



IN THE COURT OF APPEAL

AT MOMBASA

(CORAM: MAKHANDIA, OUKO & M'INOTI, J.J.A.)

CIVIL APPEAL NO. 37 OF 2016

BETWEEN

PARAMOUNT BANK LIMITED .....APPELLANT

AND

VAQVI SYED QAMARA .....1<sup>ST</sup> RESPONDENT

THE HON. ATTORNEY GENERAL .....2<sup>ND</sup> RESPONDENT

*(Appeal from the Judgment/Award of the Employment and Labour Relations Court at Mombasa  
(Rika, J.) dated 9<sup>th</sup> December, 2015*

*in*

*ELRC Case No. 346 of 2014)*

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**JUDGMENT OF THE COURT**

The 1<sup>st</sup> respondent who had worked for the appellant since 1<sup>st</sup> September, 2011 as the Chief Manager at the appellant's Mombasa branch, was on 2<sup>nd</sup> November, 2012 arrested on allegations of having stolen Kshs.9,000,127 and charged in Mombasa C.M. Criminal Case No.3199 of 2012 with stealing by servant contrary to **Section 281** of the Penal Code. However by a letter dated 30<sup>th</sup> July, 2012 the Office of the Director of Public Prosecutions directed the charges to be terminated and withdrawn under **Section 87(a)** of the Criminal Procedure Code, pending the arrest of the architect and mastermind of the heist, **Lawrence Atieno** who was at large. This notwithstanding the appellant suspended and subsequently summarily dismissed the 1<sup>st</sup> respondent on the 12<sup>th</sup> November 2012.

The 1<sup>st</sup> respondent considered the arrest and prosecution malicious and the subsequent dismissal unfair and instituted a claim in the Employment and Labour Relations Court for:

***“(a) Unpaid salary for the remainder of his contract ending March 2016, at Kshs.(12,070,000).***

***(b) General damages for malicious prosecution, unlawful termination of employment, injurious falsehoods, defamation and for pain and suffering and loss of amenities.***

(c) *Costs of the suit.*

(d) *Any other relief.....”*

While conceding that the respondent was indeed arrested and charged as alleged, the appellant maintained that, on plausible grounds and reasonable suspicion, the loss of Kshs.9,000,127 was reported to the police as required by law; that it was the police that conducted investigations that led to the decision to charge the respondent; that after reporting the loss to the police, the appellant had no role or control of the subsequent events; that following the loss of money under the watch of the 1<sup>st</sup> respondent, the appellant was justified in summarily dismissing him.

The 2<sup>nd</sup> respondent similarly denied any liability arguing that the respondent was arrested and charged following a complaint by the appellant; that the police acted honestly in fulfillment of their statutory duty to detect and prevent crime; and that the arrest was justified in the circumstances.

Rika, J. considered the relationship between the appellant as a bank and the 1<sup>st</sup> respondent as its employee and noted that that relationship demanded high degree of trust and confidence; that the 1<sup>st</sup> respondent was in a position of responsibility which demanded that he upheld values of trust and confidence, the cornerstone of an employer-employee relationship. On the question he posed himself, whether there were fair and valid reasons for summarily dismissing the respondent, the learned Judge said;

***“It is accepted Kshs.9 million was stolen from there. On the face of it, these facts would tend to show there was justification in dismissing the Claimant. The Court should however look at the actions of the Claimant and the Bank, the circumstances surrounding this theft, before making a pronouncement on the fairness and validity of the summary dismissal..... There is adequate evidence to conclude the summary dismissal of the Claimant was not based on valid and fair ground, under Section 43 and 45 of the Employment Act 2007. Procedure was in fundamental departure from the minimum statutory procedure prescribed under Section 41 of the Act. The Claimant merits compensation for unfair termination, under Section 49 of the Employment Act and Section 12 of the Employment and Labour Relations Court Act.”***

In assessing the appropriate compensation, and despite his conclusion above that ***“...on the face of it, these facts would tend to show there was justification in dismissing the Claimant”***, the learned Judge took the view that the 1<sup>st</sup> respondent was denied substantive as well as procedural fairness; and that he was fortunate to get a better paying job in Uganda immediately following termination of his employment. For the latter reason the learned Judge found no basis for the claim of Kshs.12 million for unpaid salary up to March 2016. But following his finding that the summary dismissal was unfair, the learned Judge awarded the respondent 6 months’ salary in compensation for unfair termination, translating to Kshs.1,800,000, worked out as  $Kshs.300,000 \times 6 = Kshs.1,800,000$ , to be paid by the appellant.

