



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**MILIMANI COMMERCIAL COURTS**  
**CIVIL SUIT NO. 148 OF 2009**

**JAMES NYAKUNDI NDEGE..... PLAINTIFF**

**VERSUS**

**BARCLAYS BANK OF KENYA..... DEFENDANT**

**JUDGMENT**

By a plaint dated 4<sup>th</sup> March, 2009, the Plaintiff pleaded that he was the Defendant's customer holding four (4) accounts with the Defendant at the latter's Kisii and Queensway branches. That on 24<sup>th</sup> November, 2008, when the Plaintiff attempted to encash a cheque for Kshs.200,000/-, the Defendant declined to pay the same, subjected him to bodily search, reported him to the police whereby he was charged in a court of law. That by withholding the monies in the Plaintiff Accounts with itself the Plaintiff was unable to carry out his businesses and development projects whereby he had suffered loss and damages. He claimed for a declaration in respect of Kshs.9,129,794/45 held in his said accounts, specials of Kshs.2,860,000/- per month and legal fees of Kshs.500,000/-, damages for wrongful confinement together with interests and costs.

In its defence, the Defendant denied that the Plaintiff opened the alleged accounts but admitted that a person by the name James Nyakundi Ndege did open an account in its Kisii branch but he thereafter moved to the United States of America. That subsequently a person purporting to be James Nyakundi Ndege did open three other accounts with its Queensway Branch Nairobi. The Defendant denied knowing the Plaintiff and asserted it had serious doubts about the Plaintiff's identity in November, 2008 whereby the Plaintiff was charged in **Nairobi Cr. Case. No. 1925 of 2008** that the bank did freeze the accounts in question and denied that the funds therein belonged to the Plaintiff. The Defendant contended that the Plaintiff had perjured himself and denied the Defendant's entire claim

The Plaintiff testified in support of his case. He told the court that he opened his first account No.

3691204 with the Defendant at its Kisii Branch on 22<sup>nd</sup> August, 1994 (hereinafter “the Kisii Account”) wherein he made several transactions. On 7<sup>th</sup> October, 2008, he opened three other accounts with the Defendant at its Queensway Branch Nairobi being Account Nos.2601611, 0942506422 and 0084100358 being Savings, Current and Deposit Accounts, respectively. The Deposit account was closed after one month. He gave to the Defendant a copy of his National Identity Card, his photograph and filed some questionnaire at the time of opening the account.

On 24<sup>th</sup> November, 2008, the Plaintiff testified how he went to the Defendant’s Queensway Branch to encash his own cheque for Kshs. 200,000/-, the Defendant’s cashiers detained his cheque and the Identity Card, they sent him for an alternative identification papers. When he brought his passport, he and his brother-in-law whom he was with were detained for three (3) hours in the Defendant’s strong room. He was later handed over to the police who charged him with the offence of making a document without authority and uttering a false document in the Nairobi **Cr. Case No. 1925 of 2008 Republic –vs- James Nyakundi Ndege**. In which after trial he was acquitted.

The Plaintiffs case was that after his arrest, the Defendant took all his identification papers ( the National ID Card and the passport), all his cheque books and all his ATM Cards for Equity Bank and Barclays Bank plus the passbook for the Kisii Account. This left him in an embarrassing situation as he could neither move, buy food, pay for shelter nor pay school fees for his children. He was unable to proceed with his business. At that time, all the three accounts with the Defendant had Kshs.9,129,794/45 to his credit. The Plaintiff further testified that as a result of the Defendant’s action he was unable to pay his workers, complete the construction of a 30 unit apartment he was putting up in Kisii town, farm his 4.42 hectare farm in Kajiado of commence trading in a business of supplies with his business called Pash Investments or J.N. Investments Ltd. That his wife known as Josephine Momanyi who was in the United States of America carrying on business of real estate and who had been sending him the finances for business with him was frustrated by the Defendant’s actions whereby she filed HCCC NO. 639/09 against the bank which she later withdrew.

The plaintiff further told the court that he was forced to sell some of his properties to complete the Kisii project. He had borrowed a total of Kshs. 21 million to complete the project and for his business. He had now leased the Kisii property to Kisii University College for a sum of Ksh.350,000/- per month for five years commencing 1<sup>st</sup> September, 2011. As a result of the Defendant’s actions, the Plaintiff stated that he had suffered Kshs.500,000/- legal fees, loss of income from the farm of Kshs.3 million per quarter rental income of Kshs.312,000/- per month for the 26 rooms and loss of income from his businesses (Pash and J.N. Investments) of Kshs. 1.5 million per month. He prayed for judgment in accordance with the plaint.

