



**Simiyu v Attorney General of Kenya & 3 others (Civil Suit E002 of 1988)
[2024] KEHC 16374 (KLR) (23 December 2024) (Judgment)**

Neutral citation: [2024] KEHC 16374 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CIVIL SUIT E002 OF 1988
RN NYAKUNDI, J
DECEMBER 23, 2024**

BETWEEN

GEORGE FRANCIS SIMIYU PLAINTIFF

AND

THE HON. ATTORNEY GENERAL OF KENYA 1ST DEFENDANT

THE DIRECTOR OF PUBLIC PROSECUTIONS 2ND DEFENDANT

THE INSPECTOR GENERAL OF NPS 3RD DEFENDANT

**THE PROTESTANT CHURCHES MEDICAL ASSOCIATION CHRISTIAN
HEALTH ASSOCIATION OF KENYA 4TH DEFENDANT**

JUDGMENT

1. The Plaintiff vide its further further further amended plaint dated 10th May, 2023 seeks orders as follows: -
 - a. A declaration that officials of the 5th defendant and the 4th defendant wrongfully and unlawfully converted motor vehicle registration No.s KRZ 900, KSB 151, KSD 392, KSB 515 and KSD without justification or court order.
 - b. A declaration that the Plaintiff was maliciously prosecuted.
 - c. Special damages and/or income loss from the motor vehicles and tractor from the date of the wrongful and unlawful detinue and conversion of the same
 - d. General damages for wrongful and unlawful conversion of motor vehicle registration Nos. KRZ 900, KSB 151, KSD 392, KSB 515 and KSD 059.
 - e. Compensation for malicious prosecution.



- f. Costs of the suit.
2. The Plaintiff averred that sometime in or about July, 1979, he was an employee of the Protestant Churches Medical Association now the Christina Health Association of Kenya (the 5th defendant) working in the position of a General Secretary/Treasurer. That sometimes on or about 1979, while on study leave pursuing further studies in the United States of America (studies sponsored by the 5th defendant) the 5th defendant without any reasonable justification and/or probable cause falsely and maliciously reported to the police that the Plaintiff had allegedly stolen from the association prompting unlawful impoundage of motor vehicles and the subsequent arrest of the Plaintiff who was charged in Nairobi Criminal Case no. 1578 of 1982 with the offence of stealing by servant on 46 counts.
 3. The Plaintiff further averred that he was acquitted by the Court of Appeal in Nairobi Criminal Appeal No. 5 of 1986 which apologized to the Plaintiff for he had already served the illegal sentence.
 4. The Plaintiff argued that the prosecution was instigated by the Association by malice through a malicious report made by the Official of the 5th Defendant and poorly investigated by the 4th defendant and as a result the Plaintiff was subjected to great suffering and damage. He further stated that the police under the authority of the 1st defendant mounted prosecution against him following investigation and recommendations to prosecute by the 4th defendant as an investigating officer and a key prosecution witness even after establishing that there was insufficient evidence to support the offence of stealing which were pertinently actuated by malice.
 5. The 1st to 4th defendant through the Hon. Attorney General denied all of the Plaintiff's allegations as raised in the further further further amended plaint and sought for dismissal of the suit with costs.
 6. The 5th defendant in denying the averments raised by the Plaintiff stated that at the time it was enjoined in these proceedings, the cause of action against it had since lapsed. It further averred that it is not the proper party in this proceedings by reason of the deconsolidation of the instant suit and Nairobi HCC 122 of 1987 vide court order of 18th April, 2013 and as such, the subject matter herein being malicious prosecution can only be determined between the Plaintiff and the 1st, 2nd, 3rd and 4th defendants.
 7. According to the 5th defendant, the prosecution of the Plaintiff was as a result of the Plaintiff's act of theft and embezzlement of the 5th defendant's money while in its employment. That the prosecution was not malicious whatsoever but was based on proper investigations carried out by the police which found the Plaintiff culpable.
 8. The 5th Defendant further stated that by reason of the fact that the Plaintiff's suit is premised on circumstances and events that took place more than 40 years to date, records relating to the matters in this suit are no longer available. Further that the persons with the information relating to this suit are either deceased or cannot be traced.
 9. It was the case of the 5th defendant that while the Plaintiff was away in the US, it was revealed that the Plaintiff had stolen and or embezzled from the 5th defendant, colossal sums of money amounting to about Kshs. 3,025, 470/=. That the Plaintiff had stolen and or embezzled the 5th defendant's said monies on several occasions while in its employment. Upon the said discovery, the 5th defendant's officials then reported the said loss to the police and supplied the documents in support of the Plaintiff's theft which was approximately investigated and found that the Plaintiff had stolen from its employer. The 5th Defendant therefore prayed for dismissal of the suit with costs and interests to the 5th defendant.



