

IN THE HIGH COURT OF TANZANIA

AT MTWARA

CIVIL CASE NO. 2 OF 2011

JABIL MALID ----- PLAINTIFF

VERSUS

DIRECTOR GENERAL PREVENTION AND

COMBATING OF CORRUPTION BUREAU-----1ST RESPONDENT

THE HON. ATTORNEY GENERAL----- 2ND RESPONDENT

JUDGMENT

Mipawa, J

This is a suit of Malicious prosecution instituted by Jabil Maulid , the plaintiff, against the Director General of Prevention and Combating Corruption Bureau (1st Defendant), and The Attorney General (2nd Defendant). The plaintiff is claiming against the Defendants for, among other things, payment in the aggregated sum Tsh 500,000,000/= (Tanzania shillings five hundred million only) as general damages for being maliciously prosecuted by the defendants.

Briefly, the facts of this matter are that the plaintiff was on 21st November, 2011 at Ndomondo Village in Nachingwea District in Lindi Region, arrested and detained on charges of soliciting and receiving

corruption, contrary to section 3(1) and (3) of the Prevention and Combating Corruption Act of 1971. He was arraigned before the District Court of Nachingwea vide Criminal Case No. 188 of 2001, and after a full trial, the plaintiff was acquitted by Nachingwea District Court for want of strong evidence. The Republic successfully appealed to this court and the plaintiff was convicted by this court (Lukelewa, J) and sentenced to serve six (6) years in prison. The plaintiff appealed to the Court of Appeal where his appeal was allowed and he was released from prison.

In consequences of the above allegations the plaintiff filed this suit claiming that he was maliciously prosecuted and served three years in prison pending his appeal to the Court of Appeal as a result of which he lost his employment as a police officer, suffered economically, his reputation deteriorated and the society has lost trust in him and regards him as a criminal. As noted above he claims to be paid Tshs 500,000,000/- as a general damages.

At the hearing of the suit, the plaintiff was unrepresented. The defendants on the other hand enjoyed the service of Mr. Mkude learned state Attorney. The following issues were framed during the trial:

1. Whether the plaintiff was prosecuted
2. Whether the proceedings ended in favour of the plaintiff
3. Whether there was probable and reasonable cause to prosecute the plaintiff
4. Whether the plaintiff suffered any damages as a result of the prosecution

5. What reliefs are the part entitled to.

To prove the above issues the plaintiff was the only witness for his case. He testified as PW1 and his testimony was to the effect that in the year 2001 he was a Police Officer working at Nachingwea Police Station in criminal investigation department. That in the same year, he was assigned a case with , IR/1791/2001 to investigate. That in the process of investigating the case, he received the report from the informer as to the location of the suspect. That they went with the informer to arrest the suspect.

He went on testifying that when they reached at a certain area, the informer told him to stop the motorcycle, so that he (informer) can go to keep his luggage of books and then they could proceed with the safari. That the informer left him after he stopped the motorcycle, but after a few minutes a group of four people came and invaded him (PW1) and began to assault him saying "Tuna usongo na polisi". They threw him on the ground and began to tramp over his body. That later the four people stopped assaulting him after the arrival of some people together with the chairman.

That, thereafter he heard the four people who were assaulting him telling the chairman of the village to pick a certain envelop and therefore two of them went with the Village Chairman to where the envelop was and the two others were left to guide him. Later he was put in a vehicle, Toyota Landcruiser, TZR 1729 and was told that he received bribe of Tshs. 450,000/- from one Nurdin Ismail. That they put also his motorcycle in that vehicle and took him to the police station at Nachingwea and later, to the

hospital where he was admitted for a week. Later those people who assaulted him came and sent him to the court and charged him for demanding Tshs 2,000,000/- and the case lasted for three years and it was found before the trial court that the prosecution failed to prove their case beyond reasonable doubt. And the Republic appealed to the High Court of Mtwara where he was convicted and on appeal to the Court of Appeal his appeal was allowed.

He added that he was terminate from job as result of the allegations and stayed in prison and that now his family is suffering a lot. He conclude that he did not demand and receive any bribe, and that he was not present on the date and places alleged on the charge sheet, and that this court be pleased to grant his prayers sought in the plaint.

