

**ALIGANYIRA BETTY** ::::::::::: **PLAINTIFF**

**VERSUS**

**RWENZORI DIOCESE SAVINGS AND**  
**CREDIT COOPERATIVE SOCIETY LTD** ::::::::::: **DEFENDANT**

## JUDGMENT

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defendant continued to prosecute the case against her maliciously and without reasonable cause, actions which were precipitated by an unlawful termination of her employment. The plaintiff further alleges that due to the defendant's actions, she was deprived of her personal liberty and her reputation was greatly injured, resulting in mental anguish from which she sought general damages of UGX 1,000,000,000/=, exemplary damages, interest, and costs of the suit.

In its written statement of defence, the defendant denied all claims made by the plaintiff and argued that there was reasonable and probable cause to institute criminal proceedings against her.

### **Representation and hearing**

At the hearing, the plaintiff was represented by Mr. Albert Mukasa, while the defendant was jointly represented by Mr. Cosma A. Kateeba and Mr. Victor A. Busingye. To prove their respective cases, both the plaintiff and the defendant presented three witnesses each. Both counsel filed written submissions, which I have considered in this judgment.

### **Issues for Determination**

In their joint scheduling memorandum, counsel for the parties agreed on the following issues for this court's determination:

- I. Whether the plaintiff was maliciously prosecuted by the defendant.
- II. What remedies are available to the parties?

## **Burden and Standard of Proof**

In civil matters, the burden of proof rests on the plaintiff who must adduce evidence to prove his or her case on the balance of probabilities to obtain the relief sought (**See: sections 101-103 of the Evidence Act Cap 43**). Court must be satisfied that the plaintiff has furnished evidence whose level of probity is such that a reasonable man might hold that the more probable conclusion is that for which the plaintiff contends (**See: Lancaster Vs Blackwell Colliery Co. Ltd 1982 WC Rep 345 and Sebuliba Vs. Cooperative Bank Ltd (1982) HCB130**).

## **Consideration by Court**

**Issue 1: Whether the plaintiff was maliciously prosecuted by the defendant.**

The Court of Appeal in the case of **Dr. Bishop N. Okille Vs. Mesusera Eliot and Another Civil Appeal No. 29 of 1997** quoting with approval the case of **Mbowa Vs. East Mengo Administration [1972] 1 EA 352 at 354** restated the ingredients constituting the tort of malicious prosecution to include the following:

- i) The criminal proceedings must have been instituted by the defendant.
- ii) The defendant must have acted without reasonable or probable cause.
- iii) The defendant must have acted maliciously.
- iv) The criminal proceedings must have been terminated in the Plaintiff's favour.

In the instant case, it is not in contention that the plaintiff was acquitted of the criminal charges preferred against her by the 1<sup>st</sup> appellate court, and the defendant did not pursue any further appeal. Therefore, the plaintiff has proved the last ingredient. What is under contention is whether the defendant ever initiated criminal proceedings against the plaintiff and, if so, whether it did so with probable cause and based on facts it genuinely believed to be true. I will now proceed to determine the merits of each of the three contested elements of malicious prosecution.

On whether the criminal proceedings against the plaintiff were initiated by the defendant, PW3, the plaintiff, testified that she was charged and arraigned before the Anti-Corruption Court for embezzlement and unauthorized access. A judgement of the trial court in respect of ***Criminal Case No. 88 of 2017 (Uganda Vs. Aliganyira Betty)*** before the High Court Anti-Corruption Division was admitted in evidence as Pexh 8. Pexh 8 shows that the plaintiff was charged with two (2) counts, namely, (i) embezzlement of UGX. 210,364,000/= contrary to sections 19(a) and (iii) of the Anti-corruption Act and unauthorised access contrary to sections 12(2) and (7) of the Computer Misuse Act, 2011. The defendant was the complainant.

Counsel for the plaintiff argued that the defendant was instrumental in setting the law in motion against the plaintiff during the investigation and prosecution processes and that the defendant's employees testified before the trial court.

This evidence of the plaintiff was not contested by the defense. DW1, Rev. Clovis Kyalimpa, the chairperson of the defendant between 2012 and 2016, informed the court that following the forensic report, the defendant's General Assembly decided to report the plaintiff to the

police. That the directors of the defendant reported the plaintiff to the police based on both the forensic report and the resolution of the defendant's General Assembly.