On cross examination the Plaintiff testified that the director of registration had found that the finger print of PExh2 the National Identity Card he had used to open his accounts with the Defendant had not matched his finger print. That he maintained two postal addresses, one in Kisii and the other in America where his wife was staying. That when his injunction application in this suit was dismissed his wife filed HCCC No. 639/2009 against the bank claiming the money in the accounts. She wanted to have the money so that she could resend it to him by other means for use in their Kisii project. That he swore an Affidavit on 27<sup>th</sup> August, 2009 in that suit but he did not know that he was lying. That he had projected that he would make about Ksh.12,000/- per month for each of the 26 rooms from his Kisii project. He however admitted that he did not have evidence to back up his other claims on special damages.

The Defendant called one witness, Samuel Peter Kamau a Cashier in one of its branches who had dealt with the plaintiff on 24<sup>th</sup> November, 2008. He admitted that a person by the names James Nyakundi Ndege opened four accounts with the Defendant Bank's Branches at Kisii and Queensway Nairobi in August 1994 and October, 2008, respectively. That on 24<sup>th</sup> November, 2008, James Nyakundi Ndege came to the bank and attempted to encash a cheque for Kshs.200,000/-. That person produced an ID Card No. 208872341/5819552 bearing his name but the witness doubted, its authenticity. The witness then consulted two (2) of his colleagues who were also of the same view. That James Nyakundi Ndege was instructed to go and bring an original identity card but he came back with a passport. The Bank realized that the account No.260111 from which James Nyakundi Ndege had intended to withdraw money from was linked to four (4) other accounts. DW1 testified that he gave a statement to the police. That the Director of National Registration had informed the officer in charge of Banking Fraud that the National Identity Card No. 5819552 was not genuine and had not been processed by the department.

On cross examination, he admitted that the attempted encashment of Kshs.200,000/- by the Plaintiff was a normal banking withdrawal and there was nothing sinister with it. He further admitted that the same ID Card, PEXh2, that he rejected was the same one that had been used to open the accounts in question, he admitted that he was not an expert in document examination but he could tell an Identity Card that is not genuine. He further admitted that the Bank did not check the opening bank details to confirm whether the Plaintiff had produced the correct Identity Card. He confirmed that the bank was still holding the sum of Kshs.9.1M in the Plaintiff's accounts and was trading with the same earning interest thereon. He confirmed that the Plaintiff was the holder of the accounts but the bank required the Plaintiff to produce proper identification.

At the close of the trial, the parties filed their submissions which were ably hi-lighted by their respective counsels.

It is not denied that A/C Nos.3691204 and 2601611, 0942506422 and 0084100358 held at the Defendant's Kisii and Queensway Branches are in the names of James Nyakundi Ndege and that those accounts had been operated overtime by a person in that name. It is also common position that all those accounts, save for the Kisii account, were opened using the identity card number 5819552 serial No. 208872341 produced as PEXh2. The evidence available shows that the Kisii account was opened in August, 1994 using first generation Identity Card No. 5819552. On 24<sup>th</sup> November, 2008 the Plaintiff presented himself at the Defendant's Queensway branch and presented a cheque for Kshs.200,000/- for encashment supported by PEXh2 for identification purposes. The Defendant's officers got suspicious, retained the cheque and PEXh2 (the ID Card used to open the accounts) and asked the Plaintiff to go and bring better identification papers. When the Plaintiff returned with his original Passport, the Defendant had the Plaintiff locked up, reported him to the police whereby the Plaintiff was arrested and charged in **Nairobi Chief Magistrate Criminal Case No. 1925 of 2008** whereby after trial, he was acquitted when the prosecution failed to establish a prima facie case against him. Despite the Plaintiff attempting to access the said accounts using PEXh2 and Identification Card Serial No. 225463576 ID No. 5819552 PEXh3 which he took when issues were raised on PEXh2, the Defendant refused to allow him any access and those accounts remain frozen to date. To date there is being held therein a sum of Kshs. 9,129,794/45 which the Defendant is trading with.

