



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

HIGH COURT CIVIL CASE NO. 517 OF 2001

PAUL NJUGWA KAMAU.....1ST PLAINTIFF

JACKSON KAMAU MATHU T/A GATUGU FARM.....2ND PLAINTIFF

VERSUS

THE ATTORNEY GENERAL.....1ST DEFENDANT

JOHNSON MBUGUA MUGO.....2ND DEFENDANT

J. M. MUGO INVESTMENT LIMITED.....3RD DEFENDANT

COFFEE BOARD OF KENYA4TH DEFENDANT

JUDGMENT

1. The plaintiffs instituted this suit vide a plaint dated 28/3/2001 seeking Judgment against the Defendants jointly and severally as follows;

(A) The 1st Plaintiff:-

(a) General, punitive and aggravated damages for malicious prosecution, false imprisonment and abuse of the Legal process.

(b) Legal fees paid to Advocates for defending Kiambu Criminal Case No. 16 of 1999 and Kiambu Criminal Case No. 6 of 2000.

(c) Costs and interest on (a) and (b) above.

(B) The 2nd Plaintiff: -

(a) Damages for detention of Motor Vehicle Registration No. KWL 435.

(b) Loss of income arising from deterioration in coffee value and fluctuations in prices set out in paragraph 12 and 13 of the Plaint together with interest thereon at 36% per annum from March 1999 until payment in full.

(c) Costs and interest thereon at court rates from the date of judgment until payment in full.

2. It was pleaded that at all material times the 2nd Plaintiff was a coffee farmer at his Gatugu Farm and also the registered owner of Motor Vehicle Registration No. KWL 435 Isuzu Lorry. That on or about the 12/2/1998 at about 6.30 p.m., the 1st Plaintiff who is a son to the 2nd Plaintiff was going about his business transporting ballast in the said lorry when he was stopped by police officers in Githunguri area and the motor vehicle detained at the police post.

3. It was further stated that the police officers proceeded with the 1st Plaintiff to Gatugu Farm where they carried out a search and confiscated some documents. That the 1st Plaintiff was subsequently placed under arrest and was charged with two counts of robbery with violence.

