



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KITUI**

**CIVIL APPEAL NO. 33 OF 2017**

**MULI MUTUA MUTAULA.....APPELLANT**

**VERSUS**

**FRANCIS MULATYA KIEMA.....RESPONDENT**

*(Being an appeal from the original Judgment in **Kitui Principal Magistrate's Court Civil Case No. 65 of 1998** by **Hon. N. Ithiga P M** on 13/07/00)*

**J U D G M E N T**

1. **Muli Mutua Mutaula**, the Appellant herein sued the Respondent, **Francis Mulatya Kiema** seeking special damages in the sum of **Kshs. 29,000/=** General Damages for false imprisonment, costs and interest. The Respondent denied liability and defended the claim. The trial Court heard the case, analyzed evidence adduced and reached a finding in favour of the Respondent. The claim was dismissed with costs.

2. Aggrieved by the decision of the Court the Appellant appealed on grounds that the Respondent caused his arrest and consequent false imprisonment that was wrongful and malicious; and the learned trial Magistrate failed to interpret the law correctly in reaching his decision.

3. Directions in the matter were given by **Ogolla J**, where parties were required to canvass the Appeal by way of written submissions. Only the Respondent filed submissions. ]

4. The duty of this Court is to reconsider the matter and reach its own conclusion (**See Selle vs. Associated Motor Boat Company LTD (1968) EA 123**).

5. Regarding the claim for Special Damages, it is trite that a claim for special damages must not only be pleaded but must be strictly proved. The Appellant in his plaint dated the **12<sup>th</sup>** day of **February, 1998** pleaded the sum claimed but he did not adduce any documentary evidence to support the claim. Therefore the claim was not strictly proved.

6. On the question of false imprisonment, it is not in dispute that the Respondent made a report of arson to the police. Procedurally, the police commenced investigations that culminated into the arrest of the Appellant. The offence was committed within **Kitui** area therefore having been arrested in **Mombasa** he was moved to **Kitui** where further investigations were carried out and he was released without being charged. Evidence adduced was that the Appellant was mentioned by four (4) other suspects who were already in police custody. His detention per evidence adduced was necessary so as to be transferred to **Kitui**. The allegation that he was detained following insistence by the Respondent was not proved. It was not insinuated that he was threatened prior to being arrested. From the foregoing and having not prosecuted the Appeal the allegations raised stand unproven. In the premises the Appeal fails. Accordingly, it is dismissed with costs to the Respondent.

7. It is so ordered.

**Dated, Signed and Delivered at Kitui this 10<sup>th</sup> day of April, 2018.**

**L. N. MUTENDE**

**JUDGE**