**Railways Corporation v Obwoya**

**Division:** Court of Appeal at Kampala

**Date of judgment:** 4 September 1974

**Case Number:** 21/1974 (92/74)

**Before:** Sir William Duffus P, Mustafa and Musoke JJA

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**Appeal from:** High Court of Uganda – Nyamuchoncho, J

*[1] Workmen*’*s Compensation – Accident – Arising out of and in course of employment – Workman on*

*employer’s premises returning to work – Employer liable.*

**Editor’s Summary**

The appellant was employed by the respondent. He was knocked down and injured by a railway waggon

while on his employer’s premises and returning to work from lunch.

**Held –** the accident arose out of and in the course of the appellant’s employment (*Netherton v. Coles* (1)

distinguished).

Appeal dismissed.

**Cases referred to Judgment:**

(1) *Netherton v. Coles*, [1945] 1 All E.R. 227.

(2) *Virani v. Dharamshi*,[1967] E.A. 132.

[Decision of the High Court sub. nom. *Obwoya v. Railways Corporation*, [1974] E.A. 216 upheld.]

**JUDGMENT**

The following considered judgments were read.

**Musoke JA:** This is an appeal against the decision of the High Court of Uganda, in its appellate jurisdiction, allowing the respondent’s claim for compensation under the Workmen’s Compensation Act (Cap. 197), referred to hereafter as “the Act”, for bodily injuries sustained by him in an accident. The appellant was the employer of the respondent at the time of the accident, and the respondent’s application for compensation had been dismissed by a chief magistrate on the ground that no cause of action had been established against the appellant. I will refer to the appellant as “the employer” and to the respondent as “the workman”. Briefly the facts are as follows: On 22 September 1967, at 8.00 a.m. the workman, who was one of 8 men working as cattle wagon cleaners, reported for duty. At 12.30 p.m. he broke off for lunch, and was to report back at 2.00 p.m., but he did not do so. At around 3.00 p.m. his workmates learnt of his having been involved in an accident, but by then he had been removed from the scene of the accident and taken to a hospital. The lower part of his right leg was crushed in the accident, and it was later amputated below the knee, and this resulted in a permanent injury of 40 per cent. His claim for compensation, assessed under the Act at Shs. 7,977/10, was rejected by the employer, and his application to court to have the claim enforced was dismissed by the chief magistrate without carefully considering the evidence before him. At the hearing of the application in the magistrate’s court the workman gave evidence and called two of his workmates, one of them being the headman, as his witnesses. The employer called no evidence. The evidence of the workman as to the exact circumstances under which the accident occurred is somewhat confused and contradictory. However, that evidence, taken together with that of the two witnesses, shows that the workman was struck by a moving railway wagon at around 2.00 p.m. when he was returning to work from lunch, and was either walking adjacent to, or standing by, the railway lines of the employer, at a spot some 200 yards from his place of work. It is common ground that the real issue in this case is whether the circumstances of the accident fall within s. 5 of the Act. This section provides, so far as is relevant to the facts of this appeal, as follows: 5.(1) If in any employment personal injury by accident arising out of and in the course of the employment is caused to a workman, his employer shall . . . be liable to pay compensation in accordance with the provisions of this Act. ......................................................................................(*a*) ......................................................................................(*b*) (2) For the purposes of this Act, an accident resulting in the death or serious and permanent incapacity of a workman shall be deemed to arise out of and in the course of his employment, notwithstanding that the workman was at the time when the accident happened acting in contravention of any statutory or other regulation applicable to his employment, or of any orders given by or on behalf of his employer, or that he was acting without instructions from his employer, if such act was done by the workman for the purposes of and in connection with his employer’s trade or business. In his submissions in the High Court Mr. Bishota stated, *inter alia*, “Martin (workman) was probably coming from lunch going to report for duty: accident may have arisen out of his employment but not in the course of his employment. Both requirements must be fulfilled.” On that submission the judge observed, and in my view quite rightly, that the only question left for him to decide was whether the accident arose in the course of the workman’s employment; and, after considering the evidence on the record and the submissions of both counsel and the authorities cited, he expressed the view that as the workman was on his way to report for duty and was injured a few yards from his place of work, he was doing something for purposes of his own which was reasonably incidental to his employment. The judge then came to the following conclusion: “I am satisfied that the appellant met with the accident at 2 p.m. when returning from lunch, on his employer’s premises. That at the time of the accident the appellant was going to report for duty. That the fact that he had not reached his place of work and had not reported to the headman does not take him out of the course of his employment. I hold that the accident arose out of and in the course of the employment.” This finding of the judge has been attacked as being contrary to the evidence adduced, and there are five grounds of appeal as follows: 1. T HAT the judge erred in law and in fact in holding that the accident which befell the respondent on the 22 September 1967, occurred while the respondent was on the appellant’s premises. 