**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIVASHA**

**(CORAM: R. MWONGO, J)**

**HIGH COURT CIVIL APPEAL NO. 61 OF 2017**

**JACKSON MUTHUI MALUKI.....1ST APPELLANT**

**PETER KANYAE MUTUNGA.....2ND APPELLANT**

**VERSUS**

**ATTORNEY GENERAL.....RESPONDENT**

*(Being an appeal from the judgment of Hon R Kitagwa RM delivered on 3rd February, 2017 in CMCC No 32 of 2015)*

**JUDGMENT**

**Background and issues**

1 The brief background of this case is that the appellants were employees of Enashipai Resort and Spa, South Lake, Naivasaha. Whilst at work on Friday, 1st November, 2013, they were separately arrested allegedly on suspicion of being involved in defrauding guests of money. Finally, on 4th November, 2013, they were charged with being in possession of a device peculiar to and used for credit card cloning contrary to section 367(b) of the Penal Code.

2 At the criminal trial, CMCR No 2612 of 2013, the appellants both denied the charges. The trial court declined their application for bail, and directed that they be held at Naivasha Police station until 18th November, as investigations were incomplete. From the proceedings of the criminal court, on 11th November, 2013, both accused were released on bond after police indicated that they had completed investigations.

3 From material on record, the police had received complaints online from thirteen persons, 7 from USA and 6 from the UK, who claimed that they had been defrauded through their credit cards whilst staying at the hotel. A black device had been retrieved by the police, allegedly from the accused persons, and sent by the criminal investigation officers to Nairobi for analysis, but the analysis report had not yet been received.

4 At numerous subsequent mentions of the case, the prosecution indicated its inability to proceed as the report on the device sent for forensic analysis, had not been received by them. Finally, on 5th June 2014, the prosecutor was given a last adjournment to proceed, and the hearing was fixed for 14th August, 2014. On that date, the prosecutor indicated that he was not ready to proceed because the forensic analysis report had not been availed. He then added:

> ***"I have no evidence to tender. I leave the matter to court".***

5 The criminal trial court then acquitted the appellants under section 210 of the CPC on the ground that:

> ***"There being no evidence to tender by prosecution, accused persons are acquitted under Section 210 of the CPC"***

6 Thereafter, appellants filed a civil case in the lower court for damages for false imprisonment and malicious prosecution seeking: general and exemplary damages for false imprisonment and malicious prosecution; for loss of employment opportunities; special damages and interest.

7 After a full hearing, the trial court found that the police had been called by the complainant hotel and had a constitutional and statutory duty to investigate and did so, thus had reasonable and probable cause to take the appellants into custody for investigations; that the appellants were held in custody within constitutional time-lines; that the evidence availed to police justified the prosecution hence there was no malice, bad faith, or ill-will on the part of the police; that the appellants did not tender evidence to show they sought and failed to secure work elsewhere. The trial court therefore dismissed the suit.

8 This appeal seeks to overturn the trial court's determination on nine grounds which may be substantially summarized as follows:

a That the trial court erroneously found that there were reasonable grounds for arrest and prosecution of the appellants hence that there was no malicious prosecution;

b That the trial court wrongly failed to give due weight to the submissions of the appellants

c That the trial court erred in not making a finding that no connection was made between the device allegedly used for the forgery and the appellants;

9 The role of this court in a first appeal is to re-evaluate the evidence and come to its own conclusions as was stated *in* ***Selle & another v Associated Motor Boat Co. Ltd. & Others (1968) EA 123*** in the following words:

> ***"I accept counsel for the respondent's proposition that this court is not bound necessarily to accept the findings of fact by the court below. An appeal to this court from a trial by the High Court is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular this court is not bound necessarily to follow the trial judge's findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanour of a witness is inconsistent with the evidence in the case generally (Abdul Hammed Saif –vs- Ali Mohamed Sholan (1955), 22 E.A.C.A. 270)".***

10 Accordingly, I must review the evidence in the lower court and reach my own conclusions on it, in respect of each of the issues raised.

**Unjustified arrest, false imprisonment Malicious and unlawful prosecution**

*Unlawful or unjustified Arrest*

11 The substantial trial in the lower court was brief.PW1 and PW2 gave evidence on 9/9/2016 and closed the plaintiff's case. There was no appearance for the defendant. On 30/9/2016 there was a mention and again there was no appearance for the defence. The plaintiff's indicated they had filed their submissions, and the court fixed the judgment date on 28/10/2016, although it was delivered on 3/2/2017.

