THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT MBALE

HCT-04-CV-CA-0083-2013
(ARISING FROM CIVIL SUIT NO. 0031 OF 2011)

STEPHEN NDUGU……..……..……..APPELLANT
VERSUS
GRACE WASAGALI……...…….……RESPONDENT

BEFORE: THE HON. MR. JUSTICE HENRY I. KAWESA

JUDGMENT

Appellant filed civil suit no. 031/2011 against Respondent in Chief Magistrate's Court of Mbale at Mbale seeking for general damages, exemplary damages, aggravated damages and costs of the suit for false imprisonment.

The case was fully heard and eventually determined on the 24th day of June 2013 by **Her Worship Namisi Hope** in favour of the Defendant/Respondent. The appellant was dissatisfied with whole decision hence the appeal.

The grounds of appeal were;

1. The learned trial Magistrate erred both in law and fact when she failed to properly evaluate the evidence on court record hence reaching a wrong judgment.
2. The learned trial Magistrate erred both in law and fact to hold that there was no cause of action against the Respondent.
3. That the decision of the learned trial Magistrate occasioned a miscarriage of justice.

The duties a first appellate court were well articulated in ***Kifamunte Henry v. Uganda Cr. App. No. 10 of 1997***, which guided that a first appellate court has a duty to reappraise the evidence on record and come up with its own findings, taking caution that the court did not have chance to observe the witnesses.

I have gone through the evidence on record. I have also gone through submissions by the parties. I resolve the grounds of appeal as herebelow:

Grounds 1 and 2

The evidence on record was as follows:

PW.1 Ndugu Stephen Wandiba, told court that on 13.01.2011 he was imprisoned at CPS Mbale. This was after the respondent made reports to CPS. He was released on 14.01.2011, after the police gave him a police bond. He was not taken to court and file was closed by police.

The witness identified and agreed that he had signed on the document in settlement of the case.

PW.2 Kibozeyi Yasin, said that on 14.01.2012 is when PW.1 was released from Mbale CPS. He confirmed that an agreement was made, they signed it, and no one was forced to sign.

PW.3 Agatha Ndugu confirmed the arrest and detention.

The case for the defence was as follows: **DW.1 Wasagali Grace**, said that she used to experience theft of her coffee. She was forced to make a report to police. The police began surveillance and on 13. January.2011 her coffee was again stolen. Police laid an operation and impounded the coffee from Namakwekwe village. When she got this information she went to the scene where she found a police pick up and the car that was ferrying her coffee. She identified it as her coffee marked "WG." The men arrested with the coffee said it was for the plaintiff. The coffee was impounded. The police took the coffee to the police station. Plaintiff followed up the coffee at the police station, and was arrested. Later negotiations were made between the parties (DW.1 and PW.1) at police and an agreement was entered, after which the plaintiff was released by the police.

DW.2- Dt Sergeant Onono was the Investigating Officer of this file. He narrated the facts that led to the arrest and release of the plaintiff (appellant), confirming the evidence of DW.1.

DW.3 Opirir Michael, was part of the team that impounded the coffee. He confirmed that plaintiff signed an agreement in settlement of the matter.

On the lower court record defence exhibited the alleged agreement as annex A, and court received it as DE.1.

Ground 3:

From the evidence on record and agreed issues and facts, it is not contested that the plaintiff was arrested following a complaint to police by the defendant. It is also an agreed fact that the defendant and plaintiff signed an agreement whereby the plaintiff made good the loss. Plaintiff was never taken to court.

The matter before court was a case of false imprisonment. The law on this tort was well articulated by **Justice Musoke Kibuka** in ***Perusi Nanteza v. Sugar Corp & Tinkamanyire CS 502 of 1989***.

The law is that the basis of the action for false imprisonment or detention is the mere act of imprisonment or detention itself. The plaintiff only has to prove that fact. The plaintiff does not have to prove that the arrest was malicious.

