



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT MOMBASA

APPEAL NUMBER 2 OF 2016

BETWEEN

RICHARD CHAI CHIKANDE.....APPELLANT

AND

UNITED [E.A.] WAREHOUSES LIMITED.....RESPONDENT

[An Appeal from the Judgment of the Hon. D. Wasike,

Resident Magistrate delivered on 10th March 2016

in Mombasa Civil Case Number 761 of 2010]

BETWEEN

RICHARD CHAI CHIKANDE.....PLAINTIFF

VERSUS

UNITED [E.A.] WAREHOUSES LIMITED.....DEFENDANT

Rika J

Court Assistant: Benjamin Kombe

Mathew Nyabena & Company Advocates for the Appellant

Cootow & Associates, Advocates for the Respondent

JUDGMENT

1. The Appellant, in his Claim at the Resident's Magistrate's Court Mombasa, sought general and special damages against his Employer, the Respondent herein. His Claim was based on work injury. He stated under paragraph 5 of the Complaint, that while in the course of duty, on 26th June 2006, at the Respondent's factory, he was carrying sacks of wheat when suddenly sacks fell on him from the stakes. He was seriously injured on the right knee. He averred that the accident occurred as a result of the Respondent's negligence. The Respondent failed to provide the Appellant with a safe system of work, and in supervising of the Appellant.

2. In its Judgment, the Trial Court established that the Appellant was an Employee of the Respondent. It was observed by the Trial Court that the Appellant testified sacks of 180kgs fell on his right knee from a stake. The history given in the medical report produced by the Appellant was that the Appellant fell while carrying a loaded sack. Whereas the Appellant may have been injured at work, the Trial Court concluded it was not shown to have been as a result of sacks falling on the Appellant from a stake. It could not therefore be concluded that the sacks were not properly arranged as claimed by the Appellant. The Trial Court dismissed the Claim, with costs to the Respondent.

3. The Appellant presented this Appeal, in which he relies on 5 Grounds of Appeal, which are characterized as errors on the part of the Trial Court, listed below:-

- a) The Trial Court erred in holding that the Appellant was not injured by falling sacks, against the weight of the evidence.
- b) Whatever was written by the treatment facility was interpreted from what the Appellant told the facility.
- c) Evidence on record was not properly analyzed and wrong decision was arrived at.
- d) The Trial Court was wrong in placing reliance on the history of treatment notes, which history was inconsistent with the evidence of the Appellant.
- e) Appellant's evidence on causation was unchallenged.

4. Parties agreed in Court on 21st February 2017, to have the Appeal considered and determined on the strength of the record. They confirmed filing of their Written Submissions on 27th June 2017.

The Court Finds:-

5. At paragraph 5 of the Plaintiff, the Appellant states he was carrying sacks of wheat, when suddenly the sacks fell from the stakes on the Appellant, seriously injuring his right knee.

6. He blamed the Respondent for failure to supply him with a safe work environment. He alleged the Respondent was negligent, and breached its duty of care to the Appellant.

7. In his evidence at page 43 of the Record of Appeal, the Appellant told the Court he was carrying a sack of wheat of 90kgs, when other sacks fell on him from the go-down.

8. In his treatment notes and medical report, it was indicated the Claimant fell while carrying a loaded sack.

9. The Trial Court cannot be faulted for concluding there was inconsistency in the Appellant's evidence, casting doubt on the Appellant's position that he was injured as a result of sacks of wheat falling on him from the stakes. The Appellant failed to prove negligence on the part of the Respondent. It was not shown that the accident leading to the Appellant's injury was occasioned by falling sacks which had been improperly arranged by the Respondent.

10. Medical evidence was as much evidence from the Appellant himself, as it was from the medical facility. It is illogical to separate medical evidence from what the Appellant holds was his position on the details of the accident. The Trial Court, in light of the inconsistency in the Appellant's evidence, was correct in concluding there was insufficient evidence, to show that the sacks fell on the Appellant from their stakes. It was not shown that the Respondent was liable. The Trial Court correctly cited 2 Decisions of the High Court of Kenya, namely *Nairobi HCCA No. 152 of 2003 Statpack Industries v. James Mbithi Munyao* and *Kiema Muthuku v. Kenya Cargo Handling Services Limited [1991] 2 KAR 468*. It was for the Appellant to explain the inconsistency between what he considered as his evidence, and that contained in his medical documents. Details of the occurrence of the accident needed not be interpreted; all that was needed was to have what the Appellant told those who treated him, put in writing in the medical documents. If the history was not accurately captured in the treatment records, perhaps the Appellant should have called a Witness from the treatment facility, who would have assisted the Court in understanding the discrepancy. The Trial Court had no reason however, to disregard the history in the treatment records, and assume the discrepancy was as a result of wrong interpretation by the medics, of the details of the factory accident.

11. All Grounds of Appeal, though expressed in different words, seem to the Court to be based on the conclusion by the Trial Court that it was not shown by the Appellant that he was injured as a result of Respondent's negligence. That conclusion was based on the evidence presented by the Appellant, and cannot be faulted. The proceedings show other inconsistencies on the part of the Appellant. He was not sure if he was injured by sacks of wheat or sorghum. He pleaded in his Plaintiff that the Respondent failed to provide him with proper tools of work. In his evidence, he stated he did not need any tools to carry sacks, and that the pleading on this was a mistake. The Appellant did not have a well-crafted, consistent and sustainable Claim against the Respondent. The errors were not with the Trial Court. ***The Appeal fails on all counts, with no order however, on costs at both levels.***

Dated and delivered at Mombasa this 29th day of September 2017.

JAMES RIKA

JUDGE