Royal Garments Industries EPZ Ltd v Ndeleva (Appeal E006 of 2020)
[2024] KEELRC 13484 (KLR) (19 December 2024) (Judgment)

Neutral citation: [2024] KEELRC 13484 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MACHAKOS

APPEAL E006 OF 2020

B ONGAYA, J

DECEMBER 19, 2024

BETWEEN

ROYAL GARMENTS INDUSTRIES EPZ LTD ..... APPELLANT

AND

AMBROSE MUTINDA NDELEVA ..... RESPONDENT

(An appeal from the Judgment and Decree in Mavoko CMCC No. 1543 of 2017 delivered by Hon. J.A. Agonda, Senior Resident Magistrate delivered and given on 27.02. 2020)

JUDGMENT

1. The appellant filed the memorandum of appeal dated 06.03.2020 through Albert Kamunde & Company LLP Advocates. The appellant's grounds of appeal are that the trial Court erred in law and fact as follows:

    a. By holding that the plaintiff had proved his case on a balance of probability.

    b. By holding that the alleged accident indeed occurred at the Appellant's premises while the evidence showed otherwise.

    c. By holding, that the appellant was to blame at all for the accident when the evidence shows that accident occurred outside the appellant's premises.

    d. By holding that the alleged accident indeed occur at the appellant's premises while evidence, both oral and documentary clearly showed that at the time of the alleged accident the respondent was not on duty and within the appellant's premises.

    e. By failing to grasp and put into consideration the appellant's documents produced as exhibits and thus arrived at an erroneous finding on liability.

f. Failing to consider the appellant's witnesses evidence, which showed that the respondent was not on duty at the time of the alleged accident.

g. By failing to consider the appellant's submissions tendered and thus arrived at erroneous finding on liability.

h. By awarding general damages that are so manifestly excessive as to be erroneous in view of the injuries allegedly sustained by the plaintiff.

i. By not properly considering the medical reports on the record and hence arrived at a wrong assessment of damages that are so manifestly excessive as to be erroneous.

j. By finding that the respondent did not proof the special damages but still went ahead and awarded the respondent the special damages.

2. The appellant prayed for orders:

a. That the appeal be allowed and judgement against the appellant be set aside

b. Alternatively, the damages awarded be reviewed and revised.

c. Costs of this appeal and costs of the principal magistrate's court be granted to the appellant; and

d. Any other order this honourable court may deem fit to grant.

3. The background to the appeal is as follows. The respondent filed a plaint on 21.12.2017. The claim was for judgment against the appellant for;

a. Special damages

b. General damages for pain, suffering and loss of amenities.

c. Costs of and incidental to this suit

d. Interest on (a) and (b) above at court rates

e. Any other and further relief that this court may deem fit and just to grant.

4. The respondent's case was that he was employed as a machine operator. On 27.04.2015 he reported to duty and started working. At around 9.00am the machine developed some mechanical problems, which he reported to his supervisor one Rose, who instructed him to go on using the machine, until the mechanic comes to repair it.

5. An hour later the machine's pressure foot failed and knocked him on his left hand middle finger.

6. He reported the accident to the company nurse, who administered first aid and advised him to visit the hospital for further treatment.

7. The respondent visited Batian clinical services where he was treated and discharged. He thereafter went to Nairobi Women Hospital for x-ray where it was confirmed that the middle finger had fractured.

8. The appellant filed a defence on 14.02.2018 through Albert Kamunde & Company Advocates. The appellant prayed that the suit be dismissed with costs.

9. The appellant's case was that at all times it took reasonable care to safeguard the wellbeing of its employees including but not limited to providing them with protective clothing, proper instructions

on how to operate its machinery, training on how to conduct themselves while at work and did not in any away endanger the life or health of the plaintiff.

10. The appellant denied that the plaintiff was working at its premises on 27.04.2015, and denied knowledge of any accident involving the respondent.

11. The parties subsequently filed submissions and the trial Court in a judgment delivered on 07.02.2020 upheld the respondent's suit. The appellant has appealed against that judgment.

12. The parties filed submissions on the appeal.

13. This is a first appeal and the role of the Court is to revaluate the evidence and arrive at conclusions one way or the other bearing in mind it did not by itself take the evidence. The decision of the trial Court ought not be disturbed unless shown it misdirected itself and thereby arrived at conclusions that were not just or correct.

14. The main ground of appeal is that the respondent did not sustain the injury while at work and therefore the respondent is not liable. Section 10(2) of *Work Injury Benefits Act* states that an employer is liable to pay compensation in accordance with the provisions of the Act to an employee injured while at work. By consent order, the suit was determined based on pleadings and documents filed for parties. The trial Court found that the appellant failed to produce the accident register to show that the accident had not occurred on the material day. The Court finds the trial Court's finding cannot be faulted. The appellant filed no document to show that the claimant may not have been injured at work. The appellant did not even allege that the claimant had been absent from work on the material day or the circumstances under which he may have been at work and yet not injured during working processes. On the other hand, the respondent filed elaborate medical documents showing that the respondent was injured on the material day while at work. Parties having agreed to determination based on documents, the trial Court properly considered the documents and found the appellant liable. While parties may have consented to reliance on witness statements, the same could not hold because the statements by themselves could not amount to evidence without the witnesses adopting them and the contents being tested in examination. Thus, the appellant's witness statements that the respondent had not been injured on the material date while on duty or that no injury had not been reported had no probative value at all. As submitted for the respondent the appellant pleaded that the injury had taken place and without evidence, failed to show that it had not been at workplace. The appeal on liability will fail. No contributory negligence had been established for the appellant and the trial Court did not err in finding the respondent 100% liable.

15. On quantum, the trial Court relied on the appellant's cited case of Kennedy Mutinda Nzoka –Versus-Basco Product (Kenya) Limited (2013) eKLR where in similar injury Nduma J awarded Kshs.200, 000.00 on 30.08.2012. The learned Magistrate considered the effect of inflation and awarded Kshs.350, 000.00. The Court finds that the award has not been attacked in any material respect.

16. The appeal will fail upon all grounds.

In conclusion, the appeal will fail with orders as follows:

1. The appeal is dismissed with costs.

2. The trial Court's judgment and decree is upheld.

3. The Deputy Registrar to return the case file to Machakos Sub-registry forthwith.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS THURSDAY 19TH DECEMBER 2024.

BYRAM ONGAYA, PRINCIPAL JUDGE