Plaintiff's submissions

10. Learned Counsel Mr. Omenya submitted that through a further, further amended plaint dated 29th January 2020, the Plaintiff seeks judgment against the defendants jointly and severally for several reliefs. These include restoration of motor vehicles or their reasonable values, profits and income from the motor vehicles, general damages for wrongful conversion, damages for malicious prosecution, costs, and interest.
11. It was submitted for the Plaintiff that between 1976 and 1979, he was employed by the fifth defendant as a secretary general/treasurer. Learned Counsel explained that in 1979, the Plaintiff traveled to the United States for further studies with financial assistance from the fifth defendant. On 6th September 1979, the Plaintiff's properties were seized by S.P Ephraim Mwangi Maragua and I.P. Christopher Francis Wanjala (the fourth defendant). The seized properties comprised four Peugeot 404 Matatu body-built Pick Ups, a Massey Ferguson Tractor with implements, and various household items.
12. Learned Counsel submitted that the defendants colluded to wrongfully charge the Plaintiff in Criminal Case No. 1578 of 1982, resulting in a four-year prison sentence. This judgment was later vacated by Criminal Appeal No. 5 of 1986, where the Court of Appeal quashed the conviction and set aside the sentence, which the Plaintiff had unfortunately already served.
13. It was further submitted that the persecution began with a report made to the Criminal Investigation Department in 1979 by Reverend Timothy Kamau, who served as chairman of the fifth defendant from 1977 to 1980. The report alleged that the Plaintiff had deserted employment and embezzled Kshs. 3,025,470.60. Learned Counsel emphasized that these actions were malicious as the Plaintiff had not deserted but was on study leave, with the fifth defendant having provided a grant of Kshs. 60,000/= for his academic endeavors.
14. On the issue of conversion, Learned Counsel cited Black's Law Dictionary, 2nd Edition, which defines conversion as "the wrongful possession or disposition of another's property as if it were one's own." He further relied on the case of Charles Mutuma M'kanake v Diocese of Meru Trustees Registered [2021] eKLR, where the court explained the concept of conversion.
15. Regarding damages, it was submitted that the Plaintiff produced a special audit report dated 10th March 2020 showing losses amounting to Kshs. 3,091,573,188/= as of 31st December 2019. Learned Counsel cited the case of Peter Ndungu Ngae v Ann Waithera Ndungu & 2 others [2014] eKLR to support the claim for compensation.
16. On costs, Learned Counsel maintained that they should follow the event, citing the case of Orix (K) Limited vs Paul Kabeu & 2 others, where it was held that costs should ordinarily be awarded to the successful party unless their conduct warranted denial of costs.
17. In conclusion, Learned Counsel prayed that the court grant the orders sought in the plaint based on the arguments advanced and authorities relied upon.

Analysis and determination

18. From the strength of the evidence by the Plaintiff and the defendant, one can distill the following cluster of issues as worthy consideration by this court.
 - a. Whether the suit statute barred under the Limitation of Action Act CAP 22.
 - b. Whether the 5th defendant is a legal entity capable of suing or being sued by the Plaintiff.



- c. Whether the Plaintiff, at one time was an employee of the 5th defendant notwithstanding the preliminary objection raised as to its legal status
- d. Whether the Plaintiff was ever investigated by the National police Service following a complaint lodged by the 5th defendant and subsequently a criminal prosecution initiated for the offence of stealing by servant.
- e. Whether the Plaintiff was ever convicted in the 1st instance by the primary court but subsequently acquitted on appeal on grounds of insufficient and inconclusive evidence in the court below.
- f. Whether an acquittal by the Court of Appeal constituted the elements as known in law under the tort of malicious prosecution.
- g. Whether the Plaintiff's case has discharged the burden of proof as against the defendant to warrant liability for the tort of malicious prosecution.
- h. Whether if clause (f) is answered in the affirmative the quantum of damages to be awarded by this court.
- i. Whether the other remedies prayed for in the further, further, further, amended plaint are capable of being granted by this court.
- j. Whether the cost are to follow the event and as premised in Section 27 of the [Civil Procedure Act](#).

