

**REPUBLIC OF KENYA**

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

**CIVIL APPEAL NO. E339 OF 2025**

**YOUNG MEN'S CHRISTIAN ASSOCIATION (KENYA) .....**

**APPELLANT**

**VS.**

**BENSON MATI NJIRU ..... RESPONDENT**

*(Being an appeal from the judgment of Hon. E. Riany  
(PM) delivered on 19th March 2025 and amended on 6<sup>th</sup>  
May 2025*

*in Milimani Civil Case No. E445 of 2024)*

**JUDGMENT**

**Background**

1. The Respondent was previously an employee of the Appellant. Following the termination of his employment, he instituted a suit for wrongful dismissal before Nakuru High Court being **Cause No. 57 of 2015.**
2. The Respondent's case was that shortly after service of the said suit, the Appellant lodged a complaint with the police alleging that he had forged an employment contract. This complaint led to the Respondent's arrest and subsequent prosecution in Kibera Criminal Case No. 1662 of 2015.

3. The Respondent was eventually acquitted under Section 210 of the Criminal Procedure Code after a period of approximately six (6) years.
4. He thereafter instituted a suit for malicious prosecution which resulted in the judgment that is now the subject of the instant appeal.
5. The Respondent's case, before the trial court, was that he was detained beyond the constitutional period before being presented to court and that the decision to charge him with a criminal case was actuated by malice so as to ensure that he would remain in custody over the weekend. He added that investigations were either incomplete or conducted after the arrest and charging.
6. The Respondent took issue with the conduct of the investigations and noted that key forensic examinations of documents were conducted after he had already been charged. He complained about the delay in the investigations arguing that that it demonstrated that the arrest and prosecution were premature and lacked proper evidential basis.
7. The Appellant, on the other hand, filed a defence in which it denied the Respondent's allegations and averred that upon the lapse of the Respondent's employment contract, the Respondent fraudulently and without authority made a different contract dated 30<sup>th</sup> April 2014. According to the Appellant, the Respondent's actions had the effect of illegally extending the employment contract for 3 years.

8. It was the Appellant's case that upon discovery of the forgery, the matter was reported to the police, who independently investigated the claim and charged the Respondent in **Kibera Criminal Case No. 1662 of 2015.**
9. The Appellant stated that it had no control over the arrest, investigation, or prosecution.
10. After considering the parties' respective positions, the trial court entered judgment in favour of the Respondent who was awarded general damages of Kshs. 150,000 and special damages of Kshs. 600,000 together with costs and interest thereon.
11. Aggrieved by the trial court's decision, the Appellant filed the instant appeal.

## **The Appeal**

12. Appellant listed the following grounds of appeal in the Memorandum of Appeal: -
  - a) THAT the Learned trial magistrate erred in law and in fact in holding that the Respondent had proved his case of malicious arrest and prosecution against the Appellant.***
  - b) THAT the Learned trial magistrate erred in law and in fact in holding that the Appellant malicious caused the Respondent to be arrested and prosecuted yet no evidence was tendered in support of the same.***
  - c) THAT the Learned trial magistrate erred in law and in fact in failing to appreciate the right of the Appellant to lodge a criminal complaint if he reasonably believed the Respondent had committed criminal offence against him.***

- d) THAT the Learned trial magistrate erred in law and in fact in failing to appreciate that the Appellant neither arrested nor prosecuted the Respondent.**
- e) THAT the Learned trial magistrate erred in law and in fact in failing to appreciate it's the Kenya police and Office of Director of Public Prosecution who carried out the arrest and prosecution of the Respondent.**
- f) THAT the Learned trial magistrate erred in law and in fact in awarding general damages of Kshs. 150,000/= and special damages of Kshs.600,000/= yet none of these damages where proved to the required standard.**
- g) THAT the Learned trial magistrate erred in law and in fact in failing to appreciate the relevant laws, evidence and submissions of the Appellant before entering the judgement against him.**

13. The Appellant seeks orders for the setting aside of the impugned judgment and for the costs of the appeal.
14. The Appeal was canvassed by way of written submissions which I have considered.

### **The Appellant's Submissions**

15. On Malicious Prosecution, the Appellant submitted that the report to the police was made in good faith based on suspected forgery after which the police independently conducted investigations and made the decision to arrest and charge the Respondent.
16. The Appellant argued that there was no evidence of malice, ill-will, or improper motive on its part and that the

Respondent failed to establish the essential elements of malicious prosecution, particularly lack of reasonable and probable cause and malice.

