

**IN THE UNITED REPUBLIC OF TANZANIA
JUDICIARY**

**IN THE HIGH COURT OF TANZANIA
SUMBAWANGA DISTRICT REGISTRY
AT SUMBAWANGA**

DC. CIVIL APPEAL NO. 05 OF 2021

(Originating from Civil Case No. 03 of 2021 in the District Court of Kalambo at Matai)

FERDINAND NZYUNGU.....APPELLANT

VERSUS

ERIJI KILOSA.....RESPONDENT

JUDGMENT

Date of Last Order: 04/08/2022

Date of Ruling: 26/10/2022

NDUNGURU, J

This is an appeal against the ruling of the District Court of Kalambo at Matai (the trial court) dated 3rd February, 2021. At the District Court the appellant filed a suit for malicious prosecution against the respondent alleged he was false imprisoned for 62 days at Matai Primary Court. At the trial court the respondent raised a point of preliminary objection that the District Court has no jurisdiction in law to entertain the matter, the trial court found the preliminary objection has merit, thus it struck out the suit.

Aggrieved by the decision of the trial court the appellant has filed the present appeal with Memorandum Appeal contains only one ground;

1. That the trial court erred in law to struck out the case of tortious liability arising from false imprisonment and malicious prosecution on ground that it lacks pecuniary jurisdiction while in fact it has jurisdiction based on tort.

When the appeal came for hearing both parties appeared in person, unrepresented.

In his oral submission the appellant submitted that the District court has jurisdiction to entertain tort cases. He of the view that it was not correct for the trial to dismiss the case for want of jurisdiction. Thus, he prayed for the appeal be allowed with costs.

In his part, the respondent submitted that he supported the decision of the District court. He prayed for the appeal be dismissed with costs.

In the present appeal the issue for determination is whether the appeal has merit.

It is on record that the appellant instituted a tort claim of malicious prosecution at the District Court of Kalambo, however, the suit was struck out based on pecuniary factor.

However, the claim being arisen from tortious liability (malicious prosecution), the primary court has no jurisdiction under **section 18 (1)** of the Magistrates Courts Act, Cap 11 RE 2019, unless it is customary tort where the Primary Court has concurrent jurisdiction with the District Court under section 63 (1) of the Act as interpreted in the case of **Charles Lala vs Abdallah Mangi** [1992] TLR 336. Under customary tort where the Primary Court has jurisdiction, two conditions must meet, first the parties must be from the same customary law community; and second, there must be rules of customary law on tort established and practiced by the parties.

In the present appeal, the fact that the appellant instituted a claim for compensation at the District Court, the claim becomes a tort of malicious prosecution under English Common Law where the object of tortious liability is to compensate the victim for the harm suffered unlike customary tort where proof of malice and damage is not necessary as the aim is to reconcile the parties.

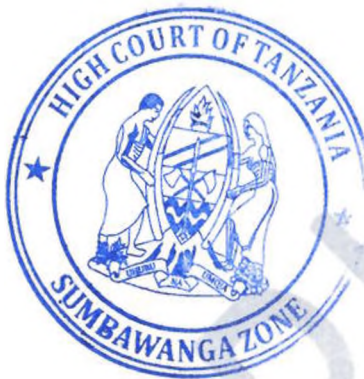
Therefore, the trial court was wrong to strike out the suit for pecuniary factor, while it has in law jurisdiction over the matter as hinted above.

Having said above, I allow the appeal and proceeded to quash the ruling of the District Court dated 3rd February, 2021 and order emanated from the ruling.

I further order Civil Case No. 03 of 2020 to proceed as if there was no objection raised following this judgment.

No order as to costs at this stage as the main case is not yet finally determined.

It is so ordered.




D. B. NDUNGURU

JUDGE

26. 10. 2022