On the question whether Employment and Labour Relations Court could entertain the claims for defamation and malicious prosecution, the learned Judge was satisfied that it could do so as long as they arose from employment and labour relations and gave the examples of the following decisions, ***Beatrice Achieng Osir v. Board of Trustees Teleposta Pension Scheme Industrial Court Cause No. 665 of 2011***, ***George Onyango Akuti v. G4S Security Services Limited Cause No. 107 of 2013*** and ***Stanley Mungai Muchai v. National Oil Corporation Cause No. 447 (N) of 2009***, where that court entertained such claims.

Regarding the claim for defamation, the learned Judge was of the opinion that although the 1<sup>st</sup> respondent disclosed to his prospective employer in Uganda that he had been charged with a criminal offence, that fact did not affect his ability to secure, almost immediately even a better paying job in Uganda. The learned Judge, however qualified that observation by stating that it would not have been same had the 1<sup>st</sup> respondent sought to secure employment in Kenya in view of the negative publicity in the local press where the 1<sup>st</sup> respondent was labeled and damned as a bank thief. For this reason, the learned Judge found that the 1<sup>st</sup> respondent’s character was damaged by the allegations linking him to the

loss of money from the appellant's Mombasa branch. That the arrest, arraignment before a criminal court of and the story being aired on the *Nation Television* on 8<sup>th</sup> November 2012 and also carried in the *Daily Nation* newspaper of 9<sup>th</sup> November 2012 damaged the 1<sup>st</sup> respondent's reputation and standing in the society. Consequent upon that conclusion, the learned Judge awarded the 1<sup>st</sup> respondent against the appellant Kshs.2,500,000 in general damages for defamation.

Turning to the question of malicious prosecution, the learned Judge relying on *Lindsell on Torts* 16<sup>th</sup> Edition, *Murunga v. The Attorney-General* 1977 KLR 138 and *Gichanga v. BAT Kenya Limited, H.C.C.C. No. 1417 of 1981*, was satisfied that the claim was proved as there was evidence that the 1<sup>st</sup> respondent was prosecuted as a result of criminal proceedings instituted by the appellant; that the prosecution was determined in his favour; and that it was malicious, without reasonable and probable cause. He specifically found that PC Njuki arrested the 1<sup>st</sup> respondent and charged him without any proper basis; that P.C Njuki merely went by the wishes of the appellant to have somebody and anybody charged in order to make an insurance claim; that he ignored the respondent's version of events; and that the eventual termination and withdrawal of the charges came too late in the day after the respondent had been dragged through the mud. In the result he entered judgment against the appellant and the 2<sup>nd</sup> respondent jointly and severally in the sum of Kshs.2,500,000 for malicious prosecution.

In the end the learned Judge awarded to the 1<sup>st</sup> respondent in total Kshs.6,800,000, with interest of 14% p.a. Parties were directed to meet their respective costs of the action.

Aggrieved by this the appellant has proffered this appeal on a whooping and unnecessary 21 grounds, which were ultimately condensed and argued only as six but which in our further consideration think ought to be only four.

The appellant maintained that the trial court had no jurisdiction to entertain the claims for defamation and malicious prosecution and hence could not award damages in respect of those claims. That, in any case there was no employer-employee relationship between the 1<sup>st</sup> and 2<sup>nd</sup> respondents to warrant a claim for unfair termination of employment. The appellant also submitted that the tort of defamation was not proved as the words published in the newspaper were indeed true and secondly, that the source of the news item relied upon by the respondent to attach liability on the appellant was not ascertained or disclosed hence it could not therefore be attributed to the appellants; that the claim based on malicious prosecution was similarly not proved as the well-known elements were not satisfied; that the withdrawal of the charges *per se* did not absolve the respondent. On the award of damages the appellants argued that there was no judicial basis or justification for Kshs.2,500,000 in damages for defamation and another Kshs.2,500,000 for malicious prosecution.

Finally it was contended that the 1<sup>st</sup> respondent's dismissal was justified for having neglected his work and that it was in error for the learned Judge to have awarded to him Kshs.1,800,000 as damages for wrongful dismissal.

