



Case Number:	Civil Suit 83 of 2011
Date Delivered:	21 Dec 2017
Case Class:	Civil
Court:	High Court at Kisumu
Case Action:	Judgment
Judge:	Esther Nyambura Maina
Citation:	Bhupendra Somabhai Patel v Kingsway Tyres Limited & another [2017] eKLR
Advocates:	-
Case Summary:	-
Court Division:	Civil
History Magistrates:	-
County:	Kisumu
Docket Number:	-
History Docket Number:	-
Case Outcome:	Judgment Entered for the Claimant; Counterclaim Dismissed.
History County:	-
Representation By Advocates:	-
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-

The information contained in the above segment is not part of the judicial opinion delivered by the Court. The metadata has been prepared by Kenya Law as a guide in understanding the subject of the judicial opinion. Kenya Law makes no warranties as to the comprehensiveness or accuracy of the information.

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

CIVIL SUIT NO. 83 OF 2011

BHUPENDRA SOMABHAI PATEL.....PLAINTIFF

VERSUS

KINGSWAY TYRES LIMITED.....1ST DEFENDANT

MANOJ SHAH.....2ND DEFENDANT

JUDGMENT

INTRODUCTION

1. The Plaintiff's claim against the Defendants is for:-

a) "An order of permanent injunction restraining the Defendants whether by itself/himself, its/his agents, servants or persons claiming through it/him howsoever , from selling, disposing, charging, transferring, pledging, leasing or by other means whatsoever dealing adversely with the Plaintiff's properties namely motor vehicle registration number KBF 222W together with the original log book and blank forms thereof duly executed, the original lease certificate to his property known as KISUMU MUNICIPALITY/BLOCK 8/174 together with blank transfer forms duly executed and the Plaintiff's passport size photos, the Plaintiff's original passport and original Identity Card and his bank statements.

b) An unconditional release of all the documents and the Plaintiff's motor vehicle registration number KBF 222W mentioned at paragraph 5(a), (b) and (c).

c) Refund of funds mentioned at paragraph 5(d) together with interests from the date it was deposited being 26.04.2011 to the date of release at court rates.

d) General damages for assault/and battery.

e) General damages

f) Costs of the suit & Interest thereon."

2. The Defendants on their part have a Counter claim against the Plaintiff for:-

i. "for the sum of Kshs.36,042,096.00.

ii. a declaration that the Plaintiff is bound by the transfers executed in for the benefit of the Defendants title no. KISUMU MUNICIPALITY/BLOCK 8/174 and motor vehicle registration no. KBF 222W.

iii. Vacant possession of the suit property title no. KISUMU MUNICIPALITY/BLOCK 8/174.

iv. Costs of this suit.

v. Interest on (i) and (ii).”

