

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA NAIROBI**  
**CIVIL APPELLATE DIVISION**  
**HCCA E1149 OF 2024**

**WILLIAM RASOWO .....1<sup>ST</sup> APPELLANT**

**VERSUS**

**QUICK MART SUPERMARKET CO LTD..... RESPONDENT**

*(Being an appeal against the judgment of Hon C K Cheptoo entered on 27<sup>th</sup> day of September in Nairobi Case No. MCCC E165/2022*

**JUDGMENT**

1. This is a case where the Appellant went to buy some items in a supermarket and upon payment, the alarm signifying presence of goods that had not been paid for went off just after leaving the pay point of the supermarket. The guards quickly approached him and had him subjected to a search in order to confirm if indeed he had stolen from the supermarket or not. This man was found not to have stolen from the supermarket. It is noteworthy that the alarm is a security measure used by many supermarket outlets in order to safeguard them against pilferages. The lower court found that the element of defamation had not been proved and so the case was dismissed. I have read the evidence on record and wish to note the following;

## **The alarm;**

- 2.** As I said above, the normal reaction when an alarm goes off at the exit of a supermarket, is that there is a reasonable believe that someone is carrying unpaid goods or rather is stealing goods from the supermarket. The version that the alarm could be faulty is only well understood by the management of the supermarket and not bystanders or fellow shoppers. In fact, even a person where an alarm goes off for in a supermarket worries, doubts if he had by accident carried items he did not pay for in one of his pockets which he rarely uses. The situation was made worse when the employees of the supermarket searched the appellant because in one way or another, they believed that the Appellant was a thief and as he was being searched, the onlookers must have watched with curiosity, some perhaps with mouth agape to see the items that the thief had stolen. and who knows, maybe some could have been contemplating to lynch the Appellant- a punishment that is common for those who steal in public.
- 3.** The defence that these alarms, just like normal gadgets fail holds a little water to put off the fire of shame in finding yourself in a situation like that. It I therefore correct to say that from the time the alarm went off until when it was confirmed that the Appellant had not stolen anything, the Appellant was embarrassed and perhaps afraid. He must

have gained a great relief after he was vindicated by a body search. The issue of a faulty alarm can only be a mitigating factor and cannot deny a victim such as the Appellant, the right to be compensated for the ordeal however short it lasted. In fact, if the courts were to rely on the defence of “faulty alarms” as sufficient for a defamation case

4. like this one, then what would prevent owners of such alarms from avoiding repairing them just to save on costs? And again what then would be the reason of using these alarms if their faultless is irrelevant? The alarm is the property of the supermarket and is under its control. This is akin to occupiers’ liability that places responsibility to its owner against third parties visiting their premises and protects them from both embarrassment or accidents. An owner of a property cannot simply eschew liability by saying that its machine was faulty.

### **The general prove of defamation;**

5. I have said it earlier in several cases before that defamation can be proven per se and without calling any third party where the act occurred in public like the case herein. The trial court was not correct in considering that the Appellant did not call a third party.

### **Quantum;**

6. Having established that there is prove of defamation, I now turn to the quantum. The Appellant did not call any witness to prove that the incident caused his employees to leave

him, or how others regarded him as a thief apart from the fact that the act occurred in a supermarket. These witnesses ought to have been called as their reaction was during and after the incident. His alleged church members who shunned him ought to have been called to buttress his case for a higher award. The other issue is that after being searched, the Appellant was vindicated and so those who saw and heard the alarm go off must have left knowing that he was not a thief. If there were those who left before he was searched, then I would be right to say that they did not bother or did not know the Appellant which is a defence of defamation.

7. The conclusion of the above is that defamation has been proven. I have read several authorities and noted that the Appellant was defamed for a short while, subjected to unnecessary search before he was vindicated. Consequently, the lower Court judgement is set aside. I award the Appellant Ksh 10,000. The Respondent shall pay costs of the lower court and this appeal.

**DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 11<sup>TH</sup> DAY OF MARCH 2026.**

**HON L P KASSAN  
JUDGE**

**In the presence of;**

Osoro for Appellant

Achieng holding brief Gitonga for Respondent

Carol - Court Assistant

ORIGINAL