suit in Kilgoris SRMCC No. 16 of 2002. In that case the respondent alleged that he was in the employment of the appellant as a casual worker. On 5th September, 1999 he was cutting sugarcane when a panga he was using slipped and cut his left leg. He alleged that he suffered a deep cut wound on his left leg. He blamed the appellant for the said accident which resulted to his injuries. He set out particulars of breach of statutory duty and negligence on the part of the appellant. He stated, *inter alia*, that he had not been provided with a safe system of work and that he had been exposed to risk of injury which the appellant knew or ought to have known.

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

During the hearing the respondent testified that on the material day he was using a panga to cut sugarcane. The panga accidentally slipped out of his hand and cut him on his left leg. He did not report the accident to the appellant. He blamed the appellant for not having provided him with gloves, gum boots and an overall.

The respondent called Dr. Oganda who produced his medical report. The appellant did not adduce any evidence.

The trial court held that the respondent had proved his case and awarded general damages in the sum of Kshs. 50,000/= and special damages of Kshs. 3,500/= on account of the medical report.

The appellant was aggrieved by the said judgment and preferred an appeal to this court. The main thrust of the appeal was that the respondent was the author of his own misfortune and that there was no negligence on the part of the appellant.

Mr. Nyambati for the appellant and Mr. Ogwenyo for the respondent made submissions which I have duly considered.

The appellant's counsel cited, *inter alia*, this court's decisions in **SOUTH NYANZA SUGAR COMPANY LIMITED –VS- WILSON ONGUMO NYAKWEBWA**, HCCA No. 77 of 2004 and **SOUTH NYANZA SUGAR COMPANY LIMITED –VS- CHARLES ONGWAE**, HCCA No. 73 of

2004.

The facts in the cases that gave rise to the aforesaid two appeals are exactly the same as those in the present appeal. The two respondents also alleged to have been cutting sugarcane as employees for the appellant and were using pangas. The said pangas slipped out of their hands and injured them. Each of the respondents filed a suit and were awarded general damages of Kshs. 50,000/= and special damages of Kshs. 3,500/=. The cases were also before the Senior Resident Magistrate's Court at Kilgoris.

In **SOUTH NYANZA SUGAR COMPANY LIMITED –VS- CHARLES ONGWAE** (Supra). This court stated as follows:

“In the present appeal the respondent testified that he was a casual worker in the employment of the appellant. It is important to highlight his evidence during cross examination. He said he cut himself accidentally. He did not disclose to the appellant that any accident had occurred. He never filled any workmen's compensation form. The appellant did not know that the respondent had been injured until the time when summons to enter appearance and plaint were served. The respondent went to see Dr. Ogado long after the alleged wound had healed.

The respondent was engaged in a manual work. He was in control of the panga that he was using to cut the cane. He had a duty to take care of his own safety. If at all the respondent was injured by the panga that he was using he was the author of his own misfortune. It is however doubtful whether the respondent was injured at all. If he was, why did he not report to the appellant and fill workmen's compensation forms? The respondent did not prove his case to the required standard.

There was no evidence to support the conclusion that was reached by the trial court, even in the absence of evidence from the appellant.”

I find the holding in the aforesaid appeal completely applicable to this one. The appellant herein went to see Dr. Ogando on 7th November 2002, more than three years from the date of the alleged accident. In my view, if at all the alleged accident ever occurred the respondent herein was to blame for the same and not the appellant.

I allow the appeal, set aside the judgment by the trial court and substitute therefore an order dismissing the plaintiff's suit before the lower court. The appellant will have costs of the suit as well as of the appeal.

DATED, SIGNED AND DELIVERED AT KISII THIS 9TH DAY OF JULY, 2009.

D. MUSINGA

JUDGE.

9/7/2009

Before D. Musinga. J

Mobisa – C.c

Mr. Ogweno for the Respondent.

No appearance for the Appellant.

Court: Judgment delivered in open court on 9th July, 2009.

D. MUSINGA

JUDGE.