



REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS  
COURT AT MOMBASA  
APPEAL NUMBER 7 OF 2015

**BETWEEN**

MWANAKOMBO AMANI OMAR ..... APPELLANT

**VERSUS**

KENYA KNIT GARMENTS [EPZ] LIMITED .....RESPONDENT

[Appeal arising from the Judgment of the Learned S.R.M Kaloleni, S.Wewa, delivered on 27<sup>th</sup> March 2012, in S.R.M.C.C Number 47 of 2011]

**BETWEEN**

MWANAKOMBO AMANI OMAR ..... PLAINTIFF

**VERSUS**

KENYA KNIT GARMENT [EPZ] LIMITED.....DEFENDANT

**JUDGMENT**

1. The Appellant was an Employee of the Respondent, working as a Cleaner on the 28<sup>th</sup> November 2010, when she slipped while on duty and fractured her right clavicle and right scapula. She filed Kaloleni S.R.M.C.C Number 47 of 2011 against the Respondent Employer, seeking special and general damages, with cost and interest.
2. The Learned Magistrate heard both Parties, and on 27<sup>th</sup> March 2012 wrote a crisp Judgment. It was found that it was the Respondent's duty to wash and dry the floor at the workplace. She alleged she slipped and fell because she had been provided worn out cleaning sandals by the Employer, and that the floor was wet and slippery hence occasioning her fall. The Magistrate threw out her Claim, finding it was the Appellant's responsibility to dry the floor, and she could not blame the Respondent for her accident, if it resulted from a wet floor. It was also the holding by the Court that there were dozens of boots at the workplace, which the Appellant could have opted to wear. There was no negligence shown on the part of the Respondent requiring the Respondent pays to the Appellant special and general damages.
3. Disaffected, the Appellant lodged this Appeal at the High Court in Mombasa. The Appeal was

transferred by the High Court to the Industrial Court on the basis of jurisdiction, in a Ruling dated 25<sup>th</sup> September 2014. It had been agreed at the High Court that the Appeal is considered and determined on the strength of the Record.

4. The Appellant raises 8 Grounds of Appeal which can be reduced to one ground without any prejudice to the Parties. That ground is: the Trial Magistrate erred in apportioning liability wholly, to the Appellant.

5. She argues that the Trial Magistrate erred in finding she was injured at work, while not finding the Respondent negligent; the evidence asserting that the accident was an act of God was not specifically pleaded; the Trial Magistrate held the Appellant's sandals were not wholly to blame, yet held the Appellant wholly liable for the accident; the Magistrate erred in finding the Appellant had the option in wearing gumboots, while these were only worn by Employees during construction; and that the Trial Magistrate erred in failing to find the Respondent largely liable for the accident.

6. The Respondent urges the Court to uphold the findings of the Trial Court. Negligence was not established against the Respondent. The Appellant did not establish her case on the balance of probability and her case was correctly dismissed.

*The Court Finds:-*

7. An examination of the record from the Trial Court does not reveal any errors, either of law or fact. It does not follow that because it was shown the Appellant was an Employee of the Respondent, and was injured at work, the Respondent/ Employer had to be liable for the injury. These facts would not lead to a finding of negligence on the part of the Respondent.

8. The Appellant alleged she was not issued with new sandals and the accident happened because she was wearing worn out sandals. She stated her sandals were smooth underfoot. They slid on the wet floor occasioning her fall. She alleged the floor was wet.

9. The Trial Court found, and this Court upholds that finding, that it was the duty of the Appellant to dry the floor after washing. She was climbing the stairs to wash dishes when she fell. This was after she had cleaned the floor. If the floor was still wet at the time, it was because she had not performed her duty of drying that floor properly. She had no reason to blame the Respondent for the wet floor. In her Witness Statement she pursued another line of attack, arguing that the floor was tiled. This seems not to have featured in her evidence before the Trial Court. The Respondent's Witnesses testified, and were not challenged on this, that the floor was made of bare cement with no tiles.

10. The evidence suggested in any event, that the Appellant could have reported to her Supervisor if the sandals were worn out, and be given a fresh supply. Secondly there were sandals and gumboots at the workplace which Employees were free to choose from. The assertion that the Respondent's Witnesses alleged the Appellant's fall was an act of God, did not materially affect the Appellant's responsibility in establishing her Claim on negligence. In all, she did not show it was as a result of the Respondent's failure in supplying a safe system of work that she slipped, and was injured.

11. This Court is however minded to interfere with the order for costs issued at the lower Court. The Appellant no doubt was injured while at work, and was entitled to pursue the claim against the Employer. She did not bring sufficient evidence to establish her claim, but her right to bring the claim cannot be doubted. Employees must be encouraged to pursue claims against their Employers without the fear of being slammed with huge litigation bills of costs by their Employers at the end of litigation. Courts must recognize Employees, particularly those from the lower cadres, normally do not have the financial wherewithal to meet the orders for costs. If costs were to follow the event in employment claims, as is often preached under the Civil Procedure, then there would be no access to industrial justice for a myriad of low-income Employees.

12. The Trial Court did not err in any demonstrable way, in dismissing the Claim. The order for costs against the Claimant was overkill. IT IS ORDERED:-

***[a] The Appeal is dismissed.***

***[b] Parties to shoulder their costs in both Courts.***

**Dated and delivered at Mombasa this 19<sup>th</sup> day of February, 2016**

**James Rika**

**Judge**