

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION
CIVIL SUIT NO.445 OF 2002

OMUNYOKOL JOHNSON ::: PLAINTIFF

VERSUS

1. ADEALBERT RUTAYISIRE
2. STANDARD CHARTERED BANK } ::::::::::::::::::::::::::: **DEFENDANT**
3. ATTORNEY GENERAL }

BEFORE: HON. JUSTICE STEPHEN MUSOTA

JUDGMENT

The plaintiff Johnson Akol Omunyokol filed this suit against the defendants to wit; Adealbert Rutayisire, Standard Chartered Bank and the Attorney General for recovery of General damages, aggravated damages, exemplary damages and special damages for trespass, unlawful arrest, false imprisonment, malicious prosecution, defamation and wrongful interference with the right of the plaintiff to be served and attended to by the second defendant Bank as well as wrongful denial of access to the money received by the 2nd defendant on the account of the plaintiff.

According to the plaint, the plaintiff's cause of action arose as follows:

- (a) The plaintiff alleges that at all material times since 1997 he was and is still a customer of the 2nd defendant Standard Chartered Bank Ltd main Branch at plot 5 Speke Road having a local savings account No. 01-2-01-21429-00-9 and a foreign account No. 32-0-89-21429-00-9.
- (b) That at all material times the 1st defendant and one Bulinda Elizabeth were employees of the 2nd defendant working in the said branch of the 2nd defendant Bank where the plaintiff holds the said two accounts.
- (c) That whenever the plaintiff used to visit the said Bank Branch as a customer he used to get assistance from the said Bulinda Elizabeth and the 1st defendant as employees of the 2nd defendant and in the course of such contact, the plaintiff developed intimacy with the said Bulinda Elizabeth and had subsequently fallen in love with her without the knowledge of the 1st defendant.
- (d) That prior to the 28th day of November 2000, the plaintiff arranged with his Bankers in China to remit to him money through his foreign account with the 2nd defendant for which the plaintiff wanted to obtain certification of his documents by 2nd defendant as his Bankers in Uganda.
- (e) Consequently, on 28th November 2000 at 10.00 a.m. he visited the said Bank Branch of the 2nd defendant officially as a customer for the purpose and the plaintiff deposited the documents with one Vincent Mukama a servant or agent of the 2nd defendant attached to the International Division of the 2nd defendant Bank who advised him to go back and check for the results later in the afternoon.

- (f) The plaintiff further avers that at about 1.20 p.m. he went back to the Bank and was referred by the said Vincent Mukama to the office of the Manager Customer Service who on seeing the plaintiff went to call for the Branch Manager and Operations Manager of the 2nd defendant respectively and thereafter the Branch Manager ordered security guards at the Bank to unlawfully and wrongfully arrest and detain the plaintiff for reasons unknown to the plaintiff, and the said men guarding the Bank acting in the course of their employment as servants or agents of the 2nd defendant, thereupon unlawfully and wrongfully arrested, detained and searched the pockets and the person of the plaintiff, alleging that he was in illegal possession of a gun, which he denied.
- (g) On failing to get anything from the plaintiff, the said security staff dragged the plaintiff by his trouser's belt to the Central Police Station, Kampala where the plaintiff was unlawfully and wrongfully detained in the police cells on allegation by Bulinda Elizabeth and the 1st defendant acting in the course of their employment as servants and or agents that he had at the time prior to his arrest and detention at the 2nd defendant's Bank threatened to kill Bulinda Elizabeth and threatened to blow up the Bank with a bomb which allegations he denied.
- (h) That at the instigation of the said Bulinda Elizabeth and the 1st defendant acting in the course of their employment as servants of the 2nd defendant the police at Central Police

Station, Kampala unlawfully held up the plaintiff in the police cells for 8 days without a charge.

- (i) That on 5th day of December 2000, the police at Central Police Station acting in the course of their employment falsely and maliciously and without reasonable and probable cause and in bad faith charged the plaintiff with the offence of threatening to kill the said Bulinda Elizabeth which he denied.

