



**REPUBLIC OF KENYA**

**EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT KERICHO**

**ELRC APPEAL NO. 6 OF 2018**

*(Before D. K. N. Marete)*

**JAMES FINLAY (K) LTD.....APPELLANT**

**VERSUS**

**PETER BOKURO OYORI.....RESPONDENT**

**JUDGEMENT**

The matter came to court by way of a Memorandum of Appeal dated 11th August, 2011 and comes out as follows:

- 1) *The learned trial Magistrate erred in law and fact in failing to hold that the Plaintiff did not prove his case on a balance of probability.*
- 2) *The learned trial Magistrate erred in failing to evaluate the evidence tendered judiciously.*
- 3) *The learned trial Magistrate erred on all points of fact and law in an as far as the award of damages is concerned.*
- 4) *The learned trial Magistrate erred in law in fact in failing to apportion liability judiciously.*
- 5) *The learned trial Magistrate's award of damages was inordinately too high and manifestly excessive for the soft tissue injuries allegedly suffered.*
- 6) *The learned trial Magistrate erred in law and in fact in failing to dismiss the Plaintiff's case.*
- 7) *The learned trial Magistrate erred in law and in fact in disregarding the formidable defence evidence tendered.*
- 8) *The learned trial Magistrate erred in law and in fact in failing to hold that the Respondent was not injured while on duty.*

She prays as follows:

- 1) *That the judgement and decision of the trial Magistrate on liability and quantum in Kericho PMCC No. 33 of 2010 be set aside and a proper finding be made by this Honourable Court.*
- 2) *That this Honourable Court do make such further orders as may be just and expedient.*

3) *This appeal be allowed with costs.*

The matter came to court variously until the 23rd July, 2018 when the respondent proposed a disposal by way of written submissions. He has, however, not submitted any submissions to date.

A look at the evidence of the respondent in the lower court demonstrates a case of injury in a cut on his pointing finger's base by a splintering knife at the workplace. The respondent had been allocated the duty of tea plucking and issued with a defective knife. Despite his protestation, he was told to work with it as an alternative one was sought. In the course of time, the handle broke and he got injured.

On the issue of being at the workplace on the material date, the respondent testified on cross-examination that he was an employee of the appellant and worked for her. On the material day, he was plucking tea and his payroll number is CRO/NO 1078.

He agreed that he had not produced evidence that he worked with the appellant but admitted knowledge of a master roll as produced in examination. He even testified that this is filled by the company.

The Appellant did not call any evidence at trial in the lower court. This is expressed as follows:

*Nyolei: I do not have my witnesses in Court. I ask for a date for submissions.*

The Appellant's written submissions are plain and cut. They are more or less a replication of the Grounds of Appeal as set out.

I do not find any fault with the reasoning and finding of the learned Magistrate. With this kind of presentation and in the absence of any evidence controverting the respondent's case, this finding rests in good stead.

On the issue of quantum, I also would not wish to quarrel with the award by the learned Magistrate.

I am therefore inclined to dismiss the appeal with orders that each party bears their costs of the same.

**Delivered, dated and signed this 9th day of October, 2018.**

**D.K.Njagi Marete**

**JUDGE**

Appearances

1. Miss Kipyego instructed by Kibichiy & Company advocates for the appellant.
2. Mr. Meroka instructed by Meroka & Company Advocates for the respondent.