2. T HAT the judge erred in law and in fact in holding that at the time of the accident the respondent was doing something which was reasonably incidental to his employment with the respondent. 3. T HAT the judge erred in law and in fact in his finding that the accident arose out of and in the course of the respondent’s employment with the appellant. 4. T HAT the judge misconstrued and/or misapplied s. 5 (1) of the Workmen’s Compensation Act. 5. T HAT the judgment and decree of the judge was against the weight of the evidence on the record. Before us Mr. Bishota has more or less repeated the points he raised in the court below. He has contended that the evidence before the court did not establish that the accident had occurred on the premises of the employer, nor that at the material time the workman was working; it merely showed that the workman was returning to work and, in his view, that was not an act incidental to the man’s employment. He referred to the following passage in Halsbury’s Laws of England Vol. 27, 3rd Edn., p. 806, at para. 1419: “The course of employment normally begins when the employee reaches his place of work.” This passage is set out fully in *Netherton v. Coles*, [1945] 1 All E.R. 227 at p. 229, which was also referred to in Mr. Bishota, as follows: “As a general rule a man’s employment does not begin until he has reached the place where he has to work, or the ambit scope or scene of his duty, and it does not continue after he has left it, and the periods of going and returning are generally excluded.” Finally Mr. Bishota referred to this court’s decision in *Virani v. Dharamsi*, [1967] E.A. 132 at p. 134, where the President of the Court, Sir Charles Newbold, said: “An action arises out of and in the course of employment if it results from an act which the employee is employed to do even if the employee is adopting a wrong method of doing the act or is doing it in a wrong manner.” Mr. Bishota then submitted that the evidence merely established that the workman was near his place of work when the accident happened but he was not in the course of his employment. Mr. Gaffa, for the workman, has submitted on the other hand that from the evidence and the circumstances surrounding the accident it was clear that the workman had reached the sphere of the place of his work and was proceeding to report for work when he was struck by the railway wagon. Further that the workman would not have been where he was injured if it were not for his employment, and that as he was returning to his place of work in the interest of his employer he was carrying out a duty incidental to his work. In support of his contention Mr. Gaffa referred to a passage in the paragraph already cited by counsel for the employer in Halsbury’s Laws of England which reads as follows: “If the place where the accident occurs is a private road or on the property of the employer, the accident is in the course of the employment because he (employee) is then at the scene of the accident by reason only of his employment and he has reached the sphere of his employment.” I have looked at the other English authorities city by Mr. Gaffa but I do not propose to refer to them specifically. It is not always easy to decide when a man’s employment begins and when it ends; all the circumstances of each case have to be carefully considered. The accident in *Netherton’s* case occurred on a public highway when the workman was returning home after work, and it was certainly outside working hours. Our case is different. The accident took place on the premises of the employer and during working time; and although the workman was not working at the time, he was on his way to resume his duties at 2.00 p.m. at his place of work, about 200 yards away, and this, in my view, bring the case directly within s. 5 (1) of the Act. In my opinion the judge was correct in holding that the accident arose out of and in the course of the workman’s employment, and I would dismiss the appeal. As regards costs, counsel for the workman has asked for costs here and in the courts below; but counsel for the employer has opposed the request for costs in the High Court and in the magistrate’s court, on the ground that no costs were awarded in those courts, and further that costs were in fact not included in the decree which was approved by counsel for the workman. I think the contention of counsel for the employer is sound. According to the record the judge does not appear to have considered at all the issue of costs, although in my view the workman should have been awarded the costs of his successful appeal in the High Court. However, as no cross-appeal was made against the judge’s omission in this regard, I do not think this court would be justified in awarding costs in the courts below. I would accordingly award to the respondent the costs of this appeal.

**Mustafa JA:** The respondent workman was returning to work after a lunch break; he was to report at his place of work at 2 p.m. At 2 p.m. he was struck by a railway wagon in the appellant Corporation’s precincts and injured. He was about 200 yards away from the place where he was to wash the appellant’s railway wagons. It was clear that he was at that time when he was struck because of his work. In my view the accident occurred, in terms of s. 5 (1) of the Workmen’s Compensation Act (Cap. 197) “out of and in the course of” his employment. I agree that the appeal must be dismissed and I concur in the order proposed by Musoke, J.A.

**Sir William Duffus P:** I have read and agree with the judgment of Musoke, J.A. and as Mustafa, J.A. also agrees, the appeal is dismissed with costs to the respondent.

*Appeal dismissed*.

For the appellant:

*DMK Bishota* (Deputy Counsel to the Community) and *LD Omari* (Assistant Counsel)

For the respondent:

*F Gaffa* (instructed by *Kirenga & Gaffa*, Kampala