

**IN THE COURT OF APPEAL OF TANZANIA
AT ARUSHA**

CIVIL APPEAL NO. 16 OF 2010

(CORAM: MUNUO, J.A., KILEO, J.A., And MANDIA, J.A.)

**AFRICAN GEM MINING LTD..... APPELLANT
VERSUS**

ANDREW NATAI RESPONDENT

**(Appeal from the decision of the High Court of Tanzania
at Arusha)**

(Sambo, J.)

dated the 28th day of August, 2008

in

Civil Appeal No. 47 of 2007

JUDGMENT OF THE COURT

28th February & 5th March, 2012

MUNUO, J.A:

The appellant, African Gem Mining Ltd is challenging the decision of the High Court of Tanzania at Arusha in Civil Appeal no. 47 of 2007 before Sambo, J.

In October, 2001 the respondent, Adrew Natai, was employed by the appellant as a machine operator, a job he got in 1999. Trouble started on

the 6th November, 2001 when the appellant instigated the police to arrest, search and prosecute the respondent of stealing by servant c/s 265 and 271 of the Penal Code, Cap. 16 R.E 2002 for allegedly stealing gemstones from his employer, the appellant. The respondent complained at paragraph 7 of the plaint that he was:-

" thoroughly searched upon during which exercise he was stripped naked hence being subjected to an act of human degradation and humiliation but nothing of incriminating nature was found with him."

He was subsequently arraigned and tried but the trial court acquitted him after ruling that he had no case to answer. Having been humiliated by the search and charge, the respondent sued for general damages for false imprisonment. The Court of Resident Magistrate dismissed the suit, that is Civil Case No. 38 of 2003. Dissatisfied, the appellant lodged Civil Appeal No. 47 of 2007. Sambo, J. allowed the appeal with costs and further awarded Tshs. 50,000,000/= (fifty million shillings) as damages for loss of reputation. Dissatisfied with the decision of the High Court, the appellant ex-employer instituted this appeal.

Mr. Bernard Buhoma, learned advocate represented the appellant. The respondent was represented by Mr. Makange, learned advocate. Mr. Buhoma lodged two grounds of appeal, namely:-

1. That the High Court was not, in law and in the circumstances justified to reverse findings of fact made by the trial court.
2. The learned judge's assessment of the general damages was manifestly excessive.

Learned counsel for the appellant urged us to reverse the decision of the High Court and restore that of the trial court which found that there was a reasonable and probable cause for the appellant to initiate criminal prosecution of the appellant and thence dismissed the suit. There was no material irregularity or error to justify the learned judge's disturbance of the findings of fact by the trial court, counsel for the appellant argued. He observed that the respondent behaved suspiciously because DW1 Wessel Marais, a Senior Manager spotted him examining the contents of the bags first instead of emptying the bags directly into the trucks which ferried

Tanzanite one to the factory. Hence the appellant reported the suspicious conduct of the respondent to the police believing he had attempted to steal Tanzanite which complaint, the trial court found not to have been justifiable.

With regards to the awarded general damages of fifty million shillings, counsel for the appellant contended that the awarded damages were excessive and that the learned judge purported to award the said damages for loss of reputation. Counsel referred us to the case of **Tanganyika Standard (N) Ltd and another versus Rugarabamu Archard Mwombeki 1987 TLR 40** in which the trial court awarded Tshs. 200,000/= general damages for defamation to the respondent. On appeal, it was held and we quote:-

"so long as the trial court had taken into consideration all the pertinent and relevant considerations, namely the -wide circulation of the libel, refusal by the appellant to apologize despite the respondent's repeated invitations to do so and failure by the respondent to show the loss of income as a result of the publication, the trial

court's assessment of general damages could not be faulted."

Counsel for the appellant also cited the cases of **Ilanga Versus Manyoke (1961) E. A. 705** where the East Africa Court of Appeal quoted with approval the decision of the Privy Council in **Nance versus British Columbia Electric Railway Co. Ltd (1951) A.C. 601** ; and **Njoro Furniture Mart Ltd Versus Tanesco (1995). TLR 205**. In the case of **Ilanga**, it was held that an appellate court may only interfere with an award of general damages where the damages were excessively low or excessively high or where the trial court proceeded on a wrong principle.

