K.K. Promote Limited v Wanjiku (Employment and Labour Relations Appeal 176 of 2022) [2024] KEELRC 1269 (KLR) (23 May 2024) (Judgment)

Neutral citation: [2024] KEELRC 1269 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

EMPLOYMENT AND LABOUR RELATIONS APPEAL 176 OF 2022

MN NDUMA, J

MAY 23, 2024

BETWEEN

K.K. PROMOTE LIMITED ..... APPELLANT

AND

GRACE WAITHERA WANJIKU ..... RESPONDENT

JUDGMENT

1. The appeal is against the judgment of the Resident Magistrate, Limuru, Mr. A. O. Amiga, delivered on 13/1/2009 on the grounds:

    1. That the learned magistrate erred in law in finding that the respondent had indeed reported the injury to anybody as she also did not summon the supervisor whom she merely knew as Wamarigu and who she allegedly reported to.

    2. That the learned magistrate failed to explain in his judgment why the respondent continued working for the appellant even after not being assisted to get medical treatment.

    3. The learned trial magistrate's judgment is based on conjectures and guesswork as he made a finding that the respondent must have been injured when he found some chits of paper affixed on the master roll a fact that is not borne out by any evidence by witnesses.

2. The respondent was awarded general damages in the sum of Kshs. 60,000/= less 20% contribution giving a total of Kshs.48,000/= and special damages of Kshs.8,500/= making a total award of Kshs.56,500/= plus costs and interest at court rates from date of judgment till payment in full.

3. The court is guided by the Court of Appeal decision in Selle v Associated Motor Boat Company Ltd 1968 eKLR. , as follows:-

    > As the first Appellate Court, it is the duty of the court to reconsider the evidence adduced before the trial court and re-evaluate it so as to draw its own independent conclusion and

to satisfy itself that the conclusions reached by the trial magistrate are consistent with evidence."

4. The court has evaluated the evidence adduced by DW1 Dr. Cyprianus O. Okere, who examined the respondent on 20/5/05 who had been injured at her place of work by a piece of wood which pricked her leg on 3/5/2005. That he saw a lacerated wound measuring 1cm in diameter. That he charged Kshs. 1,500/= for the medical report he prepared in respect of the injury and Kshs. 7,000/= for the court attendance making a total of Kshs. 8,500/= claimed as special damages by respondent. Under cross-examination, he told the court that the respondent was examined after final dressing and that the respondent's leg had a deformation from a previous accident.

5. PW2, Grace Waithera Wanjiku, the respondent stated that she was a tea picker and lived at Limuru. That she used to work for K.K. promoters the appellant for 27 years.

6. That on 3/5/2005 while picking tea leaves at the appellant's farm, she got pricked by a tea stick on the leg after slipping into a hole within the farm. That she had not seen the hole since it was covered by tea bushes. That she reported the accident to the manager Mr. Wamarangu who told PW2 to go home. That PW1 was not given money for treatment. That she went to Tigoni Sub-district Hospital. That the legs healed though at times she experienced pain on the joint. PW2 blamed the appellant for the injury. That the hole should have been filled up. That she had no protective gear. That she would not have been pricked if she had worn gumboots. PW2 sought compensation for pain and injury and costs of the suit.

7. DW1 John Njenga testified in defence of the appellant. He said that he was a farm assistant and payroll clerk at K. K. Promote, appellant. That they grow tea. That on 3/5/2005, he was on duty. That the master roll shows PW2 picked 19 kilogrames of tea leaves on that day. That PW2 did not report any injury to herself. That the supervisor did not make any report of alleged injury to PW2. That if it had happened, he would have taken PW2 for treatment. That the company meets the cost of treatment of workers. That the respondent continued working at the farm after 3/5/2005. That he left employment on 10/5/2005 on own accord.

8. That injury reports are kept and forwarded to appellant's insurance company for compensation. That PW2 did not send a demand notice to the appellant. Under cross-examination, DW1 confirmed that PW2 was on duty on the material day. DW1 said he knew Mr. Kimani Waweru who was a senior supervisor. DW1 said he was not aware that PW2 had reported the injury to him. DW1 said he did not have the injury register in court. DW1 admitted that Kimani Waweru was the immediate supervisor of the respondent. DW1 said he did not know if Kimani failed to report the matter. DW1 said he had no evidence to show that gumboots had been issued to the respondent.

9. The trial court analyzed clearly the evidence adduced by PW1, PW2 and DW1 and came to the conclusion that the respondent had proved on a balance of probability that the respondent got injured while working for the appellant. That she got treated at Tigoni District Hospital. That she had no protective gear when she got injured by a stick and in particular was not wearing gumboots.

10. The trial court found that had the appellant provided gumboots to the respondent, she would not have gotten injured. That the appellant owed a duty of care to the respondent due to the nature of work she did at the tea farm. That the appellant failed in that respect by failing to provide gumboots to the respondent.

11. The trial court also attributed partial negligence to the respondent for failing to demand gumboots from the appellant, while she worked in the farm for a period of two years.

12. The trial magistrate considered the nature and extent of injury sustained by the respondent and having considered the medical report provided by the doctor and awarded general damages at Kshs. 60,000/= shared at 80% and 20% by the parties.

13. The court has considered the Court of Appeal decision in Mwangi v Wabugu [1984] KLR 453 where the court stated:

> A Court of Appeal will not normally interfere with a finding of fact by the trial court unless such finding is based on no evidence or on a misapprehension of the evidence or the judge is shown demonstrably to have acted on wrong principle in reaching the finding and an appellate court is not bound to accept the trial judge's finding of fact if it appears either that he has clearly failed on some material point to take into account of particular circumstances or probability material to an estimate of the evidence, or if the impression based on the demeanor of a witness is consistent with the evidence in the case generally."

14. The court is satisfied that the trial court carefully considered the facts of the case and applied correct principles on the facts before him and finds no reason to interfere with the decision of the trial court on liability and damages.

15. Accordingly, the appeal lack merit and is dismissed with costs before the trial court and the Court of Appeal.

16. The court consequently confirms the award of that trial court in favour of the respondent against the appellant as follows:

    i. Kshs.60,000/= general damages less 20% Kshs.48,000/=

    ii. Special damages Kshs.8,500/=

        Total award Kshs.56,500/=

    iii. Interest at court rates from date of judgment of the trial court till payment in full.

    iv. Costs of the suit at the trial court and this court.

DATED AT NAIROBI THIS 23RD DAY OF MAY, 2024.

MATHEWS NDERI NDUMA

JUDGE

Appearance:

M/s. Wanyoike & Macharia Advocates for the appellant

M/s. C. M. Ongoto Advocates for respondent

Mr. Kemboi, Court Assistant