

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT MASINDI
CIVIL SUIT NO.005 OF 2013

KATO JACOB PLAINTIFF

VERSUS

1. TULLOW UGANDA OPERATIONS PTY LTD
2. G4S SECURITY UGANDA LTD/3RD PARTY
3. ATTORNEY GENERAL

} DEFENDANTS

Before: Hon. Justice Byaruhanga Jesse Rugyema

JUDGMENT

- [1] In this suit, the Plaintiff **Kato Jacob** sued the defendants jointly and severally for wrongful arrest, false imprisonment, and malicious prosecution and sought orders, inter alia, general and exemplary damages, costs and interest thereon.
- [2] It is the Plaintiff's case that on the **26th of March, 2011** at 11:00pm at his home in **Kisangura village, Kasongore Parish, Budongo Sub County in Masindi District**, he was invaded by a group of armed men whom he identified as workers/employees of **Tullow Uganda Operations Pty Ltd** (1st defendant), guards of **G4S Security Uganda Limited** (2nd defendant), and Police Officers of the **Uganda Police Force** attached to Bullisa Police Station and Kabango Police Post. He averred that they unreasonably arrested him in a very embarrassing humiliating way and moved him to different detention centres with no iota of evidence but only to physically, emotionally and psychologically torture him.

- [3] That due to the acts of the servants/workers of the 1st and 2nd defendants and the Uganda Police Force which were extremely oppressive, high handed, arrogant and un Constitutional, his rights to liberty and personal dignity were infringed on and as a result, the **Plaintiff** has suffered both special and general damages for which he holds the defendants jointly and severally liable.
- [4] The **1st Defendant** in its Written Statement of Defence (W.S.D) denied all the plaintiff's allegations and averred that if at all the plaintiff was ever invaded, arrested and detained, the same was without the participation of the **1st Defendant** or any of its employees or agents.
- [5] The **2nd Defendant** in its **WSD**, first denied the plaintiff's claims but later, on the **17th day of January, 2018**, entered into a **Consent Judgment** with the **Plaintiff** before the Registrar of this court where by the **Plaintiff** agreed to unconditionally withdraw the civil suit against the **2nd Defendant** upon the **2nd Defendant** paying the **Plaintiff** a total sum of **Ugx 9,000,000/-**(Nine Million Shillings Only).
- [6] The **3rd Defendant** in its **WSD** denied the Plaintiff's claims and averred that the Plaintiff's claim is misconceived, bad in law and an abuse of court process, that the allegations of wrongful arrest, false imprisonment and malicious prosecution were not within the knowledge of the **3rd Defendant** and that therefore the **Plaintiff** is not entitled to any of the damages sought.
- [7] As a result of the Consent Judgment, **the Plaintiff** proceeded with the case against only the **1st and 3rd Defendants**. The **1st Defendant** applied to have the **2nd Defendant** be issued with a **Third Party Notice**. The application was accordingly granted hence the **2nd defendant** became a **Third Party Defendant**. A Joint Scheduling Memorandum was filed.

[8] On being issued Third Part notice, the 2nd **Defendant/Third Party** filed a **WSD** and stated that the **Plaintiff** directly implicated the 1st **Defendant** in various torts for which he is seeking compensation and that as such, the **Third party** is not liable and/or obligated to indemnify the 1st **Defendant** for any infringements that could have been committed by the 1st **Defendant's** own employees or agents. The **Third party** raised a preliminary objection that the matter is *Res Judicata* thus ought to be dismissed and that the third party proceedings are bad and barred in law and an abuse of court process.

Counsel Legal representation.

[9] The plaintiff was represented by **Mr. Tugume** of **M/s Tugume-Byensi & Co. Advocates, Kampala**; the 1st Defendant was represented by **Mr. Bazira Anthony** of **M/s Byenkya, Kihika & Co. Advocates, Kampala**; 3rd Party/2nd Defendant was represented by **Mr. Fahim Matovu** of **M/s Ssempebwa & Co. Advocates, Kampala**, and the 3rd Defendant was represented by **Mr. Franklin Uwizera** from the **Attorney General's Chambers**.

Preliminary Objection

[10] The **Third Party** having raised the preliminary objection that the matter is *Res judicata* and that the Third Party proceedings are an abuse of court process which ought to be dismissed, counsel for the 1st **Defendant** submitted in rejoinder that the suit does not satisfy the parameters or elements of *Res judicata*. That there are minimum conditions that should apply for one to raise a plea of *Res judicata* which are;

- 1) There was a former suit or issue decided by a competent court.

- 2) The matter in dispute in the former suit between parties must have also been directly or substantially between the parties under the same title
- 3) The parties in a former suit should be the same litigating under the same title.

