



IN THE HIGH COURT OF MALAWI

CIVIL Division

PRINCIPAL REGISTRY

PERSONAL INJURY CASE NUMBER 559 OF 2015

BETWEEN

FRANK JUSTIN.....CLAIMANT

AND

SATEMWA TEA ESTATES LIMITEDDEFENDANT

Coram

Honourable Jack Nriya Judge

Claimant present and represented by Mr Y Domasi of counsel

Defendant represented by Ms I Mndolo

Ms D Mtegha Court Clerk

JUDGMENT

The claimant, Frank Justin, commenced this action, claiming negligence on the part of the defendant. According to the claimant's statement of claim, on or around the 7th day of May 2014, the defendant's agent ordered him to prune tea using a machine and the claimant stumbled and fell on the machine and got injured.

The claimant argues that his injury was caused due to the defendant's negligence. He argues that the defendant provided him with, and failed to repair, a faulty instrument. Further, he argued that the defendant failed to take adequate precautions for his safety while he was doing his job. Further to that, he said that the defendant exposed him to a risk of damage which the defendant knew or ought to have known. The other grounds of the negligence are failure to provide devices

or measures to protect the claimant and failing to give the claimant proper instructions when he was carrying out the said job.

The question is whether the claimant has proved that the defendant was negligent as he has particularised in his claim.

In his evidence, the claimant said that on 7th May 2014, he was instructed to prune tea using a machine. He said he got injured in the course of working when the machine started working when he had strapped it. He said as a result, he sustained a cut on his right arm. He said that before the accident, he reported the self-starting fault to the management. Further to that the defendant did not provide him with a protective gear, especially on the right-hand where he suffered the injury.

In cross-examination, the claimant said that that he used the instrument for only three weeks. He further said that he used to tell engineers that the instruments were faulty. He also said he used to tell the supervisors about the faulty instruments. He said he was trained to use the machine. On 7th May 2014, there was no supervisor but there was Mr Chitseko who led the workers to the field. He said he did not inform Mr Chitseko because he was not working under him. About the self-starting fault, he said he observed it on the same day. Later he said it started long-term before. Then he said it started Tuesday and he got injured on Wednesday. About a protective wear, he said that they were only given gumboots and torn overalls. He said that other companies provide their employees with aprons, helmets and gloves. He said that there were no gloves and helmets. He was injured up of the elbow of the right-hand side. He said if he was given a helmet perhaps he would have not been injured. He said that if he was given a glove, he would still have been injured.

The defendant called Mr. Limbani Chitseko as a witness. In his witness statement, on the particular day he was supervising a group of pruners assigned to prune tea for Mwalawanthunzi block. The witness attributed the injuries to the claimant. He testified that the claimant attempted to switch on his machine. Due to force, his machine injured him on his arm. Thus, the witness argued that the accident did not happen due to negligence on the part of the defendant. He stated that the claimant was duly trained to handle the machine and that he was provided with protective wear. Further, he testified that the machine was in perfect condition when the claimant was using it.

In summary, the claimant got injured on the elbow with the tea-pruning equipment. He claims that he was injured because the machine was faulty. Secondly, his argument is that the defendant failed to provide him with protective

wear leading to his injury. The claimant's argument is that in the circumstances of the case, the defendant failed to comply with statutory duty. The duties are under the Occupational Safety Health and Welfare Act.

The claimant argues that the evidence is ample that he was injured, that he had a faulty machine and that the defendant knew the fact that the machine was faulty. The claimant also attacked the defence case as being incoherent.

To start with the issue of evidence,

In summary, the claimant has failed to convince me that the injuries he suffered were as the result of failure on the part of the defendant. I dismiss the claim. I am not convinced that the defendant was aware that the machine was faulty. It is not clear from the evidence as to when the machine became faulty. It is also not clear that the claimant reported any fault to the defendant. I am, further, not convinced that failure to provide protective wear to the claimant, by the defendant was the reason the claimant suffered the injury.

Like in *Thom Saizi Lihoma v Anchor Industries (Soap Division) Limited* Personal Injury Cause No. 254 of 2014, Mbvundula J said:

The plaintiff however fell short of demonstrating to the court how the injuries he suffered would have been prevented had he been wearing the protective clothes he claims to have been entitled to be provided by the defendant. Would any of the protective wear he lays claim to have protected him from any of the injuries he suffered? Would any of it had prevented the heat from penetrating his trousers as he laments? The onus lies with the plaintiff to prove that assertion. He has not. The claim must therefore fail.

The claimant claimed that a glove would have assisted him. The question is whether the glove could have prevented the injury. I do not think so.

In *Nampinga v Conforzi Plantations Limited* Personal Injury Case 328 of 2009, this Court found that because the tea-cutting knife was so sharp, a glove was not enough to prevent a tea-pruner from sustaining a cut from a knife. The Court found that using a knife would prove even more dangerous as the knife could be slippery, and the glove could not even protect the claimant, in that matter, from the injury that he suffered.

DELIVERED at Blantyre the 28th day of ~~August~~ ^{September}, 2018


J N RIVA

JUDGE