

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
(CIVIL DIVISION)

CIVIL SUIT NO. 278 OF 2014

JOSEPH MUKASA BALIKUDEMBE-----PLAINTIFF

VERSUS

1. CENTENARY RURAL DEVELOPMENT BANK LTD

2. ATTORNEY GENERAL-----RESPONDENT

BEFORE HON. JUSTICE SSEKAANA MUSA

JUDGMENT

The plaintiff seeks damages for unlawful arrest and detention. On the 8.07.2013, the plaintiff was arrested by a police officer from CPS together with an officer of the 1st defendant. He was taken to CPS and detained for 3 days and later released on bond, and he kept on reporting every after 4 to 5 days.

The plaintiff was arrested and detained because his name **JOSEPH BALIKUDEMBE** was similar to that of a suspect/rogue who had withdrawn money from an account held by a school in the 1st defendant bank, using several cheques bearing the name in question as the drawer on an account belonging and operated by the school whose deputy head also happened to be the plaintiff's wife.

For the Defendants

In denying the plaintiff's claim, the 1st defendant also denies involvement in both identifying or arresting the plaintiff. It adds on to state that the said cheques reflected the Plaintiff's name in question, yet the plaintiff is spouse to the deputy Headmistress of the same school, thus Police considered the plaintiff a suspect hence arrested and detained him.

The 2nd defendant does not dispute the fact that it participated in arresting and detaining the plaintiff though it alleges that it acted in accordance with the law to arrest and detain the plaintiff.

AGREED FACTS

On **8.7.2013** the plaintiff was arrested, detained and released on 10.7.2013 on a police bond.

The plaintiff was not charged with any offence(s) before court.

AGREED ISSUES.

- 1) Whether the plaintiff has a cause of action against the defendants.
- 2) Whether the arrest and detention, if at all of the plaintiff by agents of the defendants was lawful.
- 3) If so, whether the defendants are vicariously liable for the acts and omissions of their servants in the circumstances.
- 4) What remedies are available to the plaintiff in the circumstances?

At the trial both parties led evidence of one witness each in proof of their respective cases and other evidence was by way of documentary evidence that were exhibited at trial.

Issue 1&2

Whether there is a cause of action against the defendants? &

Whether the arrest and detention, if at all of the plaintiff by agents of the defendants was lawful.

The plaintiff counsel submitted that what is important in considering whether a cause of action is revealed in the pleadings are the questions whether a right exists and whether it has been violated.

The guidelines were stated by **Court of Appeal for East Africa In Auto Garage –vs Motokov (No. 3) (1971) EA. 514**

- (i) The plaintiff must show that the plaintiff enjoyed a right
- (ii) That right has been violated; and
- (iii) That the defendant is liable

Both the 1st and 2nd defendant filed their written Statements of defense.

The claim on which the suit was brought are stated in the plaintiff and evidenced in the testimony of the plaintiff and a witness statement sworn by Mrs. Angella Kasobya Balikuddembe who was PW II in this matter. The plaintiff remained totally firm and unshaken during his cross examination about his arrest and detention at Central Police Station.

The defendants confirmed the arrest of the plaintiff upon reasonable suspicion as testified by the 1st defence witness who stated that the headmistress told them that she knew 2 persons by the name Balikuddembe- One was a director of the school and the other was a husband to the Deputy headmistress of the school.

The 2nd defendant's counsel conceded that indeed the plaintiff was arrested on 8th-07-2013 and he was released on 10th-07-2013 which according to simple computation was beyond 48 hours. She contended that the plaintiff was arrested upon reasonable suspicion of having committed a criminal offence.

The plaintiff in his evidence in chief stated that the 1st defendant's employee together with a policeman went to his home "and introduced themselves to me and told me I was needed by their boss.....They told me to follow them. Tumushabe took me to police. I discovered he was a police man....i was put under arrest by Tumushabe"

The civil tort of false imprisonment consist of unlawful detention of the Plaintiff for any length of time whereby he is deprived of his personal liberty. It must be total restraint. This principle was stated in the case of **Civil Suit NO. 154 of 2009 Mugwanya Patrick vs The Attorney General of Uganda**

Resolution

The plaintiff indeed enjoyed a right as granted by the Constitution and the 1st defendant does not deny this fact.

The right enjoyed by the plaintiff was violated by his arrest and imprisonment beyond the mandatory constitutional period and continued reporting to police for a period of 4 years.

False Imprisonment

It was undisputed that the plaintiff was arrested and detained for 3 days at Central Police Station before being released on police bond on 10th July 2013.

The plaintiff was arrested on 8th July 2013 and remained in detention until 10th July 2013 without being produced in court.

The Constitution provides that a person arrested shall be brought to a court of law within 48 hours. The detention of the applicant beyond the 48 hours was indeed a violation of his constitutional fundamental rights which would entitle him to general damages.

