

**IN THE HIGH COURT OF TANZANIA
AT TABORA**

CIVIL APPEAL No. 22 OF 2018

***(Arising from Civil Case No. 35 of 2016 in the Resident
Magistrates' Court of Tabora at Tabora)***

ISSA JUMA MAGONO ----- 1ST APPELLANT

BARAKA JUMA MAGONO ----- 2ND APPELLANT

VERSUS

ATHWAL'S TRANSPORT & TIMBER LTD ----- 1ST RESPONDENT

GODFREY LUCAS TARIMO ----- 2ND RESPONDENT

JUDGEMENT

14/02/2020 & 21/02/2020

BONGOLE J.

The appellants **Issa Juma Magono** and **Baraka Juma Magono** were charged at the Resident Magistrates' Court of Tabora with the offence of Possession of Goods suspected of having being stolen or unlawful acquired c/s 312 (1) of the Penal Code Cap 16 R.E 2002.

It was alleged by the prosecution that on the 2nd day of February 2015 at Ufuruma Village within Uyui District in Tabora Region the appellants were found in unlawful possession of 1035 bales of tobacco valued at Tshs: 135,002,016/= the property of Tanzania Leaf Tobacco Company having regard to all the circumstance were suspected of having been stolen or unlawful acquired.

Following a full trial, the appellants were found not guilty in a judgment that was delivered on 15/04/2016.

Subsequent to their victory from the criminal charges, the appellants managed to institute a civil proceedings in the same court vide Civil Case No. 35 of 2016 against the respondents herein for general damages arising from malicious prosecution and wrongful detention.

After a full trial the trial senior Resident Magistrate held that, the appellant's claims in respect of malicious prosecution and wrongful detention have no merit on the reasons that, there was reasonable and probable cause to prosecute both appellants whom some of the lost bales were found in their family godown and thus it is not disputable that their detention was lawful.

Dissatisfied with the decision of the trial court in the civil proceedings, the appellants lodged three grounds of appeal before this court couched as follows.

- 1. That, the trial learned Magistrate erred in law and fact to decide the case in favour of the Respondents while the Appellants proved the case on the balance of probabilities.**
- 2. That, as long as the Respondents were actively instrumental in search and physical arrest of the Appellants then the trial learned Magistrate misdirected herself on her findings which led to the wrong decision.**
- 3. That, the trial learned Magistrate erred in law and fact to decide the case without stating reasons for the decision reached.**

Basing on the above listed grounds, the appellants prayed for orders that, the judgment and decree of the Resident Magistrate Court of Tabora be quashed, the appellant's claim before the trial court be granted, costs both in the trial court and this appeal be provided for and any other relief(s) this Court may deem fit to grant.

At the hearing of the appeal both appellants enjoyed the legal service of RMK Advocates while the respondents enjoyed the legal service of the learned Advocate Ms. Teresia Fabian. With the permission of the court, parties filed written submission in disposing this appeal.

Mr. Musa Kasimu for the appellant submitted that **Civil case No. 35/2016** was guided by the Civil Procedure Code [Cap 33 R.E 2002] as such the judgment thereof was to be guided under Order XX Rule 4 of CPC which provides that;

"A judgment shall contain a concise statement of the case, the point for determination, the decision thereon and the reason for the decision".

He further added that, the trial magistrate had a duty to ensure compliance to the above requirement of law and to go in line with sample Judgment as outlined in Civil Procedure Code (Approved Forms) GN. Number 388 of 2017.

Further that, it is apparent from the trial court judgment that it did not take into account and evaluate the appellant's evidence, instead the court considered only the evidence of the Respondents and thus making the whole judgment biased.

That, seven issues were framed but none of them was ever considered by the trial court in its judgment when determining the fate of the case. He quoted **Order XX rule 5 of the CPC** which reads as follows.

" In a suit in which issues have been framed, the court shall state its findings or decision, with the reason thereof, upon each separate issue unless the findings upon any one or more of the issues is sufficient for the decision of the court".

He added that two issues which are (a) Whether the defendants instituted the said case maliciously (b) whether there was no reasonable and probable cause for the prosecution, were skipped deliberately by the trial court and they are the core issues of the dispute between the parties which goes to the root of the parties. As such the learned advocate submitted that since the respondent's claim was based on malicious prosecution the issues which the trial magistrate skipped to determine, it is their submission that the trial court judgment is not a judgment worth a name.