Counsel for the defendant, however, argued that the criminal proceedings against the plaintiff were not initiated by the defendant. Counsel submitted that all the defendant or its agents did was report the matter of the loss of money to the police, which then conducted independent investigations leading to the criminal proceedings against the plaintiff. Counsel further argued that criminal proceedings are initiated by either a police officer or a public prosecutor, as stipulated under section 42 of the Magistrates Court Act Cap 16, and it is under this provision that criminal proceedings were preferred against the plaintiff.

Counsel for the defendant also argued that the defendant lacked the expertise to investigate and prosecute the charges against the plaintiff. That such expertise was a preserve of the police and the Director of Public Prosecution (DPP), respectively. Counsel for the defendant referred this court to the case of ***Kindi Eria Albert Vs. Makerere University Kampala (1997) HCB 180*** where it was held that in any event, where the prosecution is instituted by the police or other investigative or prosecutorial agency after investigations, the person giving information is not liable for malicious prosecution unless the information was given with malice.

It is trite law that liability for malicious prosecution does not fall on one who investigates or prosecutes but on the person who instigates the proceedings. This was enunciated in the case of ***Dr. Bishop N. Okille***

***Vs. Mesusera Eliot and Another (supra)*** where the court of appeal held thus:

***“In a prosecution in the name of the state, the person liable is therefore the complainant in whose instigation the proceedings are due.”***

In the instant case, there is cogent evidence on record to show that the defendant, through PW1, who was its chairperson between 2012 and 2016, reported the alleged criminality against the plaintiff to the police which commenced investigations that eventually led to the plaintiff's criminal trial. It is also an incontestable fact that in the said criminal proceedings, the defendant was the complainant.

If not for the defendant's complaints, the criminal proceedings against the plaintiff vide Criminal Case No. 88 of 2017 (Uganda Vs. Aliganyira Betty) before the High Court, Anti-Corruption Division would not have commenced.

Therefore, I am convinced that the defendant played a significant role in initiating the legal process that led to the criminal proceedings against the plaintiff. Consequently, this court concludes that the defendant initiated the criminal proceedings against the plaintiff.

The next question to determine is whether, in instituting criminal proceedings against the plaintiff, the defendant acted without reasonable or probable cause. This ingredient is answered in negative if it is proved that there are facts which, on reasonable grounds, the defendant genuinely believes that the criminal proceedings are justified.

The plaintiff testified to the court that during her employment with the defendant, she introduced new policies to guard the defendant's interests, but these policies were not well-received by some of the board members. The plaintiff also testified that certain members of the defendant wished to obtain loans without adhering to the proper procedures, a practice she opposed. This opposition resulted in conflicts with the board members.

The plaintiff also informed the court that over time, she began to experience pressure from DW1, the chairperson of the defendant, to approve irregular loans for applicants known to him. She stated that when she refused, the chairperson of the board of the defendant started fighting her. She stated that in February 2015, DW1 convened a supervisory meeting where allegations of ghost accounts and irregular loan disbursements surfaced.

The plaintiff further stated that these allegations were investigated by the supervisory committee, which cleared her of any wrongdoing. However, she stated that the Board Members of defendant SACCO disregarded the supervisory committee's report and instead opted for a forensic audit, leading to her interdiction during the audit. The plaintiff further testified that following the forensic audit, her employment was terminated on allegations of fraud and misappropriation of funds. She added that the defendant then reported the matter to the police, resulting in criminal charges being filed against her.

PW1, Siima Salome Bulaaya, the then chairperson of the defendant supervisory committee, informed the court that their investigations had uncovered ghost accounts, including that of Nyakaisiki Grace and

Rwenzori Asset Fund. Additionally, she testified that one of the recommendations put forth was for the defendant to implement a systems audit to identify the individuals accountable for the prevailing fraudulent activities within the company. However, contrary to this recommendation, the board opted for a forensic audit. And that after this audit, the chairperson of the Board members of the defendant reported the plaintiff to the police for investigation, leading to criminal proceedings against her.

For the defense, DW1, the former chairperson of the Board members of the defendant testified to the court that in 2015, the defendant's management received information regarding the presence of ghost accounts, software misuse, and improper loan disbursements. This prompted the defendant to convene a management meeting, which the plaintiff attended, and it was from that meeting that he requested the defendant's supervisory committee to investigate the fraudulent incidences in the defendant's transactions.

