REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

CIVIL APPEAL NO. 29 OF 2018

ELIJAH KIPKIRUI KIBET.................................APPELLANT

VERSUS

ISAAC KIPTOO KIPTUGEN..................1ST RESPONDENT

THE ATTORNEY GENERAL...................2ND RESPONDENT

(An appeal from the judgment and decree in SPMCC No. 40 of 2010 delivered by N.C.Adalo (RM) on 19th March 2018)

JUDGMENT

1. ELIJAH KIPKIRUI KIBET (the appellant) filed the present appeal being dissatisfied with the judgment and decree in **SPMCC No. 40 of 2010 delivered on 19th March 2018**. **ISAAC KIPTOO KIPTUGEN** and **SOLOMON KIPROP KIPTUGEN** sued the appellant and the 2nd respondent (THE ATTORNEY GENERAL) for general, special and aggravated damages arising from malicious prosecution in **Iten criminal Case No. 1048 of 2006** wherein the 1st respondent and his brother Solomon had been charged with the offence of **stealing a Motor vehicle contrary to section 278(A) of the Penal Code**. They sought,

a) General damages

b) Special damages of Kshs.116,400/-,

c) Interest on a) and b)

2. Isaac's claim was dismissed for want of prosecution thus leaving Solomon as the only claimant.

The trial magistrate upon hearing the matter determined the same in favour of the **SOLOMON** and made an award of:

a) Kshs 1,500,000 as general damages,

b) Kshs. 200,000/- as aggravated and exemplary damages,

c) Kshs. 116,400/- as special damages plus costs and interests.

3. The evidence presented by Solomon at the trial was that the appellant and Isaac plus himself are biological brothers, who in 1999, joined hands and purchased motor vehicle registration No. KAD 998B at a sum of Kshs.620,000/-. Solomon contributed Kshs.150,000/=, while Isaac Kiptoo Kiptugen contributed Kshs.200,000/- and the appellant contributed Kshs.220,000/-.

However, the appellant who had been entrusted to draw up the sale agreement indicated the transaction as being between himself and the owner of the m/v (although he was to hold it in trust for himself and his brothers). They used the vehicle to operate a matatu business.

4. Solomon and Isaac were the ones who used to employ and pay the driver(s) and the conductor(s) for the said m/v, and at no given time did the appellant do so. At the initial stages, and in order to monitor the progress of their family business, Solomon and Isaac used to alternate as conductors, at no pay.

On 7/10/2002, the then enterprising brothers met, closed their accounts (the respondents used to keep the same and deal with any issue concerning the (Motor vehicle) and shared out the accrued profits according to their contributions/shares of the purchase price. They duly signed the record book (produced as P.Exh.5). They continued with their matatu business until the year 2003 when they started experiencing

some problems due to the introduction of the “Michuki Rules”.

5. Consequently, in 2005, they decided to park the vehicle in the appellant’s compound and thereafter mutually agreed to dispose of it by offering it up for sale, (a fact the respondent says was known to the members of the public in the area and within its environs). After dialogue, they decided to sell the vehicle at Kshs 420,00/- as the lowest price.

6. According to Solomon, the vehicle remained parked for over a year, then on 12/08/2006, after Isaac had been approached by potential buyers (the appellant’s wife had confirmed to them that indeed the m/v was on sale), the appellant and his said brothers (Solomon and Isaac) met to agree on when the sale would take place, the sale price having been reduced by the said brothers from Kshs.420,000/- to Kshs.350,000/.

7. After the sale, Solomon and Isaac kept the proceeds of the sale being Kshs.370,000/- safely as they waited for the appellant, so that they could share out the same on the basis of what each one of them had contributed towards the purchase price.

8. On 9/9/2006, while still waiting for the appellant, and without getting in touch with his said brothers, the appellant maliciously caused the police to seize the said motor vehicle from the new buyers (Christopher Toroitich and Daudi Lagat) and immediately took it away.

9. Solomon and Isaac were summoned to appear at Iten Police Station, alongside the two buyers on11/09/2006.The police questioned them about the proceeds of the sale, and since they had not carried the same, they were ordered to report back at the station on 18/9/2006 with the money. Meanwhile Solomon and Isaac decided to refund the money to the purchasers, rather than surrender it to the police. Solomon explained that they did this because they did not have confidence in the police.

