



REPUBLIC OF KENYA



KENYA LAW
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Mwaura & 2 others v Kenya Pipeline Company Limited & 2 others (Civil Case 355 of 2007) [2023] KEHC 18403 (KLR) (Civ) (29 May 2023) (Judgment)

Neutral citation: [2023] KEHC 18403 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL CASE 355 OF 2007

AN ONGERI, J

MAY 29, 2023

BETWEEN

DONALD KIBORO MWAURA 1ST PLAINTIFF

PETER KIHANYA MUIRURI 2ND PLAINTIFF

JOSEPH NJENGA NJUNGE 3RD PLAINTIFF

AND

KENYA PIPELINE COMPANY LIMITED 1ST DEFENDANT

THE COMMISSIONER OF POLICE 2ND DEFENDANT

THE ATTORNEY GENERAL 3RD DEFENDANT

JUDGMENT

1. The three plaintiffs in this case, Donald Kiboro Mwaura, Peter Kihanya Muiruri And Joseph Njenga Njunge (hereafter referred to as the 1st, 2nd and 3rd plaintiffs respectively) sued the three defendants Kenya Pipeline Company Limited, The Commissioner Of Police And The Attorney General (hereafter referred to as the 1st, 2nd and 3rd defendants respectively) seeking the following remedies;
 - i. General damages for unlawful arrest, false imprisonment and malicious prosecution, defamation and loss of reputation.
 - ii. Special damages in respect of loss of business and earnings and legal fees.
 - iii. Aggravated and exemplary damages for unlawful arrest, false imprisonment, malicious prosecution and publication of false allegations.



- iv. Costs and interest of the suit.
2. The defendants filed a defence denying the plaintiffs' claims.
3. A summary of the plaintiff's case was that the police spokesman Mr. Gideon Kibunja made a press statement that the three plaintiffs were being sought by CID for an alleged fraud against the 1st defendant.
4. On 17/2/2003, the plaintiffs presented themselves at the CID office Milimani with a view to clear their names. They were placed under custody.
5. On 19/2/2003 they were arraigned in court and charged with the following offences
 - i. Conspiracy to defraud the 1st defendant of kshs.339,318,941.23.
 - ii. Stealing of kshs.115,429,583.00 from the 1st defendant.
6. On 14/7/2003 the DPP entered A *Nolle Prosequere* against them and they were immediately rearrested and placed in custody and again re-arraigned in court on 10/7/2003 and charged with the same offences.
7. On 20/4/2006 the court found that they had no case to answer after conducting the trial and they were acquitted under section 210 of the *Criminal Procedure Code*.
8. The plaintiffs are now seeking the above stated remedies against the defendants.
9. The defendants did not call any witnesses.
10. The parties filed written submissions which I have duly considered. The plaintiffs in their submission argued that the defendants set the law in motion when the 2nd defendant's officers did in fact issue a press release calling upon the public to help them trace the plaintiffs on allegations of conspiracies to defraud and stealing whereby upon presenting themselves the plaintiffs were arrested, detained and arraigned in court. The plaintiffs in their bundle of documents have laid forth the publications in the various newspapers with nationwide distribution.
11. That Pursuant to section 24 of the *Kenya Police Act*, the 2nd defendant's officers are inter alia mandated with the tasks of investigating crimes and collecting criminal intelligence. As such the presumption is that the 2nd defendant's officers should have conducted criminal investigations before leveling the said charges against the plaintiffs.
12. The appellants submitted that there was no reasonable cause for instituting the proceedings and contended that at determination of the case the court while finding that the plaintiffs had no case to answer, found that what was at issue was a contractual relationship in which contract documents had been regularly executed after a tendering process and payments made as per the contract.
13. The payments made were being allegedly intended to be defrauded from the 1st defendant through conspiracy. The court rejected this notion out rightly. The fact of the tender, contracts performance and payment were within the purview of the defendants but they nevertheless maliciously charged the plaintiffs with criminal offences.
14. On whether the prosecution was malicious the plaintiffs submitted that that the 2nd defendant's officers never conducted sufficient investigations before preferring charges against the plaintiffs. The charges on the first and the second criminal case were mainly based on ill will and malice and there was no basis for the same.



