



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL CASE NO. 293 OF 2016

GEORGE NGARUIYA KARIUKI.....PLAINTIFF

-VERSUS-

INSPECTOR GENERAL KENYA POLICE SERVICE...1ST DEFENDANT

THE HON. ATTORNEY GENERAL.....2ND DEFENDANT

JUDGMENT

1. George Ngaruiya Kariuki, the Plaintiff herein, sued the Inspector General, Kenya Police Services and Hon. Attorney General the 1st and 2nd Defendants respectively claiming for damages for unlawful arrest, unlawful confinement and malicious prosecution vide the plaint dated 8th November 2016. The Defendants filed a joint statement of defence to deny the Plaintiff's claim.

2. When this suit came up for hearing, the Plaintiff was the only witnesses who testified in support of his case. The Defendants case was closed when the Defendants failed to turn up despite having notice of the hearing date. The Plaintiff (PW1) adopted the contents of his written witness statement as his evidence in Chief.

3. At the close of the Plaintiff's case, the Plaintiff was invited to file written submissions which he did. George Ngaruiya Kariuki (PW1), told this court that on 25th September 2012 he boarded a matatu registration No. KBC 085C from Githunguri going to Nairobi his place of work. PW1 stated that upon reaching the junction to Ruiru town, three traffic police officers stopped the matatu and carried out a search inside the car. PW1 claimed he had put on the matatu safety belt but was still arrested together with others and taken to Githunguri law court.

4. The Plaintiff stated that he pleaded not guilty to the charge of failing to wear seat belt contrary to Rule 22 (A) (4) of the Traffic Act cap 403 of Kenya. PW1 said that he was eventually acquitted of the offence when the police failed to attend court to prosecute their case. The Plaintiff claimed that he continued to attend the Githunguri law courts from September 2012 until mid July 2013 when he was acquitted since none of the arresting officers attended court.

5. PW1 also stated that he wasted time and incurred more expenses going for proceedings and Judgment, which took about 3 months to obtain them.

6. He also claim that he incurred a lot of money in defending himself in court. PW1 further stated that by reason of malicious arrest, detention and prosecution his character and reputation was damaged hence he was greatly injured. PW1 stated that the charges were fabricated and his prosecution lacked any basis. The Plaintiff prayed to be paid both general and special damages.

7. The following issues commend themselves for determination: **First**, whether the Plaintiff's arrest and prosecution were actuated by malice.

Secondly, is whether the Plaintiff is entitled to damages and how much .

8. On the first issue, the Plaintiff testified stating that he was arrested and later charged with the offence of failing to wear a safety belt while on board matatu registration No. KBC 085 C yet he had worn the safety belt.

9. The Defendant denied any wrong doing in their defence but unfortunately they did not tender any evidence to prove otherwise.

10. It is clear from the evidence of the Plaintiff that he together with other passengers on board motor vehicle registration No. KBC 085C were to taken to Githunguri law courts to face a charge of failing to wear a safety belt Vide Githunguri P.M.C.s Traffic Case No 438 of 2012

R Vs. George Kariuki.

11. It is also apparent from the proceedings that the Plaintiff attended court on several occasions between 25th September 2012 and 11th July 2013 when the Plaintiff was acquitted of the offence he was charged with. The police appear to have intentionally failed to attend court to testify.

12. Having considered the evidence of the Plaintiff together with his submission, I am convinced that the traffic police officers who arrested and charged the Plaintiff acted out of spite. If the police had a genuine charge, they would have availed themselves to testify in support of the case. I am satisfied that the Plaintiff proved his case to the required standards in Civil cases.

13. On quantum, the Plaintiff urged this court to award him a sum of Ksh. 60,000/= as special damages for legal fees and travelling expenses. The Plaintiff did not present any documentary evidence to establish that he actually incurred the aforesaid expenses. It is trite law that special damages must be pleaded and specifically proved. The Plaintiff merely pleaded the figure but did not provide credible evidence to establish the same. I decline to award the claim on special damages.

14. On general damages, the Plaintiff did not propose the amount he should be awarded in his submissions. The Plaintiff has however submitted to this court three authorities.

The first is the case of **Daniel Njuguna Muchiri Vs Barclays Bank of Kenya Ltd The Hon. Attorney General Nairobi H.CC 116 OF 2003**, where this court awarded a sum of **Ksh. 2,000,000/=** as general damages.

The second case is that of **George Odhiambo Richard Vs Peter Gachie & 3 others Homabay H.CC No 7 of 2015**, where the claimant was awarded **Ksh. 300,000/=** each as general damages for unlawful arrest and imprisonment.

The last authority is the **case of Chrispine Otieno Caleb Vs Attorney General H.CCC No 782 of 2007** in which this court awarded a sum of **Ksh 2,000,000/=** as general damages for malicious prosecution.

15. In the plaint, the Plaintiff sought for inter alia, general damages for illegal arrest, unlawful confinement, malicious prosecution and abuse of legal process. It would appear the Plaintiff did not want to claim separately from each head. I will therefore make a composite award over those heads generally. Having considered the cited authorities, I am convinced that an award of Ksh. 2,000,000/= is reasonable and appropriate in the circumstances. I decline to make an award for exemplary/ punitive damages because there is no evidence to warrant a grant of such a claim.

16. In the end, Judgment is entered in favour of the Plaintiff and against the Defendants in the sum of ksh. 2,000,000/=.

17. The aforesaid amount to attract interest at court rates from the date of Judgment until the date of full payment. The Plaintiff to have costs of this suit.

Dated, Signed and Delivered at Nairobi this 28th day of February, 2020.

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J.K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff

..... for the 1st Defendant

..... for the 2nd Defendant