



**Lameck v Director of Public Prosecution & 3 others (Civil Case 485 of 2013) [2023] KEHC 2119 (KLR) (Civ) (17 March 2023) (Judgment)**

Neutral citation: [2023] KEHC 2119 (KLR)

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

**CIVIL**

**CIVIL CASE 485 OF 2013**

**AN ONGERI, J**

**MARCH 17, 2023**

**BETWEEN**

**DANIEL WANJIE LAMECK ..... PLAINTIFF**

**AND**

**THE DIRECTOR OF PUBLIC PROSECUTION ..... 1<sup>ST</sup> DEFENDANT**

**THE NATIONAL POLICE SERVICE ..... 2<sup>ND</sup> DEFENDANT**

**THE HONORABLE ATTORNEY GENERAL ..... 3<sup>RD</sup> DEFENDANT**

**JOEL MOTAROKI OMBONGI ..... 4<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. The plaintiff in this case Daniel Wanjie Lameck (hereinafter referred to as the plaintiff) has sued the four defendants namely Director of Public Prosecution, Inspector General Of National Police Service, The Attorney General and Joel Motaroki Ombongi (hereinafter referred to as the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants respectively) seeking general damages for malicious prosecution and declaration that the prosecution of the plaintiff in Criminal Case No 4636 of 2010 was malicious.
2. The plaintiff is also seeking cost incurred in Cr Case No 4636 of 2010 together with costs of the suit and interest.
3. The 1<sup>st</sup> defendant filed a statement of defence dated October 19, 2015 denying the plaintiff's claim. The 1<sup>st</sup> defendant averred in the said defence that a credible case was established against the plaintiff after the completion of investigations showed sufficient of evidence against him and was conducted in accordance with the law.
4. The 4<sup>th</sup> defendant also filed a defence dated December 10, 2014.



5. The plaintiff's case in summary was that he was arrested on 16/6/2010 and charged with three criminal charges as follows:
  - i. Making a document without authority c/s 351 of the Penal Code.
  - ii. Forgery c/s 349 of the Penal Code and
  - iii. Uttering a document with intent to defraud contrary to Section 357 of (b) of the Penal Code.
6. The plaintiff was prosecuted and the court acquitted him under Section 215 of the Criminal Procedure Code.
7. The plaintiff has now sued the four defendants for malicious prosecution seeking general damages against them.
8. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants called one witness, DW 1 No 69632 CPL James Namai who said on 23/6/2010, he received a report through D.C.I.O SSP Mwenda who told them that the 4<sup>th</sup> defendant had made a complaint about a false document which had been signed through an advocate Gikera and Vadgama Advocates.
9. DW 1 said the 4<sup>th</sup> defendant was called and recorded a statement. He said the plaintiff was arrested and charged. He said the plaintiff refused to provide them with his specimen writings.
10. The 4<sup>th</sup> witness testified as DW 2. He said that on 23/6/2010 he was called by Mr. Mwaura of Embakasi Ranching Company who told him that document had been presented to their office bearing his names and he was required to go there and verify the document.
11. DW2 went and saw the document which bore his name and identity card but it was not authored by him.
12. DW 2 said police took a specimen of his signature. He said he did not know who had presented the documents to the Embakasi Ranching Company.
13. DW 2 said he reported the matter to Kilimani Police Station. DW 2 did not know the plaintiff and neither did he know who authored the documents bearing his name and ID card number.
14. The parties filed written submissions as follows:
15. The plaintiff in his submission indicated that he was a member of Embakasi Ranching Company Limited and he and other members of the company were dissatisfied with the way the company's affairs were being managed. These concerns were brought to the attention of the Registrar of companies which prompted the registrar to direct the directors to ensure that the company complies with the Companies Act. The leadership of the company thereafter was unhappy and intimidated those agitating for proper management.
16. The plaintiff was later arrested and charged in Criminal Case No 4636 of 2010 in the Chief Magistrates Court at Kibera. He argued that he was unjustly subjected to unwarranted prosecutions and made to answer charges in which he was a stranger. He was vindicated in the court's judgement dated July 3, 2013 where it was held that the defendants did not have any evidence to link him with the criminal charges.
17. It was his submission that the defendant did not have reasonable and probable cause to initiate the criminal case against him. That the investigating officer admitted that he never subjected the plaintiff's



know handwriting and signature for examination by a document examiner. That the police did not bother to interrogate or investigate other people who had visited the advocate office to prepare the letter of authority for the group.