Counsel concluded that the withdrawal of the suit against the 2nd defendant/third party by the plaintiff was done under consent and did not amount to third party proceedings becoming *res judicata*.

[11] **Section 7 of the Civil Procedure Act Cap 71** sets out the doctrine of *res judicata* as follows;

*"No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and **finally decided by such court.**"(emphasis mine)*

[12] In **John Semakula Vs Pope John Paul IV Social Club Ltd CA CA No. 67/2004**, Justice C.K Byamugisha JA regarding **S.7 CPA**, opined at **page 6** that;

"The operative words in that section are 'heard and finally determined by that court.' The provision of the section are therefore, the embodiment of the rule of conclusiveness of judgments with regard to the points that the court decided." (emphasis added)

In **Frost mark EHF Vs Uganda Fish Parkers Ltd CA CA No.114/2011** Justice Percy Night Tuhaise, JA went on and observed that:

"A withdrawal of the suit by its very nature infers that the suit ceases

to exist from the record and it will appear as though no matters had in the first place been commenced. A cursory examination of Order 25 of the Civil Procedure Rules which deals with withdrawal of suits show that a withdrawn suit is a discontinued suit which attracts costs, but it does not bar, or is not a defence to, any subsequent action. The language of Order 25 of the Civil Procedure Rules suggests that a subsequent or fresh suit is distinct from a withdrawn suit or a former suit. Such subsequent or fresh suit is bound by the law of limitation in the same manner as if the former suit, or the withdrawn suit had not been instituted.”

[13] From the above authorities, it is clear that the expression “heard” and “finally decided” in **S.7 CPA** means a matter on which the court has exercised its judicial mind and has after argument and consideration come to the decision on a contested matter. It is essential that it should have been heard and finally decided. In order that a matter may be said to have been heard and finally decided, the decision in the former suit must have been on merits; **Isaac Bob Busulwa Vs Ibrahim Kakinda [1979] HCB 179** and **Kerchiand Vs Jan Mohamed (1919-21) EA CA 64**.

[14] Thus in this case, the suit between the plaintiff and the 2nd defendant was withdrawn on certain terms of payment of **shs. 9,000,000/=** to the plaintiff by the 2nd defendant, the decision not being on its merits, would not operate as *res judicata* in the present suit either between the plaintiff and the 1st defendant and or 3rd party proceedings between the 1st defendant and the 2nd defendant. It cannot be said that there is finality in the matter that has been withdrawn from court. It cannot be said that the court handling the withdrawal settled the rights of the parties and disposed of all issues in controversy. It is also not correct to say that the questions sought to be

determined in the 3rd party proceedings were finally determined by the consent order executed between the plaintiff and the 2nd defendant. The consent order resulted in settling only part of the 2nd defendant's liability to the plaintiff but did not extinguish the rights of the 1st defendant to issue a 3rd party Notice under a **Frame Work Agreement** signed between the 1st defendant and the 2nd defendant dated 20/10/2008 under **clause 11.2 and 11.4 (D.Exh.3)**. The fact is that parts of the claim are still subsisting hence the dispute was not finally determined by the consent order.

[15] It is my finding that the consent between the plaintiff and the 2nd defendant and the consequent withdraw of the claim against the 2nd defendant does not render the present 3rd party proceedings *res judicata*. The preliminary objection is in the premises rejected accordingly.

Determination of the merits of the suit

[16] The following were the agreed facts and issues established in the suit during joint scheduling dated the 28th/10/2021.

Agreed facts

1. Kato Jacob alongside Kato Christopher and Sunday James were prosecuted in the Chief Magistrate's court of Masindi vide **Uganda Versus Kato Jacob and 2 Others, Criminal Case No. MSD-OO-CR-CO-182/2011**.
2. Kato Jacob and 2 Others were discharged of the criminal charges vide **Uganda Versus Kato Jacob and 2 Others, Criminal Case No. MSD-OO-CR-CO-182/2011**.
3. Prosecution of the Criminal case; **Uganda Versus Kato Jacob and 2 Others, Criminal Case No. MSD-OO-CR-CO-182/2011**, was carried out by the Government of Uganda through the Director of Public Prosecutions (DPP).

Agreed Issues

1. Whether the Plaintiff was maliciously prosecuted by the Defendants.
2. Whether the 1st Defendant is entitled to indemnification from the 3rd Party in case of liability.
3. What remedies are available to the parties?

RESOLUTION OF ISSUES

Burden and standard of proof

[17] In the case of **NSUBUGA VS KAVUMA [1978] HCB 307**, it was held that;
“In civil cases the burden lies on the plaintiff to prove his or her case on the balance of probabilities.”

