

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MOSHI DISTRICT REGISTRY

AT MOSHI

CIVIL CASE NO. 7 OF 2018

MONYAICHI SILAS MANGI PLAINTIFF

VERSUS

ELIBARIKI AWEDIA MANGI 1ST DEFENDANT

HASSAN MSANGI 2ND DEFENDANT

D.K MDOE 3RD DEFENDANT

ENDOCK MWAIJIBE 4TH DEFENDANT

THE ATTORNEY GENERAL 5TH DEFENDANT

JUDGMENT

7/11/2022 & 22/11/2022

L.M. MLACHA, J

The plaintiff, Monyaichi Silas Mangi, the wife of Dr. Samwel Aiweddia Mangi, has a quarrel with the first defendant, Elibariki Awedia Mangi who is also her brother in law which has grown to include members of the police force. The entire family of Aiweddia Mangi (now deceased) who was once up on a time very prominent, is now in pieces. It all started as a Probate/Land issue between Dr. Samwel Aiweddia Mangi and the first defendant which attracted Criminal charges against the plaintiff and which is now on this case on a new turn. The plaintiff was arrested, detained for some hours and later charged in two criminal cases. She was found not guilty and acquitted in one case

while the second case was dismissed under section 225 of the Criminal Procedure Act, cap 20 R.E.2019 (the CPA).

Believing that she was unlawfully arrested, detained and harassed, the plaintiff filed this case against the first defendant and four others namely, Hassan Msangi, D.K. Mdoe and Enock Mwaijibe (herein after referred to as, where need be, the first, second, third and fourth defendants respectively). Mr. Hassan Msangi, Mr. D.K. Mdoe and Mr. Enock Mwaijibe are police officers but they were sued in person. Believing that this was a case against the government, the Attorney General sought to be joined and was joined as the fifth defendant. Details of the cause of action are contained in paras 7, 8, 9, 10, 11, 12, 13, 14, 15, and 16 of the plaint and the annexures.

It was stated in the plaint that on 20/6/2018 at Machame North, Kisiki Mwera ward, Hai District while at home at around 14:00 hours, the plaintiff was invaded by the first defendant who had come with policemen from Moshi in a privately owned car who forcefully broke the grill door of her residence and entered. They arrested her and sent her to Moshi where she was unlawfully interrogated. The policemen who came purported to act on instructions of the second and third defendants. That as a result of the said forceful entry, detention and interrogation, the plaintiff sustained nervous shock, mental anguish, humiliation and anxiety. Further to that, she has failed to finish renovation of her matrimonial home. Her return visa entry into the Kingdom of Saud Arabia expired. She has also been separated unlawfully from her husband who works in Saud Arabia. That since then, she had been receiving several calls from the fourth defendant with threats and abuses forcing her not to renovate the matrimonial home.

The plaintiff proceeded to state that the police acted in their personal capacity because they had no any search warrant or court order authorising them to do what they did. She prayed for punitive damages Tshs. 100,000,000/=, special damages Tshs. 50,000,000/= being cumulative costs and expenses needed to rejoin her husband, special damages Tshs. 100,000,000/= being compensation for loss of family valuables, building materials stolen from her house after arrest by thieves and special damages Tshs. 20,000,000/= being alternative costs to hire an engineering firm consultant for supervision of renovation works at Machame- Kisiki Mwera family site.

The second, third, fourth and fifth defendants filed a written statement of defence and denied the claim. They stated that on 19/6/2018 the first defendant arrived and reported that the plaintiff destroyed two rooms of his house which he had inherited from his late father, the late Aiwedia Mangi. The fourth defendant was then assigned to deal with the matter and on 20/6/2018 he moved with WP 8115 PC Jane and village leaders to the plaintiff's home to see what had happened. They found the rooms destroyed. They needed to arrest the plaintiff who refused. The fourth defendant decided to break the door and they put her under arrest. They sent her to the police station where she was questioned and released on bail. They denied all other things.

The first defendant filed his separate written statement of defence and denied the claim as well.

With the assistance of the parties, the court framed the following issues:-

1. Whether the plaintiff was lawfully arrested and detained.
2. If the first issue is answered in the affirmative, whether the arrest and detention amounted to false imprisonment.
3. Whether the plaintiff suffered nervous shock, mental anguish, humiliation and anxiety as a result of arrest and detention.
4. To what reliefs are the parties entitled to.