The plaintiff contended that at all material times the said Bulinda Elizabeth and the 2nd defendant were acting in the course of their employment as servants or agents of the 2nd defendant for which it is vicariously liable.

The plaintiff further contended that the acts of the said Bulinda Elizabeth and the 1st defendant in preventing him from having access to the 2nd defendant and enjoying services of the said Bank as a customer and sending back the money remitted from abroad were unlawful, arbitrary, oppressive, high handed and wrongful.

The plaintiff also contended that the words used by the said Bulinda Elizabeth, the 1st defendant and the security staff of the 2nd defendant that the plaintiff acted violently and threatened to blow up the Bank unless his money was paid were defamatory of the plaintiff.

In its statement of defence the 1st and 2nd defendants denied in toto the claim by the plaintiff and promised to put the plaintiff on strict proof of his claims. The defendant contended that the foreign account of the plaintiff went into overdrawn position and was no longer active as it had no funds to meet charges to run it and was closed down. Further that the local savings account too went into an overdrawn position and was also closed. The defendants further contended that at the time the transactions mentioned in paragraphs 11 and 12 of the plaint were allegedly conducted by the plaintiff's Banker/customer relationship had ceased.

For the Attorney General, the claims of the plaintiff were denied and it prayed that the suit be dismissed with costs.

During the scheduling conference the agreed facts were that:

1. The plaintiff opened a Uganda shillings savings account and a dollar account in the 2nd defendant's Bank.
2. The 1st defendant is an employee of the 2nd defendant.
3. The plaintiff was arrested within the premises of the 2nd defendant.
4. The 2nd defendant received 6499 Dollars from Denmark to be deposited on the plaintiff's account but it sent it back to the sender.

The agreed issues for determination were:

- (i) Whether the 2nd defendant prevented or stopped the plaintiff from operating his shillings and dollar accounts.

- (ii) Whether the plaintiff was unlawfully arrested, searched and detained by servants of the 2nd and 3rd defendants.
- (iii) Whether the prosecution of the plaintiff was malicious
- (iv) Whether the plaintiff was defamed.
- (v) Remedies available to the parties.

During the trial, the plaintiff Johnson Omunyokol Akol testified as PW1. He confirmed the agreed facts and stated that he last transacted business with the defendant company on 28/11/2000 when he was arrested. That he last received money on the dollar account on 10/08/2000 which was US \$9700. He wrote a letter to the Bank to re-activate the account which he had been told had become dormant.

He stated that on the 28/11/2000 at 10.00a.m, he went to Speke Road Standard Chartered Bank Branch and talked to the receptionist who through intercom connected him to international division. He talked to Vincent Mukama who advised him to check on them later in the afternoon. At 1.30p.m. He went back to the Bank and contacted the same receptionist who told him that the documents were with Mukama. Mukama told him he had forwarded the documents to Regina Komuhanda, Personal Care Manager. He went to Regina Komuhanda who confirmed to him that she had received the documents and told him to wait. After a short while she came with two people i.e. Mr. Christopher Byaruhanga, the Operations Manager and Mr. Rutayisire, the Branch Manager.

He stated that Ratayisire beckoned one Charles Kansiime, a Special Branch Officer attached to the Bank and instructed him to arrest him inside the Bank hall, instructed the Special Branch Officer to search him thoroughly because he believed he had a gun; that he wanted to blow up the Bank.

The Special Branch Officer searched him there and then in the presence of all staff. That he was embarrassed as some of the customers and even the Bank staff knew him. They never found a gun or a bomb on him.

Then the Special Branch Officer marched him out of the hall and other security guarding the Bank joined him. They dragged him outside the Bank by his trouser belt and said they could not take him to Central Police Station. He was taken to the boss of Special Branch who interrogated him with some officers. They too told him that he had a gun and wanted to blow the Bank and accused him of threatening violence i.e. that he had threatened to kill an employee of the Bank one Elizabeth Bulinda.

