



**Kapchorua Tea Limited v Kirwa (Employment and Labour Relations Appeal E006 of 2023) [2024] KEELRC 13538 (KLR) (19 December 2024) (Judgment)**

Neutral citation: [2024] KEELRC 13538 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET  
EMPLOYMENT AND LABOUR RELATIONS APPEAL E006 OF 2023  
MA ONYANGO, J  
DECEMBER 19, 2024**

**BETWEEN**

**KAPCHORUA TEA LIMITED ..... APPELLANT**

**AND**

**ELIZABETH CHEPTARUS KIRWA ..... RESPONDENT**

**JUDGMENT**

1. Kapchorua Tea Limited, the Appellant herein was sued by the Respondent in Kapsabet SPMC No. 241 of 2014 vide a Plaint dated 25<sup>th</sup> October 2010 in which she was seeking compensation by the Appellant for the injuries she alleged to have sustained while in the course of performing her assigned duties.
2. After hearing the parties, the trial court found the Appellant to be 100% liable for the accident and awarded the Respondent Kshs 90,000 as General damages, Kshs. 1,500 as special damages, costs and interest thereon.
3. The Appellant being dissatisfied with the Judgment of the Trial Magistrate seeks to set it aside on the following grounds as set out in its Memorandum of Appeal dated 15<sup>th</sup> October 2014:
  - i. That the trial Magistrate erred in law and in fact in finding that the Plaintiff/Respondent had proved her case to the required standards despite the fact that the Plaintiff's evidence or testimony on the alleged date and injury was sufficiently rebutted by the Appellant's oral and documentary evidence.
  - ii. That the trial Magistrate grossly misapprehended the doctrine of negligence and the respective obligations of parties under the contract of employment and altogether erred in wrongly applying the same thereby imposing incongruous liability on the Appellant.



- iii. That the Trial Magistrate erred in law and fact in failing to critically evaluate the evidence on record in its totality and failed to accord the Appellant's evidence and submissions due weight to the extent that it was able to demonstrate that indeed the Respondent's claim was fraudulent and a blatant attempt to unjustly reap from the Appellant.
  - iv. That the trial magistrate erred in law and in fact arriving at conflicting decisions on similar issues of law and evidence in related cases.
  - v. That the trial Magistrate erred in law and in fact in shifting the burden of proof to the Defendant/Appellant contrary to the well established legal position that the burden of proof fully and wholly lies upon the Plaintiff in the first instance.
  - vi. That the trial Magistrate erred in law and in fact in finding and holding that the Respondent's account of the incident giving rise to this suit made out a case for negligence against the Appellant notwithstanding the fact that the Respondent neither established causation nor did she the aspect that could be attributed to negligence (blameworthiness) on the part of the Appellant.
  - vii. That the trial Magistrate erred in assessing general damages and failed to apply the general principles applicable in award of damages and comparable awards made for similar injuries.
4. The Appellant seeks the following orders: -
- i. That the judgment/decreed of the honourable court dated 18<sup>th</sup> September 2014 be reviewed and/or set aside.
  - ii. That the Respondent do bear the costs of this appeal

### **Background of the case**

5. The Respondent was the Plaintiff in the trial court. In her Complaint dated 25<sup>th</sup> October 2010, she contended that she was employed by the Appellant as a tea plucker. The Respondent averred that on 4<sup>th</sup> January 2010, while on duty, she was seriously injured when she was pricked by a tea stamp on the right leg and as a result she sustained injuries.
6. The Respondent attributed the occurrence of the accident to breach of common law and statutory duty of care on the part of the Appellant.
7. In its Statement of Defence dated 24<sup>th</sup> November 2010, the Appellant denied the allegations made in the complaint and in particular that the Respondent sustained injuries as a result of negligence or breach of contract and terms of employment by the Appellant. The Appellant pleaded that the Respondent's claim was an attempt to defraud it by falsely claiming compensation whilst fully aware that such compensation is not due to her.

### **The Appeal**

8. The Appeal was disposed of by way of written submissions. The Appellant filed its submissions on 13<sup>th</sup> October 2023 while the Respondent filed his submissions on 31<sup>st</sup> October 2023.