10. Their action did not go down well with the police who bundled the pair into the cells until 29/9/2006 when they were arraigned at Iten Law Courts charged with the offence of jointly stealing motor vehicle **Reg. No. KAD 998B** valued at Kshs.620,000/-(alleged to be the appellant’s property).

11. The two were remanded at Tambach G.K. Prison until 22/9/2006 when they were released on bond, thereafter they continued appearing in court as from 20/9/2006 until 15/10/2009 when they were acquitted of the charge for lack of evidence.

12. Solomon stated that, during the hearing of the criminal case, the appellant declined to allow his wife to attend Court for cross-examination by the accused persons’ counsel, despite having been bonded to attend court. The person who had purported to have been of the owner of the vehicle and that he had sold it to the appellant also declined to appear in court for cross-examination by the accused persons’ counsel.

> **The appellant in his defence at the trial, insisted that he was the sole purchaser of the vehicle, and that after withdrawing it from operating as a matatu, he had it parked in his compound, and was surprised to learn from his wife that Solomon and Isaac had gone to his compound, collected the log book, and taken away the vehicle under circumstances that she suspected amounted to theft. She however never testified in the matter giving rise to this appeal. The appellant thus decided to report to the police that his vehicle had been stolen and that he had no control on whatever decision the police made after receiving the information.**
>
> **The investigating officer (DW2) confirmed that upon receiving the report, he questioned the appellants two brothers, collected the sale agreement, recorded statements from the persons who bought the vehicle, then charged the two brothers (Solomon and Isaac) for theft of the vehicle.**

13. The trial court noted that there was no dispute that the charges against the brothers were initiated by the appellant who lodged a complaint with the police alleging theft of the vehicle by the two brothers, and which is what led to their being arraigned in court.

14. The trial court also observed that the investigations seemed to have been hurriedly done, with conflicting entries on years, time and dates, and the investigation diary confirmed that the appellant was aware of the sale. The officer was faulted for failing to be cautious as the information gathered suggested that it was a family enterprise and coupled with the manner the suspects were treated (from the time of being summoned at the police station until arrest, confinement and arraignment in court) showed that actually no investigation was conducted thus demonstrating spite and lack of a reasonable and probable cause, which eventually led to the acquittal in the criminal matter.

15. In considering whether there was malice, the trial court pointed out that upon receiving information from his wife that his brothers had taken the vehicle and sold it, the appellant did not seek out his siblings to establish what had transpired or why, instead rushing to the police to have the vehicle impounded and the brothers arrested, yet these were people he had in the past entrusted with both the running of the vehicle and proceeds. That evidence presented at the criminal trial confirmed that the appellant had talked to Isaac’s wife and was aware that the motor vehicle was up for sale, so to then turn around and report that it was stolen, painted a picture of nothing short of malice.

16. The appellant’s insistence that he had no control over the actions by the police was also rejected on grounds that the police could not have acted on their own volition if he had not made the report to them. Moreover, the investigating officer explained in a letter dated **30th October 2009 to the DCIO Keiyo** that the criminal matter failed because the appellant’s wife refused to be recalled for further evidence after the appellant had influenced her refusal.

17. The appellant submits that he proved beyond reasonable doubt that he was the owner of motor vehicle registration number **KAD 998B** by producing a sale agreement and all the completion documents. He invites the court to consider that the original owner of the said vehicle testified in the criminal proceedings and confirmed selling the same to the appellant herein, and that the other two brothers were witnesses to the agreement. He contends that, Solomon claimed ownership but did not produce any evidence whatsoever to demonstrate how he co-owned the vehicle.

18. It is argued that from the evidence it was clear that the appellant had employed his two brothers to manage the operations of the vehicle, but they took advantage of their positions by misrepresenting themselves as owners of the said motor vehicle and disposing it off to third parties without the knowledge of the appellant who was a ***bonafide*** owner. It is pointed out that the respondent produced an agreement dated 15th August 2016 between himself and third parties which agreement the appellant was not a party to.

19. The appellant maintains that he was not aware of the sale, or the purchasers of the stolen motor vehicle nor the advocate who drew the agreement testified in the criminal proceedings, which ought to be considered as demonstrating that he was not a party to the said agreement notwithstanding that he was the lawful owner.

