



REPUBLIC OF KENYA

High Court at Bungoma

Civil Appeal 5 of 2008

WASHINGTON OTWANE.....APPELLANT

~VERSUS~

B.A.T. (KENYA) LIMITED.....1ST RESPONDENT

ATTORNEY GENERAL.....2ND RESPONDENT

(Being appeal from the judgment and decree of the Resident Magistrate Hon. P. Achieng at Bungoma in Civil Case no.52 of 2006)

JUDGMENT

The Appellant sued the Respondents for general and special damages for defamation, unlawful arrest, false imprisonment and malicious prosecution. The suit was, following hearing, dismissed with costs by the subordinate court. This appeal was filed to challenge the judgment and decree of the court.

Counsel agreed to file written submissions which I have considered.

It is appreciated that this is the first appellate court whose responsibility is to subject the entire evidence before the subordinate to fresh and exhaustive scrutiny to determine whether the conclusions of the court were supported by the evidence (**Peters v. Sunday Post Ltd [1958] EA 424**). It is also borne in mind that this court did not have the advantage of seeing or hearing the witnesses.

The record shows that the Appellant testified. The defence called one witness, Benard Oluoch Rachieng, who was an employee of the 1st Respondent. The 2nd Respondent did not call any evidence. The Appellant's evidence was that he was a tobacco farmer who had on 30/9/2002 entered into a contract with Mastermind Tobacco (K) Ltd. On 8/5/2003 he had seven bales of tobacco at a road waiting for them to be collected by Mastermind. Police came here in BAT vehicle in which Bernard was. He was arrested and taken to Malakisi Police Station where he was charged with entering into sponsorship with more than one sponsor contrary to rule 17 (1) of the Crop Production and Livestock (Tobacco Growing and Marketing) Rules, 1994 of the Crop Production and Livestock Act, Cap 321. He was acquitted following several adjournments during which the prosecution did not call any witness.

Benard gave evidence that he was going round in Amukura/Malakisi inspecting tobacco when he found the Appellant with 6 to 7 bales of tobacco in bags marked "BAT Kenya". The Appellant told him that the tobacco belonged to Mastermind. The Appellant was a farmer contracted to the 1st Respondent. The Police arrested the Appellant whom they took to Malakisi Police Station. Benard came along as did personnel from Mastermind who claimed the Appellant was contracted to them and that this

was their tobacco. Bernard left the police to sort out the dispute and went back to his work. He was not contacted after that and did not know that the police had proceeded to charge the Appellant. He did not record any statement to the police.

It was evident that between 1987 and 2002 the Appellant was contracted to the 1st Respondent. He testified that he would enter into annual contracts with the firm, the last one being on 15/11/2001. The contract expired in 2002 and was not renewed. It is clear from the contract signed between the Appellant and the 1st Respondent on 18/12/2001 that it was supposed to be terminated by either party giving the other six months notice provided the Appellant did not have any outstanding loans. The contract included a provision that the 1st Respondent would provide all inputs and technical services that the Appellant would require during the season. The Appellant stated that he had verbally terminated the contract with the 1st Respondent and that from 2002 onwards he was contracted to Mastermind.

The evidence of Benard was that the contract between a farmer and his company lasted one season in a year. If the farmer wished to renew the contract he would do so. If a farmer continued to receive inputs from the company he was deemed to be still holding a contract with the company. The Appellant produced a statement of account (Exhibit 3) showing he owed the 1st Respondent money. Exhibit 3 shows that up to 22/1/2003 the Appellant received inputs from the 1st Respondent and owed them Ksh.84/43.

The Appellant was arrested on 8/5/2003. The evidence by Benard that four months earlier he had received inputs from the 1st Respondent was not challenged. And so was the evidence that he owed money to the 1st Respondent and that the bales he was found with were marked "BAT Kenya." There were sufficient grounds for Benard to consider that the Appellant was their contracted farmer and that the tobacco he had belonged to them. The evidence is clear that the Appellant was taking the tobacco to Mastermind. I find that there were reasonable grounds for the arrest, detention and prosecution of the Appellant. It was an offence to enter into sponsorship with more than one sponsor for which the Appellant was liable to be charged. That the police failed to extract a statement from Benard and call him to testify in the case was an act of negligence on their part, but that had nothing to do with the fact that there was reasonable basis to charge the Appellant. The arrest, detention and subsequent prosecution of the Appellant were not actions based on malice but founded on the desire to promote the law.

The claim that the Appellant was defamed had no merit given the facts, and, in any case, it was brought after 12 months. It was time-barred.

I accept the findings by the lower court and therefore dismiss the appeal with costs.

Dated, signed and delivered at Bungoma this 2nd day of October, 2012.

A. O. MUCHELULE

JUDGE