



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

Civil Case 25 of 2000

HARRIET KARIMI..... PLAINTIFF
VERSUS
ATTORNEY GENERAL DEFENDANT

JUDGMENT OF THE COURT

By her plaint dated 13.1.2000 and filed in court on 16.3.2000, the plaintiff sued the defendant seeking general damages for false imprisonment, inhuman treatment, battery, torture, embarrassment, mental torture, costs and interests. The plaint indicated that the defendant, being the government legal department committed the tortuous acts between the months of May and June 1999 when the plaintiff was arrested and while she was in custody of the police, she was assaulted, tortured, inhumanly treated and embarrassed contrary to the constitution and the law and without any lawful justification. The plaint further indicates that the plaintiff remained in custody for 26 days during which time she suffered loss and damage.

The plaint also indicates that requisite notices were issued to the defendant on 8.9.1999.

Defence was filed on 15.11.2000. That defence was for the provincial police officer, Mr. Manyinya, the Provincial Criminal Investigation officer, Eastern Province, Mr. Kamundi and the minister of state in the office of the President in charge of internal security. The defendant's defence averred that they were strangers to the allegations of unlawful arrest and confinement pleaded at paragraph 5 of the plaint. The defence also contained averments to the effect that if the plaintiff was arrested then the said arrest was carried out upon a reasonable and probable cause that a crime had been committed. The defendants also denied all the other averments in the plaintiff's plaint.

In her evidence to the court, the plaintiff stated that on the 13.5.1999 at about 12.45pm, three Criminal Investigation Department (C.I.D.) officers went to her home in Embu town where she was residing with her husband, James Kiome Rangiri who testified as PW2. The plaintiff's husband was by then a police officer attached to the Embu Police Divisional Headquarters. The CID officers informed the plaintiff that she was required by the Embu officer Commanding Police Division (OCPD), a Mr. Karanja. The plaintiff accompanied the three CID officers to Mr. Karanja's office. After the plaintiff had been asked to identify herself, she was informed by the said Mr. Karanja that she was infact wanted by the Provincial

Police Officer (PPO). The plaintiff was then driven in the OCPD's car up to the PPO's office, a Mr. Manyinya. The said Mr. Manyinya was found in the company of the Provincial Criminal Investigation's Officer (PCIO), one Mr. Kamundi. The plaintiff was interrogated by these two senior police officers in a manner, which, according to the plaintiff, showed that they were bitter with her. During that interrogation too, the PCIO threw a biro pen at the plaintiff, hitting her on her left eye. After that, the plaintiff was locked up in the cells until 19.5.1999.

On the 19.5.1999, the plaintiff was transferred to Meru Police Station where she was locked up until 31.5.1999. On that 31.5.1999, the plaintiff was taken back to Itabua police station, Embu where she was again locked up until 5.6.1999. On the 5.6.1999, the plaintiff was again taken back to Meru Police Station where she was held until 8.6.1999 when she was released.

The plaintiff testified further that during the time of her troubles, she was employed as a secretary at Isiolo Hekima Primary School. She also said that she used to operate a retail shop business at Isiolo. It was also her evidence that during the entire period of her incarceration, she was not told why she was being held, and that it was only much later when she learnt that her woes were caused by one Esther Wangechi who was said to be a former girlfriend of PW2, and a current girlfriend of the P.P.O.

It was the plaintiff's contention that she was kept incommunicado during the 26 days and that she was slapped by one of the CID officers apart from the fact that a biro pen was thrown at her and hit her on the left eye. That she was denied water for taking of medicines and that she suffered embarrassment for being locked up for no apparent reason.

A letter written to the Attorney General on 9.8.1999 giving notice of intention to sue was given in evidence as P exhibit 1. The payment receipt dated 13.8.1999 from Securicor Security Services for the delivery of the notice to the defendant was produced as P exhibit 2. The defendant's response dated 15.9.1999 to the plaintiff's letter was produced as p exhibit 3. Also produced as P exhibit 4 was a letter dated 20.8.1999 by the then Minister of State in the President's Office, Major (Rtd) Marsden Madoka. The plaintiff stated further that as a result of the confinement, she lost her job with Hekima Primary School and that her shop business also collapsed.

PW2 James Kiome Ringiri, corroborated the plaintiff's evidence as regards the arrests and confinement. He testified that when the three CID officers went to their home on the 13.5.1999, he too was at home. He also testified that Simon Karanja, who was said to have sent for the plaintiff was his boss at work. Later that evening, PW2 went to the OCPD's office to enquire about the plaintiff but he was informed that she had been taken to the PPO's office. PW2 also made enquiries as to why the plaintiff was being held. The answer was that the plaintiff was being held on the instructions of the PPO. PW2 was also informed that some undisclosed investigations were going on.

The plaintiff remained locked up at Itabua police station until 19.5.1995 when she was moved to Meru police station. On 20.5.1999, PW2 went to Meru Police station to find out why the plaintiff was being held up there. From the Occurrence book (OB) PW2 established that the plaintiff had been booked for interrogation, though the OCS Meru Police Station was not sure of the reason why the plaintiff was being locked up at his station.

