



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
HIGH COURT CIVIL APPEAL NO. 88 OF 2001
(Being an appeal from the judgment of Nyeri Resident Magistrate Mr. W. K. Korir dated
22.6.2001 in P.M.C.C. No. 609 of 1995)

SAMUEL NDIRANGU APPELLANT

VERSUS

PATRICK WACHIRA NDERITU RESPONDENT

J U D G M E N T

Samuel Ndirangu (hereinafter referred to as the Appellant) has brought this appeal against the judgment of the Resident Magistrate Nyeri made on 22nd June 2001 in which the Resident Magistrate gave judgment for Patrick Wachira Nderitu (hereinafter referred to as the Respondent) and awarded him a total of Kshs.76,170/= as general and special damages for false imprisonment and malicious prosecution. The Appellant has cited 3 grounds in his memorandum of appeal as follows:-

1. That the trial magistrate erred in holding that the Respondent had proved his case.
2. That the learned magistrate erred in fact for completely disregarding the Appellants evidence, thereby occasioning a miscarriage of justice.
3. That the trial magistrate erred and misdirected himself in awarding Kshs.70,000/= as general damages without proper proof.

The Respondents claim was for general and special damages against the Appellant for Defamation, False imprisonment and malicious prosecution and loss of business. In his evidence before the lower court the Respondent maintained that he was arrested and confined at Giakanja police station for 2 days after the Appellant connected him with the theft of his 2 goats. The Respondent was released after 2 days. His freedom was however short lived as the Appellant went for him again after one day this time with police officers from Nyeri police station. The Respondent was locked in for 3 days after which he was again released on bond. Two days later the Appellant again had him arrested and charged with stealing the Appellants 2 goats. The Respondent produced the proceedings of the criminal trial which showed he was acquitted under section 210 of the Criminal Procedure Code after the court ruled that he had no case to answer. The Respondent maintained that the Appellant was actuated by malice in lodging and pursuing his complaint. He maintained that he suffered special loss in payments incurred in hiring an advocate and coming to court. He also claimed to have suffered loss in his business and that his reputation was tarnished because the Appellant imputed that he was a thief.

The Appellant for his part admitted having made a report against the Respondent to the police but denied that the same was motivated by malice. He maintained that the skin and cut legs of his stolen goats were recovered from the Respondents premises.

In his evidence the Appellants stated that he did not know the Respondent and only reported the matter

because his goats were stolen. He maintained that the Appellant was arrested by the police after investigations and that he had no malice towards him.

The trial magistrate in his well considered judgment held that it is the Appellant who carried out the investigations, made discoveries on his own and pushed the police into charging the Respondent. The trial magistrate was satisfied that by his conduct the Appellant showed a desire to inflict suffering on the plaintiff which was malice. He therefore found the Appellant liable to the Respondent for false imprisonment and malicious prosecution but rejected the claim for defamation and loss of business.

I have carefully reconsidered and evaluated the evidence as I am expected to do in this first appeal. I am satisfied that the trial magistrate properly directed his mind and came to the right conclusion. It is evident that the Appellant's behaviour went beyond that of a mere victim reporting a crime to the police. He took upon himself the role of the police as he investigated, recovered what he considered to be exhibits and identified the Respondent as the culprit. Notwithstanding the reluctance of the police, the Appellant pushed for the Respondent to be arrested and charged. The Appellant set the law in motion against the Respondent and must take responsibility for the institution of the proceedings against the Respondent. It is evident that what was relied upon by the Appellant as evidence was no more than suspicion hardly sufficient to justify the arrest or prosecution of the Respondent. Although the Appellant's goats may have been stolen he had no reasonable or probable cause to blame the Respondent. I do find as the trial magistrate did that the Appellant was actuated by a desire to inflict suffering on the Respondent whom he blamed for his loss. This was malice. There is further no doubt that the Respondent's prosecution terminated in his favour. There was therefore sufficient proof of the tort of false imprisonment and malicious prosecution.

The Respondent chose not to sue the Attorney General for the actions of the police in the arrest and prosecution. A question therefore arises as to whether his claim is maintainable without the Attorney General being joined I do find however that the Respondents arrest, confinement and prosecution commenced with the report made by the Appellant and continued through the prosecution to his acquittal. It is apparent that the Appellant was the man instigator of the arrest and prosecution. The fact that the Respondent decided not to pursue the police officers does not in any way minimize the Appellant's liability. An aggrieved party is not precluded from pursuing only one tortfeasor where there are more than one tortfeasors.

On the issue of general damages, none of the advocates addressed the lower court on this issue, nor were any submissions made before this court to show that the award made was either so low or so high as to justify the intervention of this court. I do not therefore find it appropriate to interfere with the amount awarded. It is however apparent that the trial magistrate erred in failing to split the award to indicate how much was awarded for each tort. I find it necessary to correct this anomaly and do therefore apportion the award as follows:

Kshs.6,170/= special damage

Kshs.25,000/= - General damages for false imprisonment

Kshs.45,000/= - General damages for malicious prosecution. The upshot of the above is that I find no substance in this appeal and therefore dismiss it in its entirety.

The Respondent shall have costs of this appeal.

Dated signed and delivered at Nyeri this 26th day of March 2004

H. M. OKWENGU

JUDGE