4. It was contended that the arrest and prosecution was malicious and without any reasonable or justifiable cause. That the 1st Plaintiff was discharged under Section 87(a) of the Criminal Procedure Code for lack of evidence but was re-arrested and charged afresh and was subsequently acquitted under Section 210 Criminal Procedure Code.
5. It was further pleaded that on 18/2/1999 police officers gave instructions to the 4th Defendant to stop the processing and sale of the 2nd Plaintiff's 143 bags of coffee, thereof causing the coffee to deteriorate and depreciate in value which together with the detention of the motor vehicle caused the 2nd Plaintiff to suffer loss and damage.
6. The 1st Defendant filed a Statement of Defence dated 18/1/2002 and denied the claim. The criminal prosecution was admitted but it was stated that the 1st Defendant acted without malice and that there was reasonable or justifiable cause for the arrest and prosecution.
7. The 2nd and 3rd Defendants filed a joint Statement of Defence dated 24/5/2001 and denied the Plaintiffs' claim. It was stated that a report of theft was made to the police who conducted investigations which culminated in the arrest and prosecution.
8. The 4th Defendant filed a statement of Defence dated 7/5/2001 and denied the Plaintiffs' claim. It was pleaded that the 143 bags of coffee delivered by the 2nd Plaintiff was the subject of a criminal case and led to a civil dispute. That the coffee was eventually sold upon issuance of a court order.
9. The 1st Plaintiff **Paul Njugwa Kamau (PW1)** testified. He described himself as a transporter and stated that his late father, Jackson Kamau Mathu was at the material time the registered owner of the motor vehicle herein and the owner of Gatugu Farm which was about 26 hectares in size with about 14,000 coffee trees and had a coffee factory at the same farm. PW1 narrated to the court how he was arrested and subsequently prosecuted. He produced as exhibits the proceedings in Kiambu SPMC Criminal Case No. 6/1999 wherein he was discharged under Section 87 of the Criminal Procedure Code and Kiambu SPMC Criminal No. 16/2000 wherein he was acquitted under Section 210 of the Criminal Procedure Code. His evidence was that the prosecution was carried out maliciously and without any reasonable or justifiable cause.
10. PW1 produced the coffee delivery statements for year 1999/2000 for Gatugu Farm and the Booking Confirmation Slip No. 72806 dated 28/1/1999 issued by Kenya Planters Cooperative Union for delivery of 143 bags of Parchment coffee and a Coffee Movement Permit issued on the same day. He further testified that Gatugu Farm had harvested and processed 201 bags of coffee in the year 1998/1999. He stated that the farm normally made "out of pool" sales. His further evidence was that the 143 bags of coffee could not be processed and auctioned due to the letter written by the police and the coffee ended up deteriorating and losing value.
11. Following the passing away of the 2nd Plaintiff, he was substituted in this case by his son, **PW2 Gabriel Mathu Kamau**. PW2 described his late father as a coffee farmer at the Gatugu Farm licensed under code number AA422. He testified that year 1998/1999 as a year of very good harvest. That on 28/1/1999 the harvested, pulped and the poached coffee was booked for delivery to Kenya Planters Co-operative Union stores in Nairobi for milling and a movement permit issued. That on 2/2/1999 the coffee was delivered to Kenya Planters Co-operative Union Mills, Nairobi using the motor vehicle herein which was being driven by the 1st Plaintiff (PW1) who was employed at the farm.
12. PW2 further testified that the motor vehicle was detained by the police on 12/2/1999, the coffee documents confiscated and the 2nd Plaintiff arrested and prosecuted over the alleged theft of 120 bags of coffee. That the said coffee ended up being sold below the market price, the same having been detained by the Coffee Board of Kenya for one year.
13. The 1st Defendant did not call any witnesses.
14. **Samuel Mugo Mbugua (DW2)** testified on behalf of the 2nd and 3rd Defendants. He described the 3rd Defendant, J. M. Mugo Investments, as a family business involved in the business of growing coffee under the name of Mbugo Estate which consists of four farms and a factory. That the average of coffee sales comes to about 2000 bags annually. That in the evening of 28/1/1999, there was a robbery at the farm and 120 bags of coffee that had been packed for delivery to Kenya Planters Co-operative Union carried away using Motor vehicle KWL 435 owned by the 2nd Plaintiff.
15. DW2 further testified that on the 2/2/1999 the plaintiff delivered 143 bags of coffee to Kenya Planters Co-operative Union when in the previous years the plaintiffs only delivered 20 bags of coffee. That the 143 bags of coffee were delivered hurriedly and without the following of due procedure. That the coffee in question was sampled by the Coffee Liquorer and 80% of the same found to belong to the 2nd and 3rd Defendants' farm. That the complaint, the arrest and the prosecution were justified.
16. The Chief Liquorer, **Charles G. W. Gatere (DW1)** also testified in support of the case by the 2nd and 3rd Defendants. A Chief Liquorer at Coffee Board of Kenya at the material time, he described himself as a trained Coffee Taster/Liquorer. His evidence was that once the Coffee Board of Kenya received the milled coffee from Kenya Planters Co-operative Union, it would determine the quality of the coffee, auction it and pay the farmers.
17. In respect to the coffee in question, the Liquorer's evidence was that he received samples of parchment coffee from the police under the cover of an exhibit Memo form and carried out quality analysis of the same as per the request. That from his testing by way of "blind tasting" he was able to establish that the coffee in question came from the 2nd and 3rd Defendants' coffee farm. He stated during cross-examination that the examination of the coffee was physical and sensory based using his naked eyes, taste, smell, touch, etc. He ruled out the possibility that coffee from other farms in the same region would have the same characteristics and stated that as a qualified liquorer the test was 100 % fool proof. His further evidence was that once coffee is milled and not sold immediately it losses value. He described the conditions of storage at Coffee Board of Kenya as ideal and that they met the international standards.

18. **Enosh Ongosi Akuma (DW3)**, the manager, Regulations and Compliance, testified on behalf of the 4th Defendant, Coffee Board of Kenya. His evidence was that the said Board was not involved in the arrest, prosecution and imprisonment of the 1st Plaintiff and therefore not liable for the loss of value of the coffee in question nor liable for the deterioration of the motor vehicle and the coffee. His further evidence was that the 92 bags delivered to it by Kenya Planters Co-operative Union were sold when the court issued orders to that effect. That the coffee could not have been sold earlier as it was the subject of investigations by the police and the subsequent court cases.

19. I have considered the Plaintiffs' case, the Defence cases and the submissions filed by the respective counsels to the parties.

20. The robbery at the 2nd and 3rd Defendants farm is not in dispute. The arrest, detention and prosecution of the 1st Plaintiff and the detention of the coffee in question and the motor vehicle is also not disputed. It is also not in dispute that the Plaintiffs and the 2nd and 3rd Defendants are coffee farmers. The main contention is whether there was reasonable and justifiable cause for the arrest and prosecution.

21. The principles that govern a claim founded on malicious prosecution were set out by the Court of Appeal in **Robert Okeri Ombeka v Central Bank of Kenya [2015] eKLR** while quoting the case of **Murunga v Attorney General [1979] KLR** as follows:

“a) The Plaintiff must show that the prosecution was instituted by the Defendant, or by someone for whose acts he is responsible.

b) The Plaintiff must show that the prosecution terminated in his favour.

c) The Plaintiff must demonstrate that the prosecution was instituted without reasonable and probable cause.

d) He must also show that the prosecution was actuated by malice.”

