



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

CIVIL APPEAL NO. 119 OF 2010

(Arising from Judgment and Decree in Eldoret Chief Magistrate's Court in Civil suit No. 448 of 2008 delivered by I. Maisiba Resident Magistrate on 9/7/2010)

KENYA FLOURSPAR CO. LIMITED.....APPELLANT

VERSUS

ELIJAH KANYINGI NDEGWA.....1ST RESPONDENT

THE ATTORNEY GENERAL.....2ND RESPONDENT

J U D G M E N T

1. The appeal is against the decision of the trial court in CMCC No. 448 of 2008. The 1st Respondent was an employee of the appellant who was arrested and detained on suspicion of being involved in a theft of the appellant's tool box. The trial court proceeded and awarded damages to the said 1st Respondent.

2. Simultaneously with the said suit was a related case No. 447 of 2008 between the appellant and one William Mutua Maseve. They were both involved in the allegation and the trial court awarded them similar damages.

3. The appellant filed Appeal No. 118 of 2010 and my sister Justice Ngenye made the following findings after analysing the evidence on record.

a) “ I uphold the award of general damages for false imprisonment and exemplary damages in the sum of Kshs 40,000/= and Kshs 10,000/= respectively.

b) I set aside the award on general damages for defamation of character of Kshs 200,000/= as the same was not proved.

c) The damages Under (a) above are payable by the appellant and the 2nd Respondent jointly and severally.

d) Since the appeal has partially succeeded each party shall bear its own costs.”

4. This appeal is in all fours with the above decision. Infact they ought to have been consolidated. I have read the lengthy judgment of my sister and I do not see any reason of departure.

5. In the premises I do adopt the decision cited above as per the judgment in ELD HCCA No. 118 of 2010 *mutatis Mutandis*.

Its so ordered.

Delivered, signed and dated at Eldoret in open court on this 19th day of October, 2018.

H.K. CHEMITEI

JUDGE

19/10/18