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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(CIVIL DIVISION)

CIVIL SUIT NO. 460 OF 2019

MWESIGWA BERNARD PLAINTIFF

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VERSUS

ATTORNEY GENERAL DEFENDANT

BEFORE: HON. JUSTICE ESTA NAMBAYO

JUDGMENT

The plaintiff filed this suit against the defendant seeking for special and general
15 damages, interest and costs of the suit for wrongful arrest, false detention and
malicious prosecution.

Background to the suit

The brief background to this suit is that on the 15th September, 2016, Police Officials
raided the Plaintiff's workshop and recovered five and half bags of copper wires
20 weighing 125 kilograms. The plaintiff was also arrested and detained for two days at
Police before being arraigned in Court where he was acquitted on a no case to
answer. The Plaintiff now claims that his arrest and prosecution was unlawful and

malicious and that in the process, he lost customers, business and integrity, hence this suit.

25 The defendant never attended court after filing its written statement of defence and so court proceeded under O. 9 rule 20 (1) (a) of the CPR.

Representation

Learned Counsel Edward Ahumuza appeared for the Plaintiff. He filed his written submissions.

30 The following issues are for determination: -

1. Whether the Plaintiff's arrest by the defendant's agents was unlawful
2. Whether the Plaintiff's prosecution by the defendant's agents was malicious
3. Remedies available.

Issue 1: Whether the Plaintiff's arrest by the defendant's agents was unlawful.

35 Submissions

Counsel for the Plaintiff submitted that Police invaded the Plaintiff's workshop and took his copper scrap and that the plaintiff was also arrested and detained at Jinja Police Station without an explanation for his arrest. Counsel relied on the cases of Issa Wazembe –v- A.G CS No. 154 of 2016 and Agaba Keneth –v- AG CS No. 247 of

40 2016 where Musa Ssekaana, J, noted that;

“the person arrested and detained has a right to know the reasons for detention right away at the time of arrest. The person effecting arrest must explain the reasons in clear and simple language...”

Counsel explained that Richard Mugwisagye who testified as PW3 in the criminal
45 proceedings, (Exh. P.1) informed court that when the police made a search at the
plaintiff’s store, the cables recovered weren’t part of those that were stolen from
Bugolobi; and that at Page 28 of Exh. P.1, AIP Othieno James states that in regard to
A2 (Plaintiff) and A3, they relied on the information of Katabira and not specifically
that the items recovered from A1 & A2 were stolen in Bugolobi or Ntinda. That
50 there had been a series of thefts.

Counsel further explained that when a search was carried out at the Plaintiff’s
premises, the officers confirmed that the property recovered in his store was not
stolen from the scene of crime. That this being the case, the police should not have
gone ahead to arrest the plaintiff as there was no reason to do so. Counsel also
55 relied on the finding of the trial Magistrate and Art. 23(3) of the Constitution and
prayed that this court finds that the plaintiff was unlawfully and wrongfully arrested
by the defendant’s agents.

Analysis

***Articled 23(1) (C) of the 1995 Constitution of Uganda provides that no person
60 shall be deprived of personal liberty except for purposes of bringing that person***

before a court in execution of the order of a court or upon reasonable suspicion that that person has committed or is about to commit a criminal offence under the laws of Uganda.

Evidence on court record shows that the plaintiff was arrested after one of the
65 arrested suspects, (Katabalwa) informed the police that they were selling the stolen
UTL copper wires to him. That it is Katabalwa who led the police to the plaintiff's
store and copper wires were recovered in his store. The plaintiff was charged with
being in possession of stolen property contrary to S.314 of the Penal Code Act and
conspiracy to commit a felony C/S 390 of the Penal Code Act, (see Exh. P.1, evidence
70 of PW3, (SSP Richard Mugwisagye), on page 23 and the judgement). Under
paragraph 6, of PW3's evidence in Exh.P.1, it is stated that PW3 was told by
Katabalwa that there was a rich man in Kisenyi who they would sell the copper wires
to and that the rich man was called Mwesigwa Bernard. Counsel for the Plaintiff
submits on page 5 that when a search was made, the officers confirmed that the
75 property found in the plaintiff's store was not the one stolen from the scene of
crime.