20. Further, that he had no malice in the arrest of the respondent but rather had a genuine and reasonable cause to believe that his motor vehicle had been stolen and sold to third parties hence reporting the matter to the police.

21. He contends that once the appellant reported the matter to the police he left the mantle with them to carry out their investigations and charge whoever they found culpable. It is reiterated that after reporting the matter to the police, the appellant was no longer in control of the same since he couldn't direct the prosecution on who to charge and who not to charge. The appellant submitted that he had no control nor discretion over the matter, contending that the Attorney General is the party who would be responsible for prosecutions instituted without reasonable or probable cause.

22. The appellant cited the case of **Nyeri High Court Civil Appeal no. 27 of 2014 – Stephen Gachau Githaiga & Another v AG (2015) and the case of Scofinaf Kenya Ltd. V Peter Guchu Kuria (H.C Civil Appeal No. 595 of 200, at Nairobi** on the issues of reasonable and probable cause. Further, he submits that there was suspected theft of the motor vehicle and the same had already been sold to unsuspecting members of the public and the first thing the appellant did was to report the same to the police.

23. To prove malicious prosecution, the respondent was required to show that by bringing criminal proceedings against him the appellant acted without reasonable and probable cause. What amounts to reasonable and probable cause for the purpose pf proving malicious prosecution was explained in **Kagame & Others v AG and Another (1969) EA 643.**

24. On the question as to whether the prosecution was malicious and whether the prosecution against the brothers was brought recklessly and indifferently, the appellant cited the case of **Jediel Nyaga v Silas Mucheke (Civil Appeal No. 59 of 1987 (Nyeri)(UR).** It is argued that money realized from proceeds of the sale was found missing, and Solomon failed to account for it; thus justifying the arrest and charge. the appellant further cited the case of **Egbema vs West Nile District Administration (1972) E.A and the case of Makueni HCCA No. 128 of 2017, Susan Mutheu Muia v Joseph Makau Mutua (2018) EKLR** on the issue of complaints made to the police and how it is for the prosecution to investigate the matter and make a decision whether to prosecute or not.

25. It is submitted that the trial magistrate having come to the conclusion that there was no fault on the part of the police who investigated and prosecuted the appellant and thus absolved the police of any liability with respect to the issues of reasonable and probable prosecution, could not in the same breath make a finding in favour of the respondent who had not established this vital ingredient of malicious prosecution.

26. It is contended that the learned magistrate fell into error in judgment when he made a finding that because there was a long standing dispute between the appellant's family and the respondents' family then this was evidence of malice and therefore this had proved the ingredient of the prosecution was actuated by malice which is necessary in a claim for malicious prosecution.

27. It is further submitted that the reason why the respondents were acquitted under **section 210 of the Criminal Procedure Code,** was that one key witness did not turn up for further cross examination. Further, that it is the work of the prosecution to call up witnesses not the complainant, in this case the appellant herein. Therefore, failure of the prosecution to discharge their duties should not be visited upon the appellant as having malice. The fault not to recall witnesses ought to be attributed to the police.

28. The appellant cited the case if **Busia Civil Appeal No. 9 of 2018 – Dickson Ojiambo Odaba v Commissioner General Kenya Revenue Authority & Another (2019) EKLR** and submitted that there must be a balance between freedom of the prosecutor to perform the duty prosecuting criminal offenders and the protection of an individual from false accusations.

29. Certainly the 3rd parties were found to be in possession of the suit motor vehicle and the 2nd respondent and his brother had sold it to the said third parties and received Kshs. 370,000/- being the full consideration, to which the appellant claims that it was without his consent and knowledge. However, the appellant is being less than candid, he had knowledge that his brothers had sold the vehicle, as in his testimony, he said the wife had told him as much.

30. As to the award given by the trial court being inordinately high, the law is settled as to the award of damages in several cases including **Shabani v City Council of Nairobi (1985) KLR 516, 519 citing Butt v. Khan C.A No. 40 of 1977. He cited the case of Nairobi Civil Appeal No. 315 of 2010 Attorney General & 2 others v L.T Benjamin Muema (2019) eKLR** where it was upheld the decision of the lower court which had awarded the respondent the sum of Kshs. 400,000/- for malicious prosecution. He also cited the case of **Homa Bay Civil Appeal No. 61 of 2017 – Sukari Industries Limited v Linet Ouma (2018) eKLR** where the court upheld the award of Kshs.650,000/- as general damages wherein the respondent had been arraigned in court for the offence of theft but was acquitted by a criminal court.