After interrogation the Special Branch boss ordered one Kirya to detain him. He was taken to Buganda Road Court on 5/12/2000 in the afternoon and charged with an offence of threatening violence. After several adjournments to allow prosecution produce their witnesses the

trial Magistrate acquitted him. He stated that many people contacted him, started calling him a terrorist, murderer, social deviant who gets women by force and all those who associated with him started shunning him.

In cross-examination the plaintiff maintained that he had accounts with Standard Chartered Bank. He visited the Bank very many times and in re-examination the plaintiff testified that he had never been informed that his account had been closed.

The second witness for the plaintiff PW2, Omagor David Steven, stated that in 2000 to 2002 he read a newspaper article concerning the plaintiff. There was an allegation that he was threatening to blow up the Bank and threatening staff in the Bank. This took him by surprise knowing his background as a Foreign Serving Officer working as a Diplomat in the Embassy in China. When he read the newspapers articles a number of people who knew him kept asking him what had exactly happened and whether the plaintiff was in possession of the bombs.

PW3 Francis Ichuma, an Accountant and a village mate of the plaintiff also testified that one morning he was called on phone by his late brother Mr. Vincent Emoru who informed him that Mr. Omunyokol had been arrested and was at Central Police Station and requested him to go and secure a bond. He went to Central Police Station and found

Omunyokol who told him that some lady had alleged that he was going to blow the Bank, so the security swung into action.

In cross examination PW3 stated that he heard about the allegation that Omunyokol wanted to blow the Bank from the plaintiff who he found at Central Police Station and that he was going to the Bank because that was his Bank.

The defence led evidence through two witnesses.

DW1 Rutayisire Adealbert, 1st defendant stated that in 2001 a staff in the branch came to his office and reported that there was fracas in the Banking hall and that one customer by the names of John Omunyokol was chasing one of his staff called Elizabeth Bulinda and that Elizabeth was crying and customers were in the Banking hall seeing what was happening. He rushed to the Banking hall only to find Omunyokol chasing Bulinda who was crying. That as a Branch Manager he tried to find why the plaintiff was chasing Bulinda but could not get any information from Omunyokol and the situation was tense, he called the security officer called Kirya Andrew to come and handle the case but the plaintiff resisted Mr. Kirya. He was left with no option but to call police guards that were within the Banking hall to handle the matter.

In cross-examination, Mr. Rutayisire stated that he came to know that the plaintiff was a customer in the Bank after the incident and the plaintiff was arrested at his instructions.

DW2 Bulinda Elizabeth testified as DW2 wherein she stated that the plaintiff called several times until the call went to her extension. That the plaintiff told her that he was going to the Bank to beat her up and kill her and that eventually he came to the Bank. He went towards her desk where upon she ran to the Customer Service Manager's cubicle which was on the same line. That the plaintiff followed her to the Customer Service's manager's cubicle where upon the manager asked her whether she knew the plaintiff and at that moment the branch manager also appeared who asked security to step in.

Court allowed both counsel to file written submissions in respect of their cases.

After considering the evidence on record and the respective submission by respective counsel as well as the law and the wealth of authorities cited for my aid, I go ahead and resolve the issues framed starting with issue No.1,

Issue I: whether the second defendant prevented or stopped the plaintiff from operating his shillings and dollar accounts:

From the evidence and submission of both counsels, it has been established that the plaintiff opened up a savings account No. 01-2-01-21429.00.9 and a foreign account No. 32-0-89-21429-00-9.

In his submission, learned counsel for the defendant submitted that the plaintiff at the time he went to the Bank there was no relationship that existed between the plaintiff and the defendant Bank. That for a year, the plaintiff had not deposited any money on the account and thus his accounts were closed as they were in over drawn position.