THE PLAINTIFF'S CASE

3. Briefly the Plaintiff's case is that sometimes in the year 2006 he was employed as Branch Manager at the 1st Defendant's Branch in Kisumu. According to him his duties were to oversee the general administration of the office. He remained the Branch Manager until 26th April 2011 when his services were terminated. It was his evidence that on 21st April 2011 he was summoned to the 1st Defendant's Head Office in Nairobi where he was accused of mismanagement and misappropriation of the 1st Defendant's stock. He stated that although he had been summoned and had travelled from Kisumu at 8AM it was not until 6.30PM when he was called into the Board room. He stated that it was when he entered the Board room where he had been informed the meeting between the Kenya Tea Development Authority and Managers of the 1st Defendant would take place that he realized there was no such meeting. Instead it was an interrogation concerning theft of Kshs.38 Million at his Branch. In court he stated that the questioning took about 40 minutes and when he denied the accusations of theft Manoj Shah the 1st Defendant's Managing Director and the 2nd Defendant in this case lost his temper and beat him repeatedly. When he bled and his shirt got stained he was given a shirt to change into. At around 9.30PM he was escorted to Central Police Station by one Sanjay and Amal Shah. Sanjay entered one of the offices while he and Amal Shah waited in the corridor. He was however not booked in. Instead he was taken back to the office and coerced into admitting the theft in writing. He was also coerced to enter into an agreement that he would transfer his property in Kisumu – **LR Kisumu Municipality/Block 8/174** and Motor Vehicle **KBF 222W** as part payment of the sum embezzled. He also agreed to deposit a sum of Kshs.6,750,000 to the 1st Defendant's account and execute a transfer form in respect of the car and the property. Thereafter he was detained in the home of the Security Officer and the next day escorted to his house in Kisumu, by air, where he collected the original title deed to the property, the log book for the vehicle, his passport and original identity card which he then went and handed to the 2nd Defendant in Nairobi. He continued being held incommunicado in Nairobi only to be released on 26th April 2011. The Plaintiff admitted that a sum of Kshs.257,800/= which were daily sales for 23rd April 2011 were in fact banked into his bank account instead of the 1st Defendant's account. He explained that this was because by the time he left Kisumu for Nairobi the Online System was not working. He stated however that while he was in Nairobi he was made to do a transfer of Kshs.250,000/= to the 1st Defendant's account and that of that sum what remains unpaid is Kshs.7,800/=. When asked about the transactions and the audit report that form the basis of the Defendant's counter claim the Plaintiff stated that the impugned transfers were all done by the Head Office. He stated that he was not computer literate and that anything to do with computers was handled by somebody else in the branch. He contended that his employer was aware he was not computer literate. He stated that upon travelling back to Kisumu and more specifically on 18th May 2011 he went to Kisumu District Hospital and was treated for the injuries he had suffered and that he also obtained a P3 Form which is part of his exhibits in this suit. He however did not prefer charges against the 2nd Defendant. He stated that subsequently he instructed his Advocates to issue a demand to the Defendants and to thereafter file this suit. He denied that he stole any money from the 1st Defendant and contended that the reason the impugned transfers have his name on them is because the computer was programmed to have his name on every transaction involving the branch. He also contended that the reason they have his signature is to acknowledge that they had been served upon him by the auditor (DW1). He disputed that his endorsement of the documents was proof of his admission of the theft and stated that the Auditor's report does not show that he took any money.

THE CASE FOR THE 1ST AND 2ND DEFENDANTS

4. The Defendants called Nandula Subbanna Deekshitulu (DW1) an Internal Auditor working at the 1st Defendant's Head Office in Nairobi. He stated that the 1st Defendant imports tyres for resale in the market. He stated that his duties are to audit the Company's physical stock vis a vis the computer stock and the bin cards. He stated that the company has various branches including in Kisumu and that the distribution of the products to the Branches from the Company's warehouse is done through an ERP (Enterprise Resource Planning) Programme. The warehouse is in Nairobi and the branches place orders to the warehouse through what they call Return to Vendor (RTV). Once the goods reach the branch the Branch raises a Goods Received Note (GRN) and then prepares a Manual Bin Card for the goods. The Audit Department monitors what goods were requisitioned, what stocks were received, what goods were sold (sales) and what credit notes were made through the system. He testified that the branch prepares summary reports daily and cash/invoice check list which can be viewed online by the Head Office. He stated that these documents can only be prepared by the Manager of the Branch as it is he who has the password and who is trained by the IT Department. He stated that no Branch Manager is computer illiterate. In regard to this case DW1 testified that when he visited the Kisumu Branch on 11th April 2011 he came across certain Transfer Notes No. 52 – 63 which were suspicious. The transfer notes showed that stock had moved from the Branch to somewhere else but this was not reflected in the Daily Sale Summary meaning that the 1st defendant lost money equivalent to those transfers which according to the witness (DW1) amounted to Kshs.36,042,096/= which the Defendants seek in the counter claim. DW1 also testified that on 24th April 2011 Kshs.257,800/= which should have been deposited in the 1st Defendant's account was deposited in the Plaintiff's account. He however conceded that on 26th April 2011 Kshs.250,000/= was banked in the Company's account by the Plaintiff. He stated that the Plaintiff could not give a plausible explanation in regard to the suspicious transfers and so he (DW1) referred the matter to Manoj Shah, the 2nd Defendant, who summoned the Plaintiff to Nairobi on 21st April 2011. He stated that he too attended that meeting. He denied that during the meeting the Plaintiff was beaten, given a shirt to change into and taken to the police station. He also denied that the Plaintiff was detained against his will for three days. He stated that it was the Plaintiff himself who upon being briefed about the issues confessed in his own handwriting that he had stolen the stocks. He stated that the Plaintiff agreed to make good the loss with the help of his son. The witness took this court through the Audit report. He stated that he supplied the documents to the Plaintiff and the Plaintiff asked for time to study them and respond to the queries but he never did. He contended that being the Branch Manager the Plaintiff was responsible for the stock at the Branch and that he had given no explanation for the loss.