Submitting in opposition to the appeal, the 1<sup>st</sup> respondent argued that the 2<sup>nd</sup> respondent having expressly admitted the jurisdiction of the court in its answer to the claim cannot subsequently deny it; that the question of jurisdiction ought to have been raised *in limine*; that, in any case the Employment and Labour Relations Court has the status of the High Court and therefore has jurisdiction, like the High Court to entertain such claims and award the damages sought; and that defamation and malicious prosecution were proved. On the question of summary dismissal, it was submitted that in terms of **Section 44** of the Employment Act, the appellant was required to hear the 1<sup>st</sup> respondent before dismissing him but failed to do so; that the award of 6 months compensation was made in accordance with the principles set out under the Employment Act.

The 2<sup>nd</sup> respondent agreed with the appellant that the trial court had no jurisdiction to entertain claims for defamation and malicious prosecution. It was, however submitted further that both claims for defamation and malicious prosecution were not proved.

It is common factor that the appellant lost, through theft, the sum of Kshs.9,000,127; that the respondent, as the Chief Manager, had the overall duty of overseeing the operations of the branch of the Bank. The respondent and **Lawrence Atieno** who was the Operations Manager, and effectively his assistant, were the exclusive custodians of the keys to the vault in the strong-room from where the money was stolen. Both of them had to be involved in the opening of the strong-room and the vault. One could not open the strong-room without the other. It is equally not in doubt, that as a result of the theft **Kapil Deo Sharma, (Sharma)** the Head of Internal Audit of the appellant made a report to the police as a consequence of which the 1<sup>st</sup> respondent was arrested and subsequently charged in court with an offence. The charges were however withdrawn on 30<sup>th</sup> July, 2012 by the Director of Public Prosecutions under **Section 87(a)** of the Criminal Procedure Code. That notwithstanding, on 3<sup>rd</sup> November 2012 the 1<sup>st</sup> respondent was suspended and a few days later on 12<sup>th</sup> November 2012 he was summarily dismissed.

With those uncontroverted facts we turn to consider the ground on the jurisdiction of the Employment and Labour Relations Court. The preamble to Employment and Labour Relations Court Act states that the court is established to hear and determine disputes relating to **“employment and labour relations”** and **“for connected purposes”**. Among its powers under **Section 12**, the court hears and determines all disputes relating to and arising out employment and labour relations. In the exercise of that jurisdiction the court has the power to award compensation or damages in any circumstances contemplated under the Act or any other written law and to grant any other appropriate relief that it may deem fit.

The origin of the dispute between the 1<sup>st</sup> respondent and the appellant was presented as a dispute arising from an employee/employer relationship, where the appellant accused the 1<sup>st</sup> respondent of theft followed by a criminal charge of stealing by servant. This was further followed by suspension and finally summary dismissal. There cannot therefore be any doubt that, in addition to the claim for unfair termination, the claim relating to general damages for malicious prosecution and defamation, which flowed directly from the dismissal, was equally within the jurisdiction of the court. In the exercise of its powers under **Section 12** of the Employment and Labour Relations Court Act, the court could entertain the dispute in all its aspects and award damages appropriately. That ground lacks substance and we reject it.

The elements to be proved in an action for malicious prosecution is today well settled. For example in **Mbowa v. East Mengo District Administration [1972] EA 352**, the East African Court of Appeal summarised the law as follows:

***“The action for damages for malicious prosecution is part of the common law of England... The tort of malicious prosecution is committed where there is no legal reason for instituting criminal proceedings. The purpose of the prosecution should be personal and spite rather than for the public benefit... It occurs as a result of the abuse of the minds of judicial authorities whose responsibility is to administer criminal justice. It suggests the existence of malice and the distortion of the truth. Its essential ingredients are:***

***(1) the criminal proceedings must have been instituted by the defendant, that is, he was instrumental in setting the law in motion against the plaintiff and it suffices if he lays an information before a judicial authority who then issues a warrant for the arrest of the plaintiff or a person arrests the plaintiff and takes him before a judicial authority;***

***(2) the defendant must have acted without reasonable or probable cause i.e. there must have been no facts, which on reasonable grounds, the defendant genuinely thought that the criminal proceedings were justified;***

***(3) the defendant must have acted maliciously. In other words, the defendant must have acted, in instituting criminal proceedings, with an improper and wrongful motive, that is, he must have had, “an intent to use legal process in question for some other than its legally appointed and appropriate purpose” Pike v. Waldrum [1952] 1 Lloyd’s Rep. 431 at p. 452; and***