When he was cross-examined by Mr. Mkude learned state Attorney, the plaintiff (PW1) stated inter alia that the trial court in that criminal case, found him to have a case to answer, and he gave his defence. He also stated that he cannot know if the six witnesses who testified for the prosecution in a criminal case had grudges against him, and that the police officer are subjected to hatred by people whom they arrest.

In their defence the Defendants had two witnesses, Martin Stephen (DW1) and Saddy Kambona (DW2). The testimony of Martine Stephen (DW1) was to the effect that on 21/11/2001 at 7:00 pm DW1 while at "magenge" near a certain godown at Ndomondo Village he saw a motorcycle with two people coming at the godown and it stopped at the door of the office at the godown. He went on stating that, he duly

identified one person as Ismail who was carried on the motorcycle. That, the one who was in charge of the motorcycle was the police officer who was investigating the case, and later they entered in the godown. The named the said Police Officer as Jabir (the plaintiff).

He went on testifying that when the police officer and others came out of the godown, the anti corruption bureau officers ordered them to lay down. Then after that order the police officer was worried, he held the motorcycle on one hand, while the other hand attempted to "fish" out from his pocket and envelop "bahasha", that envelop fell down and it was when the police officer was arrested by the PCCB Officers. Thereafter the Village Chairman was summoned to come to the scene one "mzee" Kiliami Milanzi, he came and picked the fallen envelop and when they opened they found Tshs 450,000/- inside the envelop. The PCCB officers claimed that it was their money and they started relating the note numbers and the numbers of notes which they had on their paper and found that all numbers were there.

Thereafter the police officer (plaintiff) was taken by the PCCB officers and he (DW1) was called before Nachingwea District Court to give evidence. He conclude that he did not know any malice done to the plaintiff and that the prosecution was correct without any malice.

The last witness for the defence was Saddy Kambona (DW2) who told this court that he was the one who prepared the facts and exhibit ready for the hearing of the criminal case which involved detective corporal Jabir Maulid. That there was the statement of the complainant, the paper listing the

notes and witnesses who were present and who saw plaintiff soliciting and given the said money. He went on testifying that, though the plaintiff was acquitted by the trial court the testimony established a prima facie case against the plaintiff and that on appeal to the High Court the accused (plaintiff) was convicted and sentenced to six years in prison. That the plaintiff sought the mercy of the Court of Appeal where his appeal was allowed and he was released from prison.

He went on testifying that his prosecutions were not malicious as there were all necessary ingredients to send the plaintiff to court. That he did not know the plaintiff before, so as to form an idea of filing the case maliciously against him. Also that the District Court saw the plaintiff with a prima facie case and the High Court convicted him, which is an indication that the prosecution was not maliciously.

In their final submission the defendants submitted that DW1 and DW2 testimony clearly established that the defendants had no malice whatsoever when they charged the plaintiff, and that there was reasonable and probable cause in arresting detaining and prosecuting the plaintiff. To support their submission they cited a number of authorities, including the cases of **JEREMIAH KAMAMA vs BUGOMOLA MAYANDI (1983) TLR 123, WILLIAM CHAMAFWA vs FRANCIS BITEGEKO (1973) LRT 36; and HERNIMAN vs SMITH (1938) 1 ALL ER 1.**

On the issue of damages claimed the defendants submitted that for a party to be awarded damages by the court he has to establish that a wrongful act was done on him and that such damages must be strictly

proved and awarded to cover loss directly arising from the act complained of and reasonably foreseeable. On this issue they cited the cases of **PATEL VS SAMAJ AND ANOTHER (1944) EACA 1; MATIKU BWANA VS MATIKU KWIKUBYA AND ANOTHER (1983) TLR 362; MLBUI VS DYER (1967) EA 315; and MOHAMED VS GELE (1971) HCD no. 191.**

The plaintiff on the other hand contended in his final submission that the charges against him were nothing but fabricated one, as there existed no probable and reasonable cause to suspect and prosecute him with the offence of soliciting and receiving corruption. He added that in this suit all elements of malicious prosecution are clearly established. Further that the general damages of Tshs 500,000,000/- claimed by him is due to the fact that he was imprisoned and subsequently lost his employment as a result of being maliciously prosecuted by the defendants and that thereafter he could not pay for his children school fees, no one could take care of his children as his wife lost her life. Also that the plaintiff suffers with a kidney failure which need money for treatment. And as a result of that prosecution his dignity and reputation have been affected.

