

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CIVIL APPEAL CASE NO. 31 OF 2018

MWITI MUGAMBI MARETE.....APPELLANT

VS

JULIET KANARIORESPONDENT

JUDGMENT

Mwiti Mugambi Marete appealed against the decision of the trial court in Meru Chief Magistrates court civil case no. 354 of 2011.

Wherein the trial magistrate awarded Kshs 500,000/- to the plaintiff as general damages for instigating malicious prosecution against the Respondent herein without reasonable cause, Kshs 17,000/= was also awarded as special damages and the appellant was condemned to pay costs and interest at court rates.

I have looked at the proceedings in the lower court and the submission by parties herein and it is apparent the defendants/appellants never appeared in court to controvert the allegations made by the Respondent in her claim for damages. The Respondent produced proceedings in the criminal trial that were self explanatory and the trial court had nothing against which to analyse the Respondents evidence.

It is the view of this appellate court that the trial court critically considered the Respondents case against the well known legal principles and arrived at a reasonable conclusion that the Respondent had proved his case on a balance of probabilities. I think it is too late in the day for the appellant to litigate at this stage through submissions when he failed to attend so that his contention could be tested by the Respondent through cross examination in the same way that the Respondent was cross examined.

The appeal is therefore dismissed and the trial courts determination upheld. The appellant shall pay costs of appeal. Orders accordingly.

HON. A.ONG'INJO

JUDGE

JUDGEMENT DELIVERED, DATED AND SIGNED IN COURT ON 27TH SEPTEMBER 2018.

IN THE PRESENCE OF:

C/A:-

Appellant:- Mr Kimathi Advocate for Appellant

Applicant:- Mr Nyaga Advocate holding brief for Mutuma for Respondent.

HON. A.ONG'INJO

JUDGE