On the other hand, learned counsel for the plaintiff contended that the plaintiff's account did not fall in the category of dormant accounts and as such the same were still in operation. He contended that even if the plaintiff's accounts were in the category of dormant accounts which was denied that did not mean that he ceased to be a customer because he could not be requested by the Bank to reactivity the account.

Learned counsel further urged that it is irrelevant whether the plaintiff had zero account balance. What was important was that the plaintiff's account was operational and no notice had been given to him that his account was dormant and had been closed as required.

I do agree with counsel for the plaintiff that the defendant Bank breached its duty to the plaintiff when it stopped the plaintiff from operating his account by both failing to certify his document then arresting him and further returning US dollars 6400 that had been sent to the plaintiff by a friend in Denmark in 2001. As rightly quoted learned counsel for the plaintiff, the encyclopedia of Banking law Cresswell Blair, Hill and Wood which refers to written terms and conditions between Banks and customers, banks will not close customer's accounts without first giving a customer reasonable notice. Indeed learned counsel for the defence submitted in support of this position. That while it may be true that Banks may not close customer accounts without giving reasonable notice, it is based on the rationale that a customer should be given advance notice of closure so that he can make arrangements for alternative Banking for any payments that would be in the pipeline and which would be affected by such closure. I do not agree with learned counsel for the defendant that a bank account can be closed constructively because no funds have been banked thereon.

The general rule is that Banks are under no obligation to continue doing business with someone if they do not consider it appropriate to do so. However, the Bank should not consider closing the account for improper reasons. In its relationship with customers, it is an implied term between the Bank and customer that the Bank will not normally close the customer's account without giving reasonable notice which will make the customer make alternative banking.

From the evidence adduced in this case. This was not the case; the plaintiff testified that he did not at any one time receive any communication from the second defendant that his accounts had been closed. This is why on the fateful day he proceeded to the Bank of the second defendant well knowing that his accounts were still operational. If the Bank had indeed notified the plaintiff, he would have sought alternative banking as he eventually did after the unfortunate incident. Even if the plaintiff's account was at zero and dormant which the plaintiff denies, this did not mean that he had ceased to be a customer of the Bank because he could be asked by the Bank to reactivate the account. It is therefore irrelevant whether the plaintiff had zero account balance because what is important is that the plaintiff's account was operational and no notice had been given to the plaintiff that his account was dormant or had been closed as required by the Banking law. The defendant Bank therefore breached the law when it stopped the plaintiff from operating his accounts and failing to certify documents, arresting him and later returning US \$ 6400 that had been sent to the plaintiff by a friend in Denmark in 2001 yet no notice of closure had been given to him.

Issue 2: whether the plaintiff was unlawfully arrested searched and detained by the servants of the second and third defendants.

It was an agreed fact that the plaintiff was arrested in the premises of the second defendant. The only issue for determination is whether the arrest, search and detention were unlawful. The plaintiff testified that he went to the Bank to get documents certified so that monies would

be wired to his account from the Bank of China and while there, he was arrested for no apparent reason. He further testified that he was in a love relationship with one Bulinda Elizabeth a female employee of the second defendant who the first defendant was also interested in and that was why the first defendant ordered the plaintiff's arrest at the Bank. On the other hand, in the written statement of defence, the first and second defendants pleaded that the plaintiff went to the premises of the second defendant wrongly assuming that a bank-customer relationship existed between the plaintiff and the second defendant and when the first defendant told the plaintiff to wait, the plaintiff instead started shouting and threatening to blow up the Bank. That the plaintiff threatened violence against Bulinda Elizabeth and the first defendant.

However Dw1 who is the first defendant while giving evidence testified that a staff in the Bank came to his office and reported there was a fracas in the Banking hall. That a customer by the names of John Omunyokol was chasing one Bulinda Elizabeth who was crying at that time and the customers were watching.

