

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(DODOMA DISTRICT REGISTRY)
AT DODOMA**

DC CIVIL APPEAL NO. 7 OF 2021

(Originating from the District Court of Singida at Singida in Civil Case No. 14 of 2019)

**PETER NYAHEGA MURIGO
@PETER N. MURIGO (AMON)
@PETER MURIGOAPPELLANT**

VERSUS

**1. WEMA MOHAMED
2. SINGIDA MUNICIPAL COUNCILRESPONDENTS**

15/12/2021 & 28/12/2021

JUDGMENT

MASAJU, J

The Appellant, Peter Nyahega @Peter N. Murigo (Amon), unsuccessfully sued the Respondents, Wema Mohamed and Singida Municipal Council, (The 1st and 2nd Respondents respectively) in the Resident Magistrates' Court of Singida at Singida for Unlawful Detention. The Appellant had alleged in the trial Court that the 1st Respondent, a pharmacist with the Singida Municipal Council, the 2nd Respondent, in the company of a pharmacist and two Police Officers went to the Appellant's place of business (office) on the 2nd day of May, 2019 in order to close the said office allegedly for non-compliance of the requirements of running the Accredited Drug Dispensing Outlets (ADDO) business because the 1st Respondent's routine inspection visit at the Appellant's pharmacy shop (office) on the 29th day of

April, 2019 revealed that there were medicines restricted to be sold at the shop without having complied with the procedure of running ADDO business. During the said inspection, the Appellant was not there but Mary K. Zayumba (DW2) who had been invited there by one Neema Shila to dispense drugs thereat the shop. Neema Shila was on leave.

The trial Court held that the inspection by the 1st Respondent was not lawful because the inspection team had not been duly constituted. Nevertheless, the trial Court found out that the indeed restricted (unauthorized) drugs were found in the Appellant pharmacy shop and that the Appellant had not complied with the requirements of running ADDO business.

The trial Court also found out that upon the 1st Respondent's denial by the Appellant to close the pharmacy shop, the 1st Respondent reported the incident to the police station where the Appellant was detained for about four (4) hours prior to being released on police bail on the same day. Relying on **Tumainieli V Aisa Issai** [1969] HC D280, the trial Court held that the Appellant was not detained by the 1st Respondent because the 1st Respondent just reported the incident to Police Station upon the Appellant's failure to adhere to instruction (obstruction of discharge of duties). There was no proof that he was in the position, for instance, to put him into custody. That the Appellant therefore failed to prove his case to the reacquired standard. His suit was dismissed in its entirety, hence the Appeal in the Court.

The Appellant's Petition of Appeal in the Court was made up of four (4) grounds of appeal including the ground that the trial magistrate grossly erred in law and fact to enter judgment in favour of Respondents while he proved his claim of unlawful detention on balance of probabilities.

When the appeal was heard in the court on the 25th day of November, 2021, the Appellant's learned counsel, Mr. Cosmas Luambano, argued the four grounds of appeal accordingly. The Appellant, *inter alia* drew the attention of the court to **Peter Joseph Kilibika & CRDB Bank public company Ltd V. Patrick Aloyce Mlingi** (CAT) Civil Appeal No. 37 of 2009, Tabora Registry on the allegation that unlawful detention was proved as against the 1st Respondent. The Appellant essentially argued the appeal alongside his written submissions in the trial Court. That, his case before the trial Court was proved on balance of probabilities accordingly. He prayed the Court to allow the appeal, quash and set aside the trial court's judgment and decree thereof accordingly with costs.

The Respondents severally contested the appeal. They argued that the Appellant had not been unlawfully detained because there were reasons for the 1st Respondent's reporting him to the Police station. They tailored their submissions alongside their written submissions before the trial Court. They argued that **Peter Joseph Kilibika & CRDB Bank (Plc) Ltd** (*supra*) was distinguishable from this one as the Respondents had never apologized to the Appellant. The Respondents prayed the Court to dismiss the appeal with costs for want of merit. That is all by the parties.

The Court is of the considered position that the Appeal lacks merit on the following reasoning thus,

There was no proof that the 1st Respondent or the 2nd Respondent altogether did detain the Appellant. The Appellant was temporarily detained by the Police Force at the police station upon the 1st Respondent's report there that the Appellant had obstructed them from discharging their official duties at his Appellant's place of business (pharmacy shop). Given the fact that the routine inspection there on the 29th day of April, 2019 revealed that

unauthorized drugs were found there and that there had been no compliance with running Accredited Drug Dispensing Outlets (ADDO) business by the Appellant, there was justification for the Appellant being reported to the Police Station for action if at all the Appellant on the 2nd day of May, 2019 in the 1st Respondent's follow up official visit at the pharmacy shop he obstructed the 1st Respondent from discharging his duties thereat.

There was no proof that the Respondents forced or influenced the Police Force to detain the Appellant at the Police Station prior to his being released on police bail. So, in light of **Tumanieli V. Aisa Issai** [1969] HC D 280, the trial court so rightly decided that the Respondent was not liable for the Appellant's temporary detention at the Police Station. The Appellant's suit was therefore so rightly dismissed by the trial court for want of proof of the suit on balance of probabilities. Nevertheless, the Respondents are hereby advised and enjoined to discharge their duties diligently, honestly, and faithfully in accordance with the laws lest the public service is brought into disrepute.

That said, the appeal is hereby dismissed for want of merit. The parties shall bear their own costs accordingly.




GEORGE M. MASAJU

JUDGE

28/12/2021