Background

19. The wheels of justice, though sometimes slow, continue to turn inexorably towards the truth. In this remarkable case that spans over four decades, we confront fundamental questions about the intersection of personal ambition, institutional power, and the enduring quest for justice. The narrative before this Court is not merely about the conversion of property or the mechanics of investigation, indictment, prosecution, conviction and subsequent acquittal on appeal but a true testament of our criminal justice system notwithstanding the inherent challenges experienced at all levels of the legal system.
20. First and foremost, the 5th defendant has challenged the justiciability of this suit and jurisdiction of the court to entertain as stale suit in violation of the provisions of the [Limitation of Actions Act](#). It is the contention of the 5th defendant that the current suit was filed in February 2020, more than thirty years after the cause of action arose. Furthermore, they contend that essential records and witnesses are no longer available due to the extended time lapse, potentially prejudicing their ability to mount an effective defense. However, a perusal of the record reveals that the judgment of the Court of Appeal quashing the Plaintiff's conviction was delivered on 8th January, 1987 whereas the instant was first lodged on 12th January, 1987, which timeline is well within Section 4(2) of the [Limitation of Actions Act](#). On this ground alone, the suit is well within the timelines.
21. On the second issue Whether the 5th defendant is a legal entity capable of suing or being sued by the Plaintiff, the organization contends it lacks the legal capacity to be sued in its own name, being exempt from registration. This technical objection, if sustained, could prove fatal to the plaintiff's case against the 5th defendant, regardless of the merits of his claims.
22. The question of the 5th defendant's capacity introduces complex considerations about the legal status of religious organizations and trust properties. The Protestant Churches Medical Association, now



Christian Health Association of Kenya, operates as a religious organization holding property in trust for charitable purposes. In this case, while the 5th defendant raises the issue of legal capacity, the evidence shows they have historically acted through properly appointed trustees in previous legal proceedings. The consent judgment in Nairobi HCCC No 2479 OF 1981 was executed through the organization's trustees, demonstrating their recognized legal capacity to conduct litigation. The proper approach would be to amend the pleadings to correctly reflect the trustees as representatives of the 5th defendant rather than dismiss the suit on technical grounds. This aligns with the overriding objective of civil procedure to facilitate just, expeditious, and proportionate resolution of disputes.

23. The next issue that calls for brief scrutiny is whether the Plaintiff was an employee of the 5th defendant. In examining the employment relationship between the Plaintiff and the 5th defendant, the evidence presents a clear and documented connection. The record establishes that Mr. George Francis Simiyu served as the General Secretary/Treasurer of the Protestant Churches Medical Association (now Christian Health Association of Kenya) from June 1st, 1976 to July 31st, 1979. This employment relationship is substantiated by several pieces of evidence, including official correspondence and administrative records from the period. Of particular significance is the organization's decision to sponsor his further studies in the United States, a benefit typically extended only to bona fide employees. The employment relationship is further confirmed by the documentary evidence showing that the Plaintiff was granted study leave with the organization's explicit approval and financial support of Kshs. 60,000 for his academic pursuits.
24. The nature of his position as General Secretary/Treasurer placed him in a position of significant trust and responsibility, managing the organization's finances and administrative affairs. This fact is underscored by the internal correspondence between the organization's officials during his tenure and the subsequent criminal proceedings which, though later overturned, were premised on his position as an employee handling the organization's funds. The 5th defendant's own pleadings acknowledge this employment relationship, though they attempt to characterize his departure for studies as desertion, a position that is contradicted by the documentary evidence of approved study leave. The existence of this employer-employee relationship is central to understanding both the context of the criminal charges that were brought against him and the subsequent actions taken regarding his property. The answer to that question is therefore in the affirmative.
25. On the issue of malicious prosecution, the tort of malicious prosecution is committed where there is no legal reason for instituting criminal proceedings. According to Odunga's Digest on Civil Case Law and Procedure page 5276, the essential ingredients to prove malicious prosecution are as follows:
 - a. The criminal proceedings must have been instituted by the defendant.
 - b. The defendant must have acted without reasonable or probable cause.
 - c. The defendant must have acted maliciously.
 - d. The criminal proceedings must have been terminated in the plaintiff's favor.
26. In the present case, the Plaintiff must satisfy all the elements of malicious prosecution to succeed in obtaining an award of damages against the defendants. The evidence establishes that the Plaintiff was arrested, detained, and charged by the police acting as agents of the 1st to 3rd defendants following a complaint and investigation initiated by the 5th defendant. The prosecution culminated in the Plaintiff's conviction and a four-year imprisonment sentence in Nairobi Chief Magistrates Criminal Case No. 1578 of 1982. Significantly, this conviction was later overturned by the Court of Appeal in Criminal Appeal No. 5 of 1986, which set aside both the conviction and sentence, marking a favorable termination of the proceedings for the Plaintiff.