It is also common ground that when the Plaintiff failed to secure an injunction in this suit, his wife, then in the United States of America filed a suit **Milimani HCCC No. 639 of 2009, Josephine Momanyi –vs- Barclays Bank of Kenya Ltd** claiming the money. The Plaintiff did swear an Affidavit in that suit supporting the wife's contention that the monies in the frozen accounts be released to her. However, that

case was shortly thereafter withdrawn.

In the submissions, Counsels set out five issues for determination. These are:-

- a) Whether the Plaintiff had committed perjury?***
- b) To whom does the money in the frozen Accounts belong to?***
- c) Whether the Plaintiff has proved his claim for special damages?***
- d) Whether the Plaintiff is entitled to damages for illegal confinement?***
- e) Whether the Plaintiff is entitled to the costs of the suit?***

This court adopts the said issues and I will consider them as set out above. However, I will add one issue, which is, to whom do A/c Nos.2601611, 0942506422 and 0084100358 at Queensway House Nairobi of the Defendant belong to?

I propose to consider first the issue I have framed before I consider the issues framed by the parties. As set out above, it is agreed by the parties that the said accounts are in the names of one James Nyakundi Ndege. It was admitted by the Defendant that they were opened by a person in that name using Identity Card Serial No. 208872341 ID No.5819552 issued on 21/9/1999 at Keumbu Kisii Central which was produced as PExh2. This court compared the photographs appearing on the said ID Card with the Plaintiff when giving testimony and the court was convinced that the photograph is that of the Plaintiff. There was no question about the signature appearing therein as not belonging to the Plaintiff. From a casual comparison of that signature with the one in the Verifying Affidavit as well as the one appearing in the documents opening said accounts, they look similar and it therefore belongs to the Plaintiff. DW1 was in court when the Plaintiff testified and produced PExh2 and PExh3, the two identify card which the Plaintiff said belonged to him. DW1 did not dispute that PExh2 and 3 belongs to the Plaintiff. Neither did the Defendant challenge that evidence. The Plaintiff clarified that the letter dated 20<sup>th</sup> January, 2009 at page 71 DExh1 was written on the basis of a photocopy that PExh2 was found to have a mistake. That letter was rejected by the criminal court that acquitted the Plaintiff of the offences charged. I will also not accept it as the examination resulting in it was based on a photocopy of PExh2 instead of an original copy. A photocopy can be tampered with and cannot form a basis of a scientific examination of either the finger prints or signature of PExh2.

DW1 insisted that PExh2 was not original, the Plaintiff insisted it was an original. The court saw it and did not have any reason to doubt that it was an original. The letter by the Director of National Registration dated 20<sup>th</sup> January, 2009 was based on a photocopy that was sent to him vide a letter dated

9<sup>th</sup> November, 2008. As I have held, it is a known fact that one cannot rely on a photocopy to make a conclusive finding of a fact as to signature, thumbprint etc. My view is that the letter dated 20/1/2009 at page 71 DExh 1 is of little, if any, probative value as to the genuineness or otherwise of PExh2.

In my view, what the Defendant should have done was to have that Identity Card PExh2 subjected to forensic examination by an expert. DW1 admitted that he was not an expert. Similarly, the Criminal Court in Cr. Case No. 1925 of 2008 found that the police did not subject the original ID Card Serial No. 208872341 ID No. 5819552 into examination. Accordingly, I hold that in the absence of any concrete evidence to the contrary, the Identity Card serial Nos. 208872341 and 225463576 bearing ID No. 5819552 belong to the Plaintiff and that the Plaintiff was the holder of account Nos.2601611, 0942506422 and 0084100358 held at the Defendant's Queensway Branch, Nairobi.

Since there was no dispute whatsoever that the Plaintiff was the owner of and had operated A/c No. 3691204, Kisii for quite a long time, I hold that the said account also belong to the Plaintiff.

