



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT OF KENYA AT NYERI**

**APPEAL NO.135 OF 2014**

**(Formerly High Court Civil Appeal No. 44 of 2008 at Nyeri)**

**Being An Appeal Against the Judgment and Decree of Hon. Ms R.A.A. Otieno, Senior Resident Magistrate in Civil Suit No. 583 of 2007 at Nyeri Given on 19.05.2008**

**SAMUEL KARIUKI MUGAMBI.....APPELLANT**

**-VERSUS-**

**EAST AFRICAN GROWERS LIMITED.....RESPONDENT**

(Before Hon. Justice Byram Ongaya on Friday 14<sup>th</sup> November, 2014)

**JUDGMENT**

The Appellant filed civil suit No. 583 of 2007 in the Chief Magistrate's court at Nyeri and prayed for judgment against the respondent for general damages, special damages of Kshs.2, 200.00, costs of the suit, interest, and such other relief as the court deems fit to grant. The respondent did not enter appearance and interlocutory judgment was entered in favour of the appellant on 15.10.2007 and the case set for formal proof on 3.12.2007. The appellant testified about injuries he suffered while at work and in employment of the respondent on 13.04.2007. In view of the evidence on record, it was submitted before the trial court that the appellant be awarded Kshs. 350,000.00 in general damages and Kshs. 4, 270.00 in special damages.

The learned trial magistrate considered in her judgment that the claim was based on an injury under the Workmen's Compensation Act (Cap. 236) which had been repealed by the Work Injury Benefits Act No. 13 of 2007 which came into force on 20.12.2007. The trial court cited section 16 of the Work Injury Benefits Act, 2007 which states, **"No action shall lie by an employee for recovery of damages in respect of any occupational accident or decease resulting in the disablement or death of such employee against such employee's employer and no liability for compensation on the part of such employer shall arise save as under provisions of this Act in respect of such disablement or death."**

The trial court further considered section 58(2) of the Work Injury Benefits Act, 2007 which provides, **"Any claim in respect of an accident or decease occurring before the commencement of this Act shall be deemed to have been lodged under this Act."**

Taking into account the two cited provisions, the learned trial magistrate found that it was clear that no claim for damages could be made before the court of law in respect of work related accident because, in the understanding of the learned trial magistrate, the cited section 58(2) of the new Act meant that even claims filed in court (say actions) before the commencement of the 2007 Act had to be pursued in accordance with the 2007 statute. The trial court found that the filing of the suit was not the proper

avenue and the suit was struck out with orders that the plaintiff was at liberty to pursue his claim under the Work Injury Benefits Act, 2007.

The appellant was dissatisfied with the judgment and he filed the memorandum of appeal on 7.07.2008 through Gachiri Kariuki & Company Advocate. The grounds of appeal are as follows:

1. The learned trial magistrate erred in law by applying the wrong regime of law and thus struck out the suit and misdirected herself.
2. The learned trial magistrate misdirected herself in law by not stating her findings on quantum of damages and thus misdirected herself.
3. The learned trial magistrate misdirected herself in law by not stating her findings on liability.

The appellant prayed for orders that:

1. The judgment be varied and set aside.
2. The quantum of damages be assessed.
3. Costs of the appeal and lower court be awarded to the appellant.

Despite service, the respondent did not appear at the hearing of the appeal and did not file any submissions to oppose the appeal.

The appellant submitted that the suit was filed on 28.08.2007 under the Workmen's Compensation Act, then applicable to the case. Thus, the learned trial magistrate erred in applying the Work Injury Benefits Act No. 13 of 2007 which came into force on 20.12.2007. The appellant relied on the holding in **Keroche Industries Limited –Versus- Kenya Revenue Authority & 5 Others [2007]eKLR** for the submission that back dating the application of the new law was unreasonable, irrational, oppressive, biased, discriminatory, mala fides, unfair, arbitrary, procedurally improper and an abuse of power.

The court has considered the submissions and the wording of section 58(2) of the Work Injury Benefits Act No. 13 of 2007. The section clearly refers to claims rather than suits or actions pending in court and commenced under the Workmen's Compensation Act (Cap. 236). Section 23(3) of the Interpretation and General Provisions Act (Cap. 2) in force at all material times provided that unless a contrary intention appears in the statute repealing another statute, legal proceedings commenced under the repealed statute shall be continued in accordance with the repealed statute and shall not be affected by repeal of the statute. In the present case, the court finds that section 58(2) of the Work Injury Benefits Act No. 13 of 2007 did not affect the suit as commenced and filed for the appellant and the claim referred to in the section could only mean and include claims for which no suit had been instituted under the repealed law.

In conclusion the appeal is allowed with orders:

1. The interlocutory judgment as entered in the lower court is upheld.
2. The judgment delivered on 19.05.2008 and the decree issued on 9.02.2010 is set aside.
3. The quantum of damages in the suit shall be assessed by the Chief Magistrate's Court at Nyeri taking into account the evidence and submissions filed for the appellant in the suit.
4. The respondent will pay the appellant's costs of the suit in the lower court and costs of the appeal.

**Signed, dated and delivered** in court at Nyeri this **Friday, 14<sup>th</sup> November, 2014.**

**BYRAM ONGAYA**

**JUDGE**