5. Manoj Shah, the 2nd Defendant, testified that he is the Managing Director of the 1st Defendant Company, and that the 1st Defendant is engaged in the tyre business. He confirmed that the Plaintiff was the Manager of the 1st Defendant's Branch in Kisumu for the twenty years until 26th April 2011. He admitted that he summoned the Plaintiff to Nairobi on 21st April 2011 but vehemently denied he assaulted him. The 2nd Defendant stated that to the best of his knowledge, the Plaintiff remained in Nairobi for only one day. He contended that he had no idea where the Plaintiff slept as once he finished with him the Plaintiff left the premises. He contended that he was not aware the Plaintiff was detained in the house of Issa Premji, the Company's Security Officer, for three days between 21st and 26th April 2011. He stated that after the Plaintiff left on 21st April 2011 he next saw him on 26th April when he took to him the ownership documents and the duly executed transfer forms. Manoj Shah, further stated that he was not aware the Security Officer did not allow the Plaintiff to use his phone or that the Security Officer escorted the Plaintiff to Kisumu by air to collect the documents that were taken to him on 26th April 2011. He stated that the Plaintiff banked Kshs.257,800/= received by the Branch in his own account instead of the Company's account. He contended that the Plaintiff wrote the letter ("confession") himself and took it to the Head Office and that the Plaintiff undertook to make good any loss that would be confirmed. He stated that the amount stolen was Kshs.36 Million. He contended that as a result of this undertaking the 1st Defendant withheld criminal proceedings against the Plaintiff. He stated that in the letter the Plaintiff mentioned the staff that were involved in the scam but the 1st

Defendant could not verify the allegations and neither could it have them charged as the evidence was not sufficient. He contended that as against the Plaintiff investigations were done and verified by the Auditor. He stated that the investigations showed that the Plaintiff had been stealing the 1st Defendant's tyres since 23rd July 2010 and 11th April 2011.

SUBMISSIONS

6. Learned Counsel for the parties summed up their cases through written submissions. Counsel for the Plaintiff reiterated the Plaintiff's evidence and submitted that the Plaintiff has proved that he was assaulted by the 2nd Defendant and is entitled to general damages. Counsel submitted that the 2nd Defendant took unfair advantage of the Plaintiff's vulnerable circumstances but had no justification to act as he did. Under this head Counsel proposed an award of Kshs.3,000,000/=. He relied on 2 cases:-

1. Lewis Wilkinson Kimani Waiyaki V. Attorney General [2016] eKLR

2. James Orengo V. Attorney General & Another [2007] eKLR.

7. Counsel further submitted that the Plaintiff had proved his claim for damages for false imprisonment on a balance of probabilities. He proposed an award of Kshs.3,000,000/=. He relied on the following cases:-

1. Lewis Wilkinson Kimani Waiyaki V. Attorney General (Suppra)

2. Michael Kagoma Maina V. Attorney General [2012] Eklr

8. Counsel also urged this court to hold that the transfers of the Plaintiff's property in Kisumu and his motor vehicle and the cash deposit of Kshs.6,750,000/= were obtained under duress and intimidation and the same ought to be voided and a permanent injunction granted as prayed in the plaint.