I now turn to the issues framed by the parties. An issue arose about an Affidavit sworn by the Plaintiff in **Milimani HCCC No. 639 of 2009 Josephine Momanyi –vs- Barclays Bank of Kenya Ltd** in which the Plaintiff swore as follows:-

**“3. THAT I am the holder of the following accounts that is:-**

- a) A/c No. 3691204 – Barclays Bank, Kisii Branch.**
- b) A/c No. 2601611 – Barclays Bank, Queensway House, Nairobi.**
- c) A/c No. 0942506422 – Barclays Bank, Queensway House, Nairobi,**

***and that the accounts have been frozen by the defendant.***

**4. THAT the frozen money was Telex transferred by the Plaintiff in this case and was meant for charities and projects for the underprivileged in Nairobi.**

**5. THAT I do not have any objection to the frozen monies being telex transferred back to the Plaintiff as the donor and therefore owner of the frozen money.”**

Under Section 108 of the Penal Code Chapter 63 of the Laws of Kenya, perjury is a misdemeanor punishable under the law. The Defendant relied on the cases of **Rev. Dondo –vs- HFCK (2005) e KLR**, **James Kariuki Ng'ang'a –vs- Joseph Njuguna (2004) e KLR** and **Re –vs-KRA Exparte Yaya Centre**

**Ltd (2008) e KLR** in support of its submission that the Plaintiff being guilty of perjury he should not acquire any benefit from such perjury.

The Plaintiff explained that he was misadvised to swear that affidavit, that having been placed in a desperate situation, whereby the Defendant had frozen the only funds he had, his projects with his wife came to a standstill, no fees were payable for his children he was ill advised to swear the subject Affidavit. That in any event, the said ill advised suit had been withdrawn and that he had told the truth in this case.

I find that it has not been alleged that the Plaintiff lied to this court in these proceedings. What is contended is that the Plaintiff lied in what he stated in the said Affidavit. He was firm in his testimony that the funds in the subject accounts were transferred by his wife Josephine Momanyi from the United States of America on various dates. Indeed the Plaintiff's PExh1 pages 13 to 44 showed that, funds originated from the United States of America, sent by among others one Josephine Momanyi, who is not disputed to be the Plaintiff's wife credited at the Kisii account then transferred to the accounts at the Queensway House, Nairobi.

The Plaintiff's testimony was that the funds were meant for the Plaintiff and his wife's projects at Kisii and Kajiado. He further testified that had the monies been transferred back to his wife in the United States of America as intended in that suit, he would have received it through other means other than through the said accounts and he would have had no claims in this suit.

It is therefore clear that the contents of the Plaintiff's Affidavit of 29<sup>th</sup> August, 2009 was materially correct save for it alluding to the fact that the **monies were meant for charities and projects for the under privileged in Nairobi**. To that extent, the Plaintiff had not been candid with the court in the said HCCC No. 639 of 2009. That suit was filed subsequent to this suit and was thereafter withdrawn. I am unable to apply the sanctions proposed in the cases of **Rev. Dondo –vs- HFCK (supra)**, **James Kariuki Ng'ang'a –vs- Joseph Njuguna (Supra)** and **R –vs- KRA Ex parte Yaya Centre Ltd (supra)** since in all those cases the perjury occurred in the very same suits. In the present case, perjury is claimed to have been committed in another suit which has since been withdrawn. Be that as it may, I will have something to say about it at the end of this judgment.

As regards the issue as to whom the money in the frozen accounts belong, I have already made a finding that the accounts belong to the Plaintiff. On cross examination, this is what the Defendant's witness (DW1) stated:-

***“A person by the name of James Nyakundi Ndege first opened an account on 22/8/94. I do not know him personally. But I now know that he is the Plaintiff. He is the same who opened the other accounts from pages 3 to 15 of DExh1. At page 5 of DExh1 is a copy of the ID which is certified. An original was produced Serial No. 208872341 of which a copy was taken by the bank. I agree PExh2 was the one which was used to open the account. One can only use an original document to open an account. It is also the copy of page 6. At page 7 of DExh1, there is one of the forms used for opening the account. There is a signature and photograph of the account holder. I can see that it is the Plaintiff who is in court today.*”**

..... *He opened the account with Kshs. 2 million. He opened it using PExh2..... what I have PExh2 is the one that he used to open the account and is the one which he presented to me on that day.*”

From the testimony of DW1, it is clear that the Defendant does not deny that the plaintiff is the owner of the frozen accounts, it is also not in dispute that the accounts at Queensway House were opened by the Plaintiff using PExh2. What the Defendant disputes is that that Identity Card is not genuine. There was no evidence however that was presented to prove that fact. Section 108 of the Evidence Act is clear, it is upon the party who alleges a fact who has to prove such an allegation. DW1 admitted he has no formal education on matters touching on forgery or examination of documents. The letter of the Director of National Registration of 20/1/2009 cannot be relied on since it relied on an examination of a photocopy which is unreliable.