See also **Section 101 of the Evidence Act** which provides that whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he or she asserts must prove that those facts exist and the burden of proof lies on that person.

[18] Therefore, for court to decide in favour of the plaintiff in this case, it has to be satisfied that the plaintiff has furnished evidence where the level of probability is such that a reasonable conclusion is that for which the plaintiff contends; **SEBULIBA VS COOP.BANK LTD [1982] HCB 130**.

ISSUE NO.1: Whether the Plaintiff was maliciously prosecuted by the Defendants.

[19] Counsel for the **Plaintiff** submitted that on 26th/3/2011, while the plaintiff was asleep at his home in Kisangura village, Budongo sub-

county in Masindi District, the plaintiff was invaded and arrested by a group of armed men whom he identified as workers/employees of **Tullow Uganda Operations Pty Ltd**, a guard of **G4S Security Uganda Ltd**, and **Police Officers** attached to Buliisa police station and Kabango police post on allegations that he had stolen **Motor Vehicle Reg. No.T571 AUU M18 Water tanker** of **Tullow Uganda Operations Pty Ltd**. The plaintiff was arrested and placed on a double cabin vehicle with labels of Tullow Uganda and was driven to Kabango police post where he was detained.

That the employees/workers of **Tullow Uganda Operations Pty Ltd**, a guard of **G4S Security Uganda Ltd** and the **Uganda Police Officers** unreasonably took a decision to arrest the plaintiff in a very embarrassing and humiliating way, and moved him to different detention centres without taking him to court for no reason. That the **2nd Defendant** admitted liability and settled vide a consent judgment thus the plaintiff no longer has any claim against the **2nd defendant** (G4S Security).

[20] During cross examination, the plaintiff, **Kato Jacob (PW2)** stated that on the 27/3/2011, his brother **Sam Manyire** and himself were arrested, dumped on a double cabin that was driven by an employee of **Tullow Operations Ltd** who put on an overall with inscription "Tullow Uganda" and were taken to Kabango police post. **PW2** further testified that he was a driver/employee of **BGP INTERNATIONAL** which had a drivers' contract for the **1st defendant**. That a one **Basalirwa Moses**, his fellow driver with Tullow spear headed the operation of his arrest. That he was arrested by Tullow workers, some of whom he knew and a staff of G4S Security, taken to police and later he was prosecuted in the Magistrate's court over allegations of stealing a vehicle.

- [21] **Katusabe Annet (PW1)** testified witnessing the arrest of her husband **Sam Manyire** and **Kato Jacob**, the plaintiff, over allegations of stealing a vehicle.
- [22] Counsel for the **1st Defendant** submitted that criminal proceedings in the Magistrate Court were instituted and prosecution was carried out by the servants/employees of **G4S Security Uganda Ltd** and the government of Uganda through the Director of Public Prosecutions (DPP). That the plaintiff did not adduce evidence to show that that criminal proceedings had been instituted by the **1st defendant**. That therefore, the **1st defendant** or its agents never instituted any criminal proceedings against the plaintiff. That **Basalirwa Moses**, an employee of **BGP International** confirmed in evidence that the case had already been reported to police by a one **Odema Patrick**, a security guard with **G4S Ltd/2nd defendant**. Counsel concluded that the persons that testified in the Magistrate's court against the plaintiff were not employees of the **1st defendant** company and therefore, it cannot be held liable for the acts of the **2nd defendant**.
- [23] The **1st Defendant** adduced evidence of a Charge sheet (**D.Exh.1**), Record of proceedings and Ruling in the magistrate's court collectively admitted and marked **D.Exh.2**, Contracts with **G4S Security Ltd** and **BGP International Ltd** admitted and marked **D.Exh.3** and **D.Exh. 4** respectively.
- [24] Considering the evidence and the submissions of all counsel, it is apparent and evident as per the criminal proceedings against the plaintiff (**D.Exh.1**) that during the plaintiff's prosecution in the Magistrate's court, a one **Odema Patrick**, a security guard with **G4S Security Uganda Ltd/2nd defendant/3rd party** in this suit, reported at

police a case of theft of a motor vehicle **Reg. No. T571 UAA M18** Water tanker belonging to **Tullow Uganda Operations Ltd**. It was upon **Odema's** report to police that the police at Kabango commenced investigations to recover the lost truck.

[25] As police swung into action, it was being assisted by a combination of the employees of **G4S Security (U) Ltd** (2nd defendant) who reported the case and **Tullow (U) Operations Ltd** the owner of the alleged stolen vehicle.

