



**Republic of Kenya**

**High Court, at Nairobi**

**HCC No 3016 of 1984**

**Kariuki**

**versus**

**Ochola**

**Cases**

**Nguliunga v A G [1979] E A P 1**

**Statutes**

**Government Proceedings Act (cap 40 Laws of Kenya).**

November 19, 1985, Shaikh Amin J delivered the following

**Judgment.**

In this action, the plaintiff a hawker & shoe-repairman, has instituted an action on November 2, 1984 against the 1st defendant a police corporal, the 2nd defendant a police constable and the Attorney General in accordance and in conformity with the provisions of the Government Proceedings Act (cap 40 Laws of Kenya).

The plaintiff in his plaint claims against the defendants damages for wrongful and unlawful arrest and false imprisonment when he was arrested on December 9, 1983 and kept in custody from December 9, 1983 to December 21, 1983.

He was at first kept at Kiambu police cells and later at Narok police cells till his release on the December 21, 1983. An interlocutory judgment having been entered against the defendants on May 24, 1985 in default of appearance of the defendants the case now listed before me is for the assessment of general damages and special damages only.

The plaintiff Danson N Kariuki gave evidence and testified that previously he was working as a police constable and later retired. He was on the date material to this case working as a Hawker in a Nairobi street repairing shoes and is issued with a licence by the Nairobi City Council for this purpose.

He was, he testified earning approximately Kshs 80 per day for a working day. He was arrested on December 9, 1983 and was kept in custody till December 16, 1983 i e 7 days and from December 16 to December 21, 1993 at Narok – 5 days in all -12 days.

He was then given a P 22 to report on January 2, 1984. It was then extended to June 10 1984. When he

reported on January 10, 1984 was told that there was no case to answer against him and he was free to leave. He then left the police station. He claims general damages for his wrongful arrest. The plaintiff also claims Kshs 160 for travelling expenses and also Kshs 1,200 for loss of profit and Kshs 240 lodging and boarding when attending the police demands at Narok.

Mr Njau has cited for my guidance the decision made in *Nguliunga v A G* [1979] E A P 1 where Kshs 40,000 were awarded as damages for a detention of a period of 21 days. I consider this decision relevant to the claim now before me. Mr Ole Keiwa for the defendants submitted that the above decision is distinguishable as the detention was for 21 days and the plaintiff was a supervisor who was also assaulted. Damages should be less than half.

I have carefully considered and evaluated all the evidence before me and the address of the learned counsel for the plaintiff and learned counsel for the defence. The plaintiff was arrested on December 9, 1983 and kept at custody in Kiambu police station cells for 9 days and later was transported to Narok and kept in custody for another 5 days making in all 12 days of custody. He was later served a P 22 form.

He denied the allegation made against him; that he had failed to report an accident. No bona fide explanation is offered by the defendants as to their source of information and/or their reason for this action.

It is not in dispute that the plaintiff was kept in custody in police cells for 12 days without allowing him an opportunity to be brought before the court. No charges were preferred.

No reason was given for this, unlawful and unusual action. It appears that for those 12 days he was detained unlawfully and the ingredients of false imprisonment are proved. In fact these are not contested and I have considered these facts with a view to arrive at a just and proper assessment of damages.

There is no suggestion of any physical force being used and the plaintiff quite fairly also told the court that he was provided adequate food for these days of detention in the police custody.

This is a most serious matter and no amount of damages awarded are sufficient in my view, to fully compensate the unlawful detention and imprisonment of a peaceful subject.

Whether such a person is a rich or poor man or whatever station he occupies in society are matters which are strictly irrelevant to the gravity of the unlawful action. Taking all the circumstances into consideration I assess the damages for unlawful arrest and false imprisonment at Kshs 25,000. The plaintiff must also recover the amount spent by him and out of pocket expenses incurred by him for reason of his arrest as special damages. These amounts to Kshs 1,380 (and not Kshs 1,600 as claimed) I therefore enter judgment for the plaintiff in the sum of Kshs 25,000 as general Damages plus Kshs 1,380 as special damages against the defendants jointly and severally.

The plaintiff must have his costs and interest at court rates on the amount of general damages awarded from today's date. He must also have costs and interest on the amount awarded as special damages at court rates from the date of the filing of the court action.

Delivered on the **November 19, 1985**

**Shaikh Amin J**