

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

Makerere University v. Daudi Kasiringi

(Civil Appeal No. 40 of 1973)

Judgement

Evidence - in a case of wrongful arrest, the burden is on the person arresting to establish the existence of reasonable grounds for the suspicion justifying the arrest - s.28 of the Criminal Procedure Code.

Tort - wrongful arrest - there is no distinct between the power of a police officer and of a private person to arrest a person he suspects of having committed a felony - the tort of wrongful arrest is committed when the police officer or private person arresting has no reasonable grounds for the suspicion.

This was an appeal on a claim of wrongful arrest and false imprisonment.

The undisputed facts leading to this litigation were briefly that, the respondent was the head cook at the University and had been in the appellant's service since February, 1959. Joseph Mulindwa (P.W.2) was a Waiter, in Livingstone Hall. The University has its own Security Service for the prevention of crime on the campus and was, at the material time, headed by Timothy Lwanga (D.W.1). One of the security guards was C.Okot (D.W.4). On 6<sup>th</sup> April, 1971 the respondent gave Mulindwa some onions and tomatoes to take to his home. On the way he was stopped and arrested by D.W.4 who found "very cold tomatoes and onions," weighing about 2 kilos, in a paper bag which he was carrying. Mulindwa explained his errand but was detained at the security office. The respondent went to see him there on hearing of his arrest and he told the security chiefs duty (D.W.2) about the vegetables, which he had bought from Nakasero market the previous evening. He maintained that he too was detained from 10.30 a.m. till about 4.00 p.m. without being given lunch and was handed in at Wandegeya police station on the instructions of D.W.1.

In finding for the respondent the learned trial magistrate said:

"But, without any attempt to establish that any tomatoes or onions had been stolen from the kitchen, the

Security Officers arrested the plaintiff and detained him for several hours at their office before escorting him to a police station in Wandegeya.... I find that the arrest and detention were not justified because it was not established, before arrest or thereafter , that tomatoes or onions were in fact stolen from the kitchen.” It was argued for the appellant that the learned trial magistrate had misdirected himself in saying that theft of the vegetables had to be established either before or after the arrest.

For the respondent, it was argued that under the provisions of s.28 of the Criminal Procedure Code, the burden was on the appellant to establish the existence of reasonable suspicion to justify arrest and it was submitted that the appellant had failed to discharge that burden.

The issue before court was whether Okot had reasonable grounds for suspecting that the respondent had committed a felony, viz, theft by servant contrary to s.258 of the Penal Code.

Held: 1. The only consideration which exercised the mind of Okot in arresting Mulindwa in the first place, and his colleagues who later arrested and detained respondent, was the very cold condition of the vegetables, and possibly the fact that Mulindwa was conveying them in a bag on the campus. His explanation did not satisfy Okot about the bona fides of his errand, just as it failed to satisfy the other ..security officers when the respondent repeated it to them. There was, however, nothing to controvert the respondent’s claim that he had bought those vegetables late the previous evening and he had not been home for the night.

2. The foregone was not a reasonable ground for suspicion to justify the arrest of the respondent.

Appeal dismissed with costs.

Saied, C.J.

16<sup>th</sup> December, 1976

Per Curiam:

' The arrest of the respondent was actuated by over-zealousness in the purported discharge of their duties. It must be emphasized that depriving someone of his liberty is not a matter to be taken lightly and over-zealousness does not at least in the circumstances of this case, provide a reasonable ground to shield under the provisions of s.28 of the Criminal Procedure Code.

Legislation Considered:

Criminal Procedure Code Act, s.28

Cases Cited:

1. Eria Kindi and Anor v. Makerere University, H.C.C.S. No. 1141/74
2. M'Ibui v. Dyer, [1967] E.A. 315.