



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR

RELATIONS COURT AT MOMBASA

CIVIL APPEAL NO. 7 OF 2017

BETWEEN

HANTEX GARMENTS [EPZ] LIMITED.....APPELLANT

VERSUS

EVANS MAKORI IBENCHO.....RESPONDENT

[An Appeal from the Judgment and Decree of the

Chief Magistrate's Court at Mombasa, delivered by Lutta S.

Hon. Chief Magistrate, in C.M.C.C No. 112 of 2014, on 30th November 2016]

BETWEEN

EVANS MAKORI IBENCHO.....PLAINTIFF

VERSUS

HANTEX GARMENTS.....DEFENDANT

Rika J

Court Assistant: Andrew Mwabanga

Mogaka Omwenga & Mabeya Advocates, for the Appellant

B.W. Kenzi & Company Advocates for the Respondent

JUDGMENT

1. In his Complaint filed before the Trial Court, the Respondent in this Appeal sought general and special damages, for work injury which he claimed he suffered, on 17th April 2013, while serving the Appellant.
2. The Trial Court, in its Judgment of 30th November 2016, granted him general damages at Kshs. 100,000, special damages at Kshs. 2,000, with costs and interest.
3. The Appellant herein, challenges the Judgment, on related grounds, which can be summarized as follows: -
 - The Trial Court erred in finding that the Claim was genuine, while the evidence showed it was fake.
 - The Trial Court misapprehended the applicable principles of the law and failed to appreciate authorities submitted by the Appellant.
 - The Trial Court failed to consider the facts before it.

4. The Appeal was originally filed at the High Court in Mombasa. It was transferred to the Employment and Labour Relations Court through an order issued by the High Court, on 16th March 2017. On 14th February 2020, Parties recorded a consent, to have the Appeal considered on the strength of the Record of Appeal.

The Court Finds: -

5. The Respondent asserted before the Trial Court that he was injured on 17th April 2013. He stated he was treated at Rabai Health Centre, and exhibited treatment notes.

6. The Appellant conceded that the Respondent was its Employee. It was denied that he was injured at work, on 17th April 2013, or that he was treated at Rabai Health Centre.

7. This aspect of the dispute, on injury and treatment, appears from the record not to have been satisfactorily considered and resolved, by the Trial Court. It is an issue that was central to the Claim before the Trial Court, and is central in this Appeal.

8. The Trial Court, without commenting on the documents relating to the injury and treatment of 17th April 2013, merely concluded that it was satisfied, on the balance of probability, that the Respondent was injured while on duty.

9. Extracts of the attendance register were exhibited by the Appellant, indicating that the Respondent, did not work, on 17th April 2013. Second, there was a Permission Application Form, signed by the Respondent, where he asked to be allowed days off, from 17th April 2013 to 24th April 2013, to attend burial. Third, Rabai Health Centre, wrote a letter on 25th July 2014, denying that the Respondent was treated at the facility, on 17th April 2013.

10. The Trial Court, in light of these documents, ought to have given reasons why, it opted to believe the Respondent's evidence, on the balance of probability, that he was injured at work, and treated at Rabai Health Centre, on 17th April 2013. It was open to the Respondent, to have the makers of these documents summoned to give evidence, if there was any doubt on their authenticity. He had treatment notes, alleged to have issued from the same Rabai Health Centre. If he could not have the makers of the Appellants' documents testify, he ought to have at least presented the maker of his treatment notes before the Trial Court. It was the role of the Respondent, to establish his Claim.

11. There is a lot of weight in the Appellant's submission that the Claim before the Trial Court was not genuine. The Appellant uses the word fake. With the documents presented before the Trial Court by the Appellant, the Respondent needed to do much more, to establish that his Claim was genuine. The record does not contain evidence, that would tilt the balance of probability in favour of the Respondent.

IT IS ORDERED: -

a. The Appeal is allowed.

b. No order on the costs.

Dated, signed and released to the Parties electronically, under Ministry of Health and Judiciary Covid-19 Guidelines, at Nairobi, this 15th day of December 2020.

James Rika

Judge