### **The Appellant's Submissions**

9. The Appellant framed the issues for determination to be:
  - i. Whether the Respondent had proved her case to the required standards



- ii. Whether the trial court erred in awarding damages to the Respondent
10. On the first issue, it is the Appellant's submission that the Respondent did not explain how the alleged accident occurred in her Pleint and her oral testimony in court. It is further submitted that the Respondent conceded in cross examination that she had a number of years of experience in plucking tea. According to the Appellant, since the Respondent stated in her testimony that the accident occurred in broad daylight, she cannot claim not to have been unable to see where she was walking as she went about plucking tea as alleged. It is submitted that if she was careful, she would have taken cautious steps and observed the way ahead of her.
  11. In this regard, the Appellant urged the court to make a finding that the Respondent was injured while she was in control of her organs of movement and sight but she failed to exercise care and caution expected of a prudent and reasonable person placed in similar set of circumstances. In support of this position, the Appellant cited the case of Purity Wambui Murithii Vs Highlands Mineral Water, [2015] eKLR
  12. The Appellant faulted the Respondent for failing to produce any document or form filled by the Appellant taking note of the alleged accident as would have been the case in a genuine claim and in accordance with the relevant provisions.
  13. In submitting that the Respondent's claim is fictitious, the Appellant averred that PW3 did not produce any books of record to support the assertions that the Respondent was treated at Nandi Hills Hospital as a result of the injuries she claimed to have sustained. The Appellant further submitted that treatment book produced in court did not have an outpatient number.
  14. The Appellant thus submitted that it was upon the Respondent to prove her case and the burden to so do could not be shifted to Appellant despite the Courts closing the Defence case without calling its intended witness, the Records Officer, Nandi Hills district Hospital to help shed light on the Respondent's treatment allegations.
  15. The Appellant submitted that the Respondent had utterly failed to prove her case to the requisite standards and prayed that the Respondent's claim be dismissed with costs
  16. With regards the second issue, the Appellant submitted that the damages awarded by the trial court is way above the recent decisions and should be dismissed. According to the Appellant, the Respondent is only entitled to what is in the circumstances a fair compensation, both to her and to the Appellant. On special damages, the Appellant submitted that the same fall within the province of strict provenance and must have been specifically pleaded.
  17. The Appellant therefore submitted that an award of Kshs. 50,000 is indeed an adequate, sufficient and fair award for the Respondent's injury. The cases of Eastern Produce (K) Ltd v Edith Kavere [2019] eKLR and Sinohydro Corporation Ltd v Hezra Odhiambo (2016) eKLR were relied on.

### **Respondent's submissions**

18. On its part, the Respondent submitted that the Appellant owed her the statutory duty of ensuring a safe and healthy work environment. Further, that the Appellant failed to properly equip the Respondent to avert the occurrence of the said accident. It was submitted that having failed to do so, the trial court rightly held the Appellant liable for the accident and injuries sustained by the Respondent. The Respondent cited the cases of Purity Wambui Muriithi v Highlands Mineral Water Co. Ltd (2015) eKLR and Kathambi v Safaricom Limited (Cause 1986 of 2014) [2023] KEELRC 1772 (KLR) (25 July 2023)(Judgment) to buttress this position



19. In response to the allegation by the Appellant that the Respondent was negligent in the performance of her work, the Respondent submitted that she was well experienced in her work and as such she was not negligent in the conduct of her assigned duties, nor did she injure herself willingly to claim from the Respondent
20. The Respondent further submitted that the Appellant did not avail the Respondent's supervisor Mr. Aganwa to rebut the Respondent's case that she was injured while at work. She submitted that she had proved that she was injured while on duty due to the Appellant's negligence in exposing her to the risk and thus breaching the duty of care owed to her.
21. It is the Respondent's submission that the learned trial magistrate properly appreciated the facts of the case and the law in finding that the evidentiary burden shifted to the Appellant to rebut the evidence tendered by the Respondent but the Appellant failed to do so. According to the Respondent, she proved her case to the required standard and this was reflected in the considered judgment of the trial court.
22. The court was urged to uphold the trial court's judgment and dismiss the instant appeal with costs to the Respondent.