The court received length evidence from the parties. It sounded like a land/probate dispute rather than a case based on tort. I will try to give a summary of what was said in court. The plaintiff (60) appeared as PW3. She told the court that on 20/6/2018 at about 14:00 hours she left home and moved to see a neighbour who was sick. While there, she received a phone call from her son Alpha who said that they were being beaten by police officers. She was also told that the first defendant was beating people at home. That, the first defendant had ordered Alpha to be beaten. She had to come back home. When she arrived she found many people at home. She also saw a black Noah parked at home. The first defendant saw her and directed the police to arrest her. She rushed inside and closed the grill. She demanded their identity cards and RB numbers but got none. They ordered her to enter the car and go to the police station for questioning. She told them that she was not ready to go because she did not know them. A police woman told her that the uniform were enough. She told her that the uniforms might have been stolen. She advised her to talk with her husband over the phone. She made a phone call and put it on a loud speaker. She gave it to the female police. She talked to him. She talked to her husband but they could not agree. She told him that he had stayed outside the country for a long time and did not know the law. The police woman returned the

phone to her and ordered her to enter into the car. The other policemen told her that they had been ordered to break into the house. The first defendant attempted to break it with an axe without success. The police picked a big hummer which smashed the grills. They broke the door and asked her whether she was ready to go or not. She saw the village chairman and felt safe. The village chairman asked her to go out. He also assured her that they could bail her out. She complied and asked the police not to break the next door. She came out and moved to the car. The car stopped on the way for almost 40 minutes for no apparent reason. They then proceeded to the police station.

The plaintiff went on to tell the court that while at the police station some policeman came out demanding to know the where about of the stubborn woman. They insulted her for about 10 minutes. Enock ordered her to enter in a certain room where she stayed for about three hours. They harassed her to the extent that she could almost faint. She was interrogated later. She made her statement which she signed. They released her on a cash bail bond of Tshs. 2,000,000/=. She saw Enock talking over the phone to his senior officers. She thought that it was Mdoe the RCO (third defendant) and Hassan Msangi of Dar es Salaam (second defendant). She reached home past midnight that day and found that her building materials had been stolen.

The plaintiff continued to say that she was required to report at the police station regularly where she was connected with Msangi of Dar es Salaam who used to harass her over the phone calling her a bad woman. Msangi directed the police in Moshi to harass her. One day she was called at the RCO's office where she stayed from 8:00 hours up to 16:00 hours without

eating or drinking. The police used to come at home and park their vehicle. Her husband had to complain to the IGP in 2019. She also made a phone call to the IGP. The IGP directed her to see the RPC. She moved to see the RPC who asked the RCO why they had summoned her. The RPC directed that she should not be locked up again.

The plaintiff went on to tell the court that the criminal case which was instituted against her on allegation that she had demolished a house lasted for three years. It was instituted in 2019. She was acquitted. She tendered a copy of the judgment of the district court of Moshi made in Criminal Case No. 24 of 2019 and it was received as exhibit P1. There was also a case of forgery against her. It was also dismissed, she said. The order of the district court made in Criminal Case No. 334 of 2019 discharging the plaintiff was admitted as exhibit P2. She went on to say that she came from Saudi Arabia last in 2017 following the death of her mother in law but could not go back. She had an agreement with her husband to remain in Tanzania for six months to supervise the renovation of the house but it has taken so long. Her husband wrote a letter to notify his relatives of his intension to renovate the house so they were aware. She could not finish the work due to the existence of criminal charges. She could not return to Saudi Arabia anymore. She tendered her Passport No. AB 385319 to prove her date of entry. It was received as exhibit P3. She proceeded to tell the court that following the arrest and detention she suffered insomnia and sleepless nights. She had to sleep on sleeping pills. She has also been separated from her husband. She is also suffering from blood pressure. She is like somebody useless.

She went on to say that she could not proceed with the construction because of loss of the materials. She added that the harassment is also going on. The relatives do not want her to rest. It is painful because most of the relatives were raised by her and her husband. She finished by saying that the whole family is unstable.

PW4 Dr. Samwel Aiwedua Mangi (74) confirmed that he is the husband of the plaintiff. He is currently living and working in Saudi Arabia but has a home at Machame. On 20/6/2018 at 14:00 hours, while at work in Saudi Arabia, he received a phone call from her wife telling her that there were people at home (Machame) whom she suspected to be policemen. He stopped to do what he had been doing to hear his wife. She said that the police had come at home on a private vehicle. That, they had been brought by his young brother Elibariki Aiwedua Mangi. He talked to a female police through the phone of his wife. The police could not tell her name or force number. He asked her whether they had an RB and an arrest warrant but she could not answer the questions. She could not even mention the charges against his wife. They could not reach an understanding over the phone. The woman police told him that since he is living outside the country he was not aware of procedures. She shifted the phone to his wife. He needed to talk to Elibariki who refused saying he was not ready to talk to him till death. He then heard a sound. His wife told him that the police were breaking the grill of the door. He felt tired and sweating. His daughter who was around gave him a sit to sit. His health was affected since then to date. He is now on medication for hypertension. They took her wife.