31. On the issue of aggravated damages, the appellant submitted that the awards are squarely part of or included in the sum awarded as general damages and need not be specifically pleaded or included in the prayer for such a relief. That the 2nd respondent is therefore not entitled to the award of aggravated damages awarded. He relied on the case of **Eldoret civil Appeal No. 118 of 2010 – Kenya Fluorspar Company Limited v William Mutua Maseve & Another (2014) EKLR.**

32. On the issue of special damages, the appellant submitted that it was in error, arguing that at the time of the institution of these proceedings, the plaintiffs were two. The 1st plaintiff's suit was dismissed for want of prosecution on 5th September 2014 and left the 2nd respondent as the initial pleadings were. The special damages claimed by the 2nd respondent was initially for the two of them wherein the receipts of transport costs and legal fees ought to have been divided between the two. The sum of Kshs.116,400/- was high since the same were incurred by the original plaintiffs and not only the Solomon, and that the same ought to be reduced by half.

33. This court is urged to find that the appeal has merit and ought to succeed.

I note that there are submissions filed by one **Solomon Kiprop Kiptugen,** although in the Memorandum of appeal he is not a party to the appeal (but as per the record of appeal he is listed as the 2nd respondent). He submitted that the appeal should be dismissed due to non-joinder of parties.

34. The trial court noted that the criminal charges against Solomon were generated by the appellant. Concerning the evidence presented in court the learned magistrate found that the contents of the police file had been hurriedly written for it contained a lot of discrepancies, and questioned the investigations conducted by the police.

35. The trial magistrate observed that the evidence on record indicated a lacklustre on the part of the investigator, pointing out that proper and thorough investigations could have saved not only the expenses incurred by the plaintiffs while attending court but also precious time of the advocates, prosecutors and court. That the police failed in their duty to conduct proper investigations and hurriedly charged the 2nd plaintiff in the criminal case.

36. On the issue of malice, the respondent cited the judgment of the magistrate she found that ***'the first defendant did not take time to talk to the plaintiffs…he did not bother to inquire from them his share of the proceeds of sale or to whom they had sold the vehicle to. He did not indicate as much in his evidence before court and in his evidence in the criminal case. He rushed to make a report necessitating in the impounding of the vehicle and the arrests of the 2nd plaintiff in particular. The first defendant knew who the plaintiffs were…. if the first defendant had a genuine complaint against his brothers he could have taken time to talk to them and tried to resolve their differences prior to making a report to the police after all he told the court that they had worked for him as his conductors and he had entrusted them with the running of the business.'***

37. The evidence presented to the court shows that the vehicle was up for sale for one year and the buyer had confirmed that the vehicle was for sale from the appellant's wife. The magistrate was alive to that unrebutted piece of evidence and did not err in law when she stated that;

> ***"To turn back and claim that the vehicle was stolen when one had knowledge that the vehicle was up for sale paints a picture of malice. In addition, to purposely refuse that his wife be recalled for cross examination paints a bleak picture honestly on the part of the 1st defendant."***

38. It is argued that the learned magistrate did not err in law and in fact in stating that it was incumbent on the prosecutor to ensure that his case holds matter and that the evidence to be presented before court is water tight to enable reasonable prudent and cautious man or woman as was the case may be to believe that the accused is probably guilty. The award made in favour of Solomon is described as reasonable in the circumstances. He relied on the case of **Chrispine Otieno Caleb v Attorney General HCCC No. 782 of 2007**.

ISSUES FOR DETERMINATION

1. Whether the appeal should be dismissed for non-joinder of parties,

2. Whether the 2nd respondent proved the ingredients for malicious prosecution,

3. Whether the damages awarded were inordinately high.

WHETHER THE APPEAL SHOULD BE DISMISSED FOR NON-JOINDER OF PARTIES

Order 1 Rule 9 of the Civil Procedure Rules (2010) makes it abundantly clear that misjoinder or non-joinder of parties cannot be a ground to defeat a suit. I reproduce the same hereunder: -

> ***"9 No suit shall be defeated by reason of the misjoinder or non-joinder of parties, and the court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it".***

39. Judgment was awarded in favour of both the parties in the lower court, I hold the view that the appeal shall not be struck out on account of the fact that the 2nd plaintiff was not included in the memorandum of appeal.