On the second ground the advocate for the respondent submitted that, DW1 admitted in evidence that he is the one who reported to police a criminal case leading to arrest of the Appellants, also DW4 Cpl. Jonas stated that he managed to arrest the appellants by the help of Godfrey Tarimo. It is out of the respondents' evidence that proved they were actively instrumental in search and physical arrest of the Appellants.

Lastly he submitted that, the appellants adduced evidence as to how they are in business grudges with the Respondents and it is those grudges that led to their implication and arrest but there is no evidence associating

the appellants with the respondent's allegedly lost tobacco consignment and it is unfortunate that the trial court did not consider appellant's evidence.

In reply, Ms. Theresia Fabia learned advocate submitted that Order XX rule 4 of the Civil Procedure Code Cap 33 R.E 2002 outlines four necessary requirements for a proper judgment, she submitted that the trial Magistrate fully complied with that statutory requirement.

Further that, A concise statement of the case was clearly stated by the trial Magistrate where the trial magistrate gave a summary of the facts of the case and the nature of the claim by the appellants against the respondent.

That the points for determination were contained in the issues which were framed by the court and those issues were fully discussed by the trial magistrate throughout her judgment. Also she added that the learned advocate seemed to have lost sight of the provision of Order XX rule 5 since the learned magistrate fully discussed at length six issues and reached the conclusion that the appellants did not prove their case on balance of probabilities as required by law and according to the nature of the case it would be unnecessary for the trial magistrate to discuss the remaining issues which in fact had already been covered.

That, the decision of the court was properly recorded as it appears at page 13 of the judgement of the trial court and the reason for decision of the court are what have been discussed by the trial magistrate in the course of discussing the framed issues.

She invited this court to revisit the evidence in Tabora Resident Magistrate's court Criminal Case no. 13/2015 where the judgment shows that the following matters were not in dispute.

- (i) That the Appellants were among the accused persons on the charges of having stolen 1035 bales of tobacco the property of the respondents.
- (ii) That the 1035 bales of tobacco were tendered in court as exhibit and that it was not in dispute that the said tobacco was found in the appellant's godown and that the tobacco was identified to be the property of the respondents.
- (iii) That upon the conclusion of the criminal case the appellants were acquitted but some of their co-accused were convicted and bales of tobacco were handled over to the respondents as it was not disputed that it was their property.

And lastly the learned advocate submitted that the ingredients that forms the tort of malicious prosecution were not proved by the appellants before the trial court and since 1035 bales of tobacco were found in appellant's possession, the respondents had every right under the law to report the incident to the police.

In a rejoinder, the appellant's advocate reiterated that the appellant's evidence was not considered at all in the decision of the trial court. The judgment is written as if the appellants never adduced any evidence in court.

That there is no proof that 500 bales of tobacco that was alleged to have been stolen are the ones found in the appellant's godown, there is

nothing which were adduced as evidence showing the appellants were the suspects of the alleged theft.

That could the trial magistrate in her findings considered and evaluated all of the evidence by the appellants it is obvious that the evidence of the appellants proved their claim against the respondents to the required standard of proof but failure by the magistrate to consider and evaluate the appellant's evidence led to a biased trial court judgment.

I owe unlimited gratitude to the learned advocates for their persuasive and insightful arguments. It is imperial on the record that the appellant's claims in the trial court were based on the tort of Malicious Prosecution and Wrongful detention where in its judgment the trial court decided in favour of the respondents.

The three grounds levelled by the appellants are all challenging the findings and the mode used by the trial magistrate in writing the judgment. Above that my task in this appeal is to decide whether the tort of malicious prosecution were proved as required by the law and the legality of writing skill used by the trial Magistrate.

I am mindful that the tort of malicious prosecution provides redress for those who are prosecuted without cause and with malice while wrongful detention involves restricting another person's movement within any area without legal authority and if proved the wrong doer is subject to liability to the other for harm caused.

