



REPUBLIC OF KENYA



KENYA LAW
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**Mutea v M'ituru & 2 others (Civil Appeal E114 of 2022)
[2023] KEHC 19103 (KLR) (26 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 19103 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL APPEAL E114 OF 2022
EM MURIITHI, J
JUNE 26, 2023**

BETWEEN

DAVID MUTEA APPELLANT

AND

PETER MIRITI M'ITURU 1ST RESPONDENT

CORPORAL MATHENGE 2ND RESPONDENT

THE ATTORNEY GENERAL 3RD RESPONDENT

*(An appeal from the Judgment and Decree of Hon. P. M Wechuli
(S.R.M) in Tigania PMCC No. 3 of 2018 delivered on 17/9/2019)*

RULING

1. By a Plaint dated January 4, 2018 in which the 1st Respondent sued the Appellant and the 2nd and 3rd Respondents seeking general damages for malicious prosecution, special damages, costs of the suit plus interest at court rates. The 1st Respondent pleaded that sometimes in March 2012, the Appellant maliciously and without any reasonable or probable cause made a false and malicious report against him at Miathene police post. Pursuant to the said report, the police through the 2nd Respondent arrested him and on March 16, 2012, he was charged with interfering with demarcated land boundary contrary to section 33(a) of the [Land Adjudication Act](#) in Tigania PMCC No 366/2012. After standing trial, he was found innocent and acquitted of the charges under section 215 of the [Criminal Procedure Code](#) on July 21, 2017. As a consequence of the matters aforesaid, he has suffered loss and damage, and he claims both general and special damages against the Appellant and the 2nd and 3rd Respondents jointly and severally.
2. It appears from the impugned judgment that the suit was defended but those statements of defence have not been annexed in the record of appeal.



3. Upon full hearing, the trial court entered judgment for the 1st Respondent against the Appellant and awarded general damages of Ksh 150,000, special damages of Ksh 23,000 together with costs and interest. The suit against the 2nd and 3rd Respondents was however dismissed with no orders as to costs.

The Appeal

4. On appeal, the Appellant filed his memorandum of appeal on August 19, 2022 raising 8 grounds as follows:
 1. The learned trial magistrate erred in law and fact in holding that the Appellant was liable.
 2. The learned trial magistrate erred in law and fact in failing to hold that the Appellant was only a prosecution witness.
 3. The learned trial magistrate erred in law and fact in failing to hold that the Appellant was not the one who did the investigation leading to the arrest and prosecution of the Plaintiff.
 4. The learned trial magistrate erred in law and fact in awarding the sum of Kshs 150,000/= as general damages when no case for the same had been established or proved through cogent and credible evidence.
 5. The learned trial magistrate erred in law and fact in awarding the sum of Kshs 23,000/= as special damages when the same was not specifically proved.
 6. The learned trial magistrate erred in law and fact in finding the Appellant liable whereas the case proceeded *ex parte* hence the 1st Respondent had not proved his case against the Appellant on a balance of probabilities.
 7. The learned trial magistrate erred in law and fact for not appreciating the fact that the Tigania Criminal case No. 366 of 2012 failed on technicalities.
 8. The learned trial magistrate erred in law and fact in arriving at a judgment/verdict that is wholly against the weight of the evidence and law.
5. The court notes that the proceedings of the trial court have not been availed, and, therefore, it would be impractical for this court to carry out its mandate of re-evaluating the evidence afresh in order to reach its own independent conclusion, as the first appellate court.

Orders

6. Accordingly, for the reasons set out above, the appeal is struck out with costs to the 1st Respondent.
7. Order accordingly.

DATED AND DELIVERED THIS 26TH DAY OF JUNE, 2023.

EDWARD M. MURIITHI

JUDGE

APPEARANCES:

M/S Omari Advocate for Appellant.

M/S Nkunja Advocate for the 1st Respondent.

