IN THE HIGH COURT OF TANZANIA

DAR ES SALAAM DISTRICT REGISTRY

AT DAR ES SALAAM

CIVIL APPEAL NO.189 OF 2004

GERVAS YUSTINE..... APPELLANT

VERSUS

SAID MOHAMED NDETELENI..... RESPONDENT
(Appeal from the Judgment of the Temeke District Court at Temeke Sebungie PDM dated 14th April 2004 in Civil Case No.84 of 2002)

JUDGMENT

MANENTO, JK:

This is an appeal emanating from the decision of the Temeke District court in Civil Case No.84/2002. The appellant had instituted a suit at that District court against the respondent, claiming for damages amounting to Tshs.5,000,000/= as general damages occasioned by the respondent's false imprisonment and defamatory acts towards the appellant. The appellant successfully proved his case to the satisfaction of the court. However, the trial court awarded damages of shs.200,000/= with costs of the suit. The appellant is aggrieved by general damages awarded hence this appeal. The appellant filed three grounds of appeal, namely:

(1) That the trial magistrate erred in law and in facts by awarding nominal damages without considering the

extent of the injuries suffered to the appellant.... The damages awarded to the appellant were too small and did not correspond to the damages suffered.

(2) That the trial magistrate erred in awarding damages to appease the appellant rather than to compensate him.

(3) That the trial magistrate erred in law and in fact in not giving weight to the presence of the pupils in that incident and award damages appropriate.

In order to understand properly the cause of action which led to the filing of the suit and the award of the alleged disfactory damages, I need to explain a bit what had transpired.

The appellant and the respondent are to some extent, neighbours. Their children school together in a primary school. There had been some complaints by the children of the respondent to the respondent that the children or rather a daughter of the appellant had been molesting that of the respondent. That repeated complaint to the respondent annoyed him. He wanted to revange through the appellant. I say so because of his acts as found in the proceedings.

It was early in the morning of 27/11/2005 when the appellant was going to his working place, in the company of his daughter. It

was at a place called Mbagala Kimbangukile. On the way, the respondent met with the appellant. The respondent told the appellant that his child had previously assaulted his child. Without waiting for a reply from the appellant, the respondent got hold of the appellant from his back and pulled him to his residence. While being held in that position, some people got attracted and followed behind, thinking that the appellant was a thief. However, he was not mob bitten as is the case in the city of Dar es Salaam. The respondent got hold of the respondent in that way, took him to a police post, about two Kilometers away. The appellant was not violent. He was so taken via the primary school where both the appellants and respondents children were schooling. That was after the respondent had declined a request by the appellant to take another route to the police station in order that they could avoid passing via the school, a fact which would be disgracing on him. When reached at the police post, the respondent was heard and after such hearing, the police constable present discharged the appellant for having not committed any offence. Then the appellant decided to pursue his civil rights through the civil litigations. He claimed for damages for a tort of defamation. He

claimed for shs.5,000,000/= costs of the suit and any other beliefs the court could deem it fit.

The trial court was fully satisfied that the appellant had proved the tort of unlawful arrest in which his constitutional right of movement was infringed by the appellant. In assessing the amount of damages to be awarded, the trial magistrate said that they were aimed at appeasing the appellant, while the appellant wanted to be paid compensation for the wrong done on him. The damages were assessed at shs. 200,000/= which the appellant is of the opinion that the trial magistrate erred both in law and fact in assessing the damages to be paid by the respondent. The respondent did not challenge in any way the facts found by the trial court, but conceded with the assessment of the damages.

Both the appellant and the respondent engaged the services of advocates. The appellant was therefore represented by Mr. Kisarika & Malimi (advocates) while the respondent was represented by one C.P. Msenga, learned counsel. The appeal was urged by way of written submissions.

In his submissions, the learned counsel for the appellant submitted that the facts and circumstances of the case at the trial court

would have given the trial magistrate a clear mind on the assessment of the damages to be awarded to the appellant. That the respondent without any colour of right or justification decided to restrain and harass the appellant in front of a large number of people and disregarded all attempts made by the appellant to avoid the crowds of people and the school children or even to release the appellant. The learned counsel urged that there was both restraint of the appellant's freedom of movement and defamation, which had a serious repercussion to appellant's freedom of movement and dignity. The learned counsel for the respondent did not specifically submitted on the torts of unlawful arrest and defamation combined. But I shall not leave the matter to proceed uncorrected. The torts of unlawful arrest is independent from the tort of defamation. Even the ingredients constituting each one are different from the other. As it was rightly held by the trial magistrate. The appellant had proved the tort of unlawful arrest and not defamation. However, in urging for the damages, what is obvious is the humiliation and disgrace occasioned to the appellant, taking into consideration the way he was held by the respondent when going to the police post, via a crowded area of Mbagala Rangi Tatu and the School where both the teachers and some

of the school children, including those of the respondent knew the appellant.

I agree with the learned counsel for the respondent that it is the trial court which is in a better position to assess the general damages to be awarded to the successful party. But the appellate court, like this court can interfere with that award if it is of the opinion that the trial court acted on some wrong principle and I concede that the trial court cited on a wrong principle. The learned counsel for the respondent had nothing much to offer rather than citing an English case of **Admiralty Commissioners v. S.S. Susqgu (1926) AC 655 at p.661** where it was held that the quantification of damages is a jury question. That case is not applicable here because the judge in Tanzania, in cases like this one does not sit with jury or even assessors.

Since this court is allowed to interfere with the assessment of general damages awarded as per the East African Court of Appeal decision in **J.M. Bendzel v. Kartar Singh 91953) EACA 53,** then I should see what was the wrong principle the trial court acted upon. In her judgment, the trial Principal District Magistrate had this to say in her page 3 of the typed judgment:

> " As the law provides, a civilian can make an arrest when he sees an offence being committed. But the arrest which was executed by the defendant was unlawfully without any justifiable cause. The court after looking at the surroundings in which this offence, as I can call, being committed and the people who are living in that community the 5 million is too much for the defendant to bear. The intention of the court is not to punish the defendant but to appease the plaintiff after what had happened to him."

Here the trial magistrate considered the ability of the respondent to pay the shs.5,000,000/= general damages claimed by the appellant. He had no facts as to the income of the respondent. He just took it for granted that the people in that community cannot afford to pay such damages. On the side of the appellant, she failed to take into consideration the unjustiable infringement of his freedom of movement, the humiliation and disgrace he was exposed to by the respondent, being taken as if he had committed a crime, in which some people thought or had reason to believe that he, appellant had committed an offence. The acts of the respondent in taking the appellant through crowded areas and the school where both the school

teachers and some school children knew him, such factors should have also been taken into consideration in assessing the general damages rather than the unknown principle of appeasing the appellant. He is not a child to be cheated with sweets. He is a man with his family, whose dignity is to be respected. I therefore agree that there is a need to interfere with the assessment of the general damages awarded by the trial court.

Having deliberated on the three grounds of appeal generally, and having taken into consideration the intentional acts of the respondent, aimed at both humiliating and disgracing the appellant, the general damages are assessed at shs. One million and five hundred shillings only, with costs in this court and the trial court.

A.R. Manento

JAJI KIONGOZI

1-11-2005

Coram: E. Mbise

For the Appellant – present in person

For the Respondent – present in person

Cc: Livanga.

Court:

Judgment read on 1/11/2005 in the presence of both parties.

E. Mbise DR-HC
1/11/2005