22. As stated in the case of **Thomas Mutsotso Bisembe v The Commissioner of Police & another [2013] eKLR**.

“...The law enforcement agencies are required to investigate the complaint before preferring a charge against a person suspected of having committed an offence. In other words the police or any other prosecution arm of the Government is not a mere conduit for complainants. The police must act impartially and independently on receipt of a complaint and are expected to carry out thorough investigations which would ordinarily involve taking into account the versions presented by both the complainant and the suspect...Where the police deliberately decide not to take into account the version of the suspect and acts on a story that eventually turn out to be improbable and which no ordinary prudent and cautious man would have relied upon that failure may constitute lack of reasonable and probable cause for the purpose of malicious prosecution...But neglect to make a reasonable use of the sources of information available before instituting proceedings would be evidence of want of reasonable and probable cause and also malice.”

23. As stated in the case of **Socfinaf Kenya Ltd v Peter Guchu Kuria H.C. Civil Appeal No. 595 of 2000, at Nairobi eKLR**:

“That a suspect who was acquitted of a criminal case is not sufficient ground for filing a civil suit to claim damages for malicious prosecution or false imprisonment, Evidence of spite, ill will, lack of reasonable and probable cause must be established.

24. From the criminal proceedings produced herein, it comes out that what led to the arrest of the 1st Plaintiff was the evidence of one of the workers at the 2nd and 3rd Defendants' farm. The said worker gave the registration number of the motor vehicle as the one he saw at the scene of the robbery. The criminal case proceedings reflect that the police officers who received the report of the robbery rushed to the scene where they confirmed that the robbery had taken place and found one dead body at the scene. It is apparent that the investigating officers carried out their work in the normal course of duty. There is no evidence of any malice on their part.

25. The evidence from the Liquorer pointed at the coffee in question as having come from the 2nd and 3rd Defendants' farm. The evidence from the investigating officers that they collected the coffee samples from the two farms herein in the normal course of duty remains uncontroverted by any other evidence.

26. The evidence by the 2nd and 3rd Defendants that the Plaintiffs had a bigger coffee delivery that season was confirmed by the Plaintiffs. Indeed, the Plaintiffs' evidence was that they had a bigger harvest. The documents from Kenya Planters Co-operative Union and Coffee Board of Kenya confirmed the said harvest as per the deliveries made.

27. Looking at the foregoing evidence of the robbery report and the arrest coupled with the report that the motor vehicle was seen at the scene of robbery, taken together with the evidence of bigger coffee deliveries and the coffee Liquorer's report, any reasonable man would point fingers at the Plaintiffs as the culprits. It is this court's conclusion that there was reasonable and justifiable cause for the arrest. The 2nd and 3rd Defendants on their part did what was expected of them and made the report of the robbery to the police. The 4th Defendant had no choice but to comply with the directives given by the investigating officers and preserve the coffee as an exhibit.

28. This court has arrived at the finding that there was reasonable, justifiable and probable cause for the arrest. The case of malicious prosecution therefore fails. Consequently, all the other claims which were based on the claim for unlawful arrest, malicious prosecution and false imprisonment also fail.

29. If the Plaintiff's case had succeeded, I would have taken into account that the 1st Plaintiff was in custody for a period of about one year. I would have assessed general damages for the arrest, malicious prosecution and false imprisonment at the sum of Kshs. 2 Million. **(See for example Crispus Karanja Njogu Vs. Attorney General [2008] KLR and Thomas Mutsotso Bisembe Vs. Commissioner of Police & another [2013] eKLR).**

30. The 1st Plaintiff's claim for legal fees was not specifically proved. The amount of the legal fees was not specifically pleaded. The 1st Plaintiff did not adduce any evidence in respect of the claim under this head.

31. The ownership of the motor vehicle by the 2nd Plaintiff was denied by all the Defendants. The 2nd Plaintiff claimed damages for the detention of the motor vehicle as the registered owner thereof. There were no documents produced in support of the said ownership. Ordinarily, there would be documents in support of such registered ownership or any other category of ownership.

32. The motor vehicle herein was detained for a period of about two weeks. If the claim had succeeded, I would have assessed general damages at Kshs. 100,000. **(See for example Great Lakes Transport Co.(u) Ltd Vs. Kenya Revenue Authority [2009] eKLR).**

33. The evidence from the Plaintiffs and the evidence from the Chief Liquorer was that the detained coffee was sold at a loss. The Chief Liquorer calculated the loss at USD 5942 for the 120 bags milled. He referred the court to his letter dated 7/6/2000 addressed to the 2nd and 3rd Defendants' Advocates. The Plaintiffs did not adduce any evidence on how they arrived at the figure of USD 11,685.93 claimed. There was no evidence adduced in support of the claim for 36% interest. If the Plaintiffs' case had succeeded, I would have rounded up the figure to USD 6,000 at 14% interest per annum with effect from March 1999 till payment in full.

34. With the foregoing, the upshot is that the Plaintiffs failed to prove their case on a balance of probabilities and I hereby dismiss the same. Taking into account the circumstances of this case, each party to bear own costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 17TH DAY OF JUNE, 2021

B.THURANIRA JADEN

JUDGE