12 At the hearing, PW1, Jackson Maluki, adopted his witness statement dated 24/11/2014. He stated that he was a steward in Enashipai Resort. On the material day he was cleaning the rooms in block 5 and was asked to extend his shift to 7.00pm. he was then called by then executive housekeeper. In her office he met the General Manager and two people who introduced themselves as CID police officers. The officers said they wanted to interview him, confiscated his cellphone, and led him to the changing room where he handed over his wallet, ATM card, money, lighting card and then took him back to the manager's office.

13 There, the manager gave the police a black device which they said they would investigate and informed him he was involved in a cartel involved in irregular money transactions; and that he was using the black device to defraud hotel guests; They then arrested him and took him to Karagita police station, and was thereafter charged with the offence. Since his acquittal, he said, he had not been able to get a job.

14 Peter Mutunga, PW2, also testified and adopted his witness statement. On the material day, he reported to work at Enashipai Resort for the 11.00pm shift. On arrival, the General manager came with two men who arrested him. He was not informed as to the reason for his arrest, and they took his mobile phone. He said he was kept in custody up to 11th November, 2013; his house was searched; his bank details, visa cards, driving licence, bank statements and other documents taken; and he was generally mistreated in the cells with no change of clothes, no bath and poor hygiene conditions.

15 PW2 also stated that he was thereafter rendered jobless and not able to take care of his family; further, that he lost job opportunities despite being the breadwinner for the family; and that he underwent a wholly unnecessary trial where he was acquitted after the prosecution admitted they had no evidence.

16 The state filed a defence and list of documents, including: the charge sheet in the criminal trial; the investigation diary; the statement of the operations manager of the Enashipai Resort; letter dated 17th November, 2014, from the DCIO Naivasha to the National Police Service seeking analysis of an electronic device forwarded to the Director CID; and some email complaints from customers of the hotel concerning credit card fraud. However, the defence did not avail any witnesses to tender evidence at the hearing.

17 The first question is whether the arrest was unlawful or justified. As a general rule an arrest of a suspect should not be made unless and until his or her case has been investigated and the arresting officer believes there are reasonable grounds for suspecting that the suspect has committed an offence. This is the minimum statutory criteria set out under S**ection 29 of the Criminal Procedure Code. The provision** gives power to a police officer to make an arrest without warrant in the following terms:

***"29. A police officer may, without an order from a magistrate and without a warrant, arrest—***

***(a) any person whom he suspects upon reasonable grounds of having committed a cognizable offence;…"***

**Section 58 of the National Police Service Act** gives a police officer power to arrest without warrant in exactly the same terms as section 29 CPC.

18 In **Daniel Waweru Njoroge & 17 Others v Attorney [2015] eKLR** the court described a false arrest as follows:

> ***"False arrest which is a civil wrong consists of an unlawful restraint of an individual's personal liberty or freedom of movement by another person purporting to act according to the law. The term false arrest is sometimes used interchangeably with the tort of false imprisonment, and a false arrest is one method of committing a false imprisonment. A false arrest must be perpetuated by one who asserts that he or she is acting pursuant to legal authority, whereas a false imprisonment is any unlawful confinement. Thus, where a police officer arrests a person without probable cause or reasonable basis, the officer is said to have committed a tort of false arrest and confinement. Thus, false imprisonment may be defined as an act of the defendant which causes the unlawful confinement of the plaintiff. False imprisonment is an intentional tort."***

*19* Thus, a false arrest will depend on the reasonableness of the suspicion of the police officer. H*aving a 'reasonable suspicion' presupposes the existence of facts or information which would justify an objective observer to consider that the person concerned may have committed the offence. What may be regarded as 'reasonable' will, as earlier noted, depend upon all the circumstances.*

20 In **Anthony Njenga Mbuti & 5 others v Attorney General & 3 others [2015] eKLR,** the petitioners were arrested and brought to court without any charges. They were bonded for various amounts to keep the peace. Most were unable to raise the bonds and were remanded. The trial proceedings were subsequently nullified by the High Court. Not all petitioners weret offered an explanation for their arrest, and that in some cases, no entries were made with regard to their arrest in the Occurrence Book; further, the duty officer stated that the arrested person was not being charged with any offence; and only that the arrest was in connection with investigations into a robbery/burglary. Mumbi J held concerning the arrests**:**

