



REPUBLIC OF KENYA



**KENYA LAW**  
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**Akumu v Vegpro (K) Limited (Appeal E006 of 2021)  
[2025] KEELRC 767 (KLR) (13 March 2025) (Judgment)**

Neutral citation: [2025] KEELRC 767 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU  
APPEAL E006 OF 2021  
DN NDERITU, J  
MARCH 13, 2025**

**BETWEEN**

**ROSE AKINYI AKUMU ..... APPELLANT**

**AND**

**VEGPRO (K) LIMITED ..... RESPONDENT**

*(Being an appeal from the judgment and decree issued in Eldama  
Ravine Senior Principal Magistrate's Court Civil Suit No.17 of  
2016 by Hon. J. L. Tamar (SPM) delivered on 12th October, 2017)*

**JUDGMENT**

**I. Introduction**

1. In a judgment dated and delivered on 12th October, 2017 the appellant's suit mentioned above against the respondent was dismissed with costs. Subsequently, a decree was issued on 17th October, 2017 to that effect.
2. Thereafter, the appellant commenced an appeal vide Nakuru High Court Civil Appeal No. 151 of 2017. This appeal was later on transferred to this court (ELRC) on 8th July, 2021 and allocated the reference cited above.
3. In the memorandum of appeal dated 13th November, 2017 the appellant is seeking for the following orders –
  1. That the learned magistrate erred in fact and in law in failing to find that the appellant had proved her case on a balance of probabilities despite there being overwhelming evidence.
  2. That the learned magistrate erred in fact and in law in disregarding the appellant's testimony and in disregarding the evidence tendered by the appellant during the hearing of the above suit.



3. That the learned magistrate erred in fact and in law in disregarding the appellant's submissions on record.
4. That the learned trial magistrate erred in fact and in law in dismissing the appellant's suit despite there being evidence that the appellant was injured while at work with the respondent.
5. That the learned trial magistrate erred in fact and in law in failing to deliver judgment on quantum despite the appellant having tendered in evidence.
4. By consent, the appeal was canvassed by way of written submissions. Gekong'a & Co. Advocates for the appellant filed written submissions dated 8th March, 2024 while Ntabo Abuga & Co. Advocates for the respondent filed submissions dated 14th May, 2024.
5. The court regrets and apologizes for the prolonged delay in the writing and delivery of this judgment caused by undue delay in the lower trial court file being availed as the record in the file indicates.

## II. Submissions by Counsel

6. It is submitted for the appellant that she was a casual labourer with the respondent when she was injured. It is further submitted that the injury to the appellant was as a result of negligence on the part of the respondent who allegedly failed to provide her with any form of protective gear and exposed her to unfavourable working conditions.
7. Citing *Sokoro Saw Mills Limited V Grace Nduta Ndung'u* (2006) eKLR it is submitted that the lower trial court failed to consider the evidence adduced by the appellant and wholly adopted the evidence by the respondent especially in regards to the employment records which were allegedly adopted by the trial court as the gospel truth. It is submitted that the appellant neither participated nor contributed to the authorship of the documents and records produced by the respondent during the trial and did not consent to the validity of the same.
8. On the quantum of damages that ought to have been awarded to the appellant, it is submitted that a medical report by Dr. Kiamba was produced in court confirming that the appellant had suffered soft tissue injuries of the occipital region, soft tissue injuries to the chest, and soft tissue injuries to the left back.
9. Citing *M.A. Bayusuf & Sons LTD V Grace Odhiambo Opondo* (2008) eKLR and *Devki Steel Mills LTD V James Makau Kisuli* (2012) eKLR where similar injuries as those suffered by the appellant had been occasioned to the respective claimants, it is submitted and reiterated that a sum of Kshs300,000/= in general damages is fair compensation in that behalf and the court is urged to award as such.
10. It is further submitted that the appellant availed evidence that she had incurred Kshs7,000/= towards a medical report and availed evidence to that effect during the trial. The court is urged to allow this claim for special damages.
11. For the respondent, it is submitted that the lower trial court fully analyzed and contextualized the evidence from both sides as per the copy of the judgment in the record of appeal and ultimately arrived at the right conclusion. It is further submitted that the appellant failed to prove the fact of employment of any form with the respondent as at the time of the alleged accident and her case failed on account of her failing to prove her case to the required standard under Section 109 of the *Evidence Act*.
12. Citing *Mbogo V Shah* (1968) EA 93 and *Makube V Nyamuro* (1983) KLR 403 the court is urged not to interfere or disturb the finding and holding of the lower trial court as the appellant has failed to



demonstrate that the judgment was based on no evidence, misapprehension of the evidence, or wrong principles of the law.

13. The court is urged to uphold the decision of the lower trial court and dismiss the appeal with costs.

### **III. Issues for Determination**

14. The court has perused the record of appeal, including the proceedings in the lower trial court, the memorandum of appeal, and the submissions by counsel for both parties as summarized above. In my considered view, the following issues commend themselves to the court for determination –
  - a. Was there an employment relationship between the appellant and the respondent as the time of the alleged accident?
  - b. If (a) above is in the affirmative, what was the nature, terms and conditions of that relationship?
  - c. Was the appellant injured at work and what was the nature of the injuries suffered?
  - d. Is the respondent negligent and or liable for the injuries suffered by the appellant?
  - e. Did the lower trial court arrive at the right decision?
  - f. Are there any reasons for this court to interfere with the decision of the lower trial court as prayed by the appellant?
  - g. What appropriate orders should this court make in regard to the above issues and on costs?