PW2 was then referred to the DCIO, but on seeing the acting DCIO, one Inspector Mwala, Inspector Mwala informed PW2 that he was not aware of what was going on with the plaintiff. The plaintiff remained locked up at Meru Police Station until 31.5.1999 when she was released and returned to Embu. On her arrival at Embu, on the same day, two police officers, Insp. Dahir and CPL Murithi again picked up the plaintiff from her house in Embu and took her to Itabua police station where she remained locked up until 5.6.1999. On 5.6.1999, the plaintiff was again taken to Meru Police station from where she was finally released on 8.6.1999. No charges were preferred against the plaintiff. PW2 also testified that the person who was said to be behind the plaintiff's arrest was one Esther Wangechi, a former girlfriend of his.

The defendant did not offer any evidence despite the fact that the office of the Attorney General in Meru was duly served with the hearing notice. What therefore remains in terms of the evidence for the defendant is the statement of defence which I have already referred to elsewhere in this judgment. There are two issues for determination by this court. One is whether the plaintiff's arrest and confinement was unlawful and two whether the plaintiff has proved her claim of malicious prosecution. On the first issue, there is overwhelming evidence that the plaintiff's imprisonment for 26 days was unjustified. The same was also false and unlawful. The Attorney General is therefore vicariously liable for the unjustified, false and unlawful imprisonment of the plaintiff by the 1st, 2nd and 3rd defendants. The defendant's have not said why the plaintiff was locked up and why she had to be moved between Itabua and Meru Police stations over those 26 days without any charges being preferred against her. The plaintiff's complaint against the defendants is therefore justified.

On the second issue of malicious prosecution, which was canvassed during the hearing but not pleaded in the plaint, the plaintiff must prove the following conditions:- (a) that the prosecution was instituted by the defendant or by someone for whose acts he is responsible, (b) that the prosecution terminated in the plaintiff's favour, (c) that the prosecution was instituted without reasonable or probable cause and (d) that the prosecution was actuated by malice.

In his submissions to the court, Mr. Charles Kariuki, for the plaintiff cited the following authorities to the court:-

- (i) Murunga – Vrs – Attorney General (1979) KLR 138**
- (ii) Kagane and others – Vrs – Attorney General (1969) EA 643**
- (iii) Patrick Murithi Mukuva – Vrs – Edwin Warui Munene and others Meru HCCC No. 19 of 2000 (unreported)**

As I have mentioned earlier, though the aspect of malicious prosecution was raised during the hearing, the same was not pleaded. I believe it was not a mistake on the part of the plaintiff that malicious prosecution was not pleaded. There was not tendered in evidence proof that the plaintiff was prosecuted. Nor was there any evidence that such prosecution terminated in the plaintiff's favour. The fact therefore that no prosecution was commenced against the plaintiff disposes of conditions (a) and (b) of the four conditions that the plaintiff must prove in order to succeed on a claim for malicious prosecution. If the plaintiff had proved the fact of the prosecution, I would have had no hesitation in finding that the prosecution was

founded without reasonable and probable cause and that the same was actuated by malice. The complaint against the plaintiff and for which she was arrested and detained and later released without charge is said to have been made by a former girlfriend of PW2 and who was also said to be a girlfriend to the PPO. After considering all the evidence on record, I do find that no prudent or cautious man, occupying the position of the PPO could possibly say that on the facts before him, there was ground to arrest the plaintiff and keep her in confinement without charge for 26 days. My finding is that the PPO was using the criminal process to settle scores based on personal vendetta against the plaintiff. This kind of conduct by the PPO, the PCIO and the police in general is most abhorrent and should be discouraged at all costs. For the reasons that I have given, the plaintiff has not proved her claim for malicious prosecution nor did she plead the same.

The next issue is one of damages. Mr. C. Kariuki for the plaintiff has submitted that the plaintiff is entitled to Kshs. 3,000,000/= (shillings three million) as general damages. It is contended for the plaintiff, as stated in evidence that the plaintiff lost her job as secretary at Hekima Primary School in Isiolo. Apart from making this claim the plaintiff did not adduce any evidence such as letter of appointment or salary payslip or even a dismissal letter to show that indeed she was so employed. That piece of evidence is therefore rejected by the court.

The plaintiff also alleged that her retail shop business also collapsed during the 26 days when she was falsely confined by the defendants. Again, no evidence was adduced to the effect that the plaintiff was running such a business. The court is therefore unable to accept that evidence.

I find that the plaintiff is entitled to damages for false arrest and confinement. I make an award of Kshs. 1,000,000/= (shillings one million) in this regard as general damages. The plaintiff shall also have costs of this suit and interest on both general damages and on costs at court rates.

Order accordingly.

Dated and delivered at Meru this 16th day of November 2005.

RUTH N. SITATI

JUDGE