DW1 also told this court that following the supervisory committee's findings, the defendant initiated a forensic audit of the defendant's affairs. The forensic audit revealed: (i) the existence of ghost accounts, and (ii) a significant loss of funds belonging to the defendant through these ghost accounts. And that this was attributed to the plaintiff, as she was in possession of passwords necessary for operating the software used to manage the defendant's members' accounts.

DW3, Rwakasoro Patrick, who served as the loans officer of the defendant from 2012 to 2015, testified that as a result of ghost accounts and irregular loan disbursements, the defendant incurred a financial loss of UGX 210,000,000/=. DW3 also informed the court that it was



the plaintiff's duty, in her capacity as the manager of the defendant at the time, to supervise the accounting procedures of the defendant, ensure the safekeeping of proper financial records, and be accountable for any losses incurred.

Both DW1 and DW3 testified that, according to the forensic audit report, the accounting software was controlled by a server located in the plaintiff's office, and only the plaintiff had exclusive access to it. This led the defendant to believe that the plaintiff was responsible for the loss. These developments prompted the defendant's Board members to report the matter to the police for further independent investigations. Subsequently, following the police investigations, the Director of Public Prosecutions sanctioned the file, and the plaintiff faced criminal proceedings.

Counsel for the plaintiff contends that although the defendant faced issues of financial mismanagement and misappropriation of funds, the supervisory committee report identified individuals responsible, such as Mwebesa John, who irregularly took loans. Counsel argued that the defendant failed to adhere to the recommendations of the supervisory committee report by neglecting to report the responsible individuals but opted to unjustly implicate the plaintiff without probable or reasonable cause.

Additionally, counsel for the plaintiff argued that the process of conducting the forensic audit was marred by irregularities, rendering the resulting report illegitimate. Despite this, the defendant hastily reported the plaintiff to the police without properly considering the authenticity and contents of the report.

Furthermore, counsel for the plaintiff argued that the report and subsequent investigations lacked sufficient evidence to reasonably suggest the plaintiff's guilt of embezzlement and unauthorized access. Counsel submitted that the charges against the plaintiff were solely based on the flawed forensic audit report, which was deemed null and void as per the ruling of Hon. Justice Jane Okuo Kajuga in ***Criminal Appeal No. 001 of 2021 (Aliganyira Betty Vs. Uganda)***.

On the other hand, counsel for the defendant argued that the defendant acted with reasonable or probable cause when it reported the plaintiff to the police on allegations of embezzlement of its funds. Counsel argued that the findings of the appellate court are irrelevant to the instant case because at the time the matter was reported to the police, the defendant had reasonable cause to believe that the plaintiff was guilty.

Counsel for the defendant further argued that the trial court's establishment of a prima facie case against the plaintiff, the subsequent defence, conviction, and sentencing, all attest to the existence of probable cause to initiate criminal proceedings against the plaintiff. Counsel referred this court to the case of ***Uganda Revenue Authority Vs. Murisa Amos CACA No. 128 of 2018***.

In the case of ***Bosco Wabendo and 5 Others Vs. Issa Namara HCCA No. 21 of 1999*** citing with the approval the case of ***Edirisa semakula Vs. Attorney General [1976] HCB 171***, the court defined reasonable or probable cause as:

***“An honest belief in the guilt of the accused upon full conviction, founded on reasonable grounds, of the existence of the state of circumstances which, assuming***

***them to be true, would reasonably lead to any ordinary prudent and cautious man, placed in the position of the accuser, to the conclusion that the person charged was probably guilty of the crime imputed.”***

In the case of ***Uganda Revenue Authority Vs. Murisa Amos (Supra)***, the Court of Appeal observed that:

***“Where a court of law has determined that an accused person has a case to answer, the prosecution having adduced sufficient evidence as to require him/her to be put on his defence a civil suit for malicious prosecution cannot be sustained thereafter.”***

An evaluation of both the plaintiff's and the defendant's evidence on record shows that there were irregular activities occurring in the defendant's affairs during the plaintiff's tenure as a manager. This can be inferred from Exhibit 3, the defendant Supervisory Committee Report (Pexh 3) on matters regarding the financial management of the defendant, dated March 6, 2015. These irregular activities pertained to the operation of ghost accounts, loan disbursements, and misuse of the accounting software.