15. In support of their case, the plaintiffs cited that according to *Winfield & Jolowicz on Tort*, at page 681, 'The plaintiff must show that the prosecution ended in his favour, but so long as it did so it is of no moment how this came about, whether by a verdict or acquittal, or by discontinuance of the prosecution by leave of the court, or by quashing of the indictment for a defect in it, or because the proceedings were coram non iudice, or by nonsuit.'
16. Finally, the plaintiffs contended that at some point in the course of the proceedings, the plaintiffs bank accounts were frozen, to add salt to the injury the plaintiffs were slapped with hefty bond terms which left them totally incapacitated unable to carry on their businesses as well as cater for their day to day living.
17. The plaintiffs also submitted that the publications in the dailies further complicated the situation as their business associates shunned them and as such it was very difficult for them to attract new business as well as sustain their clients.
18. The plaintiffs submitted that their source of income was totally crippled. That in the light of the foregoing and noting the amounts at stake, the humiliations, the hefty bond terms, the tarnished business reputation and the ruined image of the plaintiffs as businessmen from the publications in the dailies, they deserve reasonable compensation to put them back to the position they were in before the charges levelled against them were made.
19. The issues for determination in this suit are as follows;
 - i. Whether the defendants are liable to pay the plaintiffs damages for unlawful arrest, false imprisonment and malicious prosecution and defamation.
 - ii. Whether the defendants are liable to pay the plaintiffs aggravated and exemplary damages for unlawful arrest, false imprisonment, malicious prosecution and publication of false allegations.
 - iii. Whether the defendants are liable to pay the plaintiffs special damages in respect of loss of business and earning and legal fees.
 - iv. Who pays the cost of the suit?
20. On the issue as to whether the defendants are liable to pay the plaintiffs damages for unlawful arrest and false imprisonment and also malicious prosecution and defamation, I find that the plaintiffs' evidence has not been controverted.
21. The plaintiffs were arrested, arraigned before court and acquitted under section 210 of the *Criminal Procedure Code*.
22. The Trial court during the prosecution found that what was at issue was a contractual relationship in which contract documents had been regularly executed after a tendering process and payments made as per the contract.
23. The court confirmed that the plaintiffs had no case to answer and they were finally acquitted under section 210 of the *Criminal Procedure Code*.
24. I find that the defendants are liable to pay each of the plaintiffs damages for unlawful arrest, false imprisonment and malicious prosecution assessed as follows;
 - i) General damages for unlawful arrest Ksh 1,000,000/= each.
 - ii) General damages for false imprisonment Ksh 1,000,000/= each.



- iii) General damages for malicious prosecution Ksh 1,000,000/= each.
 - iv) General damages for defamation Ksh 1,000,000/= each.
25. The total for each plaintiff is Kshs. 4,000,000 and therefore the defendants are liable to pay the plaintiffs a total of Kshs. 12,000,000.
26. On the issue as to whether the defendants are liable to pay the plaintiffs aggravated and exemplary damages for unlawful arrest, false imprisonment, malicious prosecution and publication of false allegations, I find that the General damages awarded are adequate.
27. In the case of *National Transport and Safety Authority & 2 others v Elisha Zebedee Ongoya* [2020] eKLR H. Omondi J (as she then was) held as follows: -

“On quantum of damages, the award of Ksh 3,500,000/= as general damages I take note of the approach in the case of *James Mwangi Wanyoike & 9 others v AG*(2012) eKLR, where the court held that making an award of both exemplary and general damages was a double award. The case of *Cassel and Co Ltd v Broome and anor* (1972) AC where reference was made to the speech by Lord Devlin in *Rookes v Bernard* (1964) AC 1129 as follows:

“Thus a case of exemplary damages must be presented quite differently from one for compensatory damages, ... But the fact that these two sets of damages differ essentially, does not necessarily mean that there should be two awards...”

28. I therefore find that aggravated and exemplary damages are appropriate if the compensatory damages are considered inadequate and is aggravated by the way in which the defendant behaved towards the plaintiff.
29. The defendant’s conduct must be so outrageous and repeated as to warrant deterrence which is not the situation in this case.
30. In the current case, I find that the General damages awarded are sufficient and therefore the aggravated and exemplary damages are not payable.
31. On the issue as to whether the defendants are liable to pay the plaintiffs special damages in respect of loss of earnings and loss of business and legal fees, the law requires that special damages be specifically pleaded and proved.
32. I find that the same were not specifically pleaded and proved as required by law. The claim in respect of special damages must accordingly fail.
33. Judgment be and is hereby entered in favor of the plaintiffs against the defendants jointly and severally in the sum of kshs.12,000,000 in respect of unlawful arrest, false imprisonment and malicious prosecution and defamation as assessed above together with costs of this suit and interest at court rates from the date of this judgment until payment in full.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 29TH DAY OF MAY, 2023.

.....

A. ONGERI

JUDGE

In the presence of:



..... for the Plaintiff

..... for the Defendant

