

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL SUIT NO. 480 OF 2016

MOHAMMED TUMUSIIMEPLAINTIFF

VERSUS

UGANDA REVENUE AUTHORITYDEFENDANT

BEFORE HON. JUSTICE SSEKAANA MUSA

JUDGMENT

BACKGROUND

This plaintiff instituted this suit against the defendant for recovery of UGX 67,000,000/= being special damages for malicious prosecution and unlawful termination of employment, general damages, interest and costs of the suit.

On 22nd May 2007, the plaintiff while in the course of his employment as a driver to a one John Imaniraguha, was intercepted and the vehicle he was driving impounded. He was detained for twelve days and later on released only to be re-arrested September 2007 on allegations that he was in charge of a motor vehicle used for smuggling goods and being in possession of goods suspected to have been smuggled in the country.

The defendant instituted criminal proceedings against the plaintiff and others in the case of Uganda versus John Imaniraguha & Another vide Criminal Case No. 499 of 2007 in the Chief Magistrates court of Nakawa at Nakawa. The plaintiff was charged with being in possession of goods suspected to have been smuggled contrary to section 230 of the Penal Code Act and being a master in-charge of a vehicle used for smuggling contrary to Section 199 (b) of the East Africa Community Customs Management Act, 2004 (EACCMA). Although during the course of trial, a prima facie case was established and the Accused was put on his defence, he was acquitted on both counts.

The plaintiff alleges that he lost his job and failed to find alternative employment since May 2007 to date. The plaintiff brought this suit seeking to recover special and general damages for malicious prosecution and costs of this suit.

According to the joint scheduling memorandum, the parties agreed on the following issues to be resolved by this court;

1. Whether the Plaintiff was maliciously prosecuted
2. What are the remedies available to both parties?

I will adopt the above issues and proceed to determine the matter accordingly.

DETERMINATION

Both parties filed written submissions which were considered by this court.

Issue 1

Whether the Plaintiff was maliciously prosecuted?

The tort of malicious prosecution is committed where there is no legal reason for instituting criminal proceedings. It occurs as a result of the abuse of the minds of the minds of judicial authorities whose responsibility is to administer criminal justice.

According to Odunga's Digest on Civil Case Law and Procedure page 5276, the essential ingredients to prove malicious prosecution are as follows:

1. The criminal proceedings must have been instituted by the defendant
2. The defendant must have acted without reasonable or probable cause
3. The defendant must have acted maliciously
4. The criminal proceedings must have been terminated in the plaintiff's favor.

In this case, there is no doubt that the defendant instituted criminal proceedings against the plaintiff which proceedings were terminated in the plaintiff's favor hence proving two of the essential ingredients of malicious prosecution.

The court should now determine whether the defendant acted without reasonable or probable cause.

According to **Dr. Willy Kaberuka V Attorney General Civil Suit No. 160 of 1993 [1994]] II KALR 64**, Byamugisha J stated that

“ The question as to whether there was reasonable and probable cause for the prosecution is primarily to be judged on the basis of an objective test and that is to say, to constitute reasonable and probable cause, the totality of the material within the knowledge of the prosecutor at the time he instituted the prosecution whether that material consists of facts discovered by the prosecutor or information which has come to him or both must be such as to be capable of satisfying an ordinary prudent and cautious man to the extent of believing that the accused is probably guilty.”

In the present case, it is the uncontroverted evidence of the plaintiff that upon interception by the officials of the defendant he intimated to them that he was only a driver of the said motor vehicle whose role was driving the trucks to the destination from Kisumu to DRC and showed them copies of the log book in the names of John Imaniraguha. The defendants however still proceeded to institute criminal proceedings against the plaintiff despite this information. The plaintiff was acquitted of the charges.

Counsel for the plaintiff submitted that the prosecution of the plaintiff clearly demonstrates the proceedings leading to the arrest, detention and charging of the plaintiff demonstrated failure on the part of the defendant to conduct thorough investigation. Counsel further submitted that had due consultation and investigations been conducted by any ordinary and prudent defendant prosecutor, his position would have led him to the conclusion not to arrest detain and charge the plaintiff.