This evidence is a contradiction from what the defendant pleaded. It strengthens the plaintiff's evidence that he had gone to the Bank to have his documents certified. The defence did not adduce any evidence to show that indeed there was a fracas in the Banking hall as alleged. What Dw1 testified was hearsay evidence which is inadmissible. The evidence by Dw1 is a departure from what was pleaded in the Written Statement of Defence. It is trite law that a party

cannot depart from his or her pleadings unless the same are amended.
See: **Blay Vs Polland and Morris (1931) KB.**

No satisfactory evidence was adduced to justify the arrest of the plaintiff in this case. Where the plaintiff is arrested without cause, the arrest is unlawful and such plaintiff is entitled to compensation.

There is evidence that the plaintiff visited the Bank to have his documents certified and to reactivate his dollar accounts to enable him receive money from China. This is proved by exhibit P1 a letter from the plaintiff to the Bank Manager requesting the Manager to reactivate account No. 32-0-89-21429-00-9. Instead he was arrested. There was no proof that the plaintiff was chaotic. The arrest of the plaintiff was on 22nd November 2000 and he stayed in police custody until 5th December 2000 when he was charged. This fact was not rebutted by the defence therefore by holding the plaintiff in custody for over 48 hours, the detention was unlawful.

From the evidence on record, the first and second defendants set the law in motion and caused the plaintiff to be detained by police. It is therefore no defence that the police thereby became responsible for the continued detention of the plaintiff. Once the detention or imprisonment is established, the onus shifts to the defendants to show that it was reasonably justified. No such attempt was made in the instant case. The first, second and third defendants are jointly

vicariously liable for the unlawful search, arrest and illegal detention of the plaintiff for eight days.

In the circumstances, I am inclined to hold that the arrest and detention of the plaintiff was wrongful, illegal and without any reasonable or probable cause and he is entitled to compensation.

Issue 3: Whether the prosecution of the plaintiff was malicious.

The law regarding malicious prosecution was stated in the case of **Kenneth Owiny Vs Attorney General (1997)iv KALR 70.** Where Okello J (as he then was) held and I agree that:

“to prove the tort of malicious prosecution, the plaintiff must prove that his prosecution by the defendant was actuated by malice and to prove that malice, the plaintiff may show that the prosecution was not based on reasonable or probable cause that the plaintiff had committed the offence with which he was prosecuted.”

The term reasonable or probable cause was defined as:

“That there must be sufficient grounds for thinking that the plaintiff was probably guilty of the crime imputed. This does not mean that the prosecution has to believe in

the probability of conviction; the prosecution has not got to test the full strength of the defence, it is concerned only with the question of whether there is a case fit to be tried. The prosecution must believe that the probability of the accused's guilty is such that upon general grounds of justice, a charge against him/her is warranted."

In the instant case, the plaintiff was charged before the Chief Magistrate's Court of Buganda Road with threatening violence. The plaintiff's arrest had been initiated by Dw1, an employee of the second defendant. The prosecution began on 5th December 2000 and judgment was passed on 15th April 2002. The plaintiff was acquitted on a submission of no case to answer, the only witness who testified at the trial was Dw2 who testified that on the 28th November 2000, the plaintiff called on phone and threatened to come and beat her and then kill her. She also testified that the plaintiff went to the Bank and went to the Customer Service Manager and Dw1 went and informed the defendant that she could not work because of the plaintiff's presence in the Bank and the plaintiff was arrested. With such scanty evidence which was not corroborated and having held that the arrest of the plaintiff was unlawful, it follows that the plaintiff's prosecution was without any reasonable cause. No wonder the learned trial Magistrate in his ruling on a no case to answer stated that this was a matter which should not even have found its way into the courtroom. Given that the prosecution was instituted by the defendant and was terminated in the plaintiff's favor and considering that there was no

reasonable or probable cause to prosecute the plaintiff, his prosecution was motivated by malice.