18. The plaintiff argued further that the defendants did not have any evidence that linked him to the alleged forgery and he was arrested only because his name appeared in the document under investigation.
19. It was submitted by the plaintiff that he was made aware of the arbitrary arrests for those agitating for proper management of Embakasi Ranching Company Ltd with the mission of intimidating and dissuading people from speaking out.
20. The plaintiff indicated that he had expressed his desire to run for directorship of the company and the 4<sup>th</sup> respondent had expressed similar interest and argued that it was not a coincidence that he was harassed and intimidated as a bid to silence him.
21. The plaintiff argued that he should be compensated for the malicious prosecution as he endured psychological trauma, damage to his reputation, had to attend court at least 42 times which jeopardized his agribusiness as he could not dedicate adequate time which led to the loss of lucrative flower export contacts. He was later diagnosed with hypertension which was directly attributed by the distress arising from the malicious prosecution.
22. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants in their submissions argued that the lack of reasonable and probable cause cannot be relied upon by itself to show malice. They argued that the plaintiff needed to prove malice in fact but no evidence was provided to prove that in discharging their duties they acted with spite, ill will or improper motives. That the 4<sup>th</sup> defendant reported the matter and as a result the plaintiff was later charged with the offence of forgery.
23. It was submitted further that the mere fact that a person has been acquitted of the criminal charge does not connote malice on the part of the prosecutor a position that was held by the Court of Appeal in *Nzoia Sugar Company Ltd v Fungututi* [1988] KLR 399.
24. On special damages they argued that the plaintiff alleged that he incurred expenses to the tune of Kshs. 381,000 as special damages. In his plaint, he failed to expressly state the particulars of special damages and on this the claim must therefore fail.
25. The 4<sup>th</sup> respondent in his submissions reiterated the sentiments by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents in their submissions. They further argued that no evidence was tendered to show he was the one who initiated the prosecution of the plaintiff.
26. He submitted that the defendant had reasonable and probable cause to lodge a complaint against the plaintiff. He admitted that he lodged a complaint with the police to seek answers and truth about what was going on in relation to the documents that had been presented to him, that contained his identification details and signature that he had not authored.
27. The plaintiff's suit against the 4 defendants is based on malicious prosecution which is defined as an intentional tort that provides redress to a Plaintiff, for losses incurred following unsuccessful and malicious proceedings which are initiated without any lawful reasonable and/or probable cause by the Defendant.
28. The elements of the tort of malicious prosecution have been discussed in various authorities including *Murunga vs The Attorney General* (1976-1980) KLR 1251 where Cotran J listed them as follows: -
  - i. That a prosecution was instituted by the defendant or by someone for whose acts he is responsible.



- ii. That the prosecution terminated in the Plaintiff's favour.
  - iii. That the prosecution was instituted without reasonable and/or probable cause.
  - iv. That the prosecution was actuated by malice.
29. The duty to prove this case is upon the plaintiff and the standard of proof is on a balance of probabilities.
30. The issues for determination in this case are as follows:
- i. Whether the prosecution of the plaintiff in Cr Case No 4636 of 2010 was malicious.
  - ii. Whether the plaintiff was prosecuted without a reasonable probable cause.
  - iii. Whether the plaintiff is entitled to the remedies he is seeking against the defendants.
  - iv. Who pays the costs of this suit?
31. On the issue as to whether the prosecution of the plaintiff in criminal case no 4636/2010 was malicious, I find that it is not in dispute that there were documents presented to Embakasi Ranching Company bearing the names of the 4<sup>th</sup> defendant which were not authored by the 4<sup>th</sup> defendant.
32. The 4<sup>th</sup> defendant went to the Embakasi Ranching Company and confirmed he was not the author of the documents.
33. The 4<sup>th</sup> defendant reported the matter at Kilimani Police Station.
34. There is evidence that the documents were obtained from Stephen Njoroge Gikera Advocate who gave evidence in the criminal case.
35. The plaintiff who had been nominated by the 30 people who wanted Mr. Stephen Gikera to represent them was arrested and charged.
36. I find that there was a valid complaint and a reason why the plaintiff was the one charged.
37. It is not in dispute that the documents were not authored by the 4<sup>th</sup> defendant.
38. The plaintiff according to the evidence adduced by Stephen Njoroge Gikera in criminal case No 4636 of 2010 was nominated as the one to represent the group of 30 people who wanted the said Stephen Njoroge Gikera to represent them.
39. In the circumstances, I find that the prosecution was not malicious since it had a genuine valid complaint.
40. In cases of malicious prosecution the element of malice must be proved.
41. The 4<sup>th</sup> defendant did not know the plaintiff and I find that the element of malice by the defendants has not been proved.
42. The 4<sup>th</sup> defendant made a genuine complaint and the issue was investigated and the plaintiff was arrested because he was nominated by the people who give Stephen Njoroge Gikera instructions.
43. There is therefore no evidence that the prosecution of the plaintiff was malicious since the complaint was genuine and valid.
44. On the issue as to whether the plaintiff was prosecuted without a reasonable probable cause, I find that the answer is in the negative.



45. I find that there was evidence to link the plaintiff in the documents since he was the one nominated to represent the group that asked Stephen Njoroge Gikera to represent them in the alleged transaction at Embakasi Ranching Company.
46. DW 2 said the plaintiff refused to provide him with his specimen signature. This would have ruled out the involvement of the plaintiff in the alleged forgery.
47. I therefore find that the prosecution of the plaintiff in Cr Case No 4636 of 2010 had a reasonable, probable cause.
48. I also find that the plaintiff was placed on his defence before he was acquitted under Section 215 of the *Criminal Procedure Code*.
49. The trial court can only place an accused person on his defence where it is satisfied that the prosecution has established a prima facie case to warrant the accused person to be placed on his defence.
50. As the chairman of the group that instructed the lawyer to represent them, I find that the plaintiff either knew the author or was the author of the forged documents.
51. On the issue as to whether the plaintiff is entitled to the remedies he is seeking against the defendants I find that the answer is No The plaintiff escaped jail for reasons that the standard of proof required in criminal cases is high.
52. Having failed to prove his case on a balance of probabilities, I dismiss the plaintiff's case for want of merit.
53. On the issue as to who pays the costs of this suit, it is trite law that costs follow the event. The court also has the discretion to order a party to pay costs.
54. I find that this suit has been a long and protracted one and for purposes of putting this matter to rest, I direct that each party bears its own costs.

**DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS  
17<sup>TH</sup> DAY OF MARCH, 2023.**

**A. ONGERI**

**JUDGE**