On the other hand counsel for the defendant submitted that the plaintiff's indication that *“had the defendant applied the law, as a prudent and cautious person, it would have known that upon presentation of a log book and explaining that he was just an employee, then proceedings of arresting him, detaining him for three weeks and charging him demonstrated malicious intention”* is totally not true because being an employee is not a defence under the EACCMA for the offences with which the plaintiff was charged therefore inviting this court to find that the defendant acted with reasonable and probable cause.

I have carefully read the judgment of His worship Deo Nizeyimana, the plaintiff was acquitted on both counts preferred against him owing to the fact that his employer the owner of the trucks did not acquire or procure the said trucks illegally and hence the plaintiff could not be faulted for any offence.

The plaintiff also testified and submitted that he had handed over copies of the vehicle's log book to the defendant's officials which evidence was unchallenged as noted earlier.

On that basis I find that the defendants acted without reasonable or probable cause. The defendant's officials had all the necessary material to satisfy a prudent and cautious man not to institute criminal proceedings against the plaintiff. They ought to have verified that the trailer being driven by the plaintiff was duly authorized by URA and therefore not prosecuted him.

With regard to the defendant having acted maliciously, counsel for the plaintiff submitted that malice has been established as inferred from the failure of the defendant to consult the law and or act prudently and cautiously as not to arrest detain and charge the plaintiff who had no case.

Counsel for the defendant on the other hand submitted that although the plaintiff submits that *“malice has been established in the instant case as inferred from the failure of the defendant to consult the law, and to act prudently and cautiously as not to arrest, detain and charge the plaintiff who had no case”*, this is not evidence of malice at all.

Counsel cited the case of **Katerregga v Attorney-General** [1973] 1 EA 287 (HCU), where it was held that malice must be proved in fact and not inferred as the plaintiff does in his submissions.

Counsel further submitted that according to the case of **Owiny Kenneth v Attorney General, HCCS 11/1995**, there is need of independent evidence of malice to support the claim of malicious prosecution and not infer the malice as the plaintiff does in its submissions.

Counsel invited court to find that the defendant did not act with malice.

According to **Gwagilo V Attorney General [2002] 2 EA 381 (CAT)**, malice in the context of malicious prosecution is an intent to use the legal process for some other purpose than its legally appointed and appropriate purpose and the appellant could prove malice by showing for instance that the prosecution did not honestly believe in the case which they were making that there was no evidence at all upon which a reasonable tribunal could convict that the prosecution was mounted a wrong motive and show that motive.

Hon. Mr. Justice Bashaija K. Andrew in **Mugabi v Attorney General Civil Suit No. 133 OF 2002** held that

“It is my view that malice has been established as can be inferred from the Police’ failure to consult the law and/ or to act as a prudent and cautious person would do, and also in acting without reasonable cause. The Police officers at Lugazi Police Station failed even in the simplest of the investigative tasks of retaining copies of the sale agreement Exhibit P III, which would have helped in ascertaining from the witnesses thereto the ownership of the motorcycle. Instead, they kept the Plaintiff reporting to Police for over twelve times without bothering to investigate until when they eventually arrested, detained and subsequently had him prosecuted. This is a manifestation of malice as it was a reckless disregard of the law and the Plaintiff’s legal rights.”

Relating that to the present circumstances, the defendant’s officials had ample to time to carry out proper investigations since they were given copies of the vehicle’s log book but instead opted to institute criminal proceedings and re-arrested the plaintiff. Therefore in this case malice was clearly inferred from the defendant’s failure to consult the law and conduct proper investigations as a cautious and prudent person would have.

Basing on all the above, the plaintiff has clearly fulfilled the essential ingredients to prove malicious prosecution.

Issue 2

What are the remedies available to both parties?

The plaintiff pleaded for special damages, general damages and costs of the suit.

The defendant opposed the same in their written submissions citing inconsistencies in the plaintiff’s evidence.

Since I have ruled on issue one in the affirmative, the plaintiff is entitled to damages.

The law relating to special damages is settled. *W.M Kyambadde v.Mpigi District Administration (supra)* and *Bonham Carter v. Hyde Park Hotel Ltd (1948) 64 TL P 177* the guiding principle is that special damages must be specifically pleaded and strictly proved. See also *Hassan v.Hunt [1964] EA 201; Kainamura Melvin Consultant Engineering & 7 Or’s v. Connie Labada, S.C.C.A No. 61 of 1992; J.B. Semukima v. John Kaddu (1976) HCB 16.*

The plaintiff in the plaint pleaded special damages to a tune of UGX 67.000.000 being lost income from 2007 to date, legal fees defending criminal charges and expenses to attend court from Kanungu.

