IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: MUGASHA, J.A., NDIKA, J.A., And KITUSI, J.A.)

CIVIL APPEAL NO. 16 OF 2016

JEPTHER SOKA SANANI .... APPELLANT

VERSUS

THE STANDARD CHARTERED BANK (T) LIMITED .... RESPONDENT

(Appeal from the Judgment and Decree of the High Court of Tanzania at Dar es Salaam)

(Kaduri, J.)

dated the 2nd day of May, 2014
in
Civil Appeal No. 46 of 2013

....

JUDGMENT OF THE COURT

5th & 26th, May, 2020

NDIKA, J.A.:

Jephter Soka Sanani, the appellant herein, has appealed to this Court against the judgment of the High Court of Tanzania at Dar es Salaam (Kaduri, J.) dated 2nd May, 2014 in Civil Appeal No. 46 of 2013. The impugned judgment reversed the decision of the Resident Magistrate's Court of Dar es Salaam at Kisutu in Civil Case No. 115 of 2008 awarding the appellant TZS. 20,000,000.00 as general damages for injury suffered due to a false alarm allegedly raised by the respondent.

For an understanding of the context in which the appeal has arisen as well as the issues involved, we narrate the essential facts of the case as follows: on 18th February, 2006 around 11:00 hours, the appellant visited the respondent's branch at Shoppers Plaza, Mikocheni in Dar es Salaam to deposit an amount of TZS. 6,000,000.00 in cash into the account of his business partner, one Frederick Mosha. Having done so and collected the pay-in-slip, he started walking towards the exit but before he could get out, he was accosted by a plainclothes police officer who then led him out of the bank apparently under arrest. Outside the bank, he found himself surrounded by several police officers who had just arrived there on a police patrol vehicle (Land Rover Defender 110). A little later, the then Officer in Charge (OCS) of the nearby Oysterbay Police Station, Ex-SSP Gervas Mapunda (PW2), arrived at the scene.

The appellant was then taken to the police station where he was searched after he had surrendered all his possessions. He was then briefly interrogated by the police who subsequently released him upon being satisfied that he was not a robber and that he posed no discernible danger. In response to the appellant's protest, the police informed him that their action was prompted by an alarm raised by an official of the respondent bank on a suspicion that he was a robber. The appellant then filed a formal complaint at the station.

In his amended plaint the appellant claimed that he was in the respondent's bank for a lawful purpose; that he was not dressed in a manner that would have concealed an offensive weapon had he carried one; and that he was so well behaved that he could not attract any attention or raise any suspicion. He lamented that he was accosted and arrested by a police officer at the behest of an employee of the respondent and that he was roughed up and handled as an armed robber.

On the basis of the pleadings, his own evidence as PW1 and the testimonial account of PW2 Ex-SSP Mapunda, the appellant prayed for a declaration that the respondent's employee who accused and identified him as an armed robber acted carelessly, negligently, recklessly and irresponsibly which act endangered his life. In addition, he prayed for general damages to the tune of TZS. 30,000,000.00; exemplary damages in the sum of TZS. 15,000,000.00; an apology from the respondent; and costs.

Through its amended written statement of defence, the respondent denied the appellant's claim. In particular, the respondent flatly denied that the appellant was arrested at its Shoppers Plaza branch. It was also refuted that an employee of the respondent called the police to report any suspicious activity in the bank on the fateful day or pointed out the appellant to the police.

To support its case, the respondent produced two witnesses: DW1 Ngalagila Ngonyani, the respondent's former Financial Crimes Risk and Security Manager and DW2 Gloria Elija, the then Service Delivery Manager at the Shoppers Plaza branch.

The trial court was impressed by the appellant's case. It found it established that the appellant visited the respondent's Shoppers Plaza branch on the fateful day and that acting on a false alarm raised to the police negligently and carelessly without any reasonable or probable cause by a certain employee of the respondent, the appellant was arrested at the bank. On account of the respondent's act, the appellant was "put to danger." At the end of the day, judgment was entered with costs in his favour in the sum of TZS. 20,000,000.00 as general damages.

On appeal to the High Court, the learned Judge vacated the trial court's judgment and decree mainly on the ground that there was no proof that the appellant was arrested at the prompting of the respondent. The relevant part of the judgment, at page 191 of the record of appeal, succinctly states that:

> *"There is said to be have been suspicion on the respondent [appellant herein] in that he had taken too long in the bank. At what time did the so-called appellant's [respondent's herein] servant (since he/she*

is undisclosed) point a finger at the respondent to the police authority causing the respondent's arrest? There are so many questions that are left [unanswered] such that we cannot say for certain the respondent was reported to be a suspect or robber by the appellant's employee."

The appellant now challenges the above outcome on a Memorandum of Appeal raising four grounds thus:

"1. That the learned High Court Judge erred in justifying the arrest, detention and interrogation of the appellant as an armed robber without existence of any reasonable grounds at all and in the absence of any incriminating or even of suspicious circumstances.
2. That the learned High Court Judge erred in shielding the respondent and vindicating the right to report crimes without upholding the corresponding obligation not to do so unjustly, negligently, recklessly or carelessly.
3. That the Honourable Judge erred in disbelieving cogent evidence of a police officer that the appellant was arrested as a result of report being made by the respondent's servant followed by that of the respondent's branch manager.