In the case of **Mugwanya Patrick vs Attorney General High Court Civil Suit No. 154 of 2009** Justice Stephen Musota (as he then was) stated that;

“ The civil tort of false imprisonment consists of unlawful detention of the plaintiff for any length of time whereby he is deprived of his personal liberty. It must be total restraint....where an arrest is made on a valid warrant it is not false imprisonment; but where the warrant or imprisonment is proved to have been effected in bad faith then it is false imprisonment.”

Therefore the arrest and detention of the plaintiff for more than mandatory 48 hours or 2 days was indeed wrongful imprisonment by the 2nd defendant's agents.

It also very clear that the 1st defendant's role in the arrest of the plaintiff was that of an aggrieved party who complained to police and whatever was done by the police was in supposed to be in accordance with the powers of police as granted by the Constitution.

I do not understand what the plaintiff means or insinuates that that the actions of the police were on instructions of the 1st defendant or that the bank official was present. The police does not take directives from the complaints and once they have taken over the complaint they become wholly responsible for their actions. They are never agents of the complainants like the 1st defendant in this matter.

That is why once police is not given credible evidence in any matter the file would be closed for lack of evidence. Alternatively, if the complaint is frivolous or baseless without cogent evidence such complainant can be charged with giving police false information.

The plaintiff's right was violated by the 2nd defendant's servants in the course of their employment since they never detained the plaintiff beyond 48 hours on instructions of the 1st defendant.

The arrest and detention of the plaintiff was lawful and upon reasonable suspicion since the plaintiff had a similar name with the crooks who signed forged and cheques of the school where the plaintiff was resident as husband to the deputy Headmistress.

Once the detention or imprisonment is established the onus shifts to the defendant to show that it was reasonably justifiable and no such attempt was made in the instant case. See ***Sekaddu vs Ssebadduka HCCA No. 30 of 1964 [1968] EA 213***

I therefore find that the imprisonment and detention of the plaintiff was wrongful & illegal and was a violation of his right when it exceeded the mandatory 48 hours.

Whether the Plaintiff is entitled to the reliefs sought?

General damages

General damages are such as the law will presume to be direct natural probable consequence of the act complained of. In quantification of damages, the court must bear in mind the fact that the plaintiff must be put in the position he would have been had he not suffered the wrong. The basic measure of damage is restitution. See ***Dr. Denis Lwamafa vs Attorney General HCCS No. 79 of 1983 [1992] 1 KALR 21***

The character of the acts themselves, which produce the damage, the circumstances under which these acts are done, must regulate the degree of certainty and particularity with which the damage done ought to be stated and proved. As much certainty and particularity must be insisted on, both in pleading and proof of damage, as is reasonable, having regard to the circumstance and nature of the acts themselves by which the damage is done. See ***Ouma vs Nairobi City Council [1976] KLR 298.***

The plaintiff has also sought general damages for imprisonment and detention and continued reporting to police for over 6 months ending on 20th December 2013.

The plaintiff in his witness statement tried to lead evidence of the nature of loss suffered due failure to attend the singing festivals abroad. The same are considered highly speculative since he never attached any invitation letters for such festivals during the time he was detained or was reporting to police.

The court awards the plaintiff a sum of 10,000,000/= against the 2nd defendant as general damages for suffering arising out of the arrest and illegal detention/false imprisonment and continued reporting to police for 6 months without being discharged of any wrong doing.

Exemplary and Punitive Damages

The plaintiff also sought punitive or exemplary damages for False imprisonment and detention.

Punitive damages are intended to punish the defendant for the wrong done to the plaintiff and for acting as a deterrent. See ***Rookes vs Barnard & Others [1964] AC 1129***

In the case of ***Obongo vs Municipal Council of Kisumu [1971] EA 91*** the court held that; “ ***It is well established that exemplary damages are completely outside the field of compensation and although the benefit goes to the person who was wronged, their object is entirely punitive***”.

The plaintiff was detained for 4 days without being charged in any court of law and this is contrary Article 23(4) of the Constitution. Any violation of the Constitution by the defendant’s agents/servants who are mandated to protect and uphold it must attract a punitive sanction against the offenders or violators.

I award punitive damages of 1,000,000/= for the false imprisonment & detention of the plaintiff and continued suffering while on police bond for 6 months without closing the police file.

Interest

Section 26 provides for an award of interest that is just and reasonable. In the case of ***Kakubhai Mohanlal v Warid Telecom Uganda HCCS No. 224 of 2011***, Court held that;

“ A just and reasonable interest rate, in my view, is one that would keep the awarded amount cushioned against the ever rising inflation and drastic depreciation of the currency. A plaintiff ought to be entitled to such a rate of interest as would not neglect the prevailing economic value of money, but at the same time one which would insulate him or her against any economic vagaries and the inflation and depreciation of the currency in the event that the money awarded is not promptly paid when it falls due”

General damages and Punitive damages shall attract an interest of 15% from the date of judgment.

Costs

The plaintiff is awarded costs of the suit against the 2nd defendant only.

It is so ordered.

Dated, signed and delivered be email at Kampala this 30th day of April 2020

**SSEKAANA MUSA
JUDGE**