

# **IN THE HIGH COURT OF TANZANIA**

**(AT DAR ES SALAAM)**

**Civil Case No. 182 of 2005**

**REV. PETER PETER JUNIOR.....**

**PLAINTIFF**

**VS**

**THE ATTORNEY GENERAL.....**

**1<sup>ST</sup> DEFENDANT**

**THE DISTRICT COMMISSIONER**

**OF BAGAMOYO.....**

**2<sup>ND</sup> DEFENDANT**

## **JUDGMENT**

**Date of last Order:** 28-07-2011

**Date of Judgment:** 07-09-2011

**JUMA, J.:**

The Plaintiff Rev. Peter Peter Junior brought this action by plaint which was filed on 27<sup>th</sup> October 2005, against the Attorney General (1<sup>st</sup> Defendant) and the District Commissioner of Bagamoyo (2<sup>nd</sup> Defendant). The Plaintiff is claiming compensation TZS 180,000,000/= being Special Damage and TZS 500,000,000/= as General Damages. The Plaintiff claims against the Defendants jointly and severally for compensation of TZS 680,000,000/= as

special and general damages. The Plaintiff allege that he was defamed, harassed, remanded by police and faced difficulties all occasioned by a Removal Order issued on him on 30<sup>th</sup> November 2004. The Plaintiff is further aggrieved by a 120 hours remand at police station and subsequent 26 days remand in prison.

The Plaintiff has joined the District Commissioner of Bagamoyo as the 2<sup>nd</sup> Defendant on the allegation that on 24<sup>th</sup> November 2003 the District Commissioner arrested caused him to be remanded in police and prison remands on the ground that he was operating as a Tourist Guide without paying entrance fees, he was operating a fictitious construction company, was running an unregistered organisation and unregistered church.

The Defendants appeared and filed a written statement of defence denying liability. The Defendants further tasked the Plaintiff to prove all what he is alleging in his Plaint. Specifically, the Defendants pointed out that the 1<sup>st</sup> Defendant cannot in law commit a tort of defamation. With regard to the arrest of the Plaintiff in pursuance to a Removal Order, the Defendants reiterated that the arrest was lawfully done for purposes of criminal investigations and was done in response over public

outcry contesting the activities of the Plaintiff. Defendants prayed for dismissal of the suit in its totality for want of merit, with costs.

This suit has had a chequered history. When parties to this suit appeared before the trial judge (Mihayo, J.) on 23<sup>rd</sup> February 2007, three issues were agreed to guide the conduct of the suit. Records show that on the first day of hearing, apart from testifying in-chief as PW1, the Plaintiff informed the Court that he would lead his own case because he could not afford the services of a counsel. As a result the Plaintiff was not represented by any Counsel when he began his evidence in chief before Mihayo, J on 23<sup>rd</sup> February 2007. But, during the course of his testimony in chief; the Plaintiff sought an adjournment to enable him to hire services of a counsel to conduct his case. Hearing was as a result adjourned to 25<sup>th</sup> April 2007 when an attempt by the plaintiff to serve the defendant with an amended version of his plaint was denied when this Court ordered the deletion of the amended Plaint from the records. There followed another bout of adjournments and mentions which included even an attempt to reach an out of court settlement.

The plaintiff resumed and completed his evidence in chief on 24<sup>th</sup> September 2008, which was more than one year since he first led his own evidence in chief. Cross examination of the plaintiff which had begun on 24<sup>th</sup> September 2008 was postponed to 25<sup>th</sup> November 2008. Apart from adjournments and mentions which have become integral part of this case, nothing significant on the case happened after the 25<sup>th</sup> November 2008 postponement till almost a year later when on 28<sup>th</sup> September 2009 the matter was re-assigned to me. Mr. Mweyunge the learned State Attorney resumed the cross examination of the plaintiff on 9<sup>th</sup> April 2010.

Before the hearing of this suit begun the parties agreed on the following three issues for determination: (1) whether the Plaintiff was harassed, arrested and remanded; (2) whether that arrest was lawful in the circumstances; and (3) what reliefs parties are entitled to. As earlier shown; the Plaintiff testified as PW1 and brought one Salum Ally (PW2) and Freedom Isaac Nyerere (PW3) to testify in support of his case. Defendants brought in four witnesses: Abdallah Bakari (DW1), Grace Hilda Mesaki (DW2), Sadiki Waziri Matindija (DW3) and Beston Nathan Simkoko (DW4).

