

**IN THE HIGH COURT OF TANZANIA
AT DAR ES SALAAM**

CIVIL APPEAL NO. 20 OF 2005

*(Originating from Resident Magistrate Court at Kisutu in Civil Case
No. 339 of 2000)*

KWANZA BOTTLERS LTD APPELLANT

VERSUS

HANS JOHN PALLANGYO RESPONDENT

Date of last order – 28/6/2006

Date of Judgment – 23/8/2006

J U D G M E N T

Shangwa, J.

This is an appeal against the decision of the Court of the Resident Magistrate at Kisutu in Civil Case No. 339 of 2000 wherein the appellant was found liable for malicious prosecution, false imprisonment and wrongful termination of the respondent from employment and ordered to pay the respondent shs.10,000,000/= as general damages.

Learned counsel for the appellant Mr. Godson H. Nyange drew and filed five grounds of appeal on behalf of the appellant. From ground number one to four, the appellant is challenging the trial magistrate's decision in finding that the respondent was an employee of the appellant and that his employment was wrongfully terminated by the appellant and in further finding that he was prosecuted by the appellant and that he was prosecuted maliciously. On ground number five, the appellant is challenging the trial magistrate's decision of awarding shs.10,000,000/= to the respondent as general damages.

The facts of this case are as follows: Between 1996 and 2000, the respondent used to work with the appellant as a Truck Helper and he was being paid for his work on weekly basis. On or about 29/5/2000, one Holden Matayo who was working with the appellant as Supervisor and the appellant's Security guard arrested him from his home where

he was resting after sustaining an injury from the bottle while he was in the course of his employment at Airport area Dar es Salaam. After being arrested he was taken to Zakel Police Post where he had previously been reported for stealing 130 crates of Coca Cola valued at shs.958,800/= the property of the appellant. He was kept under police custody for 7 days and after those days, he was released on police bail but he was never charged with theft in court.

On 12/4/1999, the appellant Company's Personnel Manager called Ernest R. Saidi wrote him a letter which was tendered as exhibit P1 informing him that his services as a Truck Helper were no longer needed. This letter was written as follows and I quote:

"TO: HANS JOHN – TRUCK HELPER

12 APRIL, 1999

TERMINATION OF EMPLOYMENT (casual)

We are forced to terminate your services with us as Truck Helper (casuals) as your services are no longer needed. You will be paid as hereunder:-

10. HANS JOHN – 8.3.1999 – 13/3/1999

Notice 26 days 33,800/=

Leave 28 days

1/1/1996 – 1/1/1997 – 1,200/= 33,600/=

1/1/1997 – 1/1/1998 – 1,300/= 36,400/=

1/1/1998 -1/1/1999 – 1,300/= 36,400/=

Severance Allowance 70,200/=

Total 210,400/=

Kindly surrender our Company Uniforms before payment is being made.

Sgd

ERNEST R. SAIDI

PERSONNEL MANAGER

C.C.: FINANCE MANAGER - Kindly pay and

strike his name from payroll

(casual)

Johan Jonsen

Caroline Temu – Kavishe."

After his employment's termination on 12/4/1999, he stayed at home but he was re-engaged by the appellant on 14/2/2000 until when he was arrested by the appellant's Supervisor Holden Matayo and the appellant's security guard and taken to Zakel Police Post where he was kept under police custody for 7 days and later released on police bail. After his release, he was not allowed by the appellant to continue with work. Consequently, he sought for legal services of DR. Lamwai who instituted Civil Case No. 339 of

2000 in the Court of the Resident Magistrate at Kisumu on his behalf claiming *inter-alia* for shs.10,000,000/= as general damages for malicious prosecution, false imprisonment and for wrongful termination of his employment.

As I have already stated, the appellant was found liable for the said Civil wrongs and ordered by the trial court to pay the aforesaid amount as general damages. Hence this appeal.

In my view, as the respondent was re-engaged by the appellant to his former post on 14/2/2000 and worked with the appellant for a period of three months and fifteen days before he was arrested by the appellant's officers on 29/5/2000 who alleged to the police at Zakel Police Post that he stole the appellant's 139 crates of Soda, the trial Magistrate's finding that he was an employee of the appellant is correct. Although, when he was re-engaged, the appellant did not give him a letter of re-engagement the

fact that he was an employee of the appellant cannot easily be denied. This is because an oral contract of service is as good as a written contract of service. During the short period of his re-engagement as Truck Helper, he used to work with the appellant on casual basis as he used to work earlier before his employment was terminated on 12/4/1999. I believe that during the said period, the appellant used to pay him his weekly salaries in accordance with his earlier terms of contract of service. After his release from police custody, the appellant company was not obliged to continue with him as Truck Helper. Moreover, it had already lost faith in him after suspecting him to have stolen its 139 crates of Soda. Under such circumstances it was wrong for the trial Magistrate to find that his employment was wrongfully terminated by the appellant.

During trial, there was no evidence adduced to show that the respondent was prosecuted in any court for stealing

the appellant's crates of Soda. He was simply reported to the police who never prosecuted him in court. As he was never prosecuted, it was totally wrong for the trial magistrate to find that the respondent was prosecuted and that he was maliciously prosecuted at the instance of the appellant's supervisor Holden Matayo while he was an innocent worker.

In my opinion, the mere fact that the respondent was kept under police custody for a period of 7 days without being granted bail or without being taken to court does not automatically mean that he was falsely imprisoned. It would have been a different case had the respondent been locked up for 7 days at the appellant's premises without being reported to the police for the offence he was suspected to have committed namely stealing 139 crates of Soda the property of the appellant. The failure by the police to grant him bail and to take him to court is something which was

beyond the appellant's control and nobody can blame the appellant for it.

DR. Lamwai for the respondent did not find any fault in the findings of the trial court. He said that the respondent was an employee of the appellant and that his employment was wrongfully terminated and that he was prosecuted at the instance of the appellant who did so maliciously by reporting him to the police where he was kept under custody for 7 days during which he was falsely imprisoned.

Whereas I agree with him that the trial court correctly found that the respondent was the appellant's employee, for the reasons I have already given, I do not agree with him that the trial court was correct in finding that the respondent's employment was wrongfully terminated and that he was prosecuted or that he was prosecuted maliciously and that he was falsely imprisoned.

I hold therefore that it was wrong for the trial court to award the respondent shs.10,000,000/= as general damages for malicious prosecution, false imprisonment and wrongful termination of his employment which facts did not exist.

For these reasons, I quash the trial court's decision and I allow this appeal. As the respondent is a mere casual labourer and the appellant is a very big company, I order that each party should bear its own costs.




A. Shangwa

JUDGE

23/8/2006

Delivered in open court this 23rd day of August, 2006.


A. Shangwa

JUDGE

23/8/2006