> ***"That the conduct by law enforcement officers profiling suspects on mere suspicion, arresting and detaining them with no evidence of crime committed is arbitrary and discriminatory guaranteed in our constitution."***

21 Looking at the circumstances in the present case, from the documents and investigation diary annexed to the defence and also in the record of appeal at pages 35-44, I observe the following. It is clear that the Enashipai hotel had been receiving complaints from its guests as far back as June, 2013, who complained about being defrauded through their credit cards. However, the first report to the police was made on 30th October, 2013. The following day the police visited the hotel and made the arrest as recounted by the appellants. Did the police have reasonable grounds to suspect that the appellants had committed a cognizable offence?

22 From the investigation diary, the police had recorded the complaint of the manager of the hotel on 30th October, 2013. The police officers responded to the complaint and visited the hotel. According to PW1's uncontested evidence, the police came to the hotel on 1st November, 2013. They held a discussion with PW1 in the presence of the complainant's general manager, following which they told him they needed to interview him for some days. He was told that his mpesa account had been investigated and found to have many money-lending transactions. He was arrested and taken to the cells. The following day he was taken back to the general manager's office where, according to him, the gadget suspected to have been used to defraud the guests was found and handed over by the general manager to the police.

23 The overall evidence shows that with regard to 1st Appellant, PW1, there were grounds for reasonably suspecting him of having committed a cognizable offence and hence his arrest and the subsequent charges. I thus find from the evidence that his arrest was not unlawful, in the sense that he was arrested following an engagement and in order to answer to the complaint.

24 With regard to PW2, the 2nd appellant, the position is rather different. His uncontested evidence was that on the night of 1st November, 2013, he was on the night shift at work at 11.00pm. Whilst at work, he was arrested by the police officers who came with the general manager; he said that he was not told why he was arrested, and on the way to the police station he was asked if he had a fleet of matatus. There appears to have been no interview or questioning prior to his arrest. Thus no basis for suspicion of his having committed a crime can be imputed from the facts on record. I therefore find that the arrest of the 2nd appellant cannot be said to have reasonably been based on a suspicion involving the 2nd appellant, and the arrest was hence unlawful.

*False Imprisonment*

25 After their arrests, the appellants were presented in court on Monday 4th November 2013. In the plaint at paragraphs 4 and 6, the appellants asserted that they were *"placed in custody from 1st November to 11th November, 2013,"* and, and that their *"false imprisonment and prosecution was founded on malice and bad faith on the part of the defendant"*

26 The record of proceedings in the criminal trial (pages 23-30 record of appeal) shows that the appellants were charged with having in possession an electronic device for forgery contrary to section 367(b) of the Penal Code. The particulars were that the accused on 1st November, 2013, at Enashipai Resort Naivasha jointly had in possession an electronic device peculiar to and used for credit card cloning. An offence under section 367(b) is stated to be a felony and the offender is liable to imprisonment for seven years.

27 When the matter came up in court for plea, both appellants pleaded not guilty and applied to be released on bail. After hearing and duly

considering the application and the circumstances, the trial magistrate determined that it was necessary to grant the prosecution more time to conduct their investigation. He ruled that the accused persons be held at Naivasha Police Station until the next mention.

*28* Was the trial court entitled to make that determination? **Article 49(2)** of the Constitution provides that*:*

> ***'a person shall not be remanded into custody for an offence if the offence is punishable by a fine only or by imprisonment for not more than six months.'***

29 Accordingly, the trial court was constitutionally entitled to make a determination remanding the accused persons into custody. Given that the trial magistrate's ruling was a judicial act, and that there was no appeal or revision of the decision, I am of the view that the period spent in custody was pursuant to and in accordance with the lawful determination and cannot be treated as false imprisonment.

