



REPUBLIC OF KENYA

High Court at Nairobi (Milimani Commercial Courts)

Civil Appeal 391 of 2006

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DICKSON ISABWA ANGALUKI.

PHILIP ENDOVO MWIMALI

..... **APPELLANTS**

ERIC MAMBUYA NANDWA

VERSUS

UKWALA SUPERMARKET LIMITED

ROHIT SHAL

..... **RESPONDENTS**

VINCENT ONYANGO.

(From the judgment and decree of E N Maina Principal Magistrate in Milimani CMCC No. 2953 of 2004)

J U D G M E N T

In a plaint filed by the present Appellants at the lower court, dated 24th March, 2004, the Plaintiffs/Appellants' had sought damages for wrongful and unlawful confinement/imprisonment. They had also sought terminal and/or statutory dues as per the Regulations of Wages and conditions of Employment, under Cap 229 of the Laws of Kenya, after stating that their monthly salary each was Ksh.4800/-.

The Respondents who were the Defendants had filed their joint defence denying the Plaintiff's claim.

The claims were later heard inter partes and in a judgment dated 16th May, 2006, the honourable trial magistrate had entered judgment on liability against the 1st and 3rd Defendants/Respondents and had awarded general damages of Ksh.20,000/- in favour of each of the two plaintiff's against the two defendants. The trial magistrate had however, dismissed claims on terminal benefits on the grounds that the same being claims in special damages had not been pleaded and proved. Both the level of damages granted and failure to award the terminal benefits claimed provoked this appeal by the plaintiffs. The Defendants did not cross-appeal on any issue but opposed the grounds of appeal.

The grounds of appeal are two:-

1) That the learned magistrate erred in law and fact in assessing general damages for malicious wrongful and unlawful confinement at Ksh.20,000/-, a figure inordinately low.

2) That the learned magistrate erred in law and fact in failing to award the Appellants statutory or terminal dues as provided for under the Employment Act or Regulations under it.

I have carefully perused and considered the pleadings, the evidence adduced by both sides at the lower court and written submission by the parties below and before this court. I am satisfied, as was the trial magistrate, that the arrest and confinement of the Appellants by the 1st and 3rd Respondents, was without lawful and/or reasonable or justifiable cause. That is to say, that the reasons used by the Respondents to arrest and confine the Appellants, were actuated by pure malice. The fact that the Respondents have not filed a cross-appeal on liability, confirms the lower and this court's finding on that aspect.

The next issue to consider is whether Ksh.20,000/- as the award of general damages for unlawful and malicious arrest and confinement for four days, was adequate.

In the **Uganda Commercial Bank Vs Kigozi, [2002] IEA 305**, the High Court awarded Ksh.500,000/- for wrongful arrest and confinement. In an old case of 1986, of **Kariuki Vs East Africa Industries Ltd & Another, [1986] KLR, 383**, the court awarded Ksh.2000/= for wrongful arrest and confinement. In **John Kamau Icharia Vs Paul Njeru & Another, Nairobi HCCC No. 1774 of 1994**, the court awarded Ksh.400,000/- as general damages for unlawful arrest and wrongful confinement. In **Wanyiri Kihoro Vs The Attorney General Nairobi Civil appeal No. 151 of 1988**, where the plaintiff had been kept in detention for 74 days, the court awarded him Ksh.400,000/- as general damages noting that he had been subjected into mental torture due to long interrogation and harassment. In **Samuel Muchiri Njuguna Vs the Attorney General & Six others, Nairobi Civil Case 838 of 2003**, the plaintiff, a parliamentary politician was held in detention four days and subjected to a prosecution. He was awarded Ksh.2,000,000/- as general damages.

It is on the face of the above legal authorities that this court must now decide whether the ksh.20,000/- awarded in this case was inordinately low.

The Appellants in this case were clearly arrested and detained without probable or reasonable cause. They were not suspects of the alleged theft and the respondents properly knew so. They were humiliated before their workmates, friends and relatives both at Nairobi and at their Western Kenya village homes. They were finally not criminally prosecuted, however. It is noted that they were ordinary citizens who were toiling as labourers to make an honest living. Under the constitution however, their rights to freedom was as important as that of any other citizen and deserves equal protection under the law.

Furthermore, examination of the few cases cited above would clearly suggest that the award of Ksh.20,000/- as general damages for wrongful arrest and detention, was inordinately low. This court has accordingly, good reason to disturb the award.

The Plaintiffs/appellants had proposed an award of Ksh.500,000/- each. The learned trial magistrate noted the proposal in her judgment. She did not properly indicate why she would depart from the figure of Ksh.500,000/- which appeared to be more reasonable and closer to other awards in similar cases. She rather was more influenced by the Defendant's proposal of Ksh.5000/- than anything else.

For the above reasons, this court would and hereby does set aside the award of Ksh.20,000/- and replaces it with a more reasonable figure of Ksh.400,000/- for both the unlawful arrest and confinement for each of the Appellants.

The Appellant's jobs were clearly terminated by the Respondents in that when the Appellants sought to be reinstated, the Respondents failed to accept them back. The Appellants had in their plaint affirmed, clearly pleaded their salary and the failure by the Respondents to accept them back. They had pleaded breach of contract in paragraph 11 and 12 of the Plaint where they sought terminal benefits including failure to service notice. They sought unpaid leave for three years of work and severance/service allowance for the same period. In this court's view, the trial magistrate erred in law and fact in stating that

these aspects were not pleaded nor proved by the evidence on record.

The argument by the Respondents that the Appellants were casuals stands against the provision of the law (i.e. the Employment Act, Cap 229, now repealed, which provided that a worker could only be treated as a casual of the first six months of work. This court accordingly finds that the Appellants were entitled Ksh.14,400/- being leave allowance for three years each, Severance allowance at $\frac{1}{2} \times 2400 \times 3$ years = 7,200/= each.

Taking into account the above findings, this court allows this appeal, sets aside the lower court awards, and replaces them by the following awards for each Appellant: -

Kshs.

1. General Damages for unlawful arrest and detention	400,000.00
2. Leave Allowance	14,400.00
3. Severance Allowance	7,200.00
4. Payment in lieu of Notice	<u>3,600.00</u>
TOTAL	Kshs. 425,000.00

The general and other damages will attract court interest from the date of the lower court judgment. The special damages will attract court interest from the date of filing the suit. Costs are to the Appellants both here and below. Orders accordingly.

Dated and delivered at Nairobi this 19th day of March, 2013.

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**D A ONYANCHA
JUDGE**