



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU

APPEAL NO. 10 OF 2015

(Originally Naivasha High Court Civil Appeal No. 15 of 2015)

NELSON NJUGI NJOKI.....APPELLANT

v

LAUREL INVESTMENTS LIMITED.....RESPONDENT

(Being an appeal from the judgment/decree of Hon. Mutegi, Senior Resident Magistrate delivered on 20th January 2015 in Engineer SRMCC No. 8 of 2014)

JUDGMENT

1. This appeal was transferred from the High Court Naivasha on 24 September 2015.
2. Directions were issued on 29 January 2016 and the Appellant filed his submissions on 19 February 2016, while the Respondent filed its submissions on 16 March 2016.
3. The appeal was prompted by a judgment delivered on 20 January 2015 by the Senior Resident Magistrate's Court sitting at Engineer Law Courts in a cause of action founded on negligence (industrial accident).
4. The trial Court found the Respondent 70% liable to the Appellant and awarded general damages of Kshs 60,000/- and special damages of Kshs 5,000/-.
5. After apportioning liability, the Appellant ended up with Kshs 42,000/- as general damages, Kshs 5,000/- special damages and costs.
6. The Appellant, being aggrieved filed a Memorandum of Appeal with the High Court Naivasha and he set out some 4 grounds of appeal, to wit,

1. THAT the trial Magistrate failed to critically evaluate the evidence on record and failed to accord the Plaintiff's evidence and submissions due weight to the extent that it was able to demonstrate the nature of injuries suffered by the Plaintiff.

2. THAT the learned trial Magistrate erred in law and in fact on relying on the Respondent's submissions alone and findings on liability without any evidence from the Respondent.

3. THAT the trial Magistrate erred in law and in fact in failing to consider and analyse the Plaintiff evidence and submissions on record and proceeded to award very low quantum compared to the

injuries suffered by the plaintiff.

4. THAT the learned trial Magistrate erred and misdirected himself in fact and law by awarding damages to the Appellant that were manifestly low in the circumstances and thus failed to appreciate the principles applicable in the award of damages.

7. The role of a first appellate Court on appeal has been set out in several authorities such as *Jabane v Olenja* (1986) KLR 661 (to reconsider and re-evaluate the evidence adduced by the witnesses before the trial Court and the findings made thereon).

8. The Court will proceed to examine, evaluate and analyse the appeal bearing in mind the above stated principles.

Ground 1

9. The injuries pleaded by the Appellant were fracture of the right lateral malleolus and soft tissue injuries of the right ankle joint.

10. The medical report by Dr. Wellington Kiamba dated 8 January 2014 indicated that an x-ray showed a fracture of the lateral malleolus and soft tissue injuries of the right ankle from which the Appellant had recovered from.

11. The Respondent's medical officer in a report dated 27 February 2014 noted that there was no visible fracture of the lateral malleolus and opined that the Appellant had sprained his right ankle joint.

12. The initial medical note indicated that an x-ray was to be taken and recommended that the Appellant be put on 3 days medical off duty.

13. In paragraph 6 of his submissions, the Appellant conceded to the Respondent's medical officer's report that the injury was a ***sprain of the right ankle joint***.

14. The trial Court appreciated the proved nature of injury as a ***sprained right ankle*** joint in page 2 and 3 of the judgment.

15. In my view, the trial Court properly evaluated the nature of injuries as was conceded by the parties, as reflected in the medical report by the Respondent's medical officer.

Ground 2

16. The Appellant also contested the judgment on the ground that the trial Court only considered the Respondent's evidence on liability.

17. The Appellant's testimony was that his leg got stuck in a pit while he was in the course of duty of spraying and that he was not able to see the pit. He was walking along the pathway and there was no warning about the pit which the Respondent ought to have filled up.

18. In cross examination, the Appellant admitted that he had straddled the area for about a month.

19. The Respondent's witness did not talk at all about the existence of the pit. He did not deny or confirm its existence. He did not mention the Respondent's responsibility as to filling up of the pit.

20. In my view, the subordinate Court was in error of both fact and law. The uncontroverted testimony before him was that there was a pit.

21. That such a pit posed a danger to employees and other persons if left unfilled and or lacking an appropriate notice would lead to the conclusion that the Respondent had failed in its obligation to ensure a

safe working environment.

22. The Respondent therefore ought to have been solely liable.

Quantum

23. Grounds 3 and 4 more or less question the award of damages.

24. The trial Court awarded Kshs 60,000/- discounted by 30% contribution by the Appellant.

25. The authorities cited by the Respondent all had soft tissue injuries while the Appellant cited an authority where the injuries appear to have been more severe than those sustained by the Appellant.

26. The trial Court considered an authority where soft tissue injuries had been sustained and also noted that the Appellant had healed and awarded Kshs 60,000/-.

27. In my view, the Court was not in error when it made the award considering the authorities cited by the parties and the award ought not to be disturbed.

Conclusion and Orders

28. The upshot of the foregoing is that the Court upholds the appeal singly on the issue of liability and overturns the findings on liability which is substituted with a finding that the Respondent be 100% liable for the injuries.

29. The effect being that the Appellant is awarded Kshs 60,000/- as general damages.

30. Appellant to have costs both in the subordinate Court and in this Court.

Delivered, dated and signed in Nakuru on this 2nd day of September 2016.

Radido Stephen

Judge

Appearances

For Appellant: Achieng Owuor & Co. Advocates

For Respondent: Munene Wambugu & Co. Advocates

Court Assistant: Nixon