PW4 went on to say that the vehicle which took her wife stopped somewhere for a while. His wife needed to go out for a short call but could not be allowed. He was later told by his wife that she was locked in a certain room at the police station up to 23:00 hours. She made her statement and was given police cash bail. She could not be released up 00:00 hours. When she returned home she found everything in the house including the building materials stolen.

The evidence of PW1 Wilson Mushi (56) a mason, PW2 Wainde Mafue and PW5 Victor Gerald Mushi corroborated the evidence of PW3 on the way she was arrested following the break of the door grill and the way she was taken to the RCO's office Moshi for questioning, recording her statement and later given bail.

DW1 Elibariki Aiwedua Mangi told the court that he lives in Dar es Salaam where he works. He is a driller. His home place of origin is Machame. He is the last born in the family of Aiwedua Silas Mangi and Bibiana Zakayo Malisa. Both of them are now dead. They were living at Wariasinde village, Machame ward. His father passed away on 7/4/2016 while his mother died on 1/2/2017. They had 13 children but 3 are dead leaving 10 surviving children. He went on say that his father divided his land to his children long before his death. He left a piece of land for himself which fell to him as the last born following his death. That included the homestead which is the root cause of this case.

DW1 went on to say that following the death of their mother in 2017, the family sat under the chairmanship of PW3 Dr. Samwel Silas Mangi and re-enforced the decision of their father. It was decided that each has to remain

to his or her land. They handled the family house officially to him as the last born. They parted. On 18/4/2018 at about 17:00 hours he received a letter from Paul Maro written by his brother Dr. Samwel Mangi telling him of his intension to separate his house from the house of his father. The two houses shared a wall earlier. He consulted advocate Ngiloi who promised to talk with them as a family. They sat a meeting at Mr. Ngiloi's homestead Tangi bovu Dar es Salaam who told them that he had adviced the woman to stop the exercise till the arrival of Dr. Samwel. He found this to be a good idea and had to wait.

On 18/6/2018 he received a call from his brother Elia who requested him to go to Machame because his house was being demolished. He called Mr. Ngiloi who promised to go to see what had happened. He decided to go to Machame on the next day, on 19/6/2018. When he reached there he found people demolishing the house. He moved to the police station to report. He made a statement and was given an RB number. He gave the investigator the letter from Dr. Samwel. The investigator communicated with the village chairman Mr. Nassoro Mushi. They agreed to meet at Mkiraraya Primary School. He then moved with the police to the scene of crime. They arrived at the homestead at 14:00 hours. Afande Enock questioned the masons who were there on the reasons as to why they were demolishing the house. They said that they were engaged by the plaintiff. Afande Enock asked Alpha, the son of the plaintiff, the whereabouts of his mother. He said that she was in the neighborhood. He made a phone call. The plaintiff appeared soon later.

DW1 proceeded to tell the court that Afande Enock introduced himself to the plaintiff saying that they were policemen from the RCO's office. The plaintiff

entered inside the house and locked herself leaving the policemen outside the house. DW1, the village chairman and other villagers witnesses the plaintiff locking himself inside. The police officers told the plaintiff that she was needed at the police station to give her statement but she refused. They argued with her from 14:00 hours up to 17:00 hours without success. Afande Enock took a hammer and broke the grill. The plaintiff agreed to go out after breaking the grill. They moved direct to the police station. She was moved inside while they remained outside. They remained there up to 21:00 hours when she was bailed out. He added that the vehicle was driven by a police officer.

When he was asked about the lost properties, DW1 told the court that he could not see any property there except masons and bricks. He went on to say that the plaintiff was not harassed, everything followed the procedure. He said that if she had obeyed the police orders, nothing could have happened to her. He went on to say that Victor Mushi (PW5) lied before the court when he said that he did not record his statement because his statement was recorded at the homestead. He said that his relation with his brother, Dr. Samwel was very good previously but is now not good.

DW2 Dominic Tirofimo (78) told the court that he knew the late