### **Analysis and Determination**

23. This case being before me as a first appellate court, I am under a duty to reconsider and evaluate the evidence afresh with a view to reaching my own decision in the matter. As the first appellate court however, I must exercise caution since I did not have the advantage of seeing and hearing the witnesses. See *Selle & another –vs- Associated Motor Boat Co. Ltd & others* [1968] EA 123.
24. I have carefully considered and evaluated the evidence afresh. I have also considered the written submissions by the rival parties to this appeal and at the trial court. It is my view that the issue for determination is whether the Respondent proved her claim against the Appellant on a balance of probabilities and whether the damages awarded to the Respondent was commensurate with her injury.
25. The Appellant in its defence averred that the Respondent was not injured at work and that she falsified the treatment chits. In the Appellant's submissions on the Appeal, it is submitted that the Clinical Officer (PW3) did not produce any books of record to support the assertions that the Respondent was indeed treated at Nandi Hills Hospital as a result of the injuries she alleged to have sustained. The Appellant also questioned the treatment chit produced in court alleging that it did not have an outpatient number.
26. I have analysed the evidence of PW3 and noted that in his testimony he made reference to the treatment book which was produced in court as an exhibit. The treatment book has the name of Nandi Hills Hospital printed on the cover. Clearly, the treatment book was issued by Nandi Hills District Hospital and the prescription note dated 4<sup>th</sup> January 2010 has the stamp of Nandi Hills Hospital. Although the treatment book does not have an outpatient number as rightly submitted by the Appellant, the court is convinced that it was issued by the Nandi Hills District Hospital and it is evident that the Respondent was treated in the facility according to the testimony of PW3 who was a Clinical officer at the medical facility.
27. The Appellant has also in its submissions accused the Respondent of being negligent while performing her duties as a result of which she was injured while at work. According to the Appellant, the Respondent was the author of her misfortunes and she cannot attribute blame to her employer.



28. At the hearing, the Respondent who testified as PW2 stated that she was pricked by a tea stick and stump and that the tea sticks had been pruned. On cross examination, she stated that she could not see the stick as it was hidden under green tea bushes.
29. The Appellant did not call any witnesses to controvert the evidence of the Respondent on record. The evidence of the Respondent is thus not challenged.
30. From the Respondent's testimony before the trial court, it is my finding that the Appellant failed to provide a safe working environment to the Respondent and as such exposed the Respondent to the accident and resultant injuries she sustained.
31. The other issue that I need to address myself to is with regard to the quantum awarded to the Respondent. According to the Appellant, the award on General damages was not commensurate to the injuries sustained by the Respondent. The Appellant averred that the award of Kshs. 90,000 by the trial court was inordinately high.
32. PW3, the clinical officer in his testimony stated that the Respondent was treated as an outpatient on 4<sup>th</sup> January 2010. He produced a treatment chit as evidence that the Respondent was indeed injured. This was also confirmed by the medico-legal expert, Dr. Samuel Aluda who testified as PW1. In the Medical report dated 22<sup>nd</sup> October 2010, the Respondent sustained a prick wound on the right leg.
33. Taking into account the evidence adduced before the trial court, it is clear that the Respondent sustained the injuries to her right leg as stated in the treatment records and the medical report.
34. As stated earlier in this judgment, the trial magistrate awarded Kshs 90,000 for general damages. In its submissions on appeal, the Appellant has opined that an award of Kshs. 50,000 would have been adequate and fair for the injury sustained by the Respondent. It placed reliance on the case of Eastern produce(K)Ltd vs Edith Kavere(2019)eKLR and Sinohydro Corporation Ltd vs Hezra Odhiambo(2016)eKLR.
35. The Respondent on the other had urged the court not to disturb the award. It submitted that the learned trial magistrate properly appreciated the facts of the case before her and made the correct finding that the Appellant was 100% liable for the injuries sustained by the Respondent.
36. The Court of Appeal observed in *Simon Taveta v Mercy Mutitu Njeru* [2014] eKLR as follows:

“The context in which the compensation for the respondent must be evaluated is determined by the nature and extent of injuries and comparable awards made in the past.”
37. I have considered the authorities relied on by both parties in this appeal as well as before the trial court.
38. It is trite that assessment of damages is a matter that falls within the purview of the trial court and an appellate court would be hard pressed to interfere with such an assessment. In *Hellen Waruguru Waweru* (Suing as the legal representative of Peter Waweru Mwenja vs. Kiarie Shoe Stores Limited [2015] eKLR, the Court of Appeal reiterated this principle in the following words:

“As a general principle, assessment of damages lies in the discretion of the trial court and an appellate Court will not disturb an award of damages unless it is so inordinately high or low as to represent an erroneous estimate. It must be shown that the Judge proceeded on wrong principles or that he misapprehended the evidence in some material respect and so arrived at a figure which was either inordinately high or low. The Court must be satisfied that either the Judge, in assessing the damages, took into account an irrelevant factor, or left



out of account a relevant one or that; short of this, the amount is so inordinately high that it must be a wholly erroneous estimate of the damages."