### **IV. Employment**

15. As the court of first appeal, this court is obligated to evaluate the evidence and arrive at its own conclusions bearing in mind that it neither heard nor recorded the evidence during the trial – see *Selle V Associated Motor Boat Co. Ltd* (1968) E.A 123.
16. In her plaint filed in the lower trial court dated 16th December, 2015 received in court on 27th January, 2016 the appellant pleaded that she was “an authorized employee” of the respondent. It was further pleaded that on 30th November, 2015 or thereabout when the appellant was carrying out her duties she fell and sustained the injuries mentioned in an earlier part of this judgment. The appellant blamed the respondent for the alleged accident and the resulting injuries based on negligence and or breach of contract and the particulars thereof are set out in the plaint.
17. In the defence filed dated 30th March, 2016 and received in court on even date, the respondent denied any employment relationship between the parties or a duty of care to the appellant and the particulars of the injuries, negligence, and breach of contract. On without prejudice to the foregoing, the respondent attributed the injuries to negligence on the part of the appellant as particularized in the defence and pleaded *volenti non fit injuria*.
18. In her testimony during the trial the appellant stated that she was a casual employee with the respondent picking beans and that her wages were paid biweekly in cash. She stated that she slipped while carrying a crate of French beans and sustained the injuries alluded to in the foregoing paragraphs of this judgment.
19. In cross-examination, the appellant stated that she had not been issued with a formal contract of employment and that her pay depended on the weight of French beans harvested from the greenhouses. She stated that she did not know why her name did not appear in the employment records filed in court by the respondent. She stated that she was not a member of any Sacco.



20. The appellant called Edwin Kamurwa (PW2) as a witness who confirmed that she had been attended at Mogotio sub-county Hospital on 1st December, 2015 and the witness produced patients register as evidence. He stated that the witness was treated for soft-tissue injuries. He stated that the records had discrepancies on the age of the appellant as the register indicated that she was 30 while the treatment notes indicated that she was 35. He admitted that he had no explanation for that discrepancy.
21. For the defence, the farm manager Samuel Maina testified and stated that the appellant was never an employee of the respondent at anytime or at all. He stated that the name of the appellant did not appear in the wages or salary payment sheets. He further stated that the respondent maintained a payroll for all casuals who were paid biweekly and they all signed against their names. He stated that the name of the appellant did not appear in any of the abovementioned records and termed the claim by the appellant as fraudulent. He produced the above records of employment held by the respondent as exhibits and indicated that there existed no other records.
22. In cross-examination, he stated that the records did not support the allegation by the appellant that she was at work on 30th November, 2015 and or that she was injured at work.
23. Upon considering the evidence adduced by both sides and submission by counsel for both sides, the learned trial magistrate identified the three issues for determination as –
  - i. Whether or not the plaintiff was an employee of the defendant company
  - ii. If in the affirmative whether there was a contract of employment express or implied between the parties
  - iii. The other issue for determination is whether the defendant was in breach of the contract of employment as a result of which the plaintiff suffered injuries for which damages is sought. These in my view are the narrow issues necessary to determine the dispute between the plaintiff and the defendant company.
24. Further, upon due consideration of the evidence the lower trial court found and held that the appellant had failed to establish and prove an employment relationship or contract between herself and the respondent. The court noted that in all the documents and records availed in court the name of the appellant did not appear anywhere. The court stated that the appellant had failed to even remotely establish such employment relationship and proceeded to dismiss the suit with costs.
25. It is that same evidence that this court has now been called upon to re-examine and re-evaluate and come up with its own opinion as to whether there was established and proved by the appellant, on a balance of probabilities, an employment relationship between herself and the respondent.
26. Without beating about the bush, the court finds and holds that the appellant failed to establish and prove employment between herself and the respondent and as such the claim was baseless and therefore properly dismissed by the lower trial court. This is so for the following reasons.
27. Firstly, it was always the burden of the appellant to prove her case on a balance of probabilities. In doing so, she had to prove an employment relationship between herself and the respondent by way of oral and or documentary evidence.
28. The record of the proceedings is that the appellant relied on no documentary evidence in regard to her employment. She did not avail any written contract of employment, records of work attendance, or payment of wages or salary.



29. Secondly, the records availed by the respondent, and the appellant had no records to counter those, did not capture the name of the appellant as an employee of the respondent at anytime and or at all.
30. Thirdly, if the appellant had no records of her employment with the respondent, she had the option of calling other evidence to corroborate her evidence that she indeed was an employee of the respondent and served as she alleged. It is amazing that if at all the appellant was an employee of the respondent as she alleged she could not put together oral or documentary in support of her claim. She, for example, should have called a co-worker who worked with her during the material period. She did not do so and no wonder, and I concur, the lower trial court found and held that she had failed to establish the very foundation of her suit – that she was indeed an employee of the respondent.
31. While the evidence as summarized above may indicate that the appellant was allegedly injured on 30th November, 2015 and the evidence by PW2 indicated that she was attended at Mogotio Sub-County Hospital on 1st December, 2015, that of itself did not establish or prove that she was an employee of the respondent and that she was injured while on duty as alleged and claimed in her pleadings and testimony in court.
32. The court finds no reason(s) warranting the interference by this court with the findings and holdings by the lower trial court that the appellant had failed to establish and prove the fact of her employment with the respondent.
33. With the foregoing finding and holding, this court, just like the lower trial court, need not consider the quantum of damages as that shall be purely academic and of no legal value or consequence(s).
34. Ultimately, the judgment of the lower court is hereby affirmed in its entirety and this appeal is hereby dismissed.

#### **V. Orders**

35. Flowing from the foregoing, the court makes the following orders –
  - a. This appeal is hereby dismissed in its entirety and the judgment of the lower trial court and the decree as issued affirmed.
  - b. Costs to the respondent.

**DELIVERED VIRTUALLY, DATED, AND SIGNED AT NAKURU THIS 13TH DAY OF MARCH, 2025.**

.....

**DAVID NDERITU**

**JUDGE**