4. That the Honourable Judge erred in involving hired security guards who the arresting officer did not say had anything to do with the saga."

At the hearing of the appeal before us, the appellant appeared in person, self-represented whereas the respondent had the services of Mr. Sylvanus Mayenga, learned counsel. Both of them took turns to fully adopt their respective written submissions they had filed in advance in terms of Rule 106 of the Tanzania Court of Appeal Rules, 2009 in support of or in opposition to the appeal.

We have dispassionately examined the record of appeal and weighed the contending written submissions of the parties against the evidence on record. To determine the appeal, we propose to address the grounds of complaint in the same order they were canvassed by the parties in their respective written submissions. Thus, we shall begin with the third ground of appeal and then tackle the first and second grounds conjointly. Finally, we shall deal with Ground No. 4.

Admittedly, the outcome of the appeal essentially turns on the third ground faulting the learned Judge for disbelieving the cogent evidence of PW2 that the appellant's arrest was precipitated by a false alarm to the police made by the respondent's servant and the Branch Manager.

For a start, before dealing with main question of the cogency of PW2's evidence we wish to observe that the appellant himself did not give any direct or positive evidence on the alleged false alarm. His narrative was mainly limited to what befell him right after he had collected the bank pay-in-slip. We have indicated earlier that he averred that he was accosted by a plainclothes police officer who then led him out of the bank to a contingent of police patrol officers who were later joined by PW2. Certainly, we note that in his evidence in chief he revealed his suspicion that a female "attendant" was behind the false alarm as he swore, as shown at page 242 of record, that:

> *"While in the bank, one attendant a woman was moving around me like guarding me as I was in the queue to deposit my money.* ***As I was arrested, I recalled why the attendant was moving around me.****"* [Emphasis added]

When cross-examined by the respondent on the alleged female attendant, he stated, at page 249, that:

> *"Yes I saw the bank work attendant like that going around me several times and later I saw her pointing a finger [at] me as I was approaching the door, after I had been caught by one police man.... That attendant did not mention my name; nor did she talk to me. I did*

not hear any conversation between the attendant and the police."

He went on in the same cross-examination telling the trial court, as shown at pages 249 to 250, that:

> *"The police said that they were informed by [a] bank employee. I do not know exactly who informed the police. I thought that the attendant who pointed a finger is the one who reported to the police. I did not manage to know her name."*

The above passages present no more than mere conjecture that the red flag against the appellant was raised by an unidentified female attendant. This piece of evidence is not, by any yardstick, cogent. Needless to say at this stage, the appellant's assertion that the police told him that they acted at the bank's prompting is plainly hearsay.

Adverting to PW2 Ex-SSP Gervas Mapunda (the then OCS, Oysterbay Police Station), we think his testimony is equally of little value, if any. It was to the effect that he rushed to the bank on the fateful day upon being called and that on arriving there he found the appellant already under police restraint. Then, he said, at page 254 of the record, that:

> *"**I was informed by the Manager whom I do not recall,** who told me that they had fear that the plaintiff here [appellant herein] was not a good person for he had stayed in the bank for a long time...."* [Emphasis added]

Here we assume that PW2 meant that he learnt at the scene from the Bank Manager that the respondent's officials were apprehensive that the appellant was a suspicious person. However, in further cross-examination as captured at page 256 of the record, he said he learnt of the suspicion from the police patrol officers. We wish to let the record speak for itself:

> *"I was called by the police who were on patrol. **They told me that they had been informed by the bank administration that they [had] suspected a robber** ... the one they had under arrest .... Yes I did work on that information by interrogating the suspect. I do not recall if I ordered those interrogations to be written. **I interrogated with (sic) the branch Manager. I do not recall his name but he was the Manager.**"* [Emphasis added]

It is evident from the above passages that PW2 rushed to the scene in response to a call by the contingent of police patrol officers who had then put the appellant under restraint. Although he averred that the Branch Manager

informed him that the police response was due to an alarm raised by the respondent bank, we find it incredible that he failed to recall the Branch Manager's name nor did he remember if his interrogation of the Manager was recorded or not. In our view, the incident was a sensitive occurrence that should have been professionally handled and fully documented. In the circumstances of this case, we are of the view that a satisfactory answer as to who raised the alarm, if any, could have been obtained from any of the police patrol officers that responded to the alleged call of distress from the bank. It is obviously baffling that the appellant elected to call none of them as witness.

We also examined the testimonies of the respondents' witnesses (DW1 and DW2), which appear to us not decisive on the issue at hand as none of the witnesses had direct knowledge of the fateful incident. Nevertheless, we are decidedly of the view that in terms of sections 110 and 111 of the Evidence Act, Cap. 6 RE 2002 the burden of proof remained undischarged by the appellant and on the balance of probabilities he failed to establish that his arrest was precipitated by a false alarm to the police made by the respondent's servant or branch manager as had been alleged. In consequence, the third ground of appeal is without a semblance of merit and we dismiss it.