**(4) the criminal proceedings must have been terminated in the plaintiff's favour, that is, the plaintiff must show that the proceedings were brought to a legal end and that he has been acquitted of the charge...**

**The plaintiff, in order to succeed, has to prove that the four essentials or requirements of malicious prosecution, as set out above, have been fulfilled and that he has suffered damage. In other words, the four requirements must "unite" in order to create or establish a cause of action. If the plaintiff does not prove them he would fail in his action....."**

Three of the foregoing four elements need further clarification. In the appeal before us it was incumbent upon the 1<sup>st</sup> respondent to demonstrate that appellant was "instrumental" in setting the law in motion leading to the arrest of the 1<sup>st</sup> respondent. It was explained in the case of ***Gitau v. Attorney General (1990) KLR 13*** that if the person making a complaint or the police officer to whom the complaint is made genuinely believed the facts and acted upon them, being satisfied that a probable crime has been established, then the arrest and subsequent prosecution would be justified. But if the court is satisfied that the report was made recklessly and indifferently then those who are "instrumental" would be liable depending on the answers to the other three elements.

The second clarification is that, in order to prove malicious prosecution the 1<sup>st</sup> respondent was required to show that, by bringing criminal proceedings against him the appellant acted without reasonable or probable cause. What amounts to "reasonable and probable cause" for the purpose of proving malicious prosecution was explained in ***Kagame & Others v. AG & Another (1969) EA 643*** as follows;

***"Reasonable and probable cause is an honest belief in the guilt of the accused based upon a full conviction founded upon reasonable grounds of the existence of a state of circumstances, which assuming them to be true, would reasonably lead an ordinary prudent and cautious man placed in the position of the accuser to the conclusion that the person charged was probably guilty of the crime imputed... Excluding cases where the basis for the prosecution is alleged to be wholly fabricated by the prosecutor, in which the sole issue is whether the case for the prosecution was fabricated or not, the question as to whether there was reasonable and probable cause for the prosecution is primarily to be judged on the basis of objective test. That is to say, to constitute reasonable and probable cause the totality of the material within the knowledge of the prosecutor at the time he instituted the prosecution, whether that material consisted of facts discovered by the prosecutor or information which has come to him or both, must be such as to be capable of satisfying an ordinary reasonable prudent and cautious man to the extent of believing that the accused is probably guilty. If and insofar as that material is based on information, the information must be reasonably credible, such that an ordinary reasonable prudent and cautious man could honestly believe to be substantially true and to afford a reasonably strong basis for the prosecution...."*** (per Rudd, J).

Thirdly and finally on the clarification, the 1<sup>st</sup> respondent was to prove that the charges were terminated in his favour. The favourable termination requirement of criminal charges may be satisfied in various ways depending on how the proceedings are concluded in favour of the accused person. For instance, by acquittal, a discharge or a withdrawal.

Courts in this jurisdiction have relied, over the years on the following passage from the case of ***Egbema v. West Nile Administration [1972] EA 60*** for the foregoing proposition;

***"For the purposes proof that the criminal proceedings have been determined in the appellant's favour it is enough that the criminal proceedings have been terminated without being brought to a formal end. The fact that no fresh prosecution has been brought, although five years have elapsed since the appellant was discharged, must be considered equivalent to an acquittal, so as to entitle an appellant to bring a suit for malicious prosecution..."***

Although the withdrawal of a charge under **Section 87** is technically not on acquittal and does not operate as a bar to subsequent proceedings against an accused person on account of the same facts, guided by the

foregoing holding, we note in this appeal that five years after the charges were withdrawn on 30<sup>th</sup> July, 2012, ostensibly pending the arrest of **Lawrence Atieno**, no fresh charges have been preferred against the 1<sup>st</sup> respondent. There was no indication whether **Lawrence Atieno** was ever arrested and charged. The discharge of the respondent, therefore amounted to a termination of the prosecution in his favour.

At the heart of this appeal is the question whether the prosecution was malicious in the sense that it was brought recklessly and indifferently as to whether there were genuine grounds for doing so; that there was no honest belief in the guilt of the 1<sup>st</sup> respondent based upon a full conviction founded on reasonable grounds of the existence of a state of circumstances, which assuming them to be true, would reasonably lead an ordinary prudent and cautious man, placed in the position of the appellant and the 2<sup>nd</sup> respondent to the conclusion that the 1<sup>st</sup> respondent was probably guilty of the crime imputed. It is trite learning that a citizen can lodge a complaint if it appears to him or her that a crime has been committed and a prosecutor has a duty to prosecute a matter if there is a *prima facie* case. **Section 29** of the Criminal Procedure Code allows a police officer without a court order or a warrant, to arrest any person whom he suspects, upon reasonable grounds of having committed a cognizable offence. According to the First Schedule to the Criminal Procedure Code the crime with which the 1<sup>st</sup> respondent was charged is a cognizable offence and the police could arrest him if they had reasonable grounds for suspecting that he had committed a criminal offence.