9. On the Counter Claim Counsel for the Plaintiff submitted that the 1st Defendant did not prove that there was any loss of tyres at the Kisumu Branch. That on the contrary there is evidence that vindicates the Plaintiff that failure to make inquiries with the Sales Directors who were responsible for making the said Transfer Notes, or to have them testify in court or to produce the emails that originated the said transfers renders the Audit Report ineffective, inconclusive and baseless. Counsel urged this court to dismiss the Counter Claim with costs but to grant the reliefs sought by the Plaintiff.

10. Counsel for the Defendant submitted that the Plaintiff on his own volition and out of his own free will devoid of any undue influence, and pursuant to the admission in writing of embezzlement of the proceeds of the property of the 1st Defendant, executed not a blank transfer, but a specific transfer to the 1st Defendant of Motor Vehicle registration Number KBF 222W and handed over the same together with the original log book to the Defendants and further submit that the transfer of ownership thereof has been carried out with his full knowledge free of any undue influence as narrated by the 2nd Defendant in his evidence.

The Defendants Counsel submitted that by the admission in writing which was acknowledged by the Plaintiff in evidence which is dated 26th May 2011 confirmed that he had caused the 1st Defendant to incur massive losses by transferring of stock now amounting to Kshs.36,042,696.00 and cash Kshs.257,800.00. Counsel submitted that it was the evidence of the 2nd Defendant that whereas the Applicant's own admission of embezzlement of the stock and cash amounting to an aggregate total of Kshs.36,300,496.00 entrusted into his possession by virtue of his employment amounted to criminal

misconduct he nonetheless accepted the Plaintiff's written request towards restitution by unconditionally and irrevocably offering inter alia to:-

a) authorise the Defendants to sell **LR KISUMU MUNICIPALITY/BLOCK 8/174** by handing over the original Lease Certificate together with blank transfer forms duly executed together with his passport size photos.

b) hand over motor vehicle registration no. **KBF 222W** together with the original log book and transfer forms duly executed in favour of the 2nd Defendant.

c) cause cash in the sum of **Kshs.6,750,000.00** to be deposited to the account of the 1st Defendant.

11. The Defendants Counsel further submitted that the Plaintiff's offer and acceptance by the Defendants of the said documents and items in restitution, was not in exchange for his liberty as the Plaintiff alleges as it is still open to the Defendants to prefer criminal complaints against him. Counsel contended that the Plaintiff's allegation in his evidence that he was accused previously of embezzlement during the period between July 2009 and September 2009 while away on leave in the United Kingdom was denied by both Defence witnesses as false.

He stated further that the Plaintiff called two witnesses whose evidence was on his character and offered nothing directly on the contentious issues of the fraud and restitution. He stated that the Plaintiff's suit is barred by estoppel by conduct and the same is bad in law, incompetent and an abuse of the process of this court and ought to be struck out. Further that the 1st Defendant incurred massive losses amounting to an aggregate total of Kshs.36,300,496.00 as a result of the fraud on the part of the Plaintiff.

DETERMINATION

12. That the Plaintiff was at all material times employed by the 1st Defendant as its Branch Manager in the Kisumu Branch is not disputed. It is also not in dispute that following a periodic audit by the 1st Defendant's Internal Auditor Nandula Subbana Deekshitulu, (DW1) the Plaintiff was summoned to the Head Office on 21st April 2011. It is also not in dispute that on 26th April 2011 the Plaintiff returned to Kisumu and collected the original title deed of his property **LR KISUMU MUNICIPALITY/BLOCK 8/174** and original log book for his Motor Vehicle **KBF 222W**, his passport and National Identity card which he took to the 2nd Defendant in Nairobi. It is also not in doubt that following the meeting the Plaintiff transferred a sum of Kshs.250,000/= from his account to the 1st Defendant's account and made a further deposit of Kshs.6,750,000/= into the account. The issues for determination are:-

a) In regard to the Plaintiff's Claim

- i. Whether the 2nd Defendant assaulted the Plaintiff during the meeting of 21st April 2011.
- ii. Whether the 1st and 2nd Defendants held the Plaintiff against his will and in communicado between 21st April 2011 and 26th April 2011.
- iii. Whether the Plaintiff executed the transfer documents of his properties in favour of the 1st Defendant willingly and voluntarily or whether he acted under duress, intimidation and coercion in exchange for his freedom as alleged.
- iv. Whether he is entitled to the reliefs sought.