27. The Court of Appeal's decision to overturn the conviction, particularly noting the issues with the overloaded charge sheet and evidential concerns, is crucial. This outcome supports the Plaintiff's contention that the prosecution lacked reasonable and probable cause, especially considering that the investigating officers failed to properly consider documented evidence of his approved study leave and financial arrangements with the 5th defendant. The hasty disposal of the Plaintiff's property while his appeal was pending further suggests that the prosecution was driven by improper motives rather than a genuine pursuit of justice. Moreover, the fact that the 5th defendant proceeded to dispose of the seized vehicles to its officials and employees, without waiting for the final determination of the criminal proceedings, demonstrates a concerning disregard for due process and strengthens the inference of malice.

28. In the case of *Stephen Gachau Githaiga & Another V Attorney General* [2015] eKLR where Justice Mativo discussed the tort of malicious prosecution and stated;

“Malicious prosecution is an intentional tort designed to provide redress for losses flowing from an unjustified prosecution. Under the first element of the test for malicious prosecution, the plaintiff must prove that the prosecution at issue was initiated by the defendant. This element identifies the proper target of the suit, as it is only those who were actively instrumental in setting the law in motion that may be held accountable for any damage that results.

The second element of the tort demands evidence that the prosecution terminated in the plaintiff's favour. This requirement precludes a collateral attack on a conviction properly rendered by a criminal court, and thus avoids conflict between civil and criminal justice. The favourable termination requirement may be satisfied no matter the route by which the proceedings conclude in the plaintiff's favour, whether it be an acquittal, a discharge at a preliminary hearing, a withdrawal, or a stay.

The third element which must be proven by a plaintiff — absence of reasonable and probable cause to commence or continue the prosecution — further delineates the scope of potential plaintiffs. As a matter of policy, if reasonable and probable cause existed at the time the prosecutor commenced or continued the criminal proceeding in question, the proceeding must be taken to have been properly instituted, regardless of the fact that it ultimately terminated in favour of the accused.

Finally, the initiation of criminal proceedings in the absence of reasonable and probable grounds does not itself suffice to ground a plaintiff's case for malicious prosecution, regardless of whether the defendant is a private or public actor. Malicious prosecution, as the label implies, is an intentional tort that requires proof that the defendant's conduct in setting the criminal process in motion was fueled by malice. The malice requirement is the key to striking the balance that the tort was designed to maintain: between society's interest in the effective administration of criminal justice and the need to compensate individuals who have been wrongly prosecuted for a primary purpose other than that of carrying the law into effect.

29. The central issue of wrongful conversion stems from the seizure and subsequent disposal of the plaintiff's vehicles. The evidence indicates that following the criminal charges, these vehicles were impounded at Kitale Police Station as exhibits. Through a court order dated July 7, 1983, the vehicles were released to the 5th defendant, which subsequently transferred them to its name and later disposed of them to various parties, including its officials and employees.



