

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 2857 OF 1991

AGELINA OTENE PLAINTIFF

VERSUS

ATTORNEY GENERAL

OTIENO OWINODEFENDANTS

JUDGMENT

AGELINA OTENE sued the Attorney General on behalf of Police Department for damages arising out of the death of her son, Nicholas Otene. According to the Amended Plaint filed herein, the deceased was arrested by the police and taken to BuruBuru Police Station where he was thoroughly beaten. The deceased died a few days thereafter as a result of the beating. At the time of the hearing of this case the Plaintiff testified that the deceased was a student and had gone to deliver a letter to the parents of one of the students. Later in the evening the police came to her house and inquired if the deceased lived there, and thereafter she accompanied the police to the BuruBuru Police Station where she briefly talked with her son. Next day the son was taken to Makadara Law Courts and she was able to talk to him. The deceased said that he had been beaten at the police station. The deceased was remanded at Industrial Area Remand Prison as the mother was unable to raise the bond. Next time when the mother heard about the son was when he was at Kenyatta National Hospital undergoing treatment.

The Defendant called evidence to show that on the material evening, three to four boys snatched a handbag from Mrs. Margaret Katua, DW4. Mrs. Katua raised an alarm and members of the public came to her assistance. They chased the boys and managed to arrest the deceased. The other boy was arrested later in the same evening. It was the defence's case that it was the members of the public who beat up the boy and at the time he was being rescued by the police from the mob, he had already sustained the injuries. The police denied beating the deceased.

The deceased's co-accused was acquitted by the trial magistrate on the ground that he was not positively identified, as being one of the boys that snatched the handbag from Mrs. Gatua. I have perused the proceedings in the Criminal Case and I have evaluated the evidence adduced before me. The issue for determination is whether the deceased met his death as a result of the beatings meted out to him by the police at BuruBuru Police Station.

The Plaintiff's case is based purely on what the deceased told the Plaintiff. There is no other evidence whatsoever that was produced by the Plaintiff to prove that indeed the deceased was beaten by the police while at the police station. On the other hand, the defence witnesses testified that the police actually saved the deceased from the mob which had arrested him and which was beating him. At this juncture I would like to point out that it is not for this court to rule whether the deceased was properly arrested by the members of the public or not. It is not for this court to rule on the guilt or otherwise of the deceased in the circumstances of the case. What I am to rule is whether the deceased was beaten by the police while at BuruBuru Police Station.

I take Judicial Notice that the deceased was arrested by the members of the public after Mrs. Katua's handbag had been snatched from her in the evening. Members of the public responded to her cries and in the Kenyan context when one is caught in such circumstances it is obvious that the members of the public don't spare him. Indeed he was lucky that the police arrived in time to save him from further beatings. From the submissions by counsel for the Plaintiff, it appears that counsel realised that she did not have a solid case against the police and now submitted that the police were negligent in not taking the deceased

to hospital immediately. The evidence shows that the deceased was arrested in 3rd of May 1989, at about 9.00pm. He was taken to court on the following day and then remanded at Industrial Area Remand Prison and taken to hospital on 5th of May 1989. According to Exhibit 3 which is a Medical Report from Kenya National Hospital, the deceased had a swollen head when he was admitted. On the evidence adduced before me, I am satisfied that the Plaintiff has failed to prove her case against the Defendant on the required standard and I dismiss her case with costs.

The deceased was a young man at the time of his death. He had qualified in Carpentry and Joinery from Isinya Youth Polytechnic. His chances of getting a job were high if he would not have been selfemployed. At the age of 18 years, he had a long life ahead of him and I would have assessed general damages under Federal Accidents' Act as follows:- $Ksh.3,000 \times 12 \times 21 \times \frac{2}{3} = 504,000/-$. The suit is however dismissed with costs.

Dated this day of 2002.

J.V.O. JUMA

JUDGE