



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL CASE NO. 6451 OF 1990**

**PAUL DALMAS ODERA.....PLAINTIFF**

**VERSUS**

**MAGADI**

**SODA COMPANY.....DEFENDANT**

**JUDGEMENT**

The Plaintiff in this case is asking for General and aggravated damages aggravated for false imprisonment. His evidence was that on 28.3.1990, the Defendant's servants without notice or justification or reasonable cause, conducted a search in the plaintiff's residence in the presence of his relatives and neighbours. It was his further evidence that the employees forced him into the back of their vehicle, which amounted to wrongful confinement. The two employees of the Defendant denied the allegation in their defence and in their evidence stated that they had searched the plaintiff premises with his consent and there after searched other houses. They were not conducting the search out of malice.

In his evidence the Plaintiff had told the court that on the 28.3.90 they were at Ondara's house when the two Defendants employees Kangethe, Mr. Otwera and Mr. Omollo. Mr. Kangethe and Mr. Kilonzo requested for permission to search the plaintiff's house. From the evidence of the two defence witnesses, there had been a report of a theft of a bicycle within the Magadi premises and therefore it was necessary to make a search. They said that they started the search in the house of Mr. Ondara but there was no evidence that they searched the house. Mr. Ondara was the complainant in the matter. I would believe the plaintiff when he says that he was simply asked to accompany the search team to his house. I however find that under Rule 29 of the Companies Works Rules and Terms and Conditions of Employment the Company's employees can carry out a search on anybody living within the company's premises. The security people were within their powers to carry the search in the plaintiff's house as they did. The two witnesses said that they made searches to other house. The two witnesses did not however mention which other houses they searched. The plaintiff said his house was the only one searched although he admitted that he did not follow the team after they left his house. In the absence of any other evidence by the plaintiff on the issue of the search, I come to the conclusion that the search was not carried out of malice on the part of the security team. Neither do I find that there was false imprisonment of the plaintiff by the defendant's security team. What must have happened was that the plaintiff was asked by the team to accompany them to his house to which he obliged. I believed the defendant's witnesses when they said that if he had refused they would have sought the help of the police. The plaintiff did not call as witnesses any of the persons he said had witnessed the search and who made him find himself embarrassed. The claim for defamation will fail for lack of publication to other parties.

On the whole I find that the plaintiff has failed to prove his claim. It is to be noted that the plaintiff was given a house by the company while teaching under adult education programme. The quit notice and the letters written by the plaintiff to the defendant company asking for extension of the period would tend to go against the plaintiffs contention of malice for the company would not have extended the time if quit notice was connected with the search.

The plaintiff did not call evidence to prove that his character and reputation suffered as a result of the loss. I would dismiss the suit but I will make no order as to costs. Each party shall bear its costs of the suit.

Dated and delivered this 6th day of October, 2000.

**KASANGA MULWA**

**JUDGE**