30. The 5th defendant maintains that this transfer was lawful, arguing it constituted restitution for the embezzled funds. However, this position requires careful scrutiny, particularly in light of the Court of Appeal's decision to overturn the plaintiff's conviction. Dr. Samuel Mwenda, the current General Secretary of the 5th defendant, testified that the organization acted within its rights to recoup its losses. Yet, this assertion must be examined against the fundamental principle that the reversal of a criminal conviction necessarily calls into question any punitive measures based on that conviction.
31. The Court finds particularly concerning the haste with which the vehicles were disposed of to third parties, including the organization's own officials and employees. This disposal occurred while the plaintiff's appeal was still pending, effectively preventing any meaningful restoration of his property rights even after his successful appeal. Such actions suggest a disregard for the possibility that justice might ultimately vindicate the plaintiff's position.
32. It is not disputed that the 5th defendant lodged a complaint with the police about some criminal activities under the Penal Code which had been committed by the Plaintiff to this suit. This court walking through the memory lane of this litigation from the trial court and subsequent decision by the Court of Appeal in which the Plaintiff was acquitted, there is every reason to make a finding that the police in the first instance had no reasonable and probable cause to initiate criminal charges against the Plaintiff. Further, if the police had no sufficient grounds for suspicion to mount a successful prosecution which can stand the test of time even on appeal there is an irrebutable presumption that the court process against the Plaintiff was for an improper purpose which amounts to malice. In this country, action for malicious prosecution are often combined with actions for false imprisonment. This will occur where A is first arrested on suspicion of having committed an offence and later charged and prosecuted for that offence on the merits. If A happens to be acquitted of the charge, he/she is at liberty to sue the state for the arrest and subsequent prosecution for both false imprisonment and malicious prosecution. I have carefully re-examined and evaluated the evidence of the trial court and the subsequent decisions touching on the various offences facing the Plaintiff in his trial. One cannot resist the temptation of making the following conclusions:
 - a. That the criminal law was set in motion by the police who recommended trumped up charges against him and the nature of the information crafted to prosecute the Plaintiff became the ultimate weak link to have him acquitted by the Court of Appeal.
 - b. That the police and the Director of Public Prosecution set the law in motion without reasonable and probable cause, is by itself an act actuated by malice.
33. From the record, the 5th defendant was actively instrumental being also an employer of the Plaintiff in setting the law in motion against the Plaintiff so that he could be prosecuted for the various offences, which proved to be a toll order to be sustained before the Court of Appeal. This is one case which shows by way of evidence, that the 5th defendant did not merely inform the police of certain facts to incriminate the Plaintiff but went a notch higher to ensure that he was prosecuted notwithstanding the insufficient evidence
34. Regarding the claim of malicious prosecution, while the Court acknowledges that the mere fact of an acquittal does not automatically establish malice, the totality of circumstances in this case is telling. The investigation appears to have been conducted with undue haste, crucial evidence regarding the plaintiff's approved study leave was overlooked, and the prosecution proceeded despite significant gaps in the evidence. The Court of Appeal's critique of the overloaded charge sheet further suggests a prosecution driven more by zeal than proper consideration of the evidence.



