



REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT NAIROBI
CORAM: TUNOI, BOSIRE & AGANYANYA, J.J.A.
CIVIL APPEAL NO. 41 OF 2007

BETWEEN

JAMES MWANGI.....APPELLANT

AND

ALEX NJUGUNA.....1ST RESPONDENT
JOHN NGUNYA.....2ND RESPONDENT
ATTORNEY GENERAL.....3RD RESPONDENT

(Appeal from a judgment and decree of the High Court of Kenya at Nairobi (Lenaola, Ag. J) dated
17th September, 2004
in
H.C.C.C. NO. 4240 OF 1994)

JUDGMENT OF THE COURT

This is an appeal by **JAMES MWANGI**, the appellant before us and the unsuccessful plaintiff in the suit, against the judgment of the High Court of Kenya at Nairobi (Lenaola, Ag. J. as he then was) delivered on 17th September, 2004, whereby the learned judge dismissed the appellant's claim against the three respondents, **Alex Njuguna, John Ngunya** and **the Attorney General**, for both special and general damages.

The appellant had in his plaint dated 30th November, 1994 prayed for:-

i) An order restraining the 1st and the 2nd respondents from further harassing and/or assaulting the appellant and/or destroying his property;

ii) General damages;

and

iii) Special damages.

The facts giving rise to the suit as discernible from the record of appeal appear to be as follows. In or about 1980s and 1990s the appellant was Chairman of the Village Committee of Mukuru slums within the City of Nairobi. He also operated a kiosk for selling vegetables within the slums. The 1st respondent Alex

Njuguna was the appellant's youth wing leader while the 2nd respondent John Ngunya was also a member of the village committee. It is plain from the evidence tendered in court that all was not well within the committee and there was a lot of jostling for leadership.

It was the appellant's case that on 9th March, 1992 at about 7.00 p.m. while on his way home from South B, he met a group of people who attacked him occasioning him serious bodily injuries. As the road was well lit by electricity lights he was able to identify the 1st and the 2nd respondents within the group. After the assault he was left by the road side writhing in pain. He hired a taxi and went to report the incident at South B police station where he was instructed to go to hospital first for treatment and come later for a P3 form. However, nothing of significance occurred again until on 10th March, 1992 when he encountered the same group of people. Likewise, they assaulted him. He reported the incident to the same police station but no action was ever taken.

The appellant further pleaded that on 17th March, 1992, the 1st and the 2nd respondents led a group of about 50 people who destroyed his 8 rooms on his plot. Though the police arrested the two respondents and other people, they were set free at the police station.

The appellant testified that he made to the police a total of eleven (11) reports of assault, threats to kill and demolition of his houses by the 1st and the 2nd respondents. They were never arrested nor arraigned in court on any offence. He severally protested to the police but nothing happened.

On 19th March, 1992, the appellant went to the police to make a report of an attack at his house but he was instead arrested and charged at Makadara Law Court with an offence related to the breach of the peace. However, he was discharged by the court.

The appellant averred that because of continued harassment, he went into hiding for twelve (12) years and left his family in dire straits. He then filed suit claiming a total of **Shs.140,000,000.00** categorized, inter alia, as follows:-

1. ***Shs.1,400,000/= being "compensation" for injuries suffered by his children during the many attacks.***
2. ***Shs.21,764,000/= for loss of education by his children who became rogues.***
3. ***Shs.4,000,000/= as a result of failure to travel to America and Congo to do business.***
4. ***Shs.7,921,200= for loss of use of Motor Vehicle Registration Number KJT 171 which he was unable to use while in hiding.***
5. ***Shs.6,000,000/= for being called a thug and charged at Makadara Law Courts.***
6. ***Shs.7,000,000/= from one I.P. Musau who arrested him.***
7. ***Shs.6,000,000/= to be paid to his children "for the freedom and happiness that they have now lost."***
8. ***Shs.14,000,000/= for all the adjournments given since this suit was filed as those adjournments caused him immense loss and suffering.***
9. ***Shs.6,000,000/= to enable the plaintiff hire his own security for the future.***
10. ***Shs.22,000,000/= for deprivation.***

In response to the appellant's claim the respondents stated that the appellant was engaged in illegal sales

of plots within the Mukuru slums and when confronted he fled. He was pursued, arrested and later charged.

After hearing the evidence adduced by the parties together with the submissions thereto, the learned Judge held:-

“Turning now to the claim for damages, I see no reason to hold the 3rd defendant liable in any way. It has not been demonstrated how he failed to protect the plaintiff, whatever that means, and I shall dismiss any and all claims against him.

Similarly, as I have indicated elsewhere, no charges were even preferred against the 1st and 2nd defendants. The allegations about them are bare and I am inclined to agree with them that the suit was a case of sour grapes arising from the plaintiff’s defeat as the Chairman of the Mukuru Village Committee. Looking at the parties in court, I was struck by the sincerity of the 1st and 2nd defendant and the simple answer they gave to the wordy, farfetched, remote and ambitious evidence of the plaintiff. I believe them and therefore see no basis for granting any order in damages against them. In fact it was the plaintiff who was arrested and charged and I see no role played by the defendants in that act.

On the whole, the plaintiff’s suit must fail and I hereby dismiss the same with costs.

Orders accordingly.”

The appellant being aggrieved by the decision of the learned Judge has preferred this appeal which although is based on ten (10) grounds of appeal, raises really one point for decision, that is to say whether or not the appellant had proved his claim; and also, whether he was entitled to damages at all.

The law requires that special damages be specifically pleaded and also strictly proved, failing which they are not for granting. See ***MWAI V KENYA TOURIST DEVELOPMENT CORPORATION [1983] KLR 358***. The record shows that all that the appellant did as far as special damages were concerned was to simply specify them in the plaint without proving them. He moreover never led any evidence in proof of them. In our view, the learned Judge cannot be faulted for not granting them.

Similarly, the appellant did not lay any basis in law upon which he could properly be awarded general damages. The appellant did not demonstrate how the 1st and the 2nd respondents’ alleged unlawful acts had injured him or caused him harm or damage. Neither did he show to the court how the 3rd respondent had failed to protect him.

This case, strange as it is, and probably belonging to the domain of that famous psychoanalyst and philosopher **Sigmund Freud**, appears to be founded, as the learned Judge observed, solely on “*sour grapes*”.

The appeal must fail and is accordingly dismissed. We make no order as to costs.

Dated and delivered at Nairobi this 8th day of April, 2011.

P. K. TUNOI
.....
JUDGE OF APPEAL

S. E. O. BOSIRE
.....
JUDGE OF APPEAL

D. K. S. AGANYANYA

.....
JUDGE OF APPEAL

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

DEPUTY REGISTRAR