



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT HOMA BAY

CIVIL APPEAL NO.61 OF 2017

BETWEEN

SUKARI INDUSTRIES LIMITED.....APPELLANT

VERSUS

LINET OUMA.....RESPONDENT

(An appeal from the Judgment and decree of the Senior Principal Magistrate's Court, Ndhiwa in SPMCC No.62 of 2015 delivered on the 30/08/2017 – Hon. Mary A. Ochieng, SPM)

JUDGMENT

[1] This appeal arises from the decision and judgment of the Senior Resident Magistrate at Ndhiwa in **SRMCC NO.62 OF 2015**, in which the appellant, **SUKARI INDUSTRIES LIMITED**, was sued by the respondent, **LINET OUMA**, for general damages for wrongful arrest, false imprisonment, malicious prosecution and loss of employment and also for special damages in the sum of Kshs.547,900/=.

[2] After a full hearing of the matter, the trial court found in favour of the respondent and awarded general damages for wrongful arrest and malicious prosecution in the sum of Kshs.650,000/= against the appellant.

The claim for special damages was not awarded as prayed by the respondent.

[3] Being dissatisfied with the decision of the trial court, the appellant preferred this appeal on the basis of the grounds in the memorandum of appeal dated 28th September 2017.

The respondent cross appealed for a variation of the judgment for purposes of enhancing the award of Kshs.650, 000/= made in her favour.

[4] Both the appeal and cross appeal were canvassed by way of written submissions and in that regard the appellant was represented by the firm of **OGEJO OLENDI & CO. ADVOCATES**, while the respondent was represented by the firm of **H. OBACH & PARTNERS ADVOCATES**.

The duty of this court was to re-consider the evidence and draw its own conclusions bearing in mind that the trial court had the advantage of seeing and hearing the witnesses.

[5] Having reconsidered the evidence led by the respondent through herself (PW1) and her witnesses [PW2 to PW7] as well as that led by the appellant through its deputy human resource manager (DW1) and also having considered the rival submissions in support of and opposition to the appeal, this court would agree with the trial court that liability was established against the appellant and another for wrongful arrest and malicious prosecution of the respondent.

[6] It was undisputed that a tyre belonging to the appellant was found on a tractor belonging to the respondent and in possession of her driver at the time. It was presumed that the tyre had been stolen and that the respondent's driver was the main suspect. He was arrested together with his loader (PW2) but was said to have escaped from police custody. The loader and the respondent were later arraigned in court for the theft of the tyre but were acquitted by a criminal court.

[7] The appellant through its human resource manager (DW1) admitted that he lodged the necessary report with the police after he had ordered the detention of the respondent's tractor in the appellant's premises. The act of detaining or impounding the tractor was an indication that the appellant treated the driver of the tractor, its loader and its owner as suspects in the theft of the appellant's tyre.

The chain of events that followed after the report to the police was clearly traceable to the appellant. Its action against the respondent and her property was malicious and unjustified. It led to her false arrest and malicious prosecution for theft of the appellant's tyre and as such, the

appellant was properly and lawfully found liable for damages occasioned to the respondent.

[8] The mere fact that the respondent was acquitted of the charge was a clear indication that the prosecution was activated by malice and was instituted by the police at the behest of the appellant without reasonable and probable cause.

Therefore, the award of general damages to the respondent in the sum of Kshs.650, 000/= was proper and lawful.

The award was neither unreasonable nor excessive in the circumstances and is hereby sustained. To increase it beyond that figure would be unreasonable and excessive.

As for the claimed special damages, they were never specifically pleaded nor specifically proved and could not therefore be awarded by the trial court.

[9] All in all, this appeal is devoid of merit and is hereby dismissed

with costs. The cross-appeal is also dismissed with costs. Save for the cross-appeal. This judgment applies to **Civil Appeal No.62 of 2017** on liability and quantum of damages. Ordered Accordingly.

J.R. KARANJAH

JUDGE

19.12.2018

[Delivered and signed this 19th day of **December, 2018**].