30 A similar position was held by this court in **Bobby Macharia v AG & 3 Others v The Attorney General & 3 Others [2018] eKLR** where the following was found:

> ***"In his prayers at paragraph b) Macharia has sought general damages for false imprisonment. He goes as far as to state that his denial by the court of bail and his being held in custody until the conclusion of his case on 17th November, 2005, amounted to unlawful detention. I think that is stretching the argument on unlawful detention too far. The refusal of a court to grant bail is an action of the court's judgment, challengeable only by way of appeal. That is, the court having considered the application for bail and all the circumstances of the case, may allow or disallow bail. This is a decision that is subject to appeal, and there is no evidence that Macharia preferred an appeal. From that point when the court made its decision, the detention was made lawful by the court, and cannot be the subject of a false imprisonment claim, except if fraud, bribery or collusion were alleged or shown.***
>
> **……**
>
> ***Accordingly, I must make a finding that the unlawfulness of Macharia's detention before arraignment was subjected to judicial scrutiny, and no appeal therefrom was raised. Accordingly, I am unable to hold, in the circumstances of this case, that he was unlawfully detained for an unreasonable period which has not been explained or otherwise legally justified."*** (emphasis added).

31 In considering the present case, I have no reason to depart from the aforesaid position, and am unable to agree that either appellant was falsely imprisoned.

*Malicious prosecution*

32 In their submissions, the appellants stated that: the appellants in their evidence stated that they did know the source and use of the gadget that was the subject matter of the charge; that the gadget with unknown nature was allegedly taken for examination and it was never determined what the gadget was or was for; that in the preliminary investigations they were never linked to the device; that for the prosecution to have had reasonable grounds for charging the accused persons, the appellants must have had the alleged device in their possession and the said device must have been proved through expert analysis. Accordingly, the appellants impugn the decision of the trial court in this case for not finding in their favour despite the absence of any evidence by the defendants/respondent at trial.

33 The appellants in the lower court had relied on the case of **Chrispine Otieno Caleb v Attorney General [2014] eKLR** where the court (Odunga, J) stated:

> ***"[T]he law is clear that the mere fact that a person has been acquitted of the criminal charge does not necessarily connote malice on the part of the prosecutor. As was held in James Karuga Kiiru vs. Joseph Mwamburi and 3 Others, Nrb C.A No. 171 of 2000, to prosecute a person is not prima facie tortuous, but to do so dishonestly or unreasonably is the burden of proving that the prosecutor did not act honestly or reasonably being (sic) on the person prosecuted. Malice, however, can either be express or can be gathered from the circumstances surrounding the prosecution. A prosecution can either be mounted based on an offence committed in the presence of law enforcement officers or by way of a complaint lodged by a person to the said officers or agencies. However, the mere fact that a complaint is lodged does not justify the institution of a criminal prosecution. 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. I say ordinarily because the mere fact that the version of one of the parties is not considered does not make the subsequent prosecution malicious. However, 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 purposes of malicious prosecution. On the other hand it would be obviously absurd to make a defendant liable because matters of which he was not aware put a different complexion upon facts, which in themselves appeared a good case for 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. It is not required of any prosecutor that he must have tested every possible relevant fact before he takes action. His duty is not to ascertain whether there is a defence, but whether there is a reasonable and probable case for a prosecution. Circumstances may exist in which it is right before charging a man with misconduct to ask for an explanation but no general rule can be laid down. In the present case as already held hereinabove the circumstances from which the court can deduce that the arrest and arraignment of the plaintiff was probably justified have not been disclosed to the court.***

34 In **Gitau v. Attorney General [1990] KLR 13**,**Trainor, J** had this to say:

> ***"To succeed on a claim for malicious prosecution the plaintiff must first establish that the defendant or his agent set the law in motion against him on a criminal charge. Setting the law in motion" in this context has not the meaning frequently attributed to it of having a police officer take action, such as effecting arrest. It means being actively instrumental in causing a person with some judicial authority to take action that involves the plaintiff in a criminal charge against another before a magistrate. Secondly he who sets the law in motion must have done so without reasonable and probable cause…The responsibility for setting the law in motion rests entirely on the Officer-in-Charge of the police station. If the said officer believed what the witnesses told him then he was justified in acting as he did, and the court is not satisfied that the plaintiff has established that he did not believe them or alternatively, that he proceeded recklessly and indifferently as to whether there were genuine grounds for prosecuting the plaintiff or not. The Court does not consider that the plaintiff has established animus malus, improper and indirect motives, against the witness".***