At this stage, the above statement of the law settles the question of cause of action.

The court at this stage only looks at the fact of imprisonment and if it was caused by the defendant. This fact was accepted as an agreed fact. It therefore meant that there was a cause of action for which court could proceed to hear the plaintiff's case.

I agree with counsel for appellant that in determining cause of action.

Court is guided by the elements of the fact that:

a) Plaintiff enjoyed a right.
b) The right was violated.
c) The defendant is liable.

The determination of cause of action was considered by the Constitutional Court in ***Al Haji Naser N. Ssebagala v. Attorney General & Anor. Const. Pet. 1/96*** that:

> "*A cause of action means every fact, which if traversed would be necessary for the plaintiff to prove in order to support his right to a judgment of court. It must include some act done by the defendant and it is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove the facts but everything that if not proved would give defendant a right to an immediate judgment must be part of the cause of action. It has no relation to the defence which may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff. The cause of action must be antecedent to the institution of the suit*."

From the above position, I agree with appellant's counsel that the learned trial Magistrate ought to have looked at the plaint alone to find out if there was a cause of action. There was no need to consider the evidence in order to determine this issue.

It is however note worthy that this matter was brought to court for determination and evidence was led in court. I need to state here that the fact that court finds that a party has a cause of action entitles that party to proceed before court and lay evidence before the court so that the court determines the merits or demerits of that case.

Since this was not a case determined under O.7 r. 11, 12, 13 of the Civil Procedure Rules the court did not reject the plaint, but the plaint was presented and court had to determine it. Having found that plaintiff has a cause in false imprisonment, for the action to be complete, the plaintiff has the burden to prove that he was falsely imprisoned due to the actions of the defendant. The defendant then has the burden to show and prove that the detention was justifiable. (See: ***Sekadde v. Ssebadduka (1968) EA 213***.

This court has gone through evidence on record. The evidence clearly shows that it was not the defendant who gave the police the name of the plaintiff as the suspect. The defendant testified that she made a complaint that her coffee was being stolen. Police carried out intelligence and on a tip off arrested the coffee vendors and the coffee. Plaintiff was not arrested on instigation of the defendant. He went himself to police, owned up the case, negotiated to be released, and was led to plaintiff by DW.2- the officer investigating the matter. I find that the whole chain of causation does not show malice or falsehood intent on part of defendant/Respondent. The ***Ssebadduka case*** (supra) facts are distinguishable from this case. It would be fatal and wrong to hold that for every person who reports a case to police, and police acts on that report to investigate the matter, that person should be liable for the acts of the police if imprisonment or arrest arises, regardless of the peculiar circumstances of the case.

Every case must be considered on its own peculiar facts. In the case before me, the role of the defendant was limited to raising a complaint. She did not even name the plaintiff to the police, she did not participate in the actions that followed, it is too remote to apportion blame on her. The other peculiar circumstance revealed by these facts is that this matter was a police matter which was settled amicably. The police closed the file not for lack of evidence but because parties chose to solve it out of court as per ED.I. This cannot be taken as evidence of false imprisonment; but evidence that the detention was justifiable.

I therefore agree with the reasoning adopted by the learned trial Magistrate while assessing the evidence and the conclusion she reached on the evidence. The evidence on record does not sustain the cause in false imprisonment. The evidential burden placed on the defendant to prove that the imprisonment was justifiable was satisfied. By that finding therefore I find that though plaintiff had a cause of action, it was proved by the defendant that his detention was justifiable.

The learned trial Magistrate therefore did not error in her findings on the evidence.

Ground 1 of the appeal therefore fails.

Ground 3:

Having found that the learned trial Magistrate reached a right finding on the evidence before her, I find no merit in ground 3 of the appeal.

For reasons above, I find no merit in the appeal, I accordingly dismiss the appeal with costs to the Respondent. I so order.

Henry I. Kawesa

JUDGE

28.10.2016

Right of appeal explained.