

The evidence by the plaintiff was through PW1 to PW5. All these witnesses told court the facts that PW1- plaintiff was caretaker; he was accused of theft on instigation of D1-D10. He was convicted and while in prison, they took the cows, building materials (bricks) and aggregate stones. PW1 exhibited documents including a Judgment on appeal where the case was overturned and his conviction set aside.

In defence all defendants narrated the events which led to plaintiff's arrest. They denied any of the allegations that they maliciously caused his prosecution. They denied having detained him.

In law malicious prosecution occurs in circumstances as laid out in ***Mbowa V East Mengo Admn . [1972 1 EA 35]*** that;

1. Criminal proceedings must have been instituted by the defendant against plaintiff (been instrumental).
2. Defendant acted without reasonable or probable cause.
3. Defendant must have acted maliciously (***Pike V Waldrum (1952) 11 LLOYD's Rep. 431 at 452.***)
4. The criminal proceedings must have terminated in plaintiff's favour.

Going by the test above, I notice from the evidence that the plaintiff proved by evidence each of the ingredients above. He exhibited the Judgment on appeal which clearly illustrated the fact that the charges against the plaintiff were fabricated. At the trial in the lower court all defendants in their evidence kept on explaining that the plaintiff is a thief who just went to grab their estate property-in spite of his acquittal! The learned trial Magistrate in his Judgment however totally ignored all this evidence. He glossed over the evidence and totally failed to scrutinize and analyze the same.

He did not consider the question of malicious prosecution. The analysis of the evidence by the learned trial Magistrate, is a total disaster. He did not consider the evidence of the plaintiff at all. For example at page 2 last paragraph he states; "*the evidence on record, the plaintiff has not proved that he was assaulted since there is no medical evidence on record.*" Which is wrong because among exhibited documents on record are various medical documents admitted for plaintiff as PEX3, among others (though the numbering was mixed up). I do agree with counsel

for appellant that had the learned trial Magistrate properly weighed and evaluated the evidence he would have reached a different conclusion.

I am convinced that the evidence on record by the plaintiff was sufficient to satisfy the standard of proof to prove the plaint. This is supported by the arguments by counsel for the appellant.

I did not find merit in respondents' submissions because they were not addressing the grounds of appeal. They were off target. They did not appreciate the impact of the judgment on appeal.

The fact that an appellant is acquitted on appeal erases all earlier findings below and hence whatever the reasons and justifications alluded to by the respondents, they cannot stand in view of accused's innocence as pronounced on appeal. Accordingly I find that this appeal succeeds on all grounds raised.

I find that appellant was maliciously prosecuted, and defendants (Respondents) were key instigators and are liable.

I therefore set aside the Judgment and orders of the lower court, and replace them with Judgment for the appellant in the following terms:

- a) Defendants hand back the 14 heads of cattle to the plaintiff, who should also hand the cows to the beneficiaries of the Estate.
- b) Defendants also hand over the 800 bricks and 2 trips of hardcore to the plaintiff for the benefit of the Estate of the deceased.
- c) General damages of shs 3.000.000/= (three millions only for malicious prosecution, assault and character assassination).
- d) Costs of the suit on appeal & below.

I so order.

Henry I. Kawesa

JUDGE

19.04.2017