



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI (NAIROBI LAW COURTS)**

**Civil Suit 574 of 2002**

**CRISPUS KARANJA NJOGU ..... PLAINTIFF**

**VERSUS**

**HON. ATTORNEY GENERAL ..... 1<sup>ST</sup> DEFENDANT**

**KENYATTA UNIVERSITY ..... 2<sup>ND</sup> DEFENDANT**

**J U D G M E N T**

By plaint dated 3<sup>rd</sup> April 2002 the Plaintiff herein sought against the Defendants general and exemplary damages for malicious prosecution. He also sought special damages quantified at KShs. 520,000/00. By a ruling of the court dated 2<sup>nd</sup> December 2005 (Ojwang', J) the Defendants' statements of defence were struck out and judgment entered for the Plaintiff as claimed in the plaint. Eventually I heard the case for purposes of assessment of damages. The Plaintiff testified and called one witness.

He also produced various documents. The Defendants did not lead or call any evidence.

I have considered the testimonies of the Plaintiff and his witness as well as the written submissions (including the cases cited) filed on behalf of the Plaintiff and 2<sup>nd</sup> Defendant. No submissions appear to have been filed for the 1<sup>st</sup> Defendant. The damages claimed in the plaint (and therefore awarded as per the aforesaid ruling of 2<sup>nd</sup> December 2005) are general, exemplary and special. These are the damages I am required to assess in this judgment. In doing so I bear in mind that the Plaintiff already has judgment for a declaration that his prosecution for the offence of making a document without authority contrary to section 357(a) of the Penal Code, Cap.63, was "malicious and ill-motivated" on the part of the Defendants.

The factual background of the case is as follows. The Plaintiff was at all material times, and still is, an employee of the 2<sup>nd</sup> Defendant. His substantive office was Assistant Registrar though he was Acting Senior Assistant Registrar in the Examinations Section of the 2<sup>nd</sup> Defendant.

It appears that following a complaint made by the 2<sup>nd</sup> Defendant to the police about counterfeit degree certificates the entire Examinations Section of the 2<sup>nd</sup> Defendant was investigated. The Plaintiff (among others, it appears) was arrested on or about 24<sup>th</sup> March 1998 and charged with the offence of making a document without authority as already indicated. Subsequent moves by the prosecution to withdraw the charge were successfully resisted by the Plaintiff. Eventually he was tried, and was acquitted on 9<sup>th</sup> November 2001; the criminal court found that he had no case to answer.

When he was criminally charged the Plaintiff was suspended by the 2<sup>nd</sup> Defendant from his employment and put on half salary. The medical benefits due to him and his immediate family were also suspended. After acquittal he was eventually reinstated to his substantive office of Assistant Registrar in September 2003. His half salary withheld by the 2<sup>nd</sup> Defendant was paid to him in May 2003. His medical benefits were also reinstated. He has since applied for promotion to the next grade of Senior Assistant Registrar; he expects that his application is under consideration. It is his case that his promotion is over-due and was delayed by the criminal trial because all his colleagues in the same grade as him at the time of his prosecution have since been promoted, notwithstanding that he is more qualified academically, having earned himself a Master of Business Administration degree in 1999.

It is the Plaintiff's further case that during his suspension he could not meet his financial obligations and his four children's learning was often interrupted because he was unable to timeously pay their school fees. He also had to frequently attend court at great expense and inconvenience. He suffered alienation by his friends and he was depressed.

His family was also adversely affected; his wife was shunned by her friends and their children were picked on in school. All this was because his arrest and charge had been widely published in the media. His acquittal however was not similarly published, and so the stigma of his arrest and charge persisted for a long time. His testimony was corroborated by that of his witness who was his wife.

I will now consider the damages.

### **GENERAL DAMAGES**

The criminal charge hang over the Plaintiff's head from March 1998 to November 2001, a period of three years and 8 months. The fact that he resisted the prosecution's bid to withdraw the charge cannot be held against him; he was entitled to insist on a trial so that he can be finally and fully vindicated. A mere withdrawal of the charge could not finally free him of it; he could be charged again for the same or other offence on the same facts. It was his right to insist on a full trial.

The Plaintiff already has judgment for a declaration that the prosecution was malicious and ill-motivated. I must proceed on that basis. It appears that there was no evidential basis at all upon which the 2<sup>nd</sup> Defendant made its complaint against him to the police. There was also no evidential basis at all upon which the police charged and prosecuted him.

The Plaintiff not only successfully resisted the prosecution's effort to withdraw the charge before the criminal court. He also successfully resisted 1<sup>st</sup> Defendant's bid to enter a *nolle prosequi*. But to do this it took a constitutional reference before a bench of three judges of this court. He was determined, rightly it turned out, to be fully vindicated by a full criminal trial.

In assessing general damages I have taken all these matters into account – that is, the long and bruising battle, both in the criminal court and in the Constitutional Court. I am also persuaded that the Plaintiff had had a good career with the 2<sup>nd</sup> Defendant which was unnecessary interrupted and prejudiced by the malicious prosecution. That he and his family suffered mental anguish on account of the trial cannot be doubted. It is also possible that he and his family were shunned by their friends, further exacerbating his anguish.

I have also considered the fact that after the Plaintiff's acquittal in March 2001, it took the 2<sup>nd</sup> Defendant nearly another two years to pay him his withdrawn half salary and to lift his suspension. It is also apparent that because of the interruption of his career his promotion has been delayed.

Taking all these factors into consideration and the cases cited, and doing the best that I can, I will award the Plaintiff general damages of KShs. 800,000/00.

### **EXEMPLARY DAMAGES**

Here I must take it in the Defendants' favour their attempts to have the criminal charge against the Plaintiff withdrawn. This of course does not derogate from the fact that the Plaintiff had the right to insist on a full trial. But by seeking to have the charge withdrawn the Defendants' malice was thereby somewhat mitigated.

As already seen, there was absolutely no evidential basis for the 2<sup>nd</sup> Defendant's complaint to the police, or for the police to charge and prosecute the Plaintiff. He was treated with a degree of high-handedness that entitles him to some exemplary damages as punishment to the Defendants. I will award him the sum KShs. 300,000/00 on this head.

### **SPECIAL DAMAGES**

It is trite that special damages must be particularly pleaded and strictly proved; that is the law and no court of law will award special damages upon any other basis. The Plaintiff particularly pleaded legal fees of KShs. 240,000/00 and costs of attending court of KShs. 280,000/00. Of the legal fees, he has strictly proved only KShs. 51,000/00. I will award him this sum. I will not deny him this on account of the receipts issued to him by his lawyer not bearing revenue stamps as required under the **Stamp Duty Act**; it was not his duty to fix the stamps on the receipts but that of the person issuing them. Of the costs of attending court, not a single shilling was strictly proved and I will not award any.

I will therefore enter judgment for the Plaintiff against the Defendants, jointly and severally, in the total sum of KShs 1,151,000/00 made up as follows:-

(a) General damages .....	KShs. 800,000/00	(b) Exemplary damages .....	KShs. 300,000/00	(c) Special damages .....	<u>KShs. 51,000/00</u>	Total	<b><u>KShs. 1,151,000/00</u></b>
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There shall be interest at court rates on the general and exemplary damages from the date of judgment until payment in full, and on the special damages from the date of filing suit until payment is full. The Plaintiff shall also have costs of the suit and interest thereon at court rates from the date of filing suit. There shall issue a decree accordingly.

**DATED SIGNED AND PRONOUNCED IN OPEN COURT THIS 1<sup>ST</sup> DAY OF FEBRUARY 2008.**

**H.P.G. WAWERU**

**JUDGE**