

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT FORT PORTAL
HCT-01-CV-NO. 03 OF 2016

1. MUMBERE SAMUEL
2. BALUKU JAMAL
3. MASEREKA GIDEON ::::::::::::::::::::::::::::::::::::::: PLAINTIFFS

VERSUS

ATTORNEY GENERAL ::::::::::::::::::::::::::::::::::::::: DEFENDANT

HON. MR. JUSTICE VINCENT EMMY MUGABO

JUDGMENT

The case for the plaintiff as gathered from the plaint is for general damages, exemplary damages interest and costs for malicious prosecution and false imprisonment. Their case is that they were arrested in March 2013 in Kasese and charged with treason. They were tried and acquitted on 6/8/2014 the learned trial judge having found a no case to answer in their favour. As part of the obiter dictum of the trial judge’s ruling on the no case to answer, the judge noted that the human rights of the plaintiffs had been violated and they ought to be given damages for malicious prosecution and false imprisonment.

The defendant maintains that the arrest, imprisonment and prosecution of the plaintiffs was justified as it was based on reasonable grounds and in fulfilment of the legal obligation imposed on the state to prosecute criminal matters to protect the public.

Representation and hearing

The Plaintiffs are represented by learned counsel Chan Masereka Geoffrey of Masereka c & Co. Advocates while the defendant by Attorney General's Chambers, Fort Portal regional office.

At the hearing, the plaintiffs led evidence of four witnesses and the Defendant presented no witnesses. The hearing proceeded by way of witness statements and both counsel filed written submissions which have been considered in the judgment.

In their joint scheduling memorandum, the parties agreed to the following issues for court's determination.

1. Whether the plaintiffs were maliciously prosecuted and falsely imprisoned
2. Whether the plaintiffs are entitled to the reliefs sought
3. What remedies are available to the parties?

I will exercise the powers of the court under **Order 15 rule 5(2) of the Civil Procedure Rules** to strike out the second issue above because it is considered repetitive and it is my opinion that the findings of the court on issues one and three are sufficient to determine all the matters in controversy between the parties.

Court's consideration

Issue 1: Whether the plaintiffs were maliciously prosecuted and falsely imprisoned.

Malicious prosecution

As rightly submitted by counsel for the defendants, it is the fundamental obligation of the state to prosecute criminals and protect the public from the attendant harm that may result from criminal activity. However, not

every innocent person should be brought to justice unnecessarily or baselessly. The purpose of malicious prosecution proceedings is to check and guard against false and baseless accusation of innocent persons.

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 judicial authorities whose responsibility is to administer criminal justice.

Counsel for the plaintiffs relied on ***Odunga's Digest on Civil Case Law and Procedure page 5276***, to lay down the essential ingredients to prove malicious prosecution as follows:

- The criminal proceedings must have been instituted by the defendant
- The defendant must have acted without reasonable or probable cause
- The defendant must have acted maliciously
- The criminal proceedings must have been terminated in the plaintiff's favour.

It is an agreed fact that the plaintiffs were prosecuted in this court vide criminal case no. 60 of 2014 on the charges of treason and were acquitted in August 2014. What is left to be determined is whether there was reasonable or probable cause for the said prosecution and whether the said prosecution was malicious.

Counsel for the defendant argued that the tort of malicious prosecution is committed where there is no legal justification for instituting criminal proceedings. Further that the plaintiffs never challenged their prosecution in terms of indictment, or record of proceedings at the said criminal proceedings and thus the allegations brought against the defendant are baseless. Counsel for the defendant also relied on the case of ***Erieza***

Kaggwa Vs Christine Kagoya & Attorney General HCCS No. 397 of 2014 to submit that mere acquittal per se in the plaintiff's favour does not mean that he or she has been maliciously prosecuted.

I agree with this position and add that merely because the plaintiff came to be acquitted or discharged in a criminal court as the prosecution failed to prove the case beyond reasonable doubt, it does not mean that such acquittal or discharge could necessarily culminate into a case for malicious prosecution against the defendant. What is vital to be determined therefore is whether the defendant acted without reasonable or probable cause to commence and continue the proceedings against the plaintiffs.

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.”

PW1, PW2 and PW4 who the 2nd, 1st and 3rd plaintiffs respectively all testified that they were arrested in Kasese in March 2013, charged with treason and prosecuted before this court and acquitted. They all testify that their human rights were abused. They however do not specify what human rights were abused. During cross examination, they all testified that they

were not individually and personally known to the police officers who arrested them, or the state attorney who prosecuted them.

I note that in his ruling on a no case to answer in criminal case no. 60 of 2014 (**PEXH 1**), the learned trial judge noted that this trial was a complete waste of tax payers' money. I will for emphasis herein reproduce parts of the ruling.

Mumbere Samuel, Baluku Jamal and Masereka Gideon and others still at large were charged with treasonIt was alleged that between December 2012 and March 2013 at Kisolholho Karambi S/County next to the Uganda-Congo border, they supplied food and materials to ADF rebels with intent to aid them overthrow the lawful government of Uganda by force of arms.