17. On the evidence relating to forgery, the Appellant pointed to the testimony from witnesses, including its Chief Executive Officer, asserting that the disputed contract was not signed by him. The Appellant emphasized that forensic evidence indicated that the signatures on the questioned documents were not made by the same author. It added that evidence from the investigating officer confirmed that the Respondent was charged with forgery and the making of a false document.
18. It was further submitted that the criminal court acknowledged issues regarding the authenticity of the documents. The Respondent's acquittal was attributed to procedural issues, including failure to produce certain documents as exhibits, rather than a finding that no forgery occurred. The Appellant faulted the trial court for misapplying the legal principles governing claims for malicious prosecution.
19. The Appellant submitted that the police conducted their investigations and concluded that a criminal offence had been committed before arresting the Respondent and charging him in the criminal case. The Appellant emphasized that the decision to investigate, arrest, and prosecute lay with the police and prosecutorial authorities.
20. The Appellant explained that it merely lodged a complaint and had no control over the prosecution process.

21. The Appellant attributed any liability for wrongful prosecution to the State actors responsible for investigation and prosecution.
22. It was submitted that there was reasonable and probable cause to report the matter to the police and that since the Respondent failed to prove malice liability cannot attach as the prosecution was undertaken by the State.
23. The Appellant cited the case of **Penuel Omare Suleiman vs. Judicial Service Commission & Another [2012] eKLR** where it was held that:

***“In the instant case, the plaintiff alleges that the defendants were malicious in prosecuting him vide Migori Cr. Case No. 243 of 1998. Though it is true that that case was decided in favor of the plaintiff, there is no evidence on record to show that there was any spite or ill-will or improper motive in instituting the said criminal case. What is on record is that the plaintiff was suspected of having stolen certain amounts of money on diverse dates from his employer and as a result thereof a report was made to the police and subsequently the plaintiff was arrested and charged. In my humble view, there was reasonable or probable cause for the prosecution and even if the plaintiff proved that there was no such probable or reasonable cause, he would not have proved malice without the ingredients of spite, ill-will or improper motive. So, in this case, I find that no malice was proved by the plaintiff as against the defendants. The plaintiff’s claim under this head must therefore fail”.***

24. Reference was also made to the decision in ***Nzoia Sugar Company Limited vs. Fungututi (1988) KLR 399*** where the court opined that an acquittal per se on a criminal charge is not sufficient basis for grounding a suit for malicious prosecution.
25. The Appellant further argued that since the prosecution was undertaken by the Kenya Police and the Director of Public Prosecutions, liability lies with the State hence the Attorney General was a necessary party.
26. On the alleged errors by the trial court, the Appellant argued that the trial magistrate failed to properly evaluate the evidence, particularly on the issue of forgery and erroneously concluded that the prosecution was actuated by malice by placing undue reliance on the Respondent's acquittal in the criminal case.

### **The Respondent's Submissions**

27. The Respondent opposed the appeal and maintained that the trial court reached a sound and well-reasoned decision based on the evidence presented. He submitted that the appeal lacks merit and should be dismissed with costs as the trial court properly considered all the material before it and correctly applied the law after noting that he had discharged the burden of proof required in a claim for malicious prosecution.
28. On the allegations of malice, the Respondent submitted that the criminal complaint was initiated with the

intention of frustrating his unlawful dismissal claim and damaging his reputation.

29. The Respondent argued that the Appellant knew or ought to have known that there was insufficient evidence to support the criminal charges. According to the Respondent, the prosecution was actuated by malice, ill-will, or improper motive as the Appellant initiated the proceedings knowing that no offence had been committed.

30. It was submitted that the criminal process was used as a tool to achieve collateral purposes.

31. On the elements of malicious prosecution, the Respondent submitted that the criminal proceedings were initiated by or at the instance of the Appellant and terminated in the Respondent's favour. He added that there was no of reasonable and probable cause and that the prosecution was actuated by malice.

32. Reliance is placed on the decision in ***Murunga vs. The Attorney General (1976-1980) ELR 1251*** where it was held that: -

***“The Plaintiff has proven that criminal proceedings were initiated against him following the 1st Defendant’s complaint to the Police. The proceedings were eventually dismissed or ended in his favour, and the Plaintiff was acquitted of the charge of forgery. The Defendant’s actions in initiating the criminal complain appear to be driven by malice rather than genuine belief in the Plaintiff’s guilt. Given the Plaintiff’s claims of***

***wrongful dismissal and the context of their ongoing legal dispute, it seems clear that the Defendant was motivated by the desire to harm the Plaintiff's reputation and interfere with his legal proceedings..."***

33. The Respondent supported the award of damages by the trial court, contending that his reputation was adversely affected by the criminal charges resulting in loss of employment opportunities during the prolonged prosecution. He added that the award of both general and special damages was justified and supported by evidence, including receipts for special damages.

