



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT HOMA BAY**

**CIVIL APPEAL NO.17 OF 2018**

**BETWEEN**

**SUKARI INDUSTRIES COMPANY LIMITED.....APPELLANT**

**AND**

**FELIX MUNANGA NABWERE.....RESPONDENT**

*(Being an Appeal from the judgment in Ndhiwa Senior Resident Magistrate's*

*SRMCC No. 46 of 2016 by Hon. Mary A. Ochieng –Senior Resident Magistrate).*

**JUDGMENT**

1. Sukari Industries Company Limited, the appellant herein was the defendant in Ndhiwa Senior Resident Magistrate's SRMCC No. 46 of 2016. The Company had been sued for compensation for injuries the respondent sustained while in the employment of the appellant. The learned trial magistrate delivered judgment dated 16<sup>th</sup> May, 2018 where the respondent was awarded Kshs. 100,000/= general damages.

2. The appellant was aggrieved by the said judgment and filed this appeal. The appellant was represented by the firm of Ogenjo, Olendo & Company Advocates. The appellant raised the following grounds of appeal:

- a) The learned trial magistrate erred in fact and in law in treating the evidence and submissions before him superficially and consequently coming to a wrong conclusion on the same.
- b) The learned trial magistrate erred in fact and in law in ignoring the principles applicable in awarding quantum of damages and the relevant authorities on quantum cited in the written submissions presented and filed by the appellant.
- c) The learned trial magistrate erred in fact and in law in finding that the respondent had proved his case on a balance of probability.
- d) The learned trial magistrate erred in fact and in law in failing to dismiss the respondent's suit with costs to the appellant.
- e) The learned trial magistrate erred in fact and in law in ignoring the pleadings and submissions for the defence.
- f) The learned trial magistrate erred in fact and in laws in failing to appreciate sufficiently or at all that the evidence tended in favour of the appellant controverted and rebutted the respondent's evidence thus lowering the respondent's probative evidential value.

g) Without prejudice to the foregoing the award of damages in the circumstances was excessive.

3. The respondent was represented by the firm of Everlyne Kuke & Company, Advocates who prayed for the dismissal of the appeal.

4. This Court is the first appellate court. I am aware of my duty to evaluate the entire evidence on record bearing in mind that I had no advantage of seeing the witnesses testify and watch their demeanor. I will be guided by the pronouncements in the case of **Selle vs. Associated Motor Boat Co. Ltd. [1965] E.A. 123**, where it was held that the first appellate court has to reconsider and evaluate the evidence that was tendered before the trial court, assess it and make its own conclusions in the matter.

5. It was contended for the appellant that the respondent did not prove that he had an employee –employer relationship with the appellant. This was not specifically pleaded by the appellant. The appellant did not call evidence to challenge the respondent’s contention on the issue. When the appellant sought to reopen the case, the main reason was to call for a second opinion on medical evidence. I therefore find that the respondent’s evidence that he was a casual employee of the appellant was proved on a balance of probabilities.

6. The issue whether there was an accident in which the respondent was injured while in the course of his employment also went unchallenged. The learned trial magistrate was justified in making a finding in favour of the respondent. I equally agree with the trial court on the apportionment of liability.

7. After perusing the entire record, the only issue for my consideration was whether the quantum of damages was inordinately high. An appellate court will not disturb an award of damages unless it be shown that the trial court proceeded on wrong principles or that he misapprehended the evidence in some material respect thus arriving at an erroneous award. In **Butt vs. Khan [1981] KLR 349** at page 356 Law J.A. Said:

**...an appellate court will not disturb an award of damages unless it is so inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the judge proceeded on wrong principles, or that he misapprehended the evidence in some material respect, and so arrived a figure which was either inordinately high or low.**

In the instant case the respondent sustained the following injuries:

a) Bruises on the left knee;

b) Bruises on the left upper limb;

c) Bruises on the right upper limb;

d) Tenderness on the right lower limb;

e) Neck tenderness;

f) Chest injury; and

g) Injury on the right knee joint.

8. The respondent at the trial proposed an award of Kshs.600, 000/= general damages while the appellant proposed an award of Kshs.100, 000/=.

9. The respondent suffered soft tissue injuries. The authorities that the appellant cited supported their proposal for an award. It is baffling for them to claim that the award was excessive and yet this was their proposal. I accordingly find that the appeal lacks merit and the same is dismissed with costs.

**DELIVERED AND SIGNED AT HOMA BAY THIS 16<sup>TH</sup> DAY OF DECEMBER, 2021**

**KIARIE WAWERU KIARIE**

**JUDGE**



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