39. In the case of Southern Engineering Company Ltd. vs. Musingi Mutia [1985] KLR 730, the Court of Appeal set out the principles which should guide a court in awarding damages as follows;

"It is trite law that the measurement of the quantum of damages is a matter for the discretion of the individual Judge, which of course has to be exercised judicially and with regard to the general conditions prevailing in the country generally, and prior decisions which are relevant to the case in question to principles behind the award of general damages enumerated... The difficult task of awarding money compensation in a case of this kind is essentially a matter of opinion judgement and experience. In a sphere in which no one can predicate with complete assurance that the award made by another is wrong the best that can be done is to pay regard to the range and limits of current thought. In a case such as the present it is natural and reasonable for any member of the appellate tribunal to pose for himself the question as to award he, himself would have made. Having done so, and remembering that in this sphere there are invariably differences of view and of opinion, he does not however proceed to dismiss as wrong a figure of an award merely because it does not correspond with the figure of his own assessment... It is inevitable in any system of law that there will be disparity in awards made by different courts for similar injuries since no two cases are precisely the same, either in the nature of the injury or in age, circumstances of, or other conditions relevant to the person injured. The most that can be done is to consider carefully all the circumstances of the case in question, and to consider other reasonably similar cases when assessing the award... it need hardly be emphasized that caution has to be exercised when paying heed to the figures of awards in other cases. This is particularly so where cases are merely noted but not fully reported. It is necessary to ensure that in main essentials the facts of one case bear comparison with the facts of another before comparison between the awards in the respective cases can fairly or profitably be made. If however it is shown that cases bear a reasonable measure of similarity then it may be possible to find a reflection in them of a general consensus of judicial opinion. This is not to say that damages should be standardized or that there should be any attempt to rigid classification. It is but to recognize that since in court of law compensation for physical injury can only be assessed and fixed in monetary terms the best that Courts can do is to hope to achieve some measure of uniformity by paying heed to any current trend of considered opinion."

40. The Respondent in her submissions at the trial court sought Kshs. 350,000 as general damages relying on the case of Catherine Wanjiku Kingo'ri & 3 others vs Gibson Theuri Gichubi in Nyeri HCCC No. 320 of 1988 where Justice J.M Khamoni awarded the sum of Kshs 300,000 for soft tissue injuries
41. The Appellant on the other hand had urged the court in their submissions to award Kshs. 50,000 to the Respondent while placing reliance on the cases of Sokoro Saw Mills Ltd vs Grace Nduta Ndungu HCCA No. 99 of 2003 and African Highlands Produce Co. Ltd vs Francis B. Mososi Kericho HCCA No. 22 of 2003.
42. I have considered other authorities where awards for soft tissue injuries were made. In the case of West Kenya Sugar Co. Ltd v Stephen Nasiali Nyifu [2019] eKLR, the appellate court upheld an award of Kshs. 90,000/= where the plaintiff had sustained a cut wound on the right leg. In Ndungu Dennis – Vs- Ann Wangari Ndirangu & Another (2018) eKLR, the award was reduced from Kshs. 300,000/= to Kshs. 100,000/= where the Respondent had sustained soft tissue injuries to the lower leg and soft tissue injuries to the back.



43. On the whole, I am satisfied on my own consideration and re-evaluation of the material on record that the trial court came to the correct decision on the dispute before it and the Appellant has not satisfied me that I should disturb the findings of the honourable trial magistrate. That being my view of the appeal, the same is dismissed with costs to the Respondent.

**DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 19<sup>TH</sup> DAY OF DECEMBER, 2024**

**MAUREEN ONYANGO**

**JUDGE**

