



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI**

**CAUSE NO. 21 OF 2015**

**(FORMERLY HIGH COURT APPEAL NO, 110 OF 2007 AT NYERI)**

**Being an appeal from the judgment of Hon. E. Boke Resident Magistrate delivered on 9.10.2007 in Civil Case No. 207 of 2006 at Kandara**

**KENYA NUT COMPANY (KIAORA ESTATE) LTD..... APPELLANT**

**-VERSUS-**

**FELISTAH WANJIRU.....RESPONDENT**

(Before Hon. Justice Byram Ongaya on Friday 15<sup>th</sup> May, 2015)

**JUDGMENT**

The appellant being dissatisfied with the judgment by the learned Resident Magistrate delivered on 9.10.2007 in Civil Case No. 207 of 2006 at Kandara, filed the memorandum of appeal on 5.11.2007 through Muchui & Company Advocates. The grounds of appeal as set out in the memorandum of appeal and as submitted for the appellant at the hearing of the appeal may be summed up as follows:

1. That the learned trial magistrate erred in finding that the appellant was liable for the injuries sustained by the respondent whereas the learned trial magistrate found that it could not be confirmed whether the injury had been occasioned by a biting of a snake or a gecko.
2. The learned trial magistrate erred in finding that the respondent had failed to provide gloves as a protective gear whereas picking of coffee berries did not require any gloves as per evidence for the appellant it had been done with naked hands over the years.
3. The learned trial magistrate erred in finding that certain chemicals could have been sprayed to keep away from the coffee farm dangerous animals like the one that caused the plaintiff's injuries and the respondent had not showed the existence of such chemical.
4. The accident was not foreseeable and therefore the trial court erred in finding that protective gear such as gloves ought to have been provided.
5. The general damages for pain and suffering being Kshs.95, 000.00 was excessive.

The appeal was heard on 5.05.2015. Despite the service of the hearing notice, within the ordered time, upon the respondent's advocates Shem Kebongo & Company Advocates, the advocates and the respondent did not attend court at the hearing.

The court has revisited the record and judgment by the trial court. The court has considered the memorandum of appeal and the submissions made for the appellant. The court makes findings as follows:

1. The learned trial magistrate found that on the material on record it was not possible to ascertain

- whether the respondent's injury was caused by biting from a snake or gecko. While expressing doubt that a gecko could bite as urged in the appellant's evidence, the trial court found that it was not in doubt that the respondent had suffered injuries while at work by reason of a biting from some dangerous animal. This court finds no error in that finding by the trial court.
2. In the findings of the trial court the evidence was that protective gear such as suitable gloves and spraying of relevant chemicals was a duty the appellant had failed to perform and whose performance would have discharged the appellant's duty of care towards safety of the respondent as an employee assigned picking of coffee. This court finds no error in that finding by the trial court.
  3. The trial court apportioned liability at 10% to 90% for the respondent to the appellant taking into account that had the respondent been vigilant enough, she would have not been injured. This court finds no error in that finding by the trial court.
  4. The appellant has lamented that the general damages of Kshs.95, 000.00 was excessive. In awarding the general damages, the learned trial magistrate considered the extent of the injury and the infraction factor and found it sufficient for pain and suffering. The appellant did not urge any specific material to show the excessiveness and this court finds that the award was not excessive as it was fair in the circumstances of the case.
  5. That the injury was foreseeable is clear from the respondent's evidence in cross examination when she stated thus, **"...Snakes are always in that farm..."** In the opinion of this court, that evidence shows that dangerous animals like the snakes which were always in that farm was a continuing danger to the employees assigned to pick coffee and that they could cause injury to the employees was nearly obvious as was foreseeable.

In conclusion, the judgment of the trial court is upheld and the appeal is dismissed with costs.

**Signed, dated and delivered** in court at **Nyeri** this **Friday, 15<sup>th</sup> May, 2015.**

**BYRAM ONGAYA**

**JUDGE**