b) In regard to the Counter Claim

i. Whether the Plaintiff on his own volition and out of his own free will devoid of any undue influence admitted in writing that he had caused the 1st Defendant a loss of stock worth Kshs.36,042,696/= and a loss of Kshs.257,800/= making a total of Kshs.36,300,496/=.

ii. Whether pursuant to that "confession" the Plaintiff voluntarily and unconditionally undertook and indeed executed a transfer of his properties **LR KISUMU MUNICIPALITY/BLOCK 8/174** and Motor Vehicle **KBF 222W** and a deposit of Kshs.6,750,000/= in favour of the 1st Defendant in restitution for the loss.

iii. Whether this suit is bad in law, incompetent and an abuse of court process.

iv. Whether the 1st and 2nd Defendants are entitled to the prayers sought.

13. Having heard and considered testimonies and submissions from the parties I am satisfied that the Plaintiff has proved his case against the Defendants on a balance of probabilities. The Plaintiff testified that although he had been notified that the meeting he was going to attend was with Managers of the 1st Defendant and officials of the Kenya Tea Development Authority that was not to be. Instead it turned out the meeting was an interrogation by the 2nd Defendant and other officials of the 1st Defendant regarding alleged theft of stock and cash at his branch. This was corroborated by Caleb Ochieng Onyango (PW3) who worked at the 1st Defendant's Karen Branch and who was also at the meeting pursuant to similar summons. The 2nd Defendant confirmed Caleb Ochieng Onyango (PW3) was at the Head Office on the material day. This witness testified that he could see the happenings in the boardroom through the reception door where he sat. Like the 2nd Defendant he stated there were seven Senior Managers and Directors of the 1st Defendant inside the boardroom. He testified that his own interrogation was done at different times on that day and recalled that the Plaintiff, who he knew as a colleague in another branch for six years was called in after his first interrogation. He also attested to seeing the 2nd Defendant beating the Plaintiff and to hearing the 2nd Defendant telling one Patel to go for a title deed and the Plaintiff being taken away soon after that. He testified that whereas he himself was asked for a title deed he declined to get one. He stated that him and his Branch Manager one Asif were taken to the police station and locked up and although he was subsequently charged with Stealing by Servant he was acquitted.

14. In effect this witness confirmed the Plaintiff's evidence that on 21st April 2011 the 1st Defendant summoned its employees to the Head Office and that accusations of theft were levelled against them. This witness also confirmed that he too was asked for a title deed and was later taken to the police station. He also confirmed that he saw the 2nd Defendant beating the Plaintiff. In his statement the witness described how he saw the 2nd Defendant, in apparent rage, rise up from his seat and slap and punch the Plaintiff on the face and the back of the head. He stated that the Plaintiff started bleeding from the nose as the 2nd Defendant continued beating him. Evidence was also led by the Plaintiff's daughter that when he arrived in Kisumu on 26th April 2011 he was shaken and traumatized and that he had physical injuries. Those injuries are confirmed by a P3 form filled at Kisumu District Hospital on 10th May 2011. It is my finding that the evidence of these witnesses corroborated the Plaintiff's evidence that he was beaten by the 2nd Defendant and that when he started bleeding he was given another shirt to change it. The assault has been proved on a balance of probabilities.

