

**IN THE HIGH COURT OF TANZANIA**

**AT DAR ES SALAAM**

**CIVIL CASE NO.44 OF 2005**

**AHMED CHILAMBO..... PLAINTIFF**

**VERSUS**

**MURRAY & ROBERTS CONTRACTORS (T) LTD... DEFENDANT**

**RULING**

**MANENTO, JK:**

The plaintiff, Ahmed Chilambo had instituted legal proceedings against the defendants, Murray & Roberts Contractors Ltd for damages amounting to shs.400,000/= interests and costs of the suit. The basis of the suit are almost three, that is to say, unlawful imprisonment (incarceration), malicious prosecution and remotely breach of contract of employment which the plaintiff said even after the withdrawal of the said case the defendant refused to reinstate the plaintiff in his former employment. The defendants, through their advocates, and besides the filing of the Written Statement of Defence, raised preliminary objections on points of law, which objections were urged by way of written submissions and are the subjects of this ruling.

The defendants' preliminary objections are that:

1. The plaint does not disclose a cause of action
2. The plaint is defective for failure to comply with mandatory provisions of the law.

In the first ground of preliminary objection, the objectors submitted that there was no cause of action known by the laws of this country. In short, as per decision of the Court of Appeal in the case of **John M. Byombalira**

**V. Agency Maritime International (1983) TLR 1 at p.4,**

The expression cause of action is not defined under the code, but it may be taken to mean essentially facts which it is necessary for the plaintiff to prove before it can succeed in the suit”.

The fact that the plaintiff/respondent has sued the defendant for malicious prosecution, among the facts to be proved are that the proceedings complained of depended in favour of the plaintiff. To the defendants, the prosecution are still pending because the charge against the plaintiff was just withdrawn under section 98 of the Criminal Procedure Act, 1985. The consequence of a withdrawal of a charge is the discharge of an accused person which discharge is not a bar to subsequent proceedings against him

on account of the same facts. Therefore, discontinuation of prosecution under the provisions of section 98(a) of the Criminal Procedure Act, 1985 does not bring prosecution to an ending which is favourable to the plaintiff. It merely gives the prosecution time to carry out further investigation, with a view to possible commencement of subsequent proceedings against the plaintiff. I agree with that submissions. A withdraw of the charge under section 98 (a) of the Criminal Procedure Act, 1985 is not a sufficient ending of the prosecution because it still leaves the accused person liable to be indicted afresh on the same charge.

In his written submissions, the learned counsel for the plaintiff submitted that the objections are misconceived. It was the defendant who reported false information to the police which led to incarceration of the plaintiff and institution of criminal case against him. That the giving of false information to the police showed malice on the part of the defendant, facts which leads entitlement of damages to the plaintiff. On the strength of the case of **Simon Chitanda vs. Abdul Kisoma (1993) TLR 11**, damages are recoverable for wrongful confinement from a party who furnishes information to the police causing another to be detained only when it is shown that the informer acted falsely and maliciously.

Basing on the submissions by the learned counsel, it shows that the learned counsel for the plaintiff have deliberately avoided to submit on the issue about favourable termination of the criminal charge to the plaintiff and opted to deal with the issue of false imprisonment, which he decided to use the term incarceration. As I have already said, the discharge of the plaintiff in the criminal charge is unfavourable on him because the termination of the criminal charge makes the charge pending. The discharge is not a bar to subsequent charge on the same facts, so it is not yet safe to say that the plaintiff is free from the allegations. He can be re-arrested and charged on the same facts. Such subsequent charging could even lead to a conviction. Therefore, lack of an acquittal of the plaintiff, he can not successfully urge that he was maliciously prosecuted. For a tort of malicious prosecution to stand, there must be facts showing that the prosecution ended in favour of the plaintiff and short of those facts like in this case, it is difficulty to say that there are facts constituting a tort of malicious prosecution. Likewise, in order the information to be said to be false, it must lead to an acquittal of the plaintiff. In short, the information to be false depends mainly on the proof of prosecution to have ended on the favourable termination for the plaintiff and not vice versa. While one is independent, the other is a dependant of the former. The withdrawal of the charge by the prosecution leading to the

discharge of the plaintiff has put off the rights of the plaintiff to sue for malicious prosecution or unlawful confinement, which are all independent torts and not generally dependant on one another.

There is the second objections that of failure by the plaintiff to show that this court has jurisdiction over the matter. The plaintiff's learned counsel submitted that the damages claimed are shs.400,000,000/= and the issue arose here in Dar es Salam where the defendants are. That he has never heard of any suit being dismissed of non failure to disclose the fact about jurisdiction in the plaint. On the other hand, the learned counsel for the defendants relied on the requirement of the law and not just common sense. They raised it as a legal issue which they and the court expected a legal argument. In the submission of the learned counsel for the plaintiff, he assumes that the court knows. But if that is the case, I would like to tell the learned counsel that the court is presumed to know nothing until it is told, except those facts which the court takes judicial notes. It is true that Order VII r .1 (f) of the Civil Procedure Act, 1966 requires among other things:-  
“(f) the facts showing the court has jurisdiction.”

The law did not want to impose the duty to the court to determine whether it has jurisdiction or not. That duty is upon the plaintiff. That duty is equally wide, because it covers both pecuniary and territorial jurisdiction.

Pecuniary jurisdiction because each court has by law, the minimum and territorial jurisdiction because of various Registries of Courts in this country or else, there, would be overlapping. Therefore, the requirement of showing the court has jurisdiction is not just for the fun of it, but for a good purpose.

To end up with, I would say that there is no cause of action in this suit, and the plaint is not in conformity with the requirement of a plaint under order VII r (f) of the Civil Procedure Code, 1966. The objection is accordingly sustained and the plaint is dismissed with costs for reasons stated.

  
A.R. Mahento

**JAJI KIONGOZI.**

9-11-2005

Coram: S.A. Lila, DR

For the Plaintiff – Rutabingwa/Kashumbugu

For the Defendant- Rutabingwa/Mapande

**Order:** Ruling delivered today in the presence of learned Rutabingwa holding brief for both learned Kashumbugu and Mapande counsel for the plaintiff and defendant respectively.

**S.A. Lila**

**DISTRICT REGISTRAR**

**9/11/05**