



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

[CORAM: MRIMA, J.]

CIVIL APPEAL NO. 77 OF 2012

ROBERT KINYUA.....APPELLANT

VERSUS

ATTORNEY GENERAL.....RESPONDENT

(Being an appeal on quantum of damages from the judgment and decree by Hon. B. Ochieng, Principal Magistrate in Meru Chief Magistrate's Civil Suit No. 91 of 2010 delivered on 18/07/2012)

JUDGMENT

1. **Robert Kinyua**, the Appellant herein, was a serving Man of God with Christ Like Ministry within Meru County. His properties were stolen and he made a report to Mutuati Police Station about the loss. He further gave the names of four people whom he had personally seen and recognized stealing his items. They were persons whom the Appellant were in school with. They had also been excommunicated from the Church on grounds of misconduct.
2. The police instituted investigations. The Appellant kept on going to the police to find out about the progress of the case having given the police all the necessary information. To his surprise, the Appellant was instead arrested and charged with the offence of *giving false information to a person employed in the public service contrary to Section 129(b) of the Penal Code*. That was in ***Maua Principal Magistrates Court Criminal Case No. 1072 of 2005*** (hereinafter referred to as '**the criminal case**').
3. The Appellant pleaded to the charge on 18/03/2005. The police never availed any witnesses until they applied to withdraw the case on 21/05/2009. Despite the Appellant's protestation the criminal case was still terminated under **Section 87(a)** of the **CPC**.
4. The Appellant filed ***Meru Chief Magistrate's Civil Suit No. 91 of 2010*** (hereinafter referred to as '**the suit**') against the Attorney General. He sought for damages for false imprisonment and malicious prosecution.
5. The suit was heard. The Respondent again did not avail any witnesses. Judgment for the Appellant was delivered on 18/07/2012. The trial court awarded Kshs. 100,000/= under the heads of wrongful arrest and malicious prosecution respectively.
6. The Appellant was dissatisfied with the awards. He filed a Memorandum of Appeal on 17/08/2012. Ten grounds of appeal were preferred.
7. Directions were taken and the appeal was disposed of by way of written submissions. The Appellant complied. The Respondent did not. The Appellant contended that the court erred in making inordinately low awards which were not comparable to the circumstances of the case. He prayed for enhancement to Kshs. 3,000,000/=. He also relied on several decisions in urging this Court to allow the appeal.
8. The Respondents did not oppose the appeal.
9. As the appeal is on assessment of damages, I reiterate that assessment of damages is generally a difficult task. A Court is supposed to give a reasonable award which is neither extravagant nor oppressive while being guided by factors including previous awards for similar injuries and the principles as developed by the Courts. However, what constitutes a reasonable award is an exercise of discretion and will depend on the peculiar facts of each case. An appellate Court must be slow to interfere with such an exercise of discretion. (See **Butler vs. Butler (1982) KLR 277.**)
10. The Court of Appeal in **Kemfro Africa Ltd v A. M. Lubia & Another (1988) 1 KAR 727** discussed the principles to be observed when an appellate court is dealing with an appeal on assessment of damages. The Court expressed itself clearly thus:

The principles to be observed by an appellate court in deciding whether it is justified in disturbing the quantum of damages

awarded by a trial Judge were held by the former Court of Appeal of Eastern Africa to be that it must be satisfied that either the Judge, in assessing the damages took into account an irrelevant factor, or left out of account a relevant one, or that; short of this, the amount is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage.

11. This position was restated by the Court of Appeal in Arrow Car Limited -vs- Bimomo & 2 others (2004) 2 KLR 101 and also in Denshire Muteti Wambua -vs- Kenya Power & Lighting Co. Ltd (2013) eKLR.

12. I have carefully perused and understood the contents of the pleadings, the proceedings, the judgment, the record of appeal, the grounds of appeal, the submissions and the decisions referred to by the Appellant. I must point out that the trial court captured the contents of the pleadings and the evidence in its judgment so well. I herein incorporate the same as part of this judgment by reference.

13. I will interrogate the circumstances in this matter once again. The Appellant was a victim of theft. He saw and recognized the assailants. He reported the matter to the police. In a turn of events, the Appellant was instead charged. There was a grudge between the suspects and the Appellant. The suspects had been excommunicated from the Church for misconduct. They were obviously unhappy with the Appellant.

14. From the foregone, it will not be stretching too far for this Court to infer that the Appellant was charged in settling scores with the suspects. The police allowed themselves to be used in an unlawful manner. The police blatantly compromised an otherwise straight-forward case. The Appellant never recovered his items and had to undergo 4 years of uncalled for suffering under a false criminal case. Nothing was hard for the police to attend Court and justify the actions they took if at all they acted without ill-will. The prosecution was purely and spitefully malicious.

15. I have also considered the awards made. I have further considered the decisions by the Appellant among others. Being properly guided by the law and precedent, I find the award on wrongful arrest to be reasonable. I will not disturb that finding. However, and with greatest respect to the learned trial magistrate, I find that the award on damages for malicious prosecution to be inordinately low. I hereby interfere with that award. From the above analysis I find that an award of Kshs. 1,000,000/= (Kenya Shillings One Million Only) would have been commensurate with the circumstances of this case.

16. The appeal is therefore allowed. The award of Kshs. 100,000/= for malicious prosecution is hereby set-aside and substituted with an award of Kshs. 1,000,000/=. The award of Kshs. 100,000/= on wrongful arrest remains. The twin awards shall accrue interest at Court rates from the date of judgment before the trial court. The Respondent shall also bear the costs of the appeal.

17. Orders accordingly.

SIGNED BY:

A. C. MRIMA

JUDGE

DATED, COUNTERSIGNED and DELIVERED at MERU this 30th day of October, 2019.

A. MABEYA

JUDGE

Judgment delivered in open Court and in the presence of: -

..... for the Appellants.

..... for the Respondent.

..... Court Assistant