Pexh 3, among several observations, indicated that: ***“it is evident that the laxity was on the side of the manager (plaintiff) as things happened without her knowledge. This is evidenced by her inability to know people that had received loans two days before and were put on another request which she signed and the money was withdrawn”***

The defendant relied on this report and the forensic audit report to report to the police the case of embezzlement and authorized access contrary to section 19(a) and (iii) of the Anti-corruption Act and section 12(2) and (7) of the Computer Misuse Act 2011, respectively, against the plaintiff.

I am aware the 1<sup>st</sup> appellate court in the case of Aliganyira Betty (the plaintiff herein) Vs. Uganda Criminal Appeal No. 001 of 2021 rendered the forensic audit report inadmissible to the extent that it was prepared by unlicensed person. Therefore, the report is equally irrelevant to the instant case.

In view of Pexh 2, a letter from DW1 from the then chairperson of the defendant to the supervisory committee, the subsequent investigations and the significant role of the plaintiff in the management affairs of the defendant, I am inclined to believe that the directors of the defendant sincerely believed and were convinced that, due to the prevailing circumstances, the financial losses attributed to ghost accounts, irregular loan disbursements, and unauthorized access in the accounting software would lead to the plaintiff being found guilty as charged.

Such a belief, which is tested against the standard of an ordinary, prudent, and cautious person placed in the position of the accuser, underwent the same scrutiny by the trial court. It is an indisputable fact that the trial court in Uganda vs. Aliganyira Betty (the Plaintiff herein), vide Criminal Case No. 088 of 2017 in the High Court of Uganda, Anti-Corruption Division, presided over by His Worship Nabende Moses M., established that the prosecution had presented sufficient evidence to establish a prima facie case against the plaintiff,

who then presented her defense. The trial court subsequently convicted the plaintiff on two counts.

In the premises, it is immaterial that the plaintiff's conviction was overturned by the appellate court. As per the authority in ***Uganda Revenue Authority Vs. Murisa Amos (Supra)***, the fact that the trial court found a prima facie case against the plaintiff and the plaintiff was put on a defence is a testament that the defendant had reasonable or probable cause in instituting criminal proceedings against her.

The third question for this court to determine is whether the defendant acted maliciously in initiating the criminal proceedings against the plaintiff. This question is answered in the affirmative if it proved that, in instituting criminal proceedings, the defendant acted with an improper and wrongful motive. The defendant must have had an intent to use the legal process in question for some motive other than its legally appointed and appropriate purpose.”

PW3, the plaintiff testified to the court that at all material times, she carried out her duties and responsibilities as a manager of the defendant diligently and that she introduced policies to protect the interests of the defendant. It was the plaintiff's testimony that despite such a commendable job, the defendant instituted criminal proceedings against her out of malice and ill-motive because she did not yield to the pressure of the defendant founders and their spouses to get loans irregularly.

The plaintiff further testified that when she was arrested by the police, the defendant made announcements on Voice of Tooro Radio. Additionally, the news was broadcast on other radio stations within Fort

Portal Tourism City and was also published in print media such as Orumuli Newspaper, stating that the plaintiff had been arrested for embezzlement of over UGX. 200,000,000/=.

However, during cross-examination, the plaintiff neither provided proof that the defendant's directors or founders had applied for the loans and had put her under pressure to irregularly disburse the loans to them, nor adduced evidence to show that the defendant sponsored any false news against her on radio or in print media.

DW1 on the other hand testified that he reported the plaintiff to police on behalf of the defendant due to the existence of ghost accounts, forged books of accounts and the financial loss that the defendant had suffered.

Counsel for the plaintiff argued that the defendant had also failed to prosecute individuals who confessed to having participated in fraud activities such as Amanywa John and Mwebesa Richard but instead chose to prosecute the plaintiff who had exposed the fraud and the financial impropriety. Counsel argued that such conduct was because of hatred and enmity the defendant's chairperson and other board members had against the plaintiff.

Counsel also argued that the institution of Civil Suit No. 002 of 2017 by the defendant against the plaintiff for recovery of UGX. 210,356,000/= was another element of malice.