Applying the foregoing four elements and three explanations, and starting with the arrest of the respondent, the following facts are critical and must be borne in mind in answering the question, whether the prosecution was commenced on an honest belief and upon reasonable grounds that the 1<sup>st</sup> respondent had committed an offence. There was no agreement of how the theft was discovered. According to the appellant, **Sharma** carried out a surprise audit of its Mombasa Branch on the 31<sup>st</sup> October 2012 and found a shortage of Kshs.9,000,127, constituting 82% of the cash that had been secured in the vault. He could not, however ascertain the actual date when the cash was stolen, but a reverse audit indicated it was between 9<sup>th</sup> to 19<sup>th</sup> October 2012. The 1<sup>st</sup> respondent for his part insisted that upon his return from Malindi where he had gone on official duties he realized the Cash Register pages were glued together. He became suspicious and asked the Head Office (Nairobi) to conduct an audit; that as a result of this **Sharma** traveled to Mombasa, and together with the 1<sup>st</sup> respondent discovered the loss after opening the vault. The learned Judge was persuaded by the 1<sup>st</sup> respondent's version. For us nothing really turns on that issue since there is no dispute that the money was stolen.

Access to the vault was restricted to two custodians, the 1<sup>st</sup> respondent and **Lawrence Atieno** in a way that one could not open it without the other. It required a combination of the keys held by the two to open. The 1<sup>st</sup> respondent's explanation was that when he left for a field visit to Malindi he handed over his vault key to the Chief Cashier, **Mr. Ayaz**; that the management was aware of this arrangement and had no objection as it did not infringe its regulations. At some point, **Lawrence Atieno** disappeared and had not been traced at the time of the trial. **Mr. Ayaz**, likewise, did not record a statement with the police neither did he testify in court before the charges were terminated.

Looking independently and objectively at the fact that it was the 1<sup>st</sup> respondent and **Lawrence Atieno** who were the only custodians of the keys to the vault; that theft, according to the audit report appeared to have been committed between 9<sup>th</sup> to 19<sup>th</sup> October 2012, so that when the 1<sup>st</sup> respondent went to Malindi on 24<sup>th</sup> October 2012, having handed over the key to vault to **Ayaz** the money had already been stolen; that during this period the two keys to the vault were in the custody of the 1<sup>st</sup> respondent and **Lawrence Atieno**; that while in Malindi the 1<sup>st</sup> respondent communicated with **Ayaz** to confirm if the money in the vault was safe; and that theft was discovered only a day after he returned from Malindi. On these facts alone, we do not think it was farfetched or unreasonable to suspect the 1<sup>st</sup> respondent along with **Lawrence Atieno**. It was reasonable to link the theft with the 1<sup>st</sup> respondent on those grounds and in our own view, therefore the appellant genuinely thought that a crime had been committed and reasonably suspected the 1<sup>st</sup> respondent to warrant making a complaint to the police for investigations. There was no evidence that the appellant was actuated by improper and malicious motives in pursuing the charge

against the 1<sup>st</sup> respondent. No evidence of spite or ill-will on the part of the appellant was presented at the trial. See *Nzoia Sugar Company Ltd v. Fungututi [1988] KLR 399*. We are persuaded that on the material presented to the prosecutor, any prudent and cautious man in the position of **Nzuki**, the investigating officer, would have come to the same conclusion that the respondent was probably involved in the commission of the offence.

