

THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA

**CIVIL SUIT NO. 659 OF 1996**

HENRY MUNYANGANIZI .....PLAINTIFF

VERSUS

ATTORNEY GENERAL..... DEFENDANT

BEFORE: THE HONOURABLE MR. JUSTICE P. K. MUGAMBA

JUDGMENT

The plaintiff, Henry Munyanganizi, filed this suit against the Attorney General on July 1996. He sought special and general damages resulting from malicious prosecution by the defendant in the Criminal Court at Mengo for abuse of office. When hearing of this suit started the defendant did not comply with an order for discovery and its defence was struck out under order 10 rule 21 of the Civil Procedure Rules. Hearing proceeded ex parte thereafter.

In his testimony, which was detailed, the plaintiff narrated how he had risen in rank from a recruit constable commissioner of Police Force in 1963 to the high rank of Assistant Commissioner of Police in April 1990. He has served not only in the Police Force, where at one time he was Director of the Special Branch Department, but also in the Ministry of Co-operatives and Marketing as a Senior Marketing Officer and in the Immigration Department where by the time of termination of his services he had attained the high office of Commissioner. The academic exploits of the plaintiff are equally impressive. Through his own resources he had obtained his “O” and “A” level certificates while at work. He had gone on to get a Bachelor of Arts degree in Economics and Rural Economy in 1976 and in 1982 he acquired a Master of Science degree in Agricultural Economics from the University of Dar es Salaam. He also got a post graduate diploma in Business Management from Makerere University in addition to several other certificates.

On 1st August 1991 the plaintiff received a letter from the Permanent Secretary, Ministry of Internal Affairs, sending him on forced leave in connection with some irregularity in the processing of an entry permit for one Prakesh Sharma. Thereafter the plaintiff was prosecuted for abuse of office at the Chief Magistrate's Court regarding Sharma's entry permit in Criminal Case U 915/91. That case started on 11th September 1991 and terminated in the plaintiffs acquittal on 10th November 1993. Criminal Case U 177/93 was brought against the plaintiff 4th March 1993. It too charged the plaintiff with abuse of office, contrary to section 83(1) of the Penal Code, but this time it concerned issue of a work permit to one Hasmukhlal Duhyabhai Patel. This case, which was instituted while an earlier one was still ongoing, terminated on 18th July 1995, also in the plaintiffs favour.

Subsequently on 10th January 1995 the plaintiff received a letter dated 18th November 1994 retiring him in public interest.

The two issues framed for resolution by counsel for the plaintiff are:

1. Whether the prosecution of the plaintiff was malicious?
2. To what reliefs, if any, is the plaintiff entitled?

Regarding the first issue, I have indicated above that the plaintiff in his evidence testified to being prosecuted in two cases, namely U 915/91 and U 177/93. In original plaint paragraph 4 mentions the plaintiff being charged with a criminal offence on 24th February 1993 and paragraph 6 thereof mentions dismissal of the charges on 18th July 1995. Clearly what is being related to in that plaint is criminal case U 177/93. Particulars of Criminal Case U 915/91 are nowhere apparent. The amended plaint filed 31st October 2000 also does not refer to U 915/91. It is 'Further Amended plaint' which refers to U 915/91 and seeks some relief on score of that case rather belatedly. Counsel justifies inclusion of events in that case on the fact that the plaintiff had brooked details of it in the course of his testimony. Surely counsel should have advised his client that the first plaint left the details of that case out deliberately because having terminated on 10th November 1993, at the time the plaint was filed it was already time barred in light of the Civil Procedure and Limitations (Miscellaneous Proceedings) Act, Act 20/69. It was no longer good currency and the latest amendment sought to be a back door entry for what was already unwelcome.

See: *Epaineto - vs- Uganda Commercial Bank [1972] EA 185.*

Iga - vs- Makerere University [1972] EA 65.

In the circumstances only events surrounding Criminal Case U 177/93 merit consideration. There must be four ingredients in place in order for an action for malicious prosecution to succeed. The plaintiff should prove the following on the balance of probabilities:

- (i) That it was the defendant who instituted and continued the proceedings.
- (ii) That the defendant acted without reasonable and probable cause.
- (iii) That the defendant acted maliciously.
- (iv) That the proceedings terminated in favour of the plaintiff.

See: Kagane & Others - vs- Attorney General & Another [1969] E.A. 643.

Exhibits P.20 (the charge) and P.23 (the ruling of court) show that the proceedings were instituted and continued by the state. I have no doubt in my mind therefore that this ingredient is in place and proved.