35. The principles of justice that underpin our legal system demand not just the correction of legal wrongs but also the restoration of rights wrongfully infringed. Having carefully weighed the evidence and considered the complex history of this matter, justice requires substantive remedial action. Liability for malicious prosecution which is traceable way back to investigation, arrest, detention and prosecution is a term with complexity of canons of interpretation for reasons that involves an investigation into a particular crime identified in any of the provisions of the penal Code or other Penal laws. The liability or otherwise of the National Police Service or the Director of Public Prosecution will depend on whether or not they had information that led them to believe of objective grounds that a suspect if taken through a criminal process, there will be a prima facie case to find him/her guilty of the offence followed with a conviction. Therefore, there is need for such constitutional organs in Kenya to have reasonable and probable cause for a prosecution that the committed offences did take place and if it is only on mere suspicion, their conduct will be that which is actuated by indirect and improper motives. The appreciation of the judgments of the trial court and that of the Court of Appeal provides some key milestones in which the highest court came to a conclusion that the nature of the charges initiated against the Plaintiff did not reasonably comprise of sufficient evidence that he was probably the person who committed the offences in question. There was also the issue of duplex charges in which an unreasonable Police officer, the 4th defendant acting on the information available would not have concluded that the allegations against the Plaintiff disclosed full material facts to the police to recommend the institution of criminal proceedings.
36. In the persuasive case of *A v. New South Wales*, Gleeson CJ (2007) 233 ALR 584, the court discussed both the subjective and objective aspect of probable and reasonable cause as follows:
- “to decide whether the prosecutor did not have reasonable and probable cause for commencing or maintaining the prosecution, the material available to the prosecutor must be assessed in two ways. What did the prosecutor make of it? What should the prosecutor have made of it. To ask whether there was material to the prosecutor which assessed objectively would have warranted commencement or maintenance of the prosecution would deny relief to the person acquitted of a crime prosecuted by a person who not only acted maliciously, but who is shown to have acted without forming the view that the material warranted prosecution of the offences. Conversely, to ask only what the prosecutor made of the material that he/she had available when deciding to commence or maintain the prosecution would favor the incompetent or careless prosecutor over the competent and careful.”
37. In conclusion, this case serves as a sobering reminder of the far-reaching consequences of hasty prosecutions and the importance of protecting property rights, even in the context of criminal investigations. While monetary compensation can never fully restore the years lost to wrongful imprisonment or the opportunities foregone, it serves as society’s best attempt at making amends for injustice.
38. The lengthy delay in reaching this resolution, while regrettable, does not diminish the Court’s duty to provide remedies where rights have been violated. Indeed, it perhaps makes this duty more acute, as justice delayed must not become justice denied.

It is the court’s contention that this is one case where the Plaintiff has discharged the burden of proof on a balance of probabilities against the defendants jointly and severally for this court to impose a tortious liability for misuse of the legal process as against the Plaintiff. The purpose of the law of tort is for compensation of the Plaintiff against a wrong committed by the wrong doer. The justification is that tort law aims to award compensation to a claimant or Plaintiff in circumstances where tort-



feasor should be held responsible for the harm caused. The function of the court here is therefore to determine what is the compensation worthy of the Plaintiff. The concepts of punishment and compensation are the underlying goals of tort law and an award against the tort-feasor serves as a punishment for that matter. In order to exercise discretion on assessment of damages of the various limbs constituting malicious prosecution referenced to past awards from the superior courts would be of significant relevance: In *Jacob Juma and another v The Commissioner of police and another* [2016] eKLR the court awarded the following: False imprisonment – Kshs. 200,000/=, Exemplary damages for false imprisonment – Kshs. 400,000/=, General damages – Kshs. 2,000,000/=, Exemplary damages for malicious prosecution Kshs. 400,000/=

39. In *Brutus Nandwa Wa Ambunya Vs Inspector General Of Police & Another* [2018] eKLR where the plaintiff was awarded Kshs. 1,500,000 in exemplary, aggravated and punitive damages. In *Nahashon Mwangi vs Commissioner of Police & Another*, HCCC No. 163 2006 (2015) eKLR Mabeya J awarded Kshs 800,000/ to the Respondent who unlawfully arrested, confined and maliciously prosecuted.
40. When it comes to special damages, the law is very clear on the guiding principles. This is the position taken by the court in *Joseph Kipkorir Rono v. Kenya Breweries Limited & Another Kericho HCCA No. 45 of 2003* where Kimaru J held that:

“In current usage, special damage or special damages relate to part pecuniary loss calculable at the date of the trial, whilst general damages relate to all other items of damage whether pecuniary or non-pecuniary. If damages are special damages they must be specifically pleaded and proved as required by law. For a loss to be calculable at the date of trial it must be a sum that has actually been spent or loss that has already been incurred...Special damages and general damages are used in corresponding senses. Thus in personal injury claims, ‘special damages’ refers to past expenses and lost earnings, whilst ‘general damages’ will include anticipated loss as well as damages for pain and suffering and loss of amenities... Special damage is in the nature of past pecuniary losses or expenses while general damage is futuristic pecuniary loss or expenses. Therefore, in the instant case the loss of income as a direct consequence of this fraud would be both a general damage as well as a special damage. General damages particularly extent thereof would be unknown at the time of the trial and must await the conclusion of the case so that they may be assessed. Special damages on the other hand consist of those losses that could be calculated at the time of the trial. Special damages must be pleaded, but so must future pecuniary loss if it may lead to surprise. Non-pecuniary damage must not be quantified in a pleading...There ought to be a distinction between past pecuniary losses or expenses already incurred and could easily be calculated by say reference to receipts obtained and anticipated future pecuniary loss or expenses which is continuing and which though one may know the multiplicand you will not normally know how long the loss will take. Such an anticipated loss is general damage, which must of necessity await the completion of the suit to be assessed by the Court. Special damages on the other hand is calculable at the date of the trial out of which a round figure will be obtained. General damages are such as the law will presume to be the direct natural or probable consequences of the action complained of. Special damages on the other hand, are such as the law will infer, from the nature of the act. They do not follow in the ordinary course but are exceptional in their character and, therefore, they must be claimed specifically and proved strictly...Specific loss of profits consequential upon the loss of use of an article for a specific period to the date of the plaint is special damage, which must be pleaded. However, in certain circumstances loss of profits could be included within a claim for general damages... General damages consist of the nature of prospective loss of income while special damages consist of out of pocket expenses and loss of earnings or income incurred down to the date of