On the claim for libel we would like to say three things briefly. That claim was based on a newspaper report and a news item allegedly aired by a TV station. First, without joining in the proceedings the media house concerned, the source of the news report could not be established. There was no evidence linking it with the appellant. Secondly, were the words complained of defamatory? The 1<sup>st</sup> respondent relied on a newspaper cutting from the *Daily Nation* of 9<sup>th</sup> November 2012, in which it was reported that **“A Bank Manager yesterday denied stealing Kshs.9 million from the Moi Avenue Branch of Paramount Bank, between October 2 and 23. Mr. Naqui Syed was released on a Kshs.3 million bond until December 10<sup>th</sup> when the matter will be heard.”**

For a statement to qualify as defamatory it must tend to bring the person named in it into hatred, contempt or ridicule and the words used in the statement tend to lower him in the estimation of right-thinking members of society generally. See *Winfield & Jolowicz on Torts, 16<sup>th</sup> Edition; 2002, at page 404*. The learned Judge found the statement we have reproduced above, defamatory of the 1<sup>st</sup> respondent. With respect, we find nothing libelous in the statement, which in our view was a factual and accurate report of the case, namely, that the 1<sup>st</sup> respondent was a Bank Manager at the appellant’s Moi Avenue Branch; that he was charged with stealing Kshs.9 million from his employer; that he denied the charge; and that he was released on a Kshs.3 million bond pending the hearing of the case. Had the *Nation Newspaper* been joined in the suit a plea of justification would have been available to it as the words complained were true.

Thirdly, the learned Judge having found that the criminal charges notwithstanding, the 1<sup>st</sup> respondent was able to immediately secure another job with better pay, there was no basis to hold that he was stigmatized by the negative publicity which;

**“....damaged his employability and potential employers in the industry in which the Claimant was a longtime servant, would find his attractiveness diminished. His stock in the market dipped.”**

There was equally no basis to imagine that the situation in Kenya would have been different.

There are therefore sufficient grounds for our interference with the award of damages on defamation as clearly the learned Judge misdirected himself on this question and, as a result arrived at a wrong decision. See *Mbogo & Another v Shah [1968] EA 93*.

Having found that the 1<sup>st</sup> respondent’s prosecution was not malicious and the claim for defamation not proved, we turn our attention to his summary dismissal from employment. The appellant based the decision to summarily dismiss the 1<sup>st</sup> respondent on his implication in the theft of the money in question. Summary dismissal will be justified where the employee is guilty of a misconduct. Under **section 44(4)** an employee is said to be guilty of misconduct where, among other things, he or she;

**“(c) .....willfully neglects to perform any work which it was his duty to perform, or if he carelessly and improperly performs any work which from its nature it was his duty, under his contract, to have performed carefully and properly;**

.....

**(f) ..... is arrested for a cognizable offence punishable by imprisonment and is not within fourteen days either released on bail or on bond or otherwise lawfully set at**

*liberty; or*

***(g) ..... commits, or on reasonable and sufficient grounds is suspected of having committed, a criminal offence against or to the substantial detriment of his employer or his employer's property."***

Irrespective of the gravity of the misconduct alleged against an employee, his or her dismissal must conform to the provisions of **section 41(2)** of the Employment Act which requires that;

***".....an employer shall, before terminating the employment of an employee or summarily dismissing an employee under section 44(3) or (4) hear and consider any representations which the employee may on the grounds of misconduct or poor performance, and the person, if any, chosen by the employee within subsection (1), make."***

The appellant did not afford the 1<sup>st</sup> respondent an opportunity to be heard as required by **Section 41(2)** of the Employment Act. He ought to have been given an opportunity to be heard before termination of his employment. He may have offered an explanation on the theft.

Where summary dismissal or termination of a contract of an employee is unjustified, under the provisions of **Section 49** he will be entitled to, among other remedies, the equivalent of a number of months wages or salary not exceeding twelve months based on the gross monthly wage or salary of the employee at the time of dismissal.

The learned Judge awarded the 1<sup>st</sup> respondent six months compensation. In doing so, he took into account the fact that the 1<sup>st</sup> respondent was denied procedural fairness; and that notwithstanding, he immediately got a better paying job in Uganda. We cannot fault the learned Judge on that and the award of six months compensation.

To the extent explained above we allow the appeal, set aside Kshs.2,500,000 awarded in general damages for defamation and Kshs.2,500,000 for malicious prosecution. The appeal on the award of Kshs.1,800,000 being six months' salary compensation fails. Parties to meet their own costs of this appeal.

**Dated and delivered at Mombasa this 11<sup>th</sup> day of May, 2017.**

**ASIKE – MAKHANDIA**

.....

**JUDGE OF APPEAL**

**W. OUKO**

.....

**JUDGE OF APPEAL**

**K. M'INOTI**

.....

**JUDGE OF APPEAL**

*I certify that this is a true copy of the original.*

**DEPUTY REGISTRAR**