Concerning the second ingredient, Clerk & Lindsell on Torts (12th edition) at paragraph 1712 states:

“What is reasonable and probable cause. As has been already seen, reasonable and probable cause depends upon the information and belief of the defendant. There must be a reasonable cause in such as would operate on the mind of the party making the charge otherwise there is no probable cause for him:

I cannot say that the defendant acted in probable cause, if the state of facts was such as to leave no effect on his mind”

See also Kagane & Others - vs- Attorney General and Another [1969] EA 643, 646 (dict. At E, F, G). The charge brought against the plaintiff was consented to by the Director of Public Prosecutions and prosecuted by State Attorneys. Their professional competence should not be in doubt. They would of course take heed of the words of Justice B. J. Odoki in his work A Guide to Criminal Procedure in Uganda 2 Edition at page 61:

“The decision to prosecute or not is important as it ensures that those reasonably suspected to have committed offences are brought to trial while those suspected upon baseless and unfounded allegations are not put to unnecessary inconvenience of going through the ordeal of a trial”.

The plaintiff was acquitted under S. 125 of the Magistrates' Courts Act after court found no prima facie case had been made out. But that was not all. The plaintiff was never interrogated, let alone asked to explain, concerning allegations which resulted into his prosecution. Not a statement was taken from him according to his evidence and police was never involved in the matter. In order to have reasonable and probable cause attend the act of prosecution it behoved the defendant to gather the pertinent facts and information first and weigh their probity. I find that was not the case.

Then there is consideration of whether the defendant acted maliciously. To my mind this is akin to lack of probable cause accompanied by zeal to accomplish the task at any cost. Clerk and Lindsell in Torts (12<sup>th</sup> edition) at para 70 states:

'Malicious prosecution. In the tort of malicious prosecution malice must be shown as an additional requirement of proof separate from absence of reasonable and probable cause. "The term 'malice' in this form of action is not to be considered in the sense of spite or hatred.... but ... actuated by the improper and indirect motives." And mere anger at the plaintiff is not malice, because this is natural and proper where he was believed to have committed a crime.'

Criminal case U 177/93 was allowed to be instituted against the plaintiff despite the fact that Criminal case U 915/91 premised more or less on similar facts, which had supposedly come about later in time, was making no headway. Needless to say no statement had been taken from the plaintiff regarding the allegations in the criminal case. Indeed the plaintiff, a senior officer of state, was subjected to investigations by remote control, if any. All these are pointers to malice.

The last ingredient was, of course, satisfied when on 18th July 1995 the plaintiff was acquitted and the proceedings ended in his favour. This in combination with the preceding ingredients lead me to the unavoidable conclusion that the plaintiff was maliciously prosecuted by the defendant. The next issue relates to relief the plaintiff is entitled to. The plaintiff craves for several but I find some outright misfits so far as this action is concerned. The last amended plaint and counsel's arguments make mention of money the plaintiff would have been entitled to as a salary for November 1994 to April 2005. At page 15 of the submission counsel states:

“In his testimony he said that he claimed this because if he had not been prosecuted maliciously he would not have been retired in public interest. He would have served up to April, 24, 2005 when he would be entitled to normal retirement.’

I am at sea for the nexus! Indeed I find this proposition unconscionable for nowhere is it hinted at that his prosecution was designed to snatch from him his entitlements. To my mind his eventual retirement was an act independent of his prosecution and that is what available evidence shows. Of course one is entitled to speculation but one should not taint facts with speculation in a case of this nature. I do not find his projected salary estimates and other claimed entitlements relevant to the case at hand. As I have pronounced myself earlier, I do not find claims relating to Criminal case U 915/91 in any way related to this case either. However those claims relating to Criminal case U 177/93 deserve attention.

In Robert Cuossens - vs- Attorney General Supreme Court Civil Appeal No. 8 of 1999 (unreported), Oder J.S.C. had this to say.

“The object of an award of damages is to give the plaintiff compensation for the damages, loss or injury he or she has suffered. The heads of elements of damages recognized as such by law are dividable into two main groups: pecuniary and non-pecuniary loss. The former comprises all financial and material loss incurred, such as loss of business profit, loss of income, or expenses such as medical expenses. The latter comprise all loss which do not represent inroad upon a person’s financial and material assets such as physical pain or injury to feelings. The former, being a money loss is capable of being arithmetically calculated in money, even though the calculation must sometimes be a rough one where there are difficulties of proof.