WHETHER THE 2ND RESPONDENT PROVED THE INGREDIENTS FOR MALICIOUS PROSECUTION

The judges of the East African Court of Appeal in **MBOWA –VS- EAST MENGO DISTRICT ADMINISTRATION [1972] EA 352**, expressed themselves on malicious prosecution as follows: -

> *a.* ***"The action for damages for malicious prosecution is part of the common law of England…. The tort of malicious prosecution***

***is committed where there is no legal reason for instituting criminal proceedings. The purpose of the prosecution should be personal and spite rather than for the public benefit.** It originated in the medieval writ of conspiracy which was aimed against combinations to abuse legal procedure, that is, it was aimed at the prevention or restraint of improper legal proceedings…… It occurs as a result of the abuse of the minds of judicial authorities whose responsibility is to administer criminal justice. It suggests the existence of malice and the distortion of the truth.*

*b. **It's essential ingredients are:***

*c. **The criminal proceedings must have been instituted by the defendant, that is, he was instrumental in setting the law in motion against the plaintiff and it suffices if he lays an information before a judicial authority who then issues a warrant for the arrest of the plaintiff or a person arrests the plaintiff and takes him before a judicial authority;***

*d. **The defendant must have acted without reasonable or probable cause i.e. there must have been no facts, which on reasonable grounds, the defendant genuinely thought that the criminal proceedings were justified;***

*e. **The defendant must have acted maliciously in that he must have acted, in instituting criminal proceedings, with an improper and wrongful motive, that is, with an intent to use the legal process in question for some other than its legally appointed and appropriate purpose; and***

*f. **The criminal proceedings must have been terminated in the plaintiff's favour, that is, the plaintiff must show that the proceedings were brought to a legal end and that he has been acquitted of the charge……***

*g. **The plaintiff, in order to succeed, has to prove that the four essentials or requirements of malicious prosecution, as set out above, have been fulfilled and that he has suffered damage.***

*h. **In other words, the four requirements must "unite" in order to create or establish a cause of action. If the plaintiff does not prove them he would fail in his action. The damage that is claimed is in respect of reputation but other damages might be claimed, for example, damage to property…. The damage to the plaintiff results at the stage in the criminal proceedings when the plaintiff is acquitted or, if there is an appeal, when his conviction is quashed or set aside. In other words, the damage results at a stage when the criminal proceedings came to an end in his favour, whether finally or not. The plaintiff could not possibly succeed without proving any or all of the first three essentials of malicious prosecution without the fourth which forms part of the cause of action, would not take him very far. He must prove that the court has found him not guilty of the offence charged….***

*i. **The law in action for malicious prosecution has been clearly defined and in so far as the ordinary criminal prosecution is concerned the action does not lie until the plaintiff has been acquitted of the charge.***

40. It is undisputed that the criminal proceedings were instituted by the appellant when he reported the crime of stealing of the motor vehicle registration number **KAD 998B.**

The next issue to be determined is whether the appellant acted without reasonable cause. It is a fact that there is a sale agreement between the appellant and the seller of the motor vehicle. The respondent's account is that the vehicle was to be held in trust for them and in the criminal trial, the seller's representative **Ben Kiptoo** actually confirmed that the last payment for the purchase of the vehicle was received from Isaac. I find it peculiar that the investigating officer did not bother to verify the insistence that the vehicle had been jointly purchased although the agreement was drawn in the appellant's name, preferring to take only the appellant's word and ignore any other version without much investigation at all.

Reasonable cause threshold was set down in **Hicks v Faulkner {1878} 8Q.B.D. 167, 171** – where **Hawkins J** said:

> ***"I should define reasonable and probable cause to be an honest belief in the guilt of the accused based upon a full conviction, founded on reasonable grounds of the existence of a state of circumstances which, assuming to be true, would reasonably lead any ordinary prudent and cautious man, placed in the position of the accused to the conclusion that the person charged was probably guilty of the same imputed."***

41. It is evident that there were family disputes involved in the matter but does the evidence speak to a situation where the respondents could reasonably be suspected of stealing the vehicle to which they staked proprietary rights? Surely a reasonable person would take steps to inquire from the brothers whether they were aware of the whereabouts of the vehicle. And once the brothers refunded the money, and the vehicle having been repossessed from the purchasers and given to the appellant, what was the rationale in continuing with the criminal process unless the mover was so propelled by malice as to want to see the brothers charged in court, and probably jailed! I find that there wasn't reasonable cause to initiate the prosecution given the circumstances.