The view this court takes is, since the Defendant had allowed the Plaintiff to open the accounts at Queensway House using PExh2, it cannot now lie in its mouth to state that that document is not genuine and that for the Plaintiff to access those accounts he should produce another “genuine” document other than the very one he used to open the accounts. That is spurious. The Account Nos. 3691204 Kisii Branch, 2601611, 0942506422 and 0084100358 belong to the Plaintiff. It follows that the monies in those accounts totaling Kshs. 9,129,794/45 belong to the Plaintiff in this case. The Defendant admitted that it has been trading with it. I will give interest thereon at the rate of 15% per annum from the date of filing suit.

On special damages, in the case of **Charles Sande –vs- Kenya Co-operative Creameries Ltd (1992) LLR 314** the Court of Appeal settled that such damages must not only be pleaded but must be strictly proved. A Plaintiff must tender at the trial acceptable evidence to support his claim

In this case the Plaintiff pleaded that in freezing the accounts, the Defendant had caused him to suffer damages which he particularized in paragraph 9 of the Plaint to be legal fees of Kshs. 500,000/-, loss of income from the farm Kshs.3,000,000/- per quarter, rental income Kshs.360,000/- per month, loss of income from Pash Investments Kshs.500,000/- per month and loss of income from J.N. Investments Kshs.1,000,000/- per month.

From the evidence tendered, J.N. Investments Ltd was a company registered with the Ministry of Public Works to do General Building Works of Category E. The losses suffered by that company, if any, cannot be claimed by the Plaintiff, I reject the claim for Ksh.1 million per month for J.N Investments.

There was no evidence tendered to show that Pash Investments was doing any business at the time of the freezing of the accounts or that it had secured any contract subsequent thereto from which it could make a profit of Kshs.500,000/- per month. Mere testimony from the witness box in my view is not enough. I reject the claim of Kshs.500,000/- per month.

As regards the claim of Ksh.3,000,000/- per quarter from the farm, I accept the Plaintiff's evidence that he purchased in October, 2008 two farms LR NO. Kajiado/Kipeto/2181 and 2183 measuring a total area of 4.46 hectare. That he intended to plant wheat on the said farms. That he was unable to do so due to the Defendants actions. It cannot be disputed that for one to use a farm profitably, he requires funds. Having been financially incapacitated, the Plaintiff could not develop those farms. However, he did not produce any acceptable evidence to show that the wheat which was to be produced from the approximately said 4.46 hectares would have fetched Kshs.3,000,000/- per quarter. In the absence of any such evidence, I reject the claim.

The other claim is Kshs.500,000/- legal fees. There was no receipt or any other form of evidence that was produced to prove that the Plaintiff had incurred this sum in legal fees. I also reject it.

As regard the claim for Kshs.360,000/- per month being rental income, the Plaintiff testified that he was constructing apartments or hostels on Title No. Nyaribari Chache /B/B/Boburia/8240 but when the accounts were frozen, the project stalled. He resuscitated the project after selling some properties in Kajiado and taking a loan of Kshs. 4 million from Co-operative Bank. The evidence was tendered to show that the plaintiff took that loan in April, 2011 and that the project was completed in the same month of April, 2011 when the hostels were completed and leased to Kisii University College for Kshs. 360,000/- per month for five years. I am satisfied that the Plaintiff has proved that had the Defendant not frozen the funds in the subject accounts, he could have completed construction of the said hostels earlier than April, 2011. I am also satisfied that when those flats were completed, they were leased out for Kshs. 360,000/- per month to Kisii University College. Obviously, there had been delay in completing the project and the Plaintiff had lost and/or suffered some loss. Having said so however, the Plaintiff cannot claim loss of rental for the period October, 2008 and April, 2011. He did not tell the Court how fast he could have completed the project from October, 2008. That notwithstanding, such loss cannot be given for an unreasonable long time. A Plaintiff must take remedial measures to mitigate his damages. I will limit the loss of rental income to a maximum period of twelve (12) months in the sum of Kshs. 312,000/- per month. Since in the Plaintiff's own evidence, he would have completed 26 rooms at Kshs.12,000/- per room per month, the same totals Kshs.3,744,000/-

As to damages for illegal confinement, there was uncontroverted evidence that the Plaintiff was confined at the instance of the Defendant. Indeed the Plaintiff testified that he was detained in the Defendant's strong room for three (3) hours before he was handed over to the police who also confined him overnight at the Kileleshwa Police Station before he was charged. This was never denied. The Plaintiff asked for Kshs. 5,000,000/- for unlawful confinement. The Defendant on its part submitted that there was no malice on its part. That DW1 had confirmed that upon scrutiny of PEXh2 he found it not to be authentic and that the Defendant had only referred the matter to the police for investigation.