trial and is generally capable of substantially exact calculation. Where damages has become crystallised and concrete since the wrong the defendant could be surprised at the trial by the detail of its amount.”

41. It is settled law that special damages ought not only to be specifically pleaded by the Plaintiff or claimant but must be specifically proved. In the case at bar, the Plaintiff has miserably failed to discharge that burden for the court’s determination. There is insufficient evidence on financial pecuniary loss arising out of the business being carried out by the Plaintiff before his vehicles were seized and detained by the 5th defendant. In this limb, the court is persuaded to award the value of motor vehicles notwithstanding the absence of a valuation report
42. Indeed, the awards on malicious prosecution and false imprisonment reflect the court’s disdain of the defendants intentional and deliberate decisions to use their constitutional powers in an entirely improper manner in order to gain a collateral advantage and not for the public interest. The purpose of punishment in this sense is to protect and safeguard the sanctity of the judicial process. When abuse of the legal process is tolerated and justice is not seemed to be done, courts risk losing such public confidence. As was observed by Lord Denning as he then was in the case of *Goldsmith v. Sperrings* (1977) 1WLR 478, he remarked as follows:

“In a civilized society, legal process is the machinery for keeping order and doing justice. It can be used properly or it can be abused. It is used properly when it is invoked for the vindication of men’s rights or the enforcement of just claims. It is abused when it is diverted from its through course so as to serve extortion or oppression or to exert pressure so as to achieve an improper end. When it is so abused, it is a tort, a wrong known to the law. The judges come and will intervene to stop it. They will stay the legal process if they can before any harm is done. If they cannot stop it in time and harm is done, they will give damages against the wrongdoer.”
43. That is exactly what we are asked by the Plaintiff to do for the tortious actions of the defendant which were of a sufficiently reprehensible kind. In considering the various awards as cited above, the court finds in favor of the Plaintiff and he is hereby awarded in the following limbs:
 - a. Special damages for the seized motor vehicles – Kshs. 520,000/=
 - b. Damages for false imprisonment – Kshs. 200,000/=
 - c. Damages for malicious prosecution – Kshs. 3,500,000/=
44. In addition, accordingly, the following orders shall abide:
 - a. First, I hereby declare that the conversion of motor vehicles registration numbers KRZ 900, KSB 151, KSD 392, KSB 515, and KSD 059 by the 4th and 5th defendants was wrongful and unlawful. The transfer and subsequent disposal of these vehicles, occurring as it did while the plaintiff’s appeal was pending, constituted an improper pre-emption of the judicial process.
 - b. second, regarding the claims for damages the court awards special damages of Kshs. 520,000/=, damages for false imprisonment of Kshs. 200,000/= and as for malicious prosecution, the Court awards general damages of Kshs. 3,500,000 against the defendants jointly and severally. The damages reflect both the gravity of the wrong done to the plaintiff and the profound impact of his wrongful imprisonment on his life and career.
 - c. Fifth, the costs of this suit shall be borne by the defendants.



45. It is so ordered

DATED SIGNED AND DELIVERED AT ELDORET, THIS 23RD DAY OF DECEMBER 2024

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R. NYAKUNDI

JUDGE

In the presence of:

The Plaintiff