In **Crawford Adjusters (Cayman) Ltd v Sagicor General Insurance Ltd {2014} AC 366 Lord Kerr:**

> ***"in demonstrating an absence of reasonable or proper cause 'requires the proof of a negative proposition, normally among the most difficult of evidential requirements.' The test for establishing whether there is an absence of reasonable and proper cause requires both a subjective and objective assessment. The subjective test requires an assessment as to whether the claimant honestly believed the defendant was liable in respect of the claims brought. If the Court is convinced as to the subjective state of mind, it should then consider whether, based on the information available to the claimant at the time it initiated proceedings, it was reasonable for the claimant to have reached the conclusion it did in respect of the defendant. Lord Kerr in Crawford***

> ***considered that there was no reason for proof of malice in the civil context to be any less stringent than in the criminal context. Malice covers not only spite and ill-will, but also improper motive (Gibbs v Rea {1988} AC 786).***

42. While subjecting the case to an assessment under the above established principle, I take note that the failure to return to the station with the money and instead refunding it to the buyers, may raise suspicions as regards the intentions of the respondents. I however agree with the trial court that the police acted in haste taking into account the totality of the information they had from the appellant and his brothers, at the time of instituting the prosecution (see **Kagane v AG [1969] EA 643**. So it was incumbent on the prosecution to ensure that their case held water.

The appellant's irrational behaviour and the manner the police conducted the investigation without reasonable cause, cannot be wished away as justified.

In **CHRISPINE OTIENO CALEB –VS- ATTORNEY GENERAL [2014] eKLR; JOHN NDETO KYALO –VS- KENYA TEA DEVELOPMENT AUTHORITY & ANOR 2005 eKLR HCCC. NO. 502 OF 1999**, at page 5 & 6 Maraga J, as he then was examined the position, defined what constitutes "reasonable and probable cause" then went on to state ***"…………that it is the police who are liable to such person (accused person) for instituting proceedings against him."***

43. The criminal proceedings did indeed terminate in favour of the respondent and admittedly this does not automatically mean that the ingredient for malicious prosecution was proven. In ***Nzoia Sugar Company Ltd v Fungututi*** **[1988] KLR 399**, the Court of Appeal held;

> ***"Acquittal per se on a criminal charge is not sufficient basis to ground a suit for malicious prosecution. Spite or ill-will must be proved against the prosecutor. The mental element of ill will or improper motive cannot be found in an artificial person like the appellant but there must be evidence of spite in one of its servants that can be attributed to the company."***

44. However, in the present case, the actions and the over-zealous conduct of the police and the appellant, demonstrate outright spite and the trial magistrate aptly considered the ingredients for malicious prosecution. Whereas the evidence on record tells a story of a motor vehicle sold without the consent and approval of the owner as per the initial sale agreement, the failure of the appellant's wife to testify is in my view not only evidence of incompetence of the investigators but irrational and rushed as to suggest a collusion with the appellant, enough as to impute malice. In **Susan Mutheu Muia v Joseph Makau Mutua [2018] eKLR** it was held;

> ***It must always be remembered that the element of malice is material on the part of the prosecutor and not the complainant unless there is collusion between the two.***

45. I therefore echo the words in the case of **James Karuga Kiiru v Joseph Mwamburi & Anor Nbi CA No 171 of 2009** that to prosecute someone is not prima facie tortious, but to do so dishonestly or unreasonably is malicious.

I note that the accused persons were held for more than 24 hours and there was no explanation given as to why they were held in police cells for three days. I hold and find that the trial court considered every material ingredient in a claim for malicious prosecution, analysed the facts as presented and duly applied the law. There were no irrelevant considerations, and each step of her finding was well reasoned and backed by judicial precedence to the extent that there would be no reason whatsoever to interfere with her findings. This appeal in my considered view lacks merit and is dismissed with costs to the Solomon.

Virtually delivered and dated this 18th day of November 2020 at Eldoret

H. A. OMONDI

JUDGE