



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Civil Case 2668 of 1994

MARGARET JOSEPH MUKUA.....PLAINTIFF

VERSUS

THE HON. ATTORNEY GENERAL.....RESPONDENT

JUDGMENT

Margaret Joseph Makua sued the Attorney General and Leonard Mbogo, for general damages for unlawful arrest and confinement, a consolidated sum of Kshs.140,000/= costs and interest.

The defendant denied the claim and put the plaintiff to strict proof on the allegations in para 4 of the plaint.

Through her lawyer, G. Kamonde advocate, the plaintiff prayed the court to “**strike out the defendant’s defence dated 30th November, 1994**”.

Mr. Kamonde’s affidavit supported the application in court, under Order X Rule 20 of the Civil Procedure Rules, as the defendant failed to comply with a court order to file a list of documents within 30 days, “**as evidenced by the attached photocopy**”.

The application to strike out the defence was, however, withdrawn by Mr. Kamonde to pave way for the hearing of the main suit. A hearing date had been served on the Attorney General, as shown in the affidavit of service, but they did not appear in court.

The plaintiff testified that on 7th September, 1993, between 1.00 – 2.00 p.m., one Leonard Mbogo, the second defendant herein, together with John Munyao, went to her shop in Mai Mahiu. She identified them as policemen, though the two were not in uniform on that day.

Leonard Mbogo spoke to her first, and questioned her about a license to sell charcoal and other provisions. She had the licence which she showed him, it was hanging in the shop. That he read it but said that the license had many faults, to which the plaintiff replied that she would return it to the issuing authority, the office of the County Council in Mai Mahiu.

That Leonard retorted that the plaintiff was rude, and he demanded to see her identification card and when the plaintiff asked for time to get it from her house, Leonard demanded to accompany her, which he did, together with his colleague.

Upon arrival in the house, Leonard locked the door from inside and instead opened the windows and started searching the house together with his colleague, and asking for receipts of several items in the house. In the process Leonard discovered the plaintiff's cash Kshs.140,000/= in a paper bag. Leonard took the money, describing it as "good exhibit". He took the money and put it in his inner jacket pocket and subsequently arrested the plaintiff and escorted her to Longonot police station where he placed her in the cells, where she stayed for the night, and the following day at about 2.00 p.m. when she was allowed to come out of the cells and sit out for fresh air.

The plaintiff used the opportunity to report about the cash money taken from her house the previous day. That Leonard and his colleague were called and questioned but denied. The plaintiff was escorted back to her house and she showed the police inspector where her money was taken from by Leonard who continued to deny having taken the money.

The plaintiff was finally released from police custody. She went to Nakuru where she reported the matter to the OCPD. She was referred to Naivasha police station where she again reported the loss of her money, and recorded a statement. Finally the plaintiff was told that her money could not be found. The plaintiff broke down and cried in court at this juncture. She decided to file this suit to claim compensation for her lost cash money, arrest and confinement for 3 days.

The defendant was unable to produce any witnesses at the hearing. I refused to grant an adjournment to their last minute request for adjournment.

At the conclusion of the plaintiff's oral evidence, both advocates made and filed written filed submissions.

The defendant's written submissions read in part, "***In the circumstances, we submit and urge the court to give the defendants jointly and severally the benefit of doubt and find that they had reasonable belief that the plaintiff had committed and/or was at the time of her arrest committing offences punishable by law***".

The plaintiff's evidence remained uncontroverted as the defendant did not produce Leonard, his colleague or any witnesses to deny the plaintiff's claim. Instead the defendant relied on the denial in the defence as well as the written submission, which in my considered opinion cannot controvert oral evidence adduced by the plaintiff. For this reason, I find that the plaintiff has proved her evidence on a balance of probabilities, and I proceed in her favour, as against the defendants, jointly and severally and direct the defendants to return to the plaintiff the sum of cash Kshs.140,000/= "**stolen**" from her house by the second defendant and his colleague.

The plaintiff was arrested and detained at the police station for reasons that were not explained to her by the arresting authorities. Subsequently she was released without any charges preferred against her. For this, I award her general damages and compensation, amounting to Kshs.260,000/=.

I therefore award the plaintiff a total sum of Kshs.400,000/= plus costs and interest.

Dated at Nairobi this 19th day of September, 2008.

JOYCE ALUOCH

JUDGE OF APEAL



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