**Koech v African Highlands and Produce Company Limited and another**

**Division:** High Court of Kenya at Kericho

**Date of judgment:** 28 October 2005

**Case Number:** 48/98

**Before:** Musinga J

**Sourced by:** LawAfrica

**Summarised by:** E Ongoya

*[1] Employment law – Termination of contract of employment – Whether rules of natural justice apply.*

*[2] Malicious arrest and prosecution – Acquittal of an accused person – Whether this is evidence of*

*malicious prosecution.*

**Editor’s Summary**

The plaintiff was until 5 September 1996 an employee of the defendant. By letter dated 5 September

1996 the plaintiff’s employment was terminated with immediate effect. The plaintiff complained that rules of natural justice were violated because he was not given an opportunity to state his defence to the charges that were levelled against him before termination of his services. The plaintiff further claimed entitlement to a host of other allowances. The first defendant denied that it was bound to follow the principles of natural justice whilst terminating the plaintiff’s services. The plaintiff also claimed that on 15 August 1996, without any reasonable cause, the first defendant’s manager had taken him to Kericho Police Station and falsely and maliciously reported that the plaintiff had on 14 August 1996 stolen three pieces of steam control valves. The first defendant denied that it took the plaintiff to Kericho Police Station on 15 August 1996 and that it falsely and maliciously reported to the police that the plaintiff had stolen 3 steam control valves from the defendant. To the contrary, the first defendant averred that it made a report to the police station that it had discovered that 3 steam control valves had disappeared and suspected them to have been stolen. That the second defendant conducted its own independent investigations into the disappearance of the steam control valves and, thereafter, made an independent decision to charge the plaintiff with the offence of theft by servant.

**Held** – Where a contract of employment provides that either part may terminate the same by giving to the other party a notice or salary *in lieu* thereof none of the parties is obligated to assign any reason for terminating the contract as long as he gave the requisite notice or paid the salary *in lieu* of the notice. Unless there existed specific provisions for the application of rules of natural justice in a contract of employment, those rules were irrelevant in a case of termination of services and any alleged breach of the rules could not found a cause of action. A termination of the contract of employment in accordance with the terms of the said contract cannot be unlawful. A judgment *in rem* is a final judgment or order or decree of a competent court which confers or takes away from any person any legal character, or to be entitled to any specific thing, not as against any specific person but absolutely. An employee was not entitled to payment of his allowances upon termination of his services *Mwangi v University of Nairobi* [1995] LLR 391 (CAK) followed. A suspect who is acquitted of a criminal case is not sufficient ground for filing a civil suit to claim damages for malicious prosecution or false imprisonment. Evidence of spite, ill-will lack of reasonable and probable cause must be established. *Nzoia Sugar Company Limited v Collins Fungututi*, civil appeal number 7 of 1987 adopted. Case dismissed with costs.

**Cases referred to in judgment**

(“**A**” means adopted; “**AL**” means allowed; “**AP**” means applied; “**APP**” means approved; “**C**” means

considered; “**D**” means distinguished; “**DA**” means disapproved; “**DT**” means doubted; “**E**” means

explained; “**F**” means followed; “**O**” means overruled)

***East Africa***

*Jediel Nyaga v Silas Mucheke* civil appeal number 59 of 1987 (UR)

*Mwangi v University of Nairobi* [1995] LLR 391 (CAK) – **F**

*Nzoia Sugar Company Limited v Collinus Fungututi* civil appeal number 7 of 1987 (UR) – **A**

*Rift Valley Textiles v Edward Oganda* civil appeal number 27 of 1992 (UR)