

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 696 OF 2000

CHARLES MUTERO MWANGI1ST PLAINTIFF

FRANCIS NJERU MBAKA 2ND PLAINTIFF

MICHAEL KARIUKI3RD PLAINTIFF

- V E R S U S -

THE ATTORNEY GENERAL.....1ST DEFENDANT

ISAAC OKOTH 2ND DEFENDANT

JUDGEMENT

1) Charles Mutero Mwangi, Francis Njeru Mbaka and Michael Kariuki being the 1st, 2nd and 3rd plaintiffs respectively filed an action against the Attorney General and Isaac Okoth being the 1st and 2nd defendant respectively in which they sought for inter alia special and general damages for false imprisonment and malicious prosecution vide the plaint dated 4th May 2000. When served, the defendants filed a defence to deny the plaintiffs' claim. When the suit came up for hearing the plaintiffs testified in support of their case while the defendants closed their case without presenting any evidence to buttress their case.

2) The plaintiffs' case is said to have arisen as a result of malicious arrest and prosecution in Nairobi C.M.C.C. no. 3035 of 1996 and the subsequent successful appeals vide Nairobi H.C.C.R.A No. 643, 644 and 645 of 1998. It is alleged that in the year 1996, Isaac Okoth, the 2nd defendant maliciously, unlawfully and falsely alleged that the plaintiffs had stolen and handled stolen maize and proceeded to arrest them and thereafter charged them in Garissa Law Courts with the aforesaid offences. The plaintiffs averred that the charges were laid without any basis by the defendants against them and particularly against the 1st plaintiff who was then the area District Officer and that in an attempt to obtain a conviction, the 2nd defendant sought the assistance of the 1st defendant to enter a nolle prosequi where after the plaintiffs were arrested, detained in police and transferred and arraigned before the chief magistrate's court, Nairobi afresh. According to the plaintiffs' testimony there were no proper reasons and grounds for arresting and prosecuting them afresh. It is the plaintiffs' submission that there were no proper reasons for arresting and prosecuting them save for ulterior motives. The plaintiffs further complained that they were arrested and charged for doing what was right and no offence was committed.

3) The plaintiffs appeared before this court for hearing and each adopted their witness statements as their evidence. Charles Mutero Mwangi (PW3) told this court that in 1996 he worked in Garissa as a District Officer and during that year a committee was set up to organize a harambee in aid of the children of one Miss Monica Mwaura, a resident within his area of jurisdiction and a member of the Catholic church who was in dire need of assistance. It is the evidence of PW3 that Francis Njeru Mbaka (PW1), the 2nd plaintiff was a member of the aforesaid committee. PW3 further stated that he and one Dr. Kimani were chosen to be guests of honour. PW3 said that he issued out some maize permits for 40 bags in aid of the children of Monica to PW1, is the 2nd plaintiff who delivered the same to Monica Mwaura. The said Monica is said to have requested the 2nd plaintiff to dispose of the maize. The said plaintiff approached Michael Kariuki, a businessman dealing in maize to purchase the maize. PW3 stated that after the harambee was conducted he was summoned to record a statement at the provincial C.I.D office and he

later was arrested and arraigned before the Garissa Law Courts together with the 2nd and 3rd plaintiffs. PW3 stated that the case was withdrawn but he was re-arrested and forced to take a fresh plea before the Nairobi Chief Magistrate's Court. The 1st plaintiff stated that he was remanded in Industrial Area Police Station and in Kamiti Maximum prison. PW1 said that despite lack of sufficient evidence the trial court convicted them but they were on 6.5.1999 acquitted on appeal by the High Court. The other plaintiffs too, narrated in their testimonies near similar evidence in their witness statements as those tendered by the 1st plaintiff.

4) At the close of the plaintiff's case, the defendants closed their case without summoning witnesses in support of their case.

5) At the close of evidence, learned counsels were invited to file written submissions. At the time of writing this judgment the plaintiffs were the only parties who had filed their submissions. It is the submission of the plaintiffs that the charges preferred against them were laid without any basis whatsoever but were meant to pursue a personal vendetta by the defendants particularly the area District Officer. Having considered the evidence tendered, it is clear in my mind that there were no proper reasons and grounds for arresting and prosecuting the plaintiffs. I am convinced that there were ulterior motives. It is apparent from the evidence tendered that the plaintiffs were arrested and charged for doing what was required of them hence no offence was committed from the beginning thus the plaintiffs' arrest and prosecution was malicious.

6) The 1st and 2nd plaintiffs who were civil servants were suspended for a while and in the process the 1st plaintiff lost his seniority due to the gap created by the suspension. The 2nd plaintiff, an inspector of police was forced to retire at the age of 51 years. The 3rd defendant's business greatly suffered during the period. The defendants having failed to present evidence to buttress their defence, it therefore means that the plaintiffs' evidence remain uncontroverted. The question as to whether or not the defendants are liable is now answered in the affirmative. Consequently, the defendants are jointly and severally found liable.

7) On quantum, the plaintiffs have each asked to be awarded ksh.10 million as general damages for false imprisonment and malicious prosecution. After considering comparable awards I am convinced that a reasonable award is ksh.2,000,000/= should be awarded to each plaintiff. Consequently the plaintiffs and each awarded ksh.2,000,000/= as general damages. Costs of the suit are also awarded to the plaintiff.

Dated, Signed and Delivered in open court this 19th day of October, 2017.

J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff

..... for the Defendant