*At the hearing, none of the witnesses told court how the accused supplied food to the rebels, what type of food, where it was picked from, where it was delivered and who received it. No witness was able to link the accused to the rebel forces at all. The police officers who testified did not verify the allegations in the information they received. This trial has been a complete waste of tax payer's money. There is no iota of evidence to connect the charges to the accused and no reasonable court can put the accused to their defence. The nation is totally embarrassed.
.....*

Signed

Batema N.DA

Judge

6/08/14

Obiter:

The state abused the human rights of the accused and they ought to be given damages for malicious prosecution and false imprisonment.

The defendant has not produced any witnesses or any evidence to indicate that the prosecution of the plaintiffs was reasonably justified. It appears the prosecution sanctioned the plaintiffs' file without sufficient grounds or evidence that the accused were probably guilty.

In the case of **Glinsk vs Mclver [1962] AC 726** Lord Devlin held that;

“reasonable and probable cause means that there must be sufficient ground for thinking that the accused was probably guilty but not that the prosecutor necessarily believes in the probability of conviction...”

.....that material is based upon information, the information must be reasonably credible such that an ordinary prudent and cautious man could honestly believe it be substantially true and to afford a reasonably strong basis for the prosecution.”

I am inclined to agree with the submissions of counsel for the plaintiff that the prosecution of the plaintiffs was malicious. I have taken note that the police or the prosecutor of the criminal case may not have had anything personal with the plaintiffs but the absence of a reasonable cause for their prosecution points to nothing else but malice.

False imprisonment

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. This principle was stated in the case of **Civil Suit**

NO. 154 of 2009 Mugwanya Patrick vs The Attorney General of Uganda

It is an agreed fact that the plaintiffs were arrested in March 2013. The plaintiffs testified that they were later detained at Katojo government prison for close to one year and five months albeit being released on bail at some point. No submissions were made by counsel for the plaintiffs on this tort.

Counsel for the defendant relied on **Section 23 of the Police Act Cap 303** and argued that the police has the power to arrest anyone without warrant if it has reasonable cause to suspect that the person has committed or is about to commit an offence. Further that in cross examination, the plaintiffs confirmed that they had been arrested by police, charged with the offence of treason and detained in a gazetted government prison. Counsel prays that court finds that the plaintiffs were lawfully detained.

It was further argued for the defendant that when facts exist which would cause a reasonable person to suspect that an offence may have been committed which then would require an investigation, a person who causes matters to be investigated cannot be said to have done so either by spite or ill will. This was the position of court in ***Kagane Vs Attorney General (1969) EA 643.***

I may agree with the position advanced by counsel for the defendant that a person who has reasonable suspicion that an offence has been committed or is about to be committed may cause a lawful arrest for purposes of carrying out an investigation into the reasonable suspicion. This position is further advanced in **Section 10 of the Criminal Procedure Code Act.** However it is incumbent upon the prosecution and the police to carry out an investigation into the alleged criminal conduct and satisfy itself that on

the basis of the information obtained, it is proper to commence prosecution and to keep the accused in lawful custody.

It is my finding that the prosecution just commenced prosecution without basis, without any iota of evidence and without reasonable cause. On this basis the plaintiffs were kept in custody for more than a year. This was unlawful. The plaintiffs were falsely imprisoned.

Issue 2: What are the remedies available to the parties?

The plaintiffs prayed for general damages, punitive damages, interest and costs of the suit.

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 1st plaintiff PW2, testified that he was a businessman and a farmer prior to his arrest and that his business has since collapsed and his family has suffered. He did not however state the nature of his former business. This is the same for the 3rd plaintiff PW4 and the 2nd Plaintiff, PW1. In his submissions, counsel prayed for general damages in the sum of UGX 100,000,000/=.

Considering the circumstances of this case, the court awards the plaintiffs an aggregate sum of 30,000,000/= against the defendant as general damages for suffering arising out of the false imprisonment and malicious prosecution of the plaintiffs.

Exemplary and Punitive Damages

The plaintiffs also sought punitive or exemplary damages for False imprisonment and malicious prosecution.

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 plaintiffs were held in custody at Katojo prison from March 2013 to 1st October 2013 when they were granted bail. They continued to report until their case was complete. However, after the award of general damages to the plaintiff for the damage suffered, I see no reason to further punish the

defendant. I decline to make the ward for punitive damages. The plaintiffs have not shown that the conduct of the defendant was high handed.

Interest

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

“A just and reasonable interest rate, 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”

The General damages awarded shall attract an interest of 8% from the date of judgment.

Costs

The plaintiffs are awarded the costs of the suit against the defendant.

In the final result, this suit succeeds and it is ordered as follows

- a. The plaintiffs were falsely imprisoned and maliciously prosecuted
- b. The plaintiffs are awarded UGX 30,000,000/- in general damages
- c. Interest on general damages is allowed at 8 per cent from the date of the judgment until payment in full
- d. Costs of the suit are awarded to the plaintiffs

Dated at Fort Portal this 24th day of June 2022.



Vincent Emmy Mugabo

Judge

The Assistant Registrar will deliver the judgment to the parties



Vincent Emmy Mugabo

Judge

24th of June 2022.