[26] In **Bishop N.Okille Vs Mesusera Eliot & Anor CACA No. 29 of 1997**, Justice Okello J.A held that the essential ingredients constituting the tort of malicious prosecution have been highlighted by the court of Appeal for Eastern Africa (Lutta J.A) in **Mbowa Vs East Mengo Administration [1972] EA 352 at 354** to be the following';

- “(a) 1. That criminal proceedings must have been instituted by the defendant, that is, he was instrumental in setting the law in motion against the plaintiff.*
- 2. The defendant must have acted without reasonable or probable cause.*
- 3. The defendant must have acted maliciously. In other words the defendant must have acted in instituting criminal proceedings with an improper and wrongful motive, that is, he must have had “an intent to use the legal process in question for some other than its legally appointed and appropriate purpose.”*
- 4. The criminal proceedings must have terminated in the plaintiff's favour.*
- (b) In a prosecution in the name of the state, the person liable is the complainant in whose instigation the proceedings are*

- [27] In the instant case, irrespective of the relationship that existed between the 1st defendant and the 2nd defendant together with **BGP International**, it is clear that none of the 1st defendant's employees was instrumental or behind setting the law in motion against the plaintiff.
- [28] 2ndly, it is clear from the criminal proceedings (**D.Exh.2**), all the prosecution witnesses reported that a one **Kato Christopher** (A2 on the charge sheet of stealing Vehicle-**D.Exh.1**), driver of the 2nd defendant was behind the theft of the vehicle in question. The vehicle was recovered on the road at Kasongoire vandalized. It was being driven by a one **Sunday**, a brother to the plaintiff who fled immediately at the sight of police. The vehicle was recovered from the village of the plaintiff if not around the plaintiff's place (see evidence of **Paul Kibirige** at **p.14** of the criminal proceedings). **Katusabe Annet** (PW1) appeared to be the one who led police to where the vandalized pieces of the part of the vehicle in question were recovered.
- [29] The role of the employees of the 1st and 2nd defendants in the arrest of the plaintiff were therefore that of an aggrieved party since the stolen vehicle appear to had belonged to the 1st defendant. The 2nd defendant's employee had complained to police which acted in accordance with its mandate of curbing crime.
- [30] Therefore from the foregoing, one is not able to find evidence that **Odema Patrick, Kibirige Paul** and **Basalirwa Moses** who were the key witnesses against the plaintiff, were employees of the 1st defendant. It is therefore apparent that the 1st defendant's employees got involved because it is their vehicle which had gotten missing. Police got interested in the matter because **Odema**, an employee of **G4S**

Security Ltd (2nd defendant) had reported the disappearance of the water tanker vehicle belonging to the 1st defendant.

[31] In this case, I do find that police acted upon a reasonable complaint by the employee of the 2nd defendant. The plaintiff has not shown by way of any evidence that both the police and the employees of the 2nd defendant had any improper and wrongful motive in pressing for criminal proceedings against the plaintiff.

[32] As regards the claim that the plaintiff was held by police for more than the Constitutional 48 hours, other than claiming that he was driven to and from the scene, Masindi police station and then Buliisa police station, the plaintiff did not present any evidence regarding the period he spent in police detention. **Katusabe Annet** (PW1) also did not allude to that. A mere claim that one has been in detention for more than 48 hours by police is not enough. There must be evidence to that effect. That evidence must be in form of police record entries or witnesses. None of the plaintiff's witnesses testified in court to that effect. The same apply to the alleged torture. There must be medical evidence to that effect. It is lacking in this case.

[33] In the premises, I do find that the 1st and 3rd defendants are not liable to the plaintiff for wrongful arrest, malicious prosecution and false imprisonment as there is no evidence adduced to support the claims.

ISSUE NO.2: Whether the 1st defendant is entitled to indemnification from the 3rd party in case of liability.

[34] As per the existing contract between the 1st defendant and the 2nd defendant, under **clause 11.2 and 11.4 of the Frame Work Agreement (D.Exh.3)**, the 1st defendant would be entitled to indemnification from the 2nd defendant in case of any liability arising

from the contract/relationship between the 2 parties. However, in this case, the 1st defendant having suffered no liability arising out of its Contractual relationship with the 2nd defendant, the 1st defendant is not entitled to any indemnification.

ISSUE NO.3: Remedies available to the parties

[35] In conclusion, there is no merit in the plaintiff's suit and therefore he is not entitled to the remedies/damages sought. The suit is accordingly dismissed with costs to the 1st defendant only since the 3rd defendant did not participate in the proceedings.

Dated at Masindi this 2nd day of June, 2022.

Byaruhanga Jesse Ruyema
JUDGE