The plaintiff has proved that he was prosecuted by the Government Of Uganda on a complaint initiated by the first defendant, an employee of the second defendant and the prosecution was terminated in his favor. Upon arrest, the second defendant's employees humiliated him by walking him to the police station, dragging him by the belt of his trousers to the amusement of various persons of the public, some of whom knew him. The first defendant did not testify in the criminal trial showing that he acted maliciously without reasonable grounds to cause the arrest of the plaintiff from the Bank. The investigating officer did not also testify further fortifying the plaintiff's case of lack of grounds for his arrest and prosecution.

I am therefore satisfied on a balance of probabilities that the plaintiff has proved that his prosecution was activated by malice for there is no indication that the interests of the Bank were being protected. I will answer this issue in the affirmative.

Issue 4: Whether the plaintiff was defamed.

After perusal of the pleadings, the evidence and submissions of respective counsel, I agree with learned counsel for the defendants that no action lies against the defendants for defamation. The plaintiff

was of the view that the report by New Vision Newspaper on what transpired in court was not accurate. Therefore his remedy should have been to sue the Newspaper not the defendants herein. This ground therefore fails.

Issue 5: What remedies are available to the parties.

The plaintiff prayed for special damages, general, aggravated and exemplary damages. Regarding special damages, the principle of law in awarding special damages is well settled. A claim for special damages must be specifically pleaded and strictly proved. If a plaintiff brings an action for damages, it is for him or her to prove their damage. It is not enough to write down particulars, throw them to the court and say "*this is what I have lost, I ask you to give me these damages*". They have to prove it. Although special damages must be strictly proved they need not to be supported by documentary evidence in all cases. In the instant case, the plaintiff adduced documentary evidence to show that he indeed incurred the pleaded expenses during the criminal trial. These were exhibited as P12 and P13 respectively. Receipts with regard to lunch expenses for the lawyer were not exhibited but that notwithstanding, it is not the duty of the litigant to buy lunch for the lawyer. The plaintiff also claimed the cost for buying a record of the criminal trial but this cannot be allowed because they are supposed to be free of charge.

Consequently, there was no justification for hiring transport from Bukoto to Buganda Road court for 23 days and transporting sureties for 23 days to court. In the result, under this head of damages, I will award the plaintiff shs. 727,000= as special damages.

General damages.

General damages are those that the law presumes to arise from direct, natural or probable consequences of the act complained of by the victim, they follow the ordinary course and relate to all other terms of damages. Whether pecuniary or none pecuniary, general damages would include future loss as well as damages for paid loss and suffering. See: **Uganda Commercial Bank Vs Deo Kigozi (2002) EA 293.**

General damages are awardable by court at large after due court assessment. They are compensatory in nature in that they should offer some satisfaction to the injured plaintiff.

In his submissions, learned counsel for the plaintiff suggested the sum of 100.000.000= as general damages for the inconveniences he suffered following the inability to operate his foreign and local accounts. I am of the view that 100.000.000= is on the higher side and awarding it would amount to unjust enrichment. Appropriate reparation must always be premised on the principle of restitution to restore the wronged party into the position he would have been if there was no

breach. In the circumstances, I consider an award of 20.000.0000= as appropriate for the inconvenience the plaintiff suffered following his inability to operate his account with the second defendant. That amount is accordingly awarded.

Regarding malicious prosecution, unlawful arrest, and detention of the plaintiff, I find the sum of 15.000.000= appropriate for compensation for the inconvenience and embarrassment caused to the plaintiff by the first, second and third defendants.

Exemplary and aggravated damages.

Even though exemplary and aggravated damages are exceptional awards, the circumstances of this case do not warrant the award of such damages. No evidence was led to warrant their award, I will not award the same.

All in all, I will enter judgment for the plaintiff against the defendants jointly and severally in the terms set below;

1. Shs 727,000= as special damages.
2. Shs 20,000,000= as general damages.
3. Shs 15,000,000= as compensation for malicious prosecution, unlawful arrest and detention.
4. I will award interest at court rate on the above awards from the date of judgment until payment in full.
5. The plaintiff shall also get the taxed costs of this suit.

I Order accordingly.

Stephen Musota

J U D G E

08.09.2014