



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CIVIL APPEAL NO.36 OF 2005

MEEME M'MUNORU.....APPELLANT

VS

STEPHEN KARUTI.....1ST RESPONDENT

SAMSON KOOME.....2ND RESPONDENT

ATTORNEY GENERAL.....3RD RESPONDENT

RULING

The appellant Meeme M'Munoru preferred this appeal from the judgement of Hon Nyaga PM (as he then was) dated 28th April 2005 in Maua SRMCC No.118 of 2001 on the following grounds.

1. The Learned Trial Magistrate erred in Law in dismissing the Appellants claim against the 1st and 2nd Respondents even where there was evidence that his arrest and detention was occasioned by the unfounded report of the 1st and 2nd Respondent to the Administration police and which report led to the Appellant incarceration in the police cells for three (3) days and the subsequent charge which charge was rejected by court.
2. The Learned Trial Magistrate erred in law in failing to address the appellant's case against the 3rd Respondent yet there was already an interlocutory judgment on record against the 3rd Respondent and all that remained was assessment of damages payable to the Appellant.
3. The Learned Trial Magistrate failed to consider the Appellants Advocate submissions.
4. The Judgement of the Learned Trial Magistrate was against the weight of evidence.

Reasons wherefore the appellant prayed that judgment of the trial court be set aside with costs of appeal & costs in the lower court and that the court do assess damages payable to the appellant.

The appeal was admitted for hearing on 18th October 2012 and directions taken that Records of Appeal be filed and served and the appeal be heard by way of written submissions.

The appellant filed submissions citing the law and authorities in support of the appeal that conditions set to be satisfied in order for a plaintiff to succeed in the test of malicious prosecution have been met.

1. The authorities of cited are Music copyright of Kenya vs Tom Odhiambo Ogowi [2014]eKLR and Mbowa vs East Menjo District Administration [1972] EA 352.
2. James Karuga Kiiru vs Joseph Mwamburi & 3 others
3. Thomas Mboya Oluoch & Another v Lucy Muthoni Stephen & Another [2005] eKLR
4. Sammy Kiprotich Tanguo vs The AG [2015] eKLR
5. Dr. Will Kaberuka vs A T Kampala HCCS No. 160 of 1993.

The appellant argued that judgement by the trial magistrate was against weight of the evidence and urged that the appeal be upheld and the decision of the trial court be overruled. The Respondents counsel didn't file any submissions.

Ingredients of malicious prosecution.

1. Criminal Proceedings must have been instituted by the defendant.
2. The defendant must have acted without reasonable or probable cause i.e there must have been no facts, which on reasonable grounds, the defendants genuinely thought that, the Criminal proceedings were justified.
3. The defendant must have acted maliciously instituting criminal proceedings with an improper and wrongful motive, i.e with an intent to use the legal process in question for some other reason other than its legally appointed and appropriate purpose;
4. The Criminal proceedings must have been terminated in the plaintiffs favour.

The plaintiff has to prove that the 4 essential ingredients have been fulfilled that he suffered damage.

The appellant was discharged under section 89(5) of the Criminal procedure code and not acquitted as he claims in his grounds of appeal and submissions and therefore one of the ingredients of malicious prosecution tat criminal proceedings must have been terminated in favour of plaintiff as held by Justice Majanja in the case of Music Copyright Society of Kenya vs Tom Odhiambo Ogowi [2014] eKLR and Mbowa vs East Meno District Administration[1972] EA 352 has not been established and the trial magistrate at paragraph 2 of page 2 of the judgement has discussed that.

The 1st Respondent and the appellant had a boundary dispute. The boundary was established at the instance of the Akirangondu Land Adjudication Section Committee under, the chairmanship of 2nd Respondent.

The appellant uprooted the boundary that had been established and 1st Respondent caused appellant to be arrested. I do find there was reasonable and probable cause. The appellant does not deny he uprooted 1st Respondents fence. He infact went immediately to lands office after uprooting fence and he was arrested by Administration police officers.

A discharge under S.89 (5) C.P.C is not on acquittal. Appellant was not discharged because he didn't commit offence of interfering with boundary features but because according to trial magistrate S. 33 of Land Adjudication Section was misinterpreted.

From the judgment of the lower court, it is indicated that when appellant was discharged under Section 89 (5) C.P.C both the appellant and 1st Respondent were referred back to lands office and land was reinstated to 1st Respondent and he fenced it and that the appellant had not interfered with it again up to the time the claim in lower court was concluded.

I do find that appellants appeal is perpetuating a claim that was long settled by the land Adjudication officer after the criminal charges were removed from court.

This appeal cannot succeed. The same is dismissed with no orders also costs as it appears the Respondents didn't respond to the appeal or file submissions.

HON. A.ONG'INJO

JUDGE

RULING, DELIVERED, DATED AND SIGNED IN COURT IN

10TH MAY 2018.

In the presence of:

C/A:

Appellant: Mr Muigai Advocate

Respondent: Mr Kiogora Advocate -N/A

HON. A.ONG'INJO

JUDGE