

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**(IN THE DISTRICT REGISTRY OF KIGOMA)**  
**AT KIGOMA**  
**(APPELLATE JURISDICTION)**

**MISC. CIVIL APPLICATION NO. 2 OF 2021**

(Arising from Civil Appeal No. 8 of 2020 High Court of Kigoma)

**EMMANUEL KAYANDA HOSEA ..... APPLICANT**

**VERSUS**

**FELISTER NSHATSI ..... RESPONDENT**

**R U L I N G**

27<sup>th</sup> April & 6<sup>th</sup> May, 2021

**I.C. MUGETA, J.**

The applicant sued the respondent on two torts. These are false imprisonment and malicious prosecution. The trial District Court dismissed the plaint because none of the two torts was proved. On appeal to this court the decision of the trial court was confirmed. The applicant now prays this court to grant him leave to appeal to the Court of Appeal in terms of section 5 (1) (c) of the Appellate Jurisdiction Act [Cap. 141 R.E. 2019].

Leave to appeal is grantable on demonstrating either that facts of the case raise matters of general importance or a novel point of law worth the consideration by the Court of Appeal. The appellant has advanced three grievances that he would wish the Court of Appeal to consider. Firstly, that



the first appellate court erred to hold that the complaint on the tort of false imprisonment ought to have been directed to the Attorney General. Secondly, that this court erred to hold that malice was not proved and thirdly, that the first appellate Judge was biased.

On the first ground, Mr. Hope Kawawa, counsel for the applicant has argued, among other issues raised, that this court (Matuma, J.) erred to confirm the decision of the lower court on the reason that the tort of false imprisonment ought to have been preferred against the Attorney General ignoring the authority of the Court of Appeal in **Augustino Peter Mmari v. Tausi Selemani** [2016] TLR 137 which was cited to him without stating whether it was distinguishable or overruled by subsequent enactment. In the said case, the learned counsel submitted, the Court of Appeal confirmed the decision of the High Court where the defendant was sued and held liable for false imprisonment without involving the Attorney General. The defendant had reported the incident to the police, who incarcerated the plaintiff.

Mr. Kiviyiro, advocate for the respondent replied that since bail was denied by the Police and there is no evidence that the respondent instigated the denial of bail, this court and the trial court are justified in vindicating the respondent.

In confirming the decision of trial court rejecting the claim for false imprisonment this court held: -

*"It is my firm view that the learned magistrate was right in his decision. If the respondent reported to the police criminal allegations against the appellant, her role ended there. She had no power to control and or instruct the Police Officers on how they should deal with the appellant. That was exclusive powers of the police and if they were misused, then they were the one to blame and by doing so the Attorney General comes in as rightly observed by the learned trial magistrate".*

As submitted by counsel for the applicant, in the case of **Augustino Mmari** (supra) the defendant was held liable for false imprisonment after instigating the incarceration of the defendant despite being sued without involving the Attorney General. As further rightly argued by Mr. Kawawa, this is a Court of Appeal decision which this court did not consider despite being cited to the learned Judge. In my view, the facts of **Augustino Mmari** case are not similar to this case because in that case the offence was not bailable and subsequently the plaintiff was not charged. In this case the offence was bailable. However, for reasons known to the police, the applicant was denied bail. It was on that account my brother Matuma, J. held that allegation of

abuse of authority by the police has nothing to do with the respondent's reporting of the offence. This holding, in my view, raises the issue whether when the police deny a person bail on a bailable offence, the claim on tort of false imprisonment can lie against the complainant without including the Police which I find raising matters of general importance worth consideration of the Court of Appeal. On this point, I grant the application. I deem it unnecessary to consider the rest of the complaints which are whether malice was proved and the allegation of bias on part of the trial magistrate and the appellate Judge. No order as to costs because applications of this nature are a legal requirement.



*I.C. Mugeta*

**I.C. Mugeta**

**Judge**

**6/5/2021**

**Court:** Ruling delivered in chambers in the presence of the applicant and in the absent of the respondent, represented by her son Obeid Nshatsi.

**Sgd: I.C. Mugeta**

**Judge**

**6/5/2021**