In summary the evidence on record is that the plaintiff, who originally hailed from Songea; started living in Bagamoyo in 1999. While at Bagamoyo, Plaintiff took up many activities. He worked as a mason and also as a pastor of his church. The Plaintiff also worked as a Tour Guide. Plaintiff had a construction company besides being a Director of Education Aid Consult. The Plaintiff's complaint leading up to this present suit revolves on what he described in his evidence as a Removal Order that was issued on 8<sup>th</sup> December 2003 by the District Commissioner of Bagamoyo describing him to be a public nuisance in Bagamoyo. According to the Plaintiff, the order which required him to leave Bagamoyo District was cancelled by this Court on 12 December 2006. The Plaintiff complained that he was remanded in police and prison custody for 26 days and he contracted tuberculosis during his remand.

Plaintiff's claim that he contracted tuberculosis was supported by PW2- Salum Ally, a retired Clinical Officer. Although PW2 was not certain where the Plaintiff had contracted TB, he however remembers that Plaintiff was his patient at Bagamoyo District Hospital. PW3- Freedom Isaac Nyerere supported the claim that the plaintiff was unlawfully arrested. According to PW3, the

Plaintiff was arrested because he refused to terminate a case he had filed against the Bagamoyo District Council.

Abdallah Bakari (DW1) is a member of BATREN TOUR GUIDE GROUP which operates from National Archives offices in Bagamoyo. The group takes visiting tourists to areas of attraction. DW1 knew the Plaintiff from around 2000 and 2003 after the plaintiff visited the BATREN GROUP to express his desire to join and work with the group. Plaintiff did not manage to join the group. The group later learnt of complaints that were being leveled against the plaintiff. These complaints included the one alleging that the plaintiff was taking tourists to tourist sites and yet he convinced them to violate the laws governing prescribed fees and other entrance fees. DW1 also heard the complaint which was specifically lodged by a disappointed tourist from Japan who was angry over the poor tourist guide services the Plaintiff had provided him. According to DW1, the Plaintiff did much to discredit the profession and professionalism of Tour Guides of Bagamoyo because he staffed his tour guide office with unqualified assistants who offered tourists poor services.

Grace Hilda Mesaki, who testified for the defence as DW2, was a District Commissioner of Bagamoyo from 2000 to 2004. She described how tourism was and still is economic mainstay of Bagamoyo. She expressed her concern over how any slight disruption may affect tourism in Bagamoyo and interfere with the economy of people of Bagamoyo. DW2 came to know the Plaintiff for first time in 2000 when he visited her office to introduce his construction company whose head office was allegedly in Songea. Impressed by what the Plaintiff said, DW2 introduced him to the Director of the Bagamoyo District Council to explore whether the Plaintiff could assist in the construction of classrooms. This introduction to Bagamoyo District Council opened the way for the Plaintiff when he was engaged by village chairmen who awarded him construction contracts.

Later the District Commissioner received complaints alleging that the Plaintiff was causing trouble leading to frequent arrests of village chairman over construction contracts. DW2 also testified on the complaints she received from the disappointed Japanese tourist who had lodged complaints over the poor tourist guide services the Plaintiff had offered him while taking him on tour to Saadani Game Reserve. The tourist complained that the Plaintiff

had masqueraded as a Wildlife Officer, ready to take him to Saadani. He paid to stay for two days at Saadani but could only stay for a day because the Plaintiff had only paid for a one-day accommodation. According to DW2, members of diplomatic community learnt about this incident and representatives from the Japanese Embassy in Dar es Salaam travelled down to Bagamoyo to lodge their formal complaints and made representations before the Bagamoyo District Security Committee. Decision to remove him from Bagamoyo District was recommended by this District Security Committee.

DW4 Beston Nathan Simkoko is a Clinical Officer at Prisons Dispensary at Bagamoyo. The dispensary attends to health needs of the prisoners, prison officers and neighbouring civilians. DW4 knew the Plaintiff since when the latter was remanded and also knows the plaintiff as a resident of Bagamoyo. DW4 strongly disputed that the Plaintiff's claim that he had contracted tuberculosis whilst in prison. DW4 was adamant that he as Prisons Clinical Officer would have recorded about the tuberculosis would have sent the Plaintiff for diagnosis at Bagamoyo District Hospital. DW4 insisted further that the record of tuberculosis patients is carefully kept and the Plaintiff is not one of the tuberculosis



patients according to this register of TB patients. DW4 tendered the Unit Tuberculosis Register as **Exhibit D4**.