I have already found that the accounts at Queensway House were opened using PEXh2 in the form that it was when it was presented to DW1 on 24<sup>th</sup> November, 2008 and when it was produced in court. If the Defendant had agreed to open the accounts using PEXh2 in the state in which it is, why insist in "an original" version of the same which does not exist. To my mind, there is no acceptable evidence that was produced by the Defendant to prove that PEXh2 is not genuine or not original. If it was not original, the Defendant could not have agreed to use the same in opening the accounts in October, 2008. Indeed, there was evidence that the Plaintiff had used the same identity card in transacting on the said accounts severally before the 24<sup>th</sup> November, 2008. To mind, it was malicious to demand from the Plaintiff a different document from the one he had used to open the accounts for purposes of identification. It was also malicious for the Defendant to have confined the plaintiff in its strong room for three (3) hours. It is a

grave matter for anyone to deny a citizen of this country his liberty for no acceptable reason. That constitutional right must and should be protected jealously. To lock up someone who is not a thief, who has not committed a crime and for that matter for three (3) hours before handing him over to the police is not only an act of impunity but also malice of the highest order. The Plaintiff is entitled to damages for wrongful confinement.

The only case cited was the case of **Maundu –vs- Kiwia & others (2003) 1 EA 144** wherein the Court awarded damages of Kshs.300,000/- where the plaintiff was wrongfully detained for 16 days in prison. That was in 2003, with inflation and for the humiliation treatment the Plaintiff had to undergo being incarcerated in a strong room for three hours and thereafter at the police station overnight I will give an award of Kshs. 1,000,000/-.

As regards costs, it is trite law that costs follow the event. The Plaintiff has been successful in his principal claim, I see no reason why I have to deny him costs. I award him costs of the suit.

Let me now revert to the issue of the award of loss of rental income of Kshs.312,000/- for twelve (12) months. I am satisfied that the Plaintiff did prove this claim and he is entitled thereto. However, I have agonized over the issue of the alleged perjury. It has become fashionable for litigants to lie under oath, commit perjury if only for them to obtain orders from the courts. Although that is a criminal offence it is an attack on the dignity of the courts and the judicial process. It is a practice that must be discouraged. In this case, I will not take drastic action against the Plaintiff for the said perjury since the same was not committed in these proceedings. However, since the matter was brought to the attention of this court, and for the reason that the same relates to the purpose for which the sum of Kshs.9,129,794/45 was to be applied, this court must show its displeasure. Accordingly, for the reason that the Plaintiff lied on oath that the said funds were meant **“for charity and projects for the under privileged in Nairobi”** whilst he very well knew that the same was to be applied to the Plaintiff’s own Kisii project, I will decline to award the Plaintiff the loss of rental income of Ksh.3,744,000/- which I have found he would have been entitled to.

Accordingly, I enter judgment for the Plaintiff against the Defendant as follows:-

a) Kshs.9,129,794/45 together with interest thereon at the rate of 15% per annum from the date of filing suit until payment in full.

b) Permanent injunction restraining the Defendant by itself, its servants, agents and/or assigns from interfering with the Plaintiff’s operation and access to his Bank Accounts held at the Defendant Bank, to wit,

a. A/c No. 3691204

b. A/c No. 0942506422

c. A/c No. 0084100358

For avoidance of doubt, the Plaintiff may use his National Identity Card Serial No. 208872341 Identity Card No. 5819552 to operate the said accounts.

- c) General damages for wrongful confinement in the sum of Kshs. 1,000,000/-
- d) Interest on (c) above at court rate from the date of judgment until payment in full.
- e) Costs of the suit and interest thereon.

DATED and delivered at Nairobi this 4<sup>th</sup> day of May, 2012

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**A. MABEYA**

**JUDGE**