Having examined, the plaintiff and defence case it is clear like a full moon that the plaintiff was prosecuted by the defendants, and the proceedings though on appeal ended in his favour. The only nagging issues are, whether there was no reasonable and probable cause for such prosecution, and whether the plaintiff is entitled to be paid Tshs 500,000,000/- as general damages.

Before going further , I had the advantage of referring to **Brazier, Margaret, The Law of Torts 8th Ed, Butterworths, London, 1988 at page 433**, where the learned author had the following to say about malicious prosecution:-

...."It is a tort maliciously and without reasonable and probable cause to initiate against another judicial proceedings which terminate in favour of that other and which result in damage to his reputation person freedom and property."

In this case I agree with the plaintiff that he suffered low esteem and disrepute during the whole period of prosecution and for serving three years in prison awaiting for the out come of his appeal to the Court of Appeal. No doubt he was humiliated, suffered mental anguish and faces economic difficulties after being terminated from his employment. However for a suit of malicious prosecution to stand, the plaintiff as noted above, has to prove that he was prosecuted maliciously and that the defendants had no reasonable and probable cause to prosecute him.

I have examined the trial court decision in criminal case No. 188 of 2001 which acquitted the plaintiff on the ground that the offences of soliciting and receiving corruption were not proved to the required standard. Also the decision of this court (Lukelewa, J) in Criminal Appeal No. 32 of 2004 which quashed the acquittal order of the trial Court and substituted thereof with a conviction of the plaintiff on the second count of receiving corruption. I have gone further and with the eyes of caution considered the Court of Appeal decision in Criminal Appeal No. 147 of

2005 together with the testimony and the submissions of the parties in this suit, I must confess that I was unable to discover anything suggesting that the plaintiff was maliciously prosecuted.

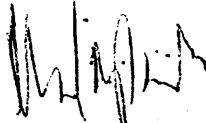
According to the testimony of Martin Stephen Milanzi who testified in this suit as DW2, the plaintiff was the one who was found in possession of an envelop "Bahasha" following a trap made by the PCCB officers. DW1 further told this court that inside the said envelop they found money Tshs 450,000/-, and further the PCCB officers saw the word "PCCB" on those notes (money). They also related the numbers in those notes (money) with a list of note numbers they had in their piece of paper and discovered that all the numbers corresponded. This witness (DW1) concluded that, those were the basis for arresting and charging the plaintiff.

The plaintiff on the other hand told this court that he was not aware if any of the prosecution witnesses including DW1 had grudges against him. The basis of his claim therefore appears to be the fact that he was prosecuted, and owing to the contradictions in the prosecution testimony he was acquitted. His testimony does not suggest anything apart from the fact that he was prosecuted and latter acquitted. However he ought to have known that acquittal by itself is not a prima facie proof of lack of reasonable and probable cause for him to be prosecuted. In the case of **WILLIAM CHAMAFWA vs. FRANCIS BITEGEKO (1973) LRT 36** the court similiary held:-

***.....acquittal by itself is not prima facie proof
of lack of reasonable and probable cause...***

It should be emphasized here that the burden of proof in an action for damages for malicious prosecution lies on the plaintiff. It is not for the defendants to show that there was reasonable and probable cause for prosecuting the plaintiff, but it is for the plaintiff to prove that his prosecution was actuated by malice and that there was no probable and reasonable cause for such prosecution. There is no such proof in this suit. For that reason I decline to grant the plaintiff's prayers sought in his plaint. The suit is devoid of merits, and is hereby dismissed in its entirety with no orders as to costs.

It is so ordered.



I.S. MIPAWA
JUDGE
30/9/2013