It is needless to say that the third issue was the central question upon which the outcome of the appeal was dependent. Our resolution of it against the appellant sufficiently disposes of the appeal. For the sake of completeness, however, we propose to address the first and second grounds of complaint, albeit very briefly.

The thrust of the two grounds is whether the learned High Court Judge erred by upholding the duty to report crimes without vindicating the corresponding obligation not to do so unjustly, negligently, recklessly, carelessly or without reasonable grounds.

For all intents and purposes, the above question turns on the interpretation of section 7 (1) and (2) of the Criminal Procedure Act, Cap. 20 RE 2002 ("the CPA"). The said section provides thus:

> *"(1) Every* ***person who is or becomes aware*** *–*
>
> *(a) of the commission of or the intention of any other person to commit any offence punishable under the Penal Code; or*
>
> *(b) [Omitted]*
>
> *shall forthwith give information to a police officer or to a person in authority in the locality who shall convey the information to the officer in charge of the nearest police station.*

> (2) ***No criminal or civii proceedings shall be entertained by any court against any person for damages resulting from any information given by him in pursuance of subsection (1)."*** [Emphasis added]

We agree with both parties that subsection (1) (a) above imposes a legal duty on every person who becomes aware of the commission of a crime or an intention to commit a crime to give information to a police officer or to a person in authority in the locality who shall in turn convey the information to the officer in charge of the nearest police station. On the other hand, subsection (2) above provides immunity to any person who fulfils his statutory duty to give information under subsection (1) against institution of criminal or civil proceedings for damages on account of the information given. What is hotly contested is the breadth of the immunity provided for – is it absolute or qualified?

Mr. Mayenga contends that the immunity is absolute; that it is unqualified in any manner. That it matters not that the report made to the police happens to have been actuated by malice and without reasonable or probable cause. With respect, we do not agree with him. The immunity is not a wholesale license for one to do what he pleases.

On a plain and ordinary meaning, the statutory immunity at hand only protects a person who, in terms of section 7 (1), reports to the police or other lawful authority the commission of or intention to commit an offence if he is or becomes aware of such commission or such intention. The catchphrase here is a "person who is or becomes aware", which we think means, among others, a person who has actual knowledge of the commission of a crime or intention to commit a crime. It also covers a person who has become aware of a state of circumstances which reasonably and probably points to a commission of or an intention to commit a crime. In any case, it will not include a person who knowingly makes a false complaint to the police or one who maliciously reports an act or omission without any reasonable and probable cause to believe the said act or omission has been or is about to be committed. In this sense, we hold, without demur, that section 7 (2) of the CPA was not intended to modify or obliterate the common law torts related to negligent and reckless misstatements, injurious falsehood, false imprisonment or malicious prosecution. In that sense, we agree with the appellant the immunity under our discussion recognizes the corresponding obligation on the person reporting a crime to the police or other authorities not to do so unjustly, negligently, recklessly, carelessly or without reasonable grounds.

We have reviewed the learned High Court Judge's decision on this aspect of immunity. To be fair to him, he did not even come close to suggesting that the immunity under section 7 (2) of the CPA was absolute. He was conscious that the immunity would not apply had it been established that the respondent made a false report. To illustrate the point, we extract the relevant passage in his judgment, at page 192 of the record, which tells it all:

> *"From the evidence we do not know who reported to the police authorities that the respondent [the appellant herein] is a robber* ***and we do not know if such information was given knowing it to be false or that the informer believed it to be false.****"*
> [Emphasis added]

It is, therefore, ineluctable that the two grounds under discussion are without merit. They stand dismissed.

Finally, in view of our finding in respect of the third ground of appeal, the fourth ground of complaint that the learned High Court Judge erred in imputing the role of the respondent's contracted security guards in the dispute is evidently inconsequential. As long as the appellant failed to link the respondent with the false alarm that triggered his arrest, whatever role the

contracted security guards had in the matter is plainly irrelevant. This ground too falls by the wayside.

The upshot of the matter is that the appeal lacks merit. We dismiss it with costs.

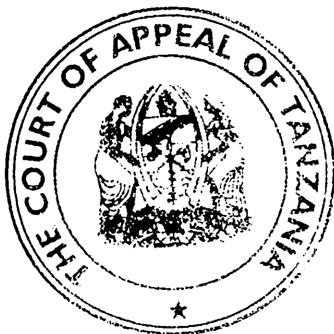
DATED at **DAR ES SALAAM** this 21st day of May, 2020.

S. E. A. MUGASHA
JUSTICE OF APPEAL

G. A. M. NDIKA
JUSTICE OF APPEAL

I. P. KITUSI
JUSTICE OF APPEAL

The Judgment delivered this 26th day of May 2020, in the Presence of the Appellant in person, and Mr. Mussa Mbaga, Counsel for the Respondent is hereby certified as a true copy of the original.



B. A. MPEPO
DEPUTY REGISTRAR
COURT OF APPEAL