15. As to whether the 1st and 2nd Defendants detained the Plaintiff against his will and incommunicado, the Plaintiff testified that after the questioning and being taken to Central Police Station and back without any charges being preferred he was taken to the residence of the Company's Security Officer where he

remained under strict surveillance. During that period 22nd April to 26th April 2011 his phone was confiscated and he could not communicate with his relatives. His daughter Sonal Patel (PW4) confirmed that during that period she kept calling the Plaintiff but he did not respond. The Plaintiff's evidence that he was detained in the residence of the Security Officer against his will was not rebutted. The

16. 2nd Defendant when questioned about it stated that he did not know what happened to the Plaintiff after he left his premises while the Security Officer was not called as a witness to either confirm or deny this allegation. This renders the Plaintiff's and his daughter's evidence highly probable. It is my finding that the Defendants' conduct was unlawful and that it amounted to false imprisonment. The Plaintiff pleaded this at paragraph 6 (viii) of the plaint and is therefore entitled to compensation for this tort.

17. In regard to the transfer of his assets to the 1st Defendant it was alleged that he did this on his own volition and upon confessing that he had stolen the 1st Defendant's stock valued at Kshs.36,000,000/=. This court is however not persuaded that the "confession" and the subsequent transfer of his assets was voluntary. To the contrary I find that he executed those documents under duress. As I have already stated there is evidence that the 2nd Defendant assaulted the Plaintiff during the questioning. I am also persuaded that he was escorted to the police station to scare him and to force him to give in. Caleb (PW3) told this court that he too was asked for a title deed and when he declined to go for one he was taken to the police station and together with his Manager was locked in. I am therefore persuaded by the Plaintiff's evidence that the reason he admitted he had stolen was because he had been beaten and was threatened with detention at the police station. It is reasonable that a person faced with threat of detention at a police station for four days would do the same. There would have been no need for the Defendants to have two people escort the Plaintiff to Kisumu as they did to collect his title deed, log book, passport photos and identity card if indeed he acted on his own volition. The Defendants would have called the two officers who escorted the Plaintiff to Kisumu to rebut these allegations but they did not call them. It is my finding that in the absence of evidence by the Defendants to rebut this the Plaintiff's evidence is true. The court is persuaded that the Plaintiff acted under duress both in admitting the theft and in executing the transfer of his assets to the 1st Defendant and as such the said transfers are null and void. The deposit of the sum of Kshs.6,750,000/= into the 1st Defendant's account was based on this confession and that sum must also be refunded to him. I am also not persuaded that the Plaintiff's suit is bad in law and an abuse of the court process. The claims he has made are known in law and as he has proved his case on a balance of probabilities he is entitled to the prayers sought.

18. What of the Counter Claim"

The Defendants' Counter Claim is based on an audit report prepared by Nandula Subbanna Deekshitulu – the 1st Defendant's Internal Auditor. This witness testified that as part of a periodic exercise he visited the Kisumu Branch on 11th April 2011 and when he did stock as well as cash audit the same revealed discrepancies between the value of 12 stocks transferred by the Plaintiff between 23rd July 2010 and 11th April 2011 vis a vis the cash receipts and that the consequent loss amounted to Kshs.36,042,096/=. In other words stocks worth Kshs.36,042,096/= could not be accounted for. The witness took this court through the relevant Transfer Notes No. 52 to 63 and was emphatic that the loss could only be attributed to the Branch Manager. What is interesting however is that on being cross-examined this witness revealed that the Transfer Notes were authorized by someone in the Credit Control Department in Nairobi. He was emphatic that the Manager at the Branch could not generate a Transfer Note as he does not have what he referred to as the serial number for that purpose. Indeed he stated this more than once – that a Transfer Note can only be created by someone at the Credit Control Department in Nairobi but cannot be created by a Branch Manager as he does not have the serial number. I presume the serial number to be a password which the person originating the Transfer Note must resort to. On his part the 2nd Defendant created the impression that the Plaintiff could not have and did not act alone

in this. The 2nd Defendant testified that the Plaintiff volunteered the names of the employees involved in the scam but stated that the Company could not take any action against those employees as the evidence was not sufficient. Given that the Auditor's position was a Branch Manager could not generate the Transfer Notes as he did not have the serial number he ought to have explained how the Plaintiff did it. Despite persistent cross-examination this explanation was not forthcoming from him. It is my finding that in the absence of an explanation of how this was done the Plaintiff cannot be found liable. In other words the Defendants have not proved on a balance of probabilities that the Plaintiff was liable for the loss of stock. It is also instructive that at the time he was questioned and coerced to admit the theft and to transfer his assets to the 1st Defendant the theft had not been established. In the Auditor's own words the Plaintiff agreed to execute the transfer of his assets so that if any loss was established the assets could be sold in restitution. The Audit Report according to the 2nd Defendant and the Auditor was prepared on 26th April 2011. In fact it is dated 27th April 2011, which means that even the Defendants were not sure of the loss when they put the Plaintiff through the questioning.