Article 23(1) (C), empowers the police to arrest upon reasonable suspicion that the
person arrested has committed a crime or is about to commit a crime. In this case,
the arrested suspects made reference to the plaintiff as one of the people they
80 were working with to vandalize the UTL copper wires and indeed when the plaintiff's
store was searched, copper wires were recovered. Reference to the Plaintiff by the
suspects as their ally in the commission of the crime and recovery of the copper
wires in the plaintiff's store which were similar to the items that had been stolen, in
my view, created reasonable suspicion to the police and it therefore justified the
85 Plaintiff's arrest. I would find therefore, that the arrest of the plaintiff did not amount
to unlawful arrest by the Defendant's agents.

Issue No. 2: Whether the Plaintiff's prosecution by the defendant's agents was malicious.

In *Murunga –v- The Attorney General, [1979] Klr 138* court noted that in a case
90 of malicious prosecution, the Plaintiff must show that;

- a) Prosecution was instituted by the defendant, or by someone for whose acts he is responsible;
- b) The prosecution was terminated in the plaintiff's favor;
- c) The prosecution was instituted without reasonable and probable cause;
- 95 d) The prosecution was actuated by malice.

In *Mbowa –v- East Mengo District Administration [1972]*, the East Africa Court of Appeal stated that;

*"The plaintiff, in order to succeed, has to prove that the four essentials or requirements of malicious prosecution, as set out above, have been fulfilled and that
100 he has suffered damage. In other words, the four requirements must "unite" in order to create or establish a cause of action. If the plaintiff does not prove them he would fail in his action."*

In this case, the prosecution was instituted by the police for whose actions the defendant is liable. It is also not in dispute that the criminal proceedings were

105 discontinued against the plaintiff when he was acquitted at a no case to answer and
as such, they were terminated in the plaintiff's favor.

In Kagane & Others –v- The Attorney General & Another {1969} E.A 643, court
noted that;

110 *“The test whether the prosecution was instituted without reasonable and probable
cause is whether the material known to the prosecution would have satisfied a
prudent and cautious man that the Plaintiff was probably guilty of the offence.”*

From the above holding, it is would mean that for court to establish a reasonable
and probable cause, the nature of the charge preferred against the plaintiff and the
evidence that was available to the police leading to the charge should be taken into
115 consideration. In this case, the case under investigation was theft of UTL copper
wires. The arrested suspects informed police that they were selling the stolen wires
to the plaintiff and they led Police to the plaintiff's store where copper wires were
recovered. The plaintiff was charged with receiving stolen property C/S 314 of the
Penal Code Act and conspiracy to commit a felony C/S 390 of the Penal Code Act. It
120 is my finding that recovery of copper wires in the plaintiff's store and the allegations
of the suspects arrested in the case that they were selling the stolen wires to the
plaintiff was enough to satisfy a prudent and cautious man that the Plaintiff was
probably guilty of the offence. It is my view that there was reasonable and probable
cause to institute prosecution against the plaintiff under the applied sections of the

125 Penal Code Act and I would find no malice on the side of the defendant. In this case, I find that the plaintiff has not satisfied the 3rd and 4th requirements for malicious prosecution.

In *Nzoia Sugar Company Ltd -v- Fungututi* [1988] KLR 399, the Court of Appeal held that;

130 *"Acquittal per se on a criminal charge is not sufficient basis to ground a suit for malicious prosecution."*

In view of the above, I find no merit in this case and it is hereby dismissed from court with costs.

I so order.

135 **Dated, signed and delivered by mail at Kampala, this 26th day of April, 2022.**

Esta Nambayo

JUDGE

26th /4/2022.