



REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
OF KISII

Civil Appeal 289 of 2004  
**BETWEEN**

**SONY SUGAR COMPANY LIMITED ..... APPELLANT**

**VERSUS**

**SAMUEL OMOKE ONDERI ..... RESPONDENT**

**(Being an appeal from the judgment and decree of the CMCC Kisii in Civil Case No. 1327 of 2003 ----- A.A. Ingutya, SRM)**

**JUDGMENT**

In the case that gave rise to this appeal, the respondent alleged that he had been employed by the appellant as a cane cutter. On 10<sup>th</sup> March 2002, he was harvesting sugarcane using a panga when the panga accidentally slipped out of his hand and cut him on the left thumb. He blamed the appellant for the accident, saying that there was breach of statutory duty and negligence on the part of his employer.

The respondent claimed general damages as well as special damages being Kshs. 3,500/= for a medical report that was prepared by **Dr. Ezekiel Ogando Zoga, PW2**.

The appellant was unable call any witness after its application for adjournment was declined by the trial court.

The learned trial magistrate apportioned liability at 10:90 in favour of the respondent and awarded a net sum of Kshs. 66,500/= as general damages plus special damages of Kshs. 3,500/=.

The appellant was aggrieved by the said judgment and preferred an appeal to this court. The main thrust of the appeal was that the respondent was the author of his own misfortune and that he did not prove that there was any breach of statutory duty or negligence on the part of the appellant.

Counsel filed written submissions and I have duly considered the same.

In his cross-examination, the respondent stated, *inter alia*:

**“I was in control of the panga. I was in a position to prevent accident if possible. I was not careful before the accident. I was not careful before this accident occurred. I got accident not out of my making. Sugar cane is held in middle area by left hand and cut at stem by panga in right hand. I was using a sharp panga. I sharpened it. I knew that a sharp panga is dangerous. I did not expect to cut myself. The company did not expect me to cut myself nor did my contractor. I have never seen anyone**

**using gloves or gumboots. I was working without gloves and gumboots all along. I had to work to earn a living even if I put myself in danger.”**

The respondent had alleged that the appellant was guilty of breach of statutory duty by failing to keep the place of work safe and by failing to provide safe means of doing the work that he had been assigned to do. He also claimed that he had not been warned of the dangers that were likely to arise in connection with his work.

Under particulars of negligence, the respondent stated that he had not been provided with suitable gloves or other adequate protective wear.

Considering the evidence that was tendered by the respondent, I agree with the appellant’s advocate that the respondent did not prove the particulars of breach of statutory duty or negligence on the part of the appellant. He admitted that he was in control of the panga that he was using and he had sharpened the same. He did not demonstrate that the accident was caused by the appellant in anyway. He also testified that the appellant was not supplying cane cutters with gloves and gumboots. The respondent did not testify that the appellant was under any obligation to supply him with the said items for the kind of work that he was engaged in.

In several decisions of this court where the respondents were cut by pangas in similar circumstances as the respondent in this appeal, the court held that the respondents could only blame themselves for the accidents that befell them. Some of those appeals are:

**SOUTH NYANZA SUGAR COMPANY LIMITED -VS- CHARLES ONGWAE**, HCCCA NO. 73 of 2004 at Kisii and **SOUTH NYANZA SUGAR COMPANY LIMITED -VS- WILSON ONGUMO NYAKWEBE**, HCCA NO. 77 of 2004 at Kisii. I am not persuaded to depart from my holding as in the above cited decisions.

Consequently, I allow this appeal, set aside the judgment by the trial court and substitute therefor an order dismissing the respondent’s suit before the trial court. The appellant will have costs of the suit as well as the appeal.

**DATED, SIGNED AND DELIVERED AT KISII THIS 9<sup>TH</sup> DAY OF MARCH, 2010.**

**D. MUSINGA  
JUDGE.**

**9/3/2010**

Before D. Musinga, J.

Mobisa – cc

N/A for the Appellant

N/A for the Respondent

**Court:** Judgment delivered in open court on 9<sup>th</sup> March, 2010.

**D. MUSINGA  
JUDGE.**