35 In the present case, as there was no participation by the respondent in the hearing in the lower court, there is no explanation as to why when the prosecution was given time to complete their investigations, they did not do so. The criminal trial court record shows that the trial magistrate lawfully denied bail and ruled:

> ***"In this case it is clear that the police are not through with their investigations. They had 24 hours to avail the accused in court. they have given details of the circumstances surrounding the charges and what they need the accused for.***
>
> ***I find it necessary to grant them the application which will facilitate meeting the ends of justice, the accused will therefore be held at Naivasha Police station till 18th of this month. Mention then".***

36 As earlier stated, the appellants were released on bond on 11th November. However, from that date until the conclusion of the case, the prosecution did not conclude their investigations. Yet they continued with the case for another nine months until 14th August 2014 on the excuse that they were waiting for a forensic analysis report on the device.

37 Finally, when the prosecution was given a last adjournment it failed to proceed with the case. Instead of seeking to enter a nolle prosequi under section 82(1) CPC or withdrawal under section 87(a) CPC in both of which instances the discharge by the court would not operate as a bar to subsequent proceedings, the prosecutor, admitted as follows:

> ***"I have <u>no evidence</u> to tender, I leave the matter to court"***

38 Naturally, the trial court then acquitted the appellants under section 210 of the CPC which provides that:

> ***"If at the close of the evidence in support of the charge, and after hearing such summing up, submission or argument as the prosecutor and the accused person or his advocate may wish to put forward, it appears to the court that a case is not made out against the accused person sufficiently to require him to make a defence, the court shall dismiss the case and shall forthwith acquit him."***

39 The acquittal in this case was based on utter absence of evidence. In short the prosecution was admitting it had no basis for the case. In **James Karuga Kiiru v Joseph Mwamburi and 3 Others, Nrb C.A No. 171 of 2000,** it was held that:

> ***"To prosecute a person is not prima facie tortuous, but to do so dishonestly or unreasonably is. And the burden of proving that the prosecutor did not act honestly or reasonably lies on the person prosecuted."***

40 I agree with the respondents in their submissions that, as stated by Kariuki, J in **Susan Mutheu Muia v Joseph Makau Mutua [2018] eKLR:**

> ***"to succeed in a claim for malicious prosecution the plaintiff must prove/establish the following ingredients of the tort i.e.***
>
> ***a) That the prosecution was instituted by the defendant or by someone for whose acts he is responsible.***
>
> ***b) That the prosecution was instituted without reasonable and probable cause.***
>
> ***c) That the prosecution was actuated by malice.***
>
> ***d) That the prosecution was terminated in the plaintiffs favour."***

41 In **Stephen Gachau Githaiga & another v Attorney General [2015] eKLR** it was held that:

> ***"The third element which must be proven by a plaintiff — absence of reasonable and probable cause to commence <u>or continue the prosecution</u> — further delineates the scope of potential plaintiffs. As a matter of policy, if reasonable and probable cause existed at the time the prosecutor commenced or continued the criminal proceeding in question, the proceeding must be taken to have been properly instituted, regardless of the fact that it ultimately terminated in favour of the accused."***

42 In this case, there is no contest regarding items a) and d). Whilst I have found that there was no false imprisonment of the accused appellants, I am constrained to find that their continued prosecution was actuated by unreasonableness and unfairness which imputes

improper motive, spite or ill will on the part of the prosecution. I so find, and to this extent, the trial court's determination is set aside.

*General and Exemplary Damages*

43 Having found as I have, I must now deal with the question of damages for malicious prosecution for both appellants, and damages for 2nd appellant for his unlawful arrest. The particulars of damages were set out in the plaint as follows:

a General and Exemplary damages for false imprisonment and malicious prosecution

b General and Exemplary damages for loss of employment opportunities

c Special damages of Kshs 60,000/-

d Interest on a) b) and c) at court rates.