19. I am however persuaded that the Plaintiff is liable to the 1st Defendant for a sum of Kshs.7,800/= being the balance of the sum that was irregularly banked in his account instead of the 1st Defendant's account. The Plaintiff's evidence that he already transferred Kshs.250,000/= of this amount to the 1st Defendant's account was confirmed by the Auditor.

20. Reliefs

I have already found that the 2nd Defendant unlawfully assaulted the Plaintiff and that he is entitled to compensation. I have also found that the Plaintiff is entitled to damages for false imprisonment and that his executing the transfer of his assets to the 1st defendant was void. On the quantum of damages I have considered the authorities cited by Counsel for the Plaintiff. The Plaintiff sued the Defendant in tort but does not allege violation of his Constitutional rights and his treatment by the 2nd Defendant can in no way be compared to that of the Plaintiff in the **James Orengo V. Attorney General & Another** (Supra). When cross-examined PW4, the Plaintiff's daughter testified that the reason she did not insist on taking her father to hospital upon his arrival in Kisumu was that the injuries were minor and could be treated at home. She insisted they were minor even upon being re-examined by Mr. Ragot, the Advocate for the Plaintiff and stated her father has suffered a minor cut... In the P3 form the degree of injury is classified as harm meaning it was not a serious injury. I am therefore not persuaded that the same should attract an award of Kshs.3,000,000/= proposed by Counsel for the Plaintiff. To the contrary I find that an award of Kshs.200,000/= (Two Hundred Thousand) would be sufficient to compensate the Plaintiff for the injuries sustained.

21. In regard to false imprisonment I find that an award of Kshs.200,000/= (Two Hundred Thousand) would also suffice. The Plaintiff was not detained in police or prison custody as was the Plaintiff in **Lewis Wilkinson Kimani Waiyaki V. Honourable Attorney General** (Supra). He did not allude to any mistreatment during the time he was confined in the Security Manager's residence.

22. In the end I find for the Plaintiff and enter judgment in his favour against the Defendants jointly and severally for:-

1. An order of permanent injunction restraining the Defendant from selling, disposing, charging, transferring, pledging, leasing or by other means whatsoever dealing adversely with the Plaintiff's Motor Vehicle KBF 222W and land LR. KISUMU MUNICIPALITY/BLOCK 8/174.

2. An unconditional release of the Plaintiff's Motor Vehicle KBF 222W.

3. Refund of the sum of Kshs.6,750,000/= deposited in the interest earning account opened in the joint names of the Advocates for the parties together with all interest accrued.

4. General damages of Kshs.200,000/= for the assault/battery

5. General damages of Kshs.200,000/= for False Imprisonment.

6. Interest on the General damages at court rates from the date of this judgment.

7. Costs of this suit

23. For the Defendants I enter judgment in their favour against the Plaintiff for a sum of Kshs.7,500/= and order that there be a set off of that sum from the sums awarded to the Plaintiff. The rest of the Counter Claim is dismissed with costs to the Plaintiff. It is so ordered.

Signed, dated and delivered at Kisumu this 21st day of December 2017

E. N. MAINA

JUDGE



While the design, structure and metadata of the Case Search database are licensed by [Kenya Law](#) under a [Creative Commons Attribution-ShareAlike 4.0 International](#), the texts of the judicial opinions contained in it are in the [public domain](#) and are free from any copyright restrictions. Read our [Privacy Policy](#) | [Disclaimer](#)