At the close of the defence case both parties duly filed their final submissions which I have taken into consideration. On the basis of the foregoing evidence on record, the written submissions and the law let me now relate all these to the issues at hand.

There is no dispute that from evidence, the answer to the first issue should be answered in the affirmative that the Plaintiff was indeed arrested and remanded in custody. The next question as to whether the Plaintiff was harassed should be taken together with the question whether that arrest and consequential remand was lawful in the circumstances of the case. For purposes of this suit, an arrest shall be lawful if that arrest is supported by probable cause for instance when there is reasonable grounds to believe that the person is committing or has committed an offence.

DW1 offered evidence regarding the probable cause that led to the arrest and remand of the Plaintiff. DW1 as a member of BATREN TOUR GUIDE GROUP testified on complaints that alleged that the Plaintiff took tourists to places of tourist attraction but

was also convincing the same tourists to defy applicable regulations governing payment of prescribed fees. DW1 also testified on an incident where a Japanese tourist paid the Plaintiff to take him to Saadani Game Reserve for five days. The Japanese later complained that the services he received from the plaintiff were far below the standard he had expected and paid for. Plaintiff took the Japanese tourist to a hotel of poorer standard than the one he had paid the Plaintiff for.

Evidence of probable or reasonable cause leading up to the arrest and remand the plaintiff in custody was also given by DW2-the District Commissioner of Bagamoyo. DW2 received complaints that the plaintiff was operating as a bush lawyer, operating legal aid clinics but charging his clients masquerading himself as a qualified lawyer. DW2 testified of her concern that the reputation of Bagamoyo as a tourist destination was ebbing away, and how the tourist from Japan had reported the Plaintiff to the police but left before for Japan before the Police could complete their investigations. With regard to the **Township (Removal of Undesirable Persons) Ordinance**, it was submitted by the replying 1<sup>st</sup> and 2<sup>nd</sup> Defendants that there was reasonable grounds arising from the complaints against the Plaintiff that this

law should be employed against the Plaintiff. Evidence on behalf of the Plaintiff suggesting that there was no reasonable or probable cause for his arrest and remand was given by the Plaintiff himself who insisted that the **Township (Removal of Undesirable Persons) Ordinance** should not have been used to order his removal from Bagamoyo.

**Townships (Removal of Undesirable Persons) Ordinance** became operational on 4th May 1944. The District Commissioner can order expulsion of undesirable native of Tanganyika from any town or area of a district under the District Commissioner. The District Commissioner could order the native concerned to leave the township; or to proceed to an area specified in the Removal Order; or to remain outside a specified township or area. With due respect, having found that there were complaints which were leveled against the Plaintiff and which necessitated criminal investigations and possible arrest, this Court cannot question the decision of the 2<sup>nd</sup> Defendant to resort to address the complaints by resorting to the **Townships (Removal of Undesirable Persons) Ordinance**.

From the foregoing factual situation I will hold that there were ample probable and reasonable causes for the 2<sup>nd</sup> defendant to

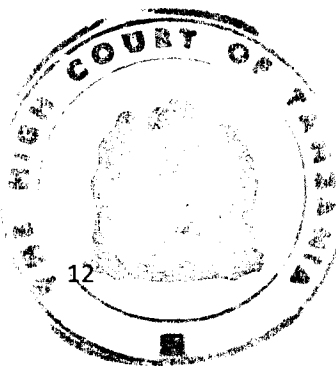
set into motion the law that led to the investigations of the complaints against the Plaintiff leading up to his arrest and remand in custody. The Plaintiff has brought no evidence to prove on balance of probability that there was any bad faith or malice when the 2<sup>nd</sup> Defendant set into motion criminal investigation that led to his arrest and remand. I find and hold that the Plaintiff has no ground of complaint over his arrest and remand in custody. This finding also disposes of the 3<sup>rd</sup> issue on relief. The Plaintiff is not entitled to any relief. The suit is hereby dismissed with costs.

Orders accordingly.



**I.H. Juma,  
JUDGE  
07-09-2011**

**DELIVERED** in Chamber this 7<sup>th</sup> day of September 2011 in the presence of Plaintiff Peter Junior and Mr. Masara – Principal State Attorney for Defendants.



**I.H. Juma,  
JUDGE  
07-09-2011**