44 In their submissions in the lower court, the appellants sought general damages for false imprisonment and malicious prosecution jointly and severally at Kshs 2,500,000/-, and exemplary damages of Kshs 800,000/-. He relied on the **Chrispine Caleb Otieno** case where Odunga J made awards of 2,000,000 and 500,000 respectively for general and exemplary damages. The court there said:

> ***"With respect to punitive or exemplary damages in Bank of Baroda (Kenya) Limited vs. Timwood Products Ltd Civil Appeal No. 132 of 2001, the Court of Appeal citing Obongo & Another vs. Municipal Council of Kisumu [1971] EA 91 and Rookes vs. Banard & Others [1964] AC 1129 held that in Kenya punitive or exemplary damages are awardable only under two circumstances, namely (i) where there is oppressive, arbitrary or unconstitutional action by the servants of the government; and (ii) where the defendant's action was calculated to procure him some benefit, not necessarily financial, at the expense of the plaintiff.***
>
> ***On general damages, in Thomas Mboya Oluoch & Another vs. Lucy Muthoni Stephen & Another (supra) the plaintiffs were in 2005 awarded Kshs 500,000.00 each general damages for malicious prosecution. In Crispus Karanja Njogu vs. The Attorney General [2008] KLR Waweru, J on 1st February 2008 awarded the plaintiff, whose substantive office was Assistant Registrar though was Acting Senior Assistant Registrar in the Examinations Section of Kenyatta University, the second defendant, Kshs 800,000.00 general damages for malicious prosecution. In Thomas Mutsotso Bisembe vs. Commissioner of Police & Another [2013] eKLR, this Court awarded the plaintiff Kshs 800,000.00 for general damages for malicious prosecution on 7th February, 2013."***

45 In the present case there was no evidence of arbitrary oppressive or unconstitutional action by the respondents to warrant exemplary damages, and I will grant none.

46 As for general damages, I find that the undisturbed award of Kshs 300.000/- general damages in the case of **Stephen Gachau Githaiga (supra)** is more comparable to the circumstances of this case, compared to **Chrispine Caleb Otieno's** case. I award each appellant damages of 300,000/- for malicious prosecution in that the prosecution continued to prosecute the case against the appellants and then finally admitted that they had no evidence to tender.

*Special damages*

47 In his evidence the 1st appellant stated that he had to hire a lawyer, Ngala Mulonza, and produced a receipt from the advocate, a copy of which is at page 19 record of appeal, for Kshs 40,000/-. The 2nd appellant proved special damages of Kshs 11,000/- being legal fees for his lawyer David Gichuki. I award these special damages.

*Damages loss of employment opportunities*

48 As for damages for loss under this head, the 1st appellant did not avail any evidence at all of loss of employment opportunities. On his part, the 2nd appellant stated that whenever he got a job, and reference was sought from his former employer, he would lose the opportunity. He stated that, for example, he got a job from Geotechniques Engineering Ltd, but when a reference was made to his previous employer, they said that he was a thief and he lost the job. However, the 2nd appellant did not provide any proof of these allegations, or of the employment allegedly offered then turned down.

49 Accordingly, I am unable to make any award under this head.

**Disposition**

50 In light of the foregoing, the trial court's judgment is hereby set aside., and substituted with an award as follows:

a General damages for malicious prosecution for 1st appellant Kshs 300,000.00

b General damages for unlawful arrest and malicious

| | |
|---|---|
| prosecution for 2nd appellant | Ksh 400,000.00 |
| c Exemplary damages | Nil |
| d Damages for loss of employment opportunities | Nil |
| e Special damages ( Kshs 40,000 + 11,000/-) | Kshs 51,000.00 |
| **Total** | **Kshs 751,000.00** |

51 Interest shall accrue on the damages at court rates from the date of this judgment.

52 Each party shall bear its own costs of the suit in the lower court.

53 The respondent shall bear the costs of the appeal.

**Administrative directions**

54 Due to the current inhibitions on movement nationally, and in keeping with social distancing requirements decreed by the state due to the Corona-virus pandemic, this Judgment has been rendered through Zoom/Teams video/tele-conference with the consent of the parties noted hereunder, who were also able to participate in the conference. Accordingly, a signed copy of this judgment shall be scanned and availed to the parties and relevant authorities as evidence of the delivery thereof, with the High Court seal duly affixed thereon by the Deputy Registrar/Executive Officer, Naivasha.

55 A printout of the parties' written consent to the delivery of this judgment shall be retained as part of the record of the Court.

56 Orders accordingly

**Dated and Delivered via videoconference at Nairobi this 2nd Day of July, 2020**

**RICHARD MWONGO**

**JUDGE**

Delivered by video-conference in the presence of:

1 Mr Olonde for the Appellant

2 Ms Cheruiyot for the AG for the Respondents

3 Court Clerk - Quinter Ogutu