In the **Njoro** case, the Court of Appeal held that in a suit for damages, the court seeks to restore the injured party, as far as possible, to the position he was in before the injury; and that unlike exemplary damages, general damages are not intended to punish the wrong doer to compensate the victim so far as money can do. As the award of fifty million shillings was manifestly excessive, counsel for appellant urged us to quash and set aside the decision of the High Court with costs.

In his reply to the written submission and his oral submission at the hearing, Mr. Makange learned advocate for the respondent supported the decision of the High Court and urged us to refrain from interfering with same. He faulted the trial court for confusing false imprisonment and the tort of defamation and thence arriving at the wrong conclusion of dismissing the suit instead of awarding general damages to the respondent. Counsel submitted that this being a second appeal, the appeal would be only on points of law and he cited the case of **Pascal Christopher and Six Others versus The Director of Public Prosecutions. Criminal Appeal No. 106 of 2006** as authority on the same. Counsel for the respondent further cited the case of **Davies and Another versus Powell Duffryn Associated Colliers Ltd (1942) 1 All E.R. 657 at page 664** wherein the court held that:

".....an appeal court is always reluctant to interfere with a finding of the trial judge on any question of fact, but it is particularly reluctant to interfere with a finding on damages....."

Counsel for the respondent submitted that there is no ground for reversing the decision of the learned judge so the appeal should be dismissed with costs.

The issues before us are:

- a. Was there a reasonable and probable cause for the arrest, detention and prosecution of the respondent for stealing by servant?
- b. Were the awarded general damages excessively low or high?

The learned judge was satisfied that the tort of false imprisonment was committed on the respondent for there was no reasonable and probable cause for instigating prosecution causing the respondent to be arrested, searched and remanded in police custody for two days. The learned judge held:

"I find that the detention of the appellant was unlawful, unreasonable and unjustified in all respects....."

On the awarded damages, the learned judge was satisfied that the appellant was liable for the tort of false imprisonment and that the claim for damages was proved on the balance of probabilities. The learned judge then proceeded to award Shilling 50 million general damages.

In the light of the evidence on record indicating that DW1 initiated the arrest, detention and prosecution of the appellant on suspicion, and because he was arrested searched and nothing was found on him, we agree with the learned judge that the respondent was falsely imprisoned. Indeed Winfield and Jolowicz on Tort 15th Edition by W.V.H. Rogers Page 69, the learned authors define false imprisonment as:

"wrongful restraint, denying a person his liberty....."

As the respondent was arrested, put in the lock up for two days on mere suspicion, and on being searched nothing was found on him, the appellant committed the tort of false imprisonment because he initiated the arrest and prosecution of the victim without a reasonable or probable cause.

With regards the award of general damages, we wish to refer to the case of **Cooper Motors Corporation Ltd versus Moshi-Arusha Occupational Health Services (1990) TLR 96** in which the Court held:

"Whether assessment of damages be by a judge or jury, the appellate court is not justified in substituting a figure of its own for that awarded below simply because it would have awarded a different figure if it had tried the case....."

Before an appellate court can properly intervene, it must be satisfied either that the judge in assessing the damages, applied a wrong principle of law (as taking into account some irrelevant facts or leaving out of account some relevant facts); or short of this, that the amount awarded is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damages."

We are satisfied that the learned judge rightly reversed the decision of the trial court and awarded shilling 50,000,000/= general damages to the respondent for false imprisonment thereby resolving the above two issue negative.

We accordingly find no merit in this appeal and hereby dismiss the appeal with costs.

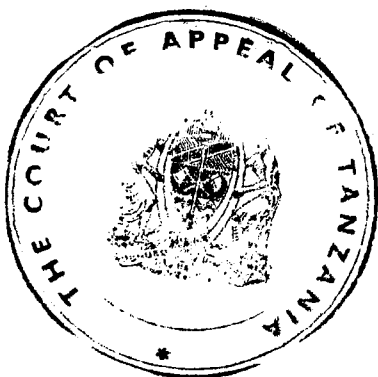
DATED at Arusha this 5th day of March, 2012.

E. N. MUNUO
JUSTICE OF APPEAL

E. A. KILEO
JUSTICE OF APPEAL

W. S. MANDIA
JUSTICE OF APPEAL

I certify that this is a true copy of the original.




E. Y. MKWIZU
DEPUTY REGISTRAR
COURT OF APPEAL