The latter, however, is not so calculable. Money is not awarded as a replacement for other money, but as a substitute for that which is generally more important than money; it is the best that a court can do, damages have to be measured in order to arrive at what compensation should be awarded”.

The plaintiff’s claim of special damages should be addressed first. This is such a claim as I have not declared inapplicable in the cause of this judgment. I have to state that the law required that special damages must be specifically pleaded and specifically proved.

See: Eletu - vs- Uganda Airlines Corporation [1984] HCB 39,

Masene - vs- Uganda Transport Co. [1992 —1993] HCB 209.

The plaintiff claims he travelled from Kisoro to Kampala on 129 occasions to attend court. For each return journey he used 180 litres of petrol. He claims, and that the cost of petrol per litre fluctuated between Shs. 950/= and Shs. 1,020/=. He claims Shs. 47,368,800/= as money expended on fuel in his submissions.

The pleadings, however, showed the same claim to be Shs. 38,532,000/=. The difference is owing to the variation in the occasions attended which are said actually to have been 129 rather than the 104 mentioned in the pleadings. The plaintiff testified that he used to commute between Kisoro, his area of birth, and Kampala in his Peugeot vehicle number UPN 150. He proffered nine receipts and one invoice (Exh. P.31) in evidence. The total amount involved in the documents so tendered is Shs. 824,600/= (this inclusive of the invoice Shs. 56,050/-). It is a puny sum alongside the Shs. 47,368,800/' earlier claimed but while I concede that proof of special damages at times need not be supported by documentary evidence in all cases (See. Amos Senyakazana - vs- Attorney General [1984] HCB 48. the amount yet to be proved, besides that on the receipts, is in comparison gignantuan and cannot merely be wished in. In any case given the plaintiffs circumstances at the time he would more probably than not have used public means of transport which are more pocket friendly. I am inclined to grant the Shs. 824.600/ as special damages on petrol to the plaintiff but for notorious want of proof the claimed cost of service I decline to grant.

Concerning expenses on legal fees the plaintiff claims Shs. 2,500,000/= as money paid to his counsel in Criminal case U.177/93. Exhibit P.32 is a receipt of payment of a deposit to his Advocates. It is for Shs. 1, 200,000/= and is dated 4th July 1994. The plaintiff testified that he had lost the other receipt bearing the balance on the amount. I am inclined to believe his testimony given the long period of two years the case took before completion and of course the authority in Amos Senyakazana - vs- Attorney General, which would be relevant on this occasion.

In all special damages awarded would be Shs. 3,324,600/= comprising of Shs. 824,600/= awarded for petrol expenses and Shs. 2,500,000/ as legal expenses.

The plaintiff was a senior officer in Government. He was Uganda's Commissioner for Immigration. He had also served as Director of Special Branch, not to mention other responsibilities in the Police Force. He is well heeled in the circles of the educated in this country and prided himself in an unblemished reputation he had built over the years as a person who was incorruptible and trusted. Prolonged criminal proceedings put an end to all that even though these came to nought in the end. He comes to court seeking redress for the pain and suffering he was let to undergo. Damages cannot be adequate as relief but a sum of Shs. 50,000,000/= as I award shall go some way towards his redress.

The plaintiff sought exemplary damages also. Exemplary damages for tort may only be awarded first where there is oppressive, arbitrary or unconstitutional action by the servant of the government and, secondly, where the defendant's conduct was calculated to procure him some benefit, not necessarily financial, at the expense of the plaintiff. As regards the actual award, the plaintiff must have suffered as a result of the punishable behavior, the punishment imposed must not exceed what would be likely to have been imposed in criminal proceedings if the conduct were criminal, and the means of the parties and everything which aggravates or mitigates the defendant's conduct is to be taken into account.

See: *Obongo - vs- Municipal Council of Kisumu [1971] EA 94*

*Rookes - vs- Barnard & Others [1964] A.C. 1129.*

I find present in the circumstances of the plaintiff properties envisaged in the authorities above, particularly the first limb and I shall award Shs. 10,000,000/ as exemplary damages.

Consequently the plaintiff shall be entitled to:

- (a) Shs. 3,324,600/= as special damages.
- (b) Shs. 50,000,000/= as general damages.
- (c) Shs. 10,000,000/= as exemplary damages.
- (d) Interest of 20% p.a. on (a), (b) and (c) from the date of judgment till full realization.
- (e) Costs of the suit.

P. K. Mugamba

Judge

1/3/2002