The plaintiff also submitted that the matter had overstayed in court and the plaintiff has remained jobless accordingly for which the defendant is to blame.

Counsel for the defendant in opposition of grant of special damages submitted that the mode of proving special damages was provided for in the case of *Kasozi and others v People's Transport Service* [1990-1994] EA 162 (SCU), where court stated that special damages must be proved; if one has no documentary evidence, one must call the persons concerned as witnesses or the parties can admit special damages.

Counsel extensively submitted on how the plaintiff failed in discharging his duty to this court proving the special damages pleaded.

Counsel submitted that regarding the plaintiff's lost salary income, there was no evidence of a contract or salary receipt to prove he was receiving that salary income. The plaintiff did not call an independent witness, such as an employer or former fellow employee to prove he was earning a salary as alleged. Therefore, the plaintiff's loss of salary income was not proved.

Counsel further submitted that regarding the plaintiff's legal professional fees, there was no evidence of a bill of costs or receipt to show the legal fees paid. Counsel for the plaintiff did not take time to guide court using the Advocates (Remuneration and Taxation of Costs) Rules on how defending the plaintiff in a criminal case before a magistrates court or instituting a claim of UGX 67,000,000/= is justifiable to lead to legal fees of UGX 5,000,000/= or UGX 200,000,000/= respectively. The plaintiff would have at least called counsel Byaruhanga who is stated in the judgment to have represented him in the criminal trial to testify on the issue of the legal fees he was paid, but he did not. Therefore, the plaintiff's legal professional fees was not proved.

With regard to the plaintiff's transport from Kanungu District and other necessities to attend court, counsel for the defendant submitted that there was no evidence that the plaintiff was residing at Kanungu during the criminal trial. However, there is contrary evidence on the charge sheet that provides that the plaintiff was resident in Kamwokya, which charge sheet was not challenged

during trial. The plaintiff did not avail a letter from the local council to explain his residence in Kanungu or call the chairperson or any other resident person to testify. The plaintiff did not explain the possibility of him having two places of abode, that is, Kanungu and Kamwokya. Besides, the plaintiff did not avail any transport or fuel receipt to explain the magnitude of the transport as UGX 7,200,000/=.

Counsel for the defendant therefore prayed that the court finds that the plaintiff is not entitled to special damages.

It is settled law that special damages have to be strictly proved short of which they are not granted. In this case I am inclined to concur with the submissions of counsel for the defendant that the plaintiff failed to strictly prove the special damages pleaded. This prayer is accordingly denied.

With regard to general damages, it is trite law that general damages are awarded in the discretion of court. Damages are awarded to compensate the aggrieved, fairly for the inconveniences accrued as a result of the actions of the Respondent.

Clearly the plaintiff was inconvenienced by the malicious prosecution by the defendant hence I will allow the prayer for general damages pleaded by the plaintiff. The plaintiff is awarded **fifty million Uganda shillings (UGX 50.000.000)** as general damages.

The plaintiff also prayed for an award interest on decretal amount. This is as provided for in **Section 26(1) of the Civil Procedure Act** which is to the effect that where interest was not prior agreed as between the parties, the Court could award interest that is just and reasonable. I note that there is no evidence of prior agreement on interest hence it is just and reasonable in the circumstances of this case to grant interest for the purpose of alleviating the anguish and suffering which the plaintiff suffered in the hands of the defendant.

In the premises, this awards an interest of 17% on the decretal amount from the date of this Judgment until payment in full.

As to the prayer for costs, **Section 27 of the Civil Procedure Act** provides that costs shall be in the discretion of the court and that costs shall follow the events unless the court has some good

reasons otherwise to order. In **UDR vs Muganga (1981) HCB 35 Manyindo J** (as he then was) held that costs should follow the events unless the court orders otherwise.

I find no reason in these circumstances to deny costs to the plaintiff.

I so order.

SSEKAANA MUSA

JUDGE

12th July 2019