In ***Jeremiah Kamama vs Bugomola Mayandi*** [1983] TLR 123 the court listed out five elements that form tort of Malicious Prosecution of

which all the elements must be proved for one to succeed in a suit for malicious prosecution and that are:-

1. The respondent was prosecuted.
2. Proceedings ended in favor of the respondent
3. That the appellants initiated the proceedings against the respondent maliciously
4. The appellants instituted the proceedings against the respondent without reasonable and probable cause
5. The respondent suffered damages as a result

It must be noted that if a person fails to prove any of the above listed elements he can never succeed in the tort of malicious prosecution. One may say that the burden that is placed on the part of plaintiffs is very enormous.

There is no doubt that the 1st and 2nd element as cited in the above case were fully proved by the appellants and there is no dispute about that on the part of respondents, if that is so, the second ground of appeal is partly covered since there no dispute that it is the respondents who put the law in motion which led to arrest of the appellants, and the trial magistrate narrated the same in her judgment that it is the respondents who reacted to the incident and reported the matter to police.

In his submission the appellant's attorney submitted that none of the seven framed issues were discussed by the trial magistrate to assist her reach the decision. I would like to quote the second paragraph of page 12 of the trial court judgment (the impugned judgment).

" In my view after the after the consigned trucks went missing, it was very reasonable for the defendants to react

and report to the police station. It was very reasonable also for the Police Force which primarily has a duty to protect the citizen and ensure their safety, to receive the defendant's claim. Likewise it was also reasonable for the police who investigated the case to act upon the information obtained from the arrested suspects and the information obtained from other sources so as to find the offenders. Similarly there was reasonable and probable cause to prosecute the plaintiffs whom some of lost bales were found in their family godown" (the underline is mine)

Reading in between the lines of the above quoted paragraph you will find that it covers the 3rd and 4th elements of the tort of malicious prosecution as stated in the case of Jeremiah Kamama (supra). The trial magistrate used the words "reasonable" to state the element of malice where she stated that "it was reasonable for the defendants to react and report to police...", " it was reasonable for the police... to receive defendants claim and act upon the information". All these words refers to the meaning that the appellants were properly prosecuted without ill will or malice. Basing on the evidence adduced during trial I agree with the senior trial Magistrate that the appellants were prosecuted without ill will or malice.

Coming to the issue of detention, it is the law that lawful organized detentions are not actionable. The trial magistrate in her judgment concluded that basing on the circumstances of the case it entails that the arrest and detention of the appellants were lawful, I agree with the finding

of the trial magistrate that the appellants entered into a lawful organized detention which is not actionable under the law.

As the trial magistrate did in her judgment, since the 3rd and 4th elements that forms the tort of malicious prosecution were not proved and taking into account that the issue of wrongful detention was not proved it will be wastage of time and resources to discuss about damages suffered. Also Order 20 rule 5 states clear that there is no need for a magistrate to discuss all issues if one or more issues is/are sufficient for the decision of the suit.

The last ground that was levelled by the appellant is on the mode used by the trial Magistrate in writing the judgment and her failure to state reasons for decision.

Yes, it is the requirement of law that any judgment must contain the reason for decision reached. I have read the whole judgement of the trial court and I found that the magistrate clearly analyzed the issues that ought to be proved and stated the reasons as to why some issues were proved and why others were not proved.

Generally speaking, judgment writing is an art and it differs from one judge/magistrate to another, there is no hard and fast rule on how judgments should be written but the law gives the guidelines about the content of a judgment, I will be wrong to challenge the skills of other judge or magistrate just because her writing skill is different from mine.

In so far, the art of writing a good judgment is in my soul but the quality of a good judgment is in the details. The impugned judgment is well

spelt and detailed upon which I find it correctly constructed as it contains all the necessary ingredients as required by the law.

That been said and done, I uphold the decision of the trial court and proceed in dismissing this appeal with cost for want of merits.

Appeal dismissed with costs.



S. B. BONGOLE

JUDGE

21/02/2020

Judgement delivered under my hand and seal of the Court in chambers this 21st February, 2020 in the presence of Mr. Mussa Kasimu learned Advocate for the Appellants and Ms. Joyce Nkwabi learned Advocate for the Respondent.



S. B. BONGOLE

JUDGE

21/02/2020

Right of Appeal is explained.



S. B. BONGOLE

JUDGE

21/02/2020