34. The Respondent also invoked constitutional protection of reputation and emphasized the personal impact of being subjected to criminal proceedings over an extended period of over six years.

### **Analysis and Determination**

35. As a first appellate court, this Court is required to reconsider and re-evaluate the evidence and draw its own conclusions, while bearing in mind that it did not have the advantage of seeing and hearing witnesses. (See ***Selle vs. Associated Motor Boat Co. [1968] EA 123***).

36. I have carefully considered the record of appeal and the parties' submissions together with the authorities that they cited. I find that the main issues for determination are: -

***a) Whether the Respondent proved the ingredients of malicious prosecution.***

- b) Whether the learned magistrate properly analyzed the evidence and the law.**
- c) Whether the award of damages was justified.**

37. To succeed in an action for malicious prosecution, a plaintiff must establish four core elements, namely; that the defendant instituted or continued criminal proceedings against the plaintiff; that those proceedings terminated in the plaintiff's favor; that the prosecution was instituted without reasonable and probable cause; and that it was actuated by malice. This formulation is well settled in East African jurisprudence. In ***Mbowa vs. East Mengo District Administration* [1972] EA 352 (EACA)**, the court stated that:

***“The plaintiff, in order to succeed, must show that the prosecution was instituted by the defendant, that it terminated in his favour, that it was instituted without reasonable and probable cause, and that it was actuated by malice.”***

38. Similarly, in ***Murunga vs. Attorney General*** (supra), the High Court emphasized that all these ingredients must be proved conjunctively, observing that the plaintiff must prove that the prosecution ended in his favour and that it was instituted without reasonable and probable cause and with malice.

39. The requirement of absence of reasonable and probable cause is both objective and subjective, focusing on whether a reasonable person, possessed of the facts

known to the prosecutor, would have believed that the accused was probably guilty.

40. In ***Kagane vs. Attorney General* [1969] EA 643**, the court explained that reasonable and probable cause means an honest belief in the guilt of the accused based upon a full conviction founded upon reasonable grounds.

41. Malice, on the other hand, does not necessarily mean spite or ill-will but includes any improper motive. As stated in *Mbowa* (supra), malice in its legal sense means improper and wrongful motive, that is, an intent to use the legal process in question for some other than its legally appointed and appropriate purpose. Proof of these elements, together with demonstrable damage such as loss of liberty, reputation, or financial harm, completes the cause of action.

42. In the present case, it was not disputed that the Respondent faced criminal charges in which the Appellant was the complainant and that the Respondent was acquitted under Section 210 of the Criminal Procedure Code. I find that the element of whether the prosecution ended in favour of the Respondent was satisfied.

43. My further finding is that even though the Appellant contended that it did not control the prosecution, it is settled that a person who sets the law in motion by making a complaint may be deemed to have instituted proceedings.

44. On whether there was reasonable and probable cause, the Appellant maintained that the complaint was based on

suspected forgery. The evidence however revealed that the Respondent was arrested before investigations were completed. The evidence also showed that forensic examination of documents was conducted after the Respondent had already been charged. It was also not disputed that the prosecution took an inordinately long period before collapsing for lack of evidence.

45. I find that these factors raise doubt as to whether there existed reasonable and probable cause at the time the complaint was made.

46. On whether the prosecution was actuated by malice, it is trite that malice may be inferred from the circumstances surrounding the institution of proceedings.

47. In the present case, I find that the timing of the complaint, coming shortly after the Respondent filed a wrongful dismissal claim coupled with the manner of arrest and prosecution, lends credence to the Respondent's assertion that the criminal process was used for a collateral purpose.

48. My further finding is that while it is true that the police and the Director of Public Prosecutions undertake investigations and prosecution, this does not absolve a complainant who initiates proceedings maliciously.

49. On whether the award of damages were justified, I note that the Respondent was subjected to criminal proceedings for a period of six (6) years and testified to reputational harm and loss of opportunity. My finding is

that the trial court considered these factors and made an award which, in my view, was within reasonable limits.

50. Having re-evaluated the evidence and the law, I find that the Respondent proved the essential elements of malicious prosecution and that the learned trial magistrate properly analyzed the evidence and applicable law. I also find that the award of damages was justified.

**51.** Accordingly, the appeal is hereby dismissed with costs to the Respondent.

**It is so ordered.**

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 30<sup>TH</sup> DAY OF APRIL 2026.**

**HON W. A. OKWANY**  
**JUDGE**

**In the presence of  
Ms Wambua for Opiyo for Appellant  
Kanyoko for Respondent  
Abdirzak - Court Assistant**