Counsel for the plaintiff argued that malice in criminal proceedings can be established by looking at the peculiar circumstances of every case or inferences from the circumstances and cannot be proved by direct

evidence. Counsel referred this court to the case of ***Zainal Bin Kunig Vs. Chan Sin Mian Micheal [1996] 2 SLR 858.***

Counsel for the plaintiff submitted that the defendant's malice against the plaintiff was noted by the appellate court in the criminal case when the court observed that the evidence regarding the use of passwords and access codes could not solely implicate the plaintiff because the system had been corrupted before, and multiple users had access to the passwords.

On the other hand, counsel for the defendant argued that the defendant had acted with a proper purpose and only reported to the police the information it believed to be accurate. Counsel contended that the defendant's only role was to lodge a complaint with the police, which then investigated the matter and forwarded the file to the DPP, who later preferred charges against the plaintiff.

Counsel further argued that if the defendant had probable cause in instituting criminal proceedings against the plaintiff, then it would naturally negate the existence of malice on the part of the defendant. Additionally, counsel submitted that the defendant acted upon the forensic report to report the plaintiff to the police, as the report indicated that the defendant had suffered financial losses due to the plaintiff's conduct.

Malice, in the context of malicious prosecution, refers to the intent to use the legal process for purposes other than its legally designated and appropriate objectives. The plaintiff can demonstrate malice by showing, for instance, that the prosecution did not genuinely believe in the merits of the case they were presenting, that there was no evidence upon which

a reasonable tribunal could convict, or that the prosecution was initiated due to an improper motive, and then proving that motive. In other words, the plaintiff must show that the prosecution was motivated not by desire to achieve justice, but for some other reason. **(see: *Gwagilo Vs. Attorney General* [2002] 2 EA 381), and *Godfrey Mbowe Vs. Attorney General Civil Suit No. 164 of 2017*).**

In the case of ***Godfrey Mbowe Vs Attorney General (supra)***, the court held that:

***“Malice can be established through enmity, retaliation, haste, omission to make due and proper enquiries, recklessness, harassment, personal spite, sinister motive etc. are some of the items which are relied upon for proving the malice.”***

In the instant case, there is cogent evidence that there was the existence of ghost accounts, misuse of passwords or access codes and irregular disbursement of loans which ultimately led to financial loss to the defendant. While the appellate court found the forensic report inadmissible on technicalities, Pexh 3, the defendant’s supervisory committee report, highlights these incidences.

Considering that the plaintiff was the manager of the defendant and was tasked with the responsibility of overseeing the defendant's technical staff, I am of the opinion that the element of malice has not been established by the plaintiff in these circumstances. What the defendant did was report what it believed to be genuine facts to the police, and by preferring charges of embezzlement and unauthorized access against the defendant, the prosecution only aimed to hold the perpetrator of



such offences accountable. Indeed, there were several witnesses before the trial court who testified about the plaintiff's involvement.

The plaintiff has not proved that the defendant acted with enmity, retaliation, recklessness, harassment or personal spite. The dismissal of the plaintiff was an administrative action which, if it was wrongful, could be dealt with under the Employment Act. Additionally, there is evidence that the defendant took time to undertake internal investigations before reporting the matter to the police. While the plaintiff testified that the defendant directors and founders had developed enmity and acted with personal spite in reporting her to the police because she refused to approve their loans, there is no evidence on record to substantiate that allegation.

In the premises, since the plaintiff has not proved all ingredients of malicious prosecution, on the balance of probability, to the satisfaction of the court, issue one is answered in negative.

## **Issue 2: What remedies are available to the parties?**

The plaintiff sought general damages of UGX. 1,000,000,000/= as well on exemplary damages of UGX. 50,000,000/=on malicious prosecution not only as fair compensation to the plaintiff against the defendant for having violated her right to but also as a punishment to the defendant for having acted with malice. However, since the plaintiff has not made out a case of malicious prosecution against the defendant, I find that the plaintiff is not entitled to any of the remedies sought herein.

Resultantly, this suit is hereby demised with costs to the defendant.

It is so ordered.

Dated at Fort Portal this 24<sup>th</sup> day of May 2024.

A handwritten signature in dark ink, appearing to read 'Mugabo', written over a horizontal line.

**Vincent Emmy Mugabo**  
**Judge**