



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT MOMBASA
APPEAL NUMBER 3 OF 2017

BETWEEN

MODERN COAST BUILDERS & CONTRACTORS LIMITED.....
APPELLANT

AND

MAURICE OWUOR ONYANGO
RESPONDENT

[An Appeal from the Judgment of the Hon. Mr. Ondieki, Mombasa Senior Resident Magistrate,
delivered on 17th August 2011,

in the Resident Magistrate's Court Civil Suit Number 3744 of 2004]

BETWEEN

MAURICE OWUOR ONYANGO
PLAINTIFF

VERSUS

MODERN COAST BUILDERS & CONTRACTORS LIMITED
DEFENDANT

Rika J

Court Assistant: Benjamin Kombe

Kinyua Muyaa & Company Advocates for the Appellant

Tarus & Company Advocates for the Respondent

JUDGMENT

1. The Respondent in this Appeal filed a Claim against the Appellant at the Resident Magistrate's Court

Mombasa, in August 2004. The Claim was registered as Civil Suit Number 3744 of 2004. He claimed he was employed by the Respondent as a Mechanic. He was injured on his left thumb while repairing a lorry gearbox. He prayed the Court to grant him, against the Respondent, general damages, special damages, costs and interest.

2. In its Judgment delivered on 17th August 2011, the Court found partially in favour of the Respondent, granting him Kshs. 100,000 in general damages. Liability was apportioned 40%-60% in favour of the Respondent. He was in the end to receive Kshs. 60,000 as general damages. He was allowed the prayer for special damages at Kshs. 4,000, plus costs and interest.

3. Dissatisfied, the Appellant lodged Civil Appeal Number 182 of 2011 at the High Court in Mombasa. The Appeal was transferred on the ground of jurisdiction to the present Court, and registered as Appeal Number 3 of 2017.

4. 6 Grounds are contained in the Memorandum of Appeal. These are:-

I. The Trial Court erred by apportioning 60% liability against the Appellant.

II. The Trial Court erred by holding the Respondent was injured at work.

III. The Trial Court erred by holding that the Appellant failed to provide the Respondent safety apparel and equipment.

IV. The Trial Court did not consider evidence adduced by Appellant's Witnesses.

V. The Trial Court did not consider Appellant's written submissions.

VI. The award of general damages was excessive.

5. Parties agreed in Court to have the Appeal considered and determined on the strength of their Submissions on record.

The Court Finds:-

6. On ground 1, the Court has seen nothing to suggest the Trial Court erred in apportioning liability at 40%-60% in favour of the Respondent/ Employee. There was evidence that the Respondent worked with his bare hands, and did not have any protective gear at all. It is the statutory and common law duty of Employers to provide Employees with a safe working environment, as held in this ***Court's Appeal Number 1 of 2015 between Rashid Ali Faki v. A.O. Said Transporters Limited [2016] eKLR***. The Trial Court was persuaded that the Appellant did not supply the Respondent with such an environment, and faulted the Respondent partially, for not exercising reasonable caution to avoid injury. The Court has no ground to interfere with the finding and apportionment of liability.

7. On ground 2, there was convincing evidence given by the Respondent that he was an Employee of the Appellant. He was injured at work. He was treated at Coast General Hospital. His bill was paid by the Appellant. The Court is not able to agree with the Appellant that the Trial Court erred, in finding the Claimant was injured at work.

8. The Court has concluded under ground 1, that the Appellant did not meet its statutory and common law duty to provide the Claimant with a safe working environment. This conclusion applies in rejecting ground 3.

9. Ground 4 is that the Trial Court did not consider Appellant's evidence. The record shows the Trial Court considered Appellant's evidence. Line 28 to 30 of page 9 and Line 1 to 6 of page 10 of the proceedings were devoted to what Appellant's Witness Homy Richard Nyati told the Court. What other evidence from the Appellant was adduced and not considered? Ground 4 has no merit and is rejected.

10. Grounds 5 and 6 are rejected. They are not supported by the proceedings of the Trial Court. The Trial Court clearly states it had considered the Submissions and Decisions filed by the Parties. The quanta of damages proposed by both Parties were placed on the scales justice. An amount of Kshs. 60,000 was granted to the Respondent, which going by his work injury, and decided cases, was in the view of the Court a fair award. There is absolutely nothing to support the last 2 grounds. The Trial Court considered Submissions filed by the Parties, and did not give an excessive award.

IT IS ORDERED:-

a) The Appeal is declined.

b) Costs of the Appeal to the Respondent.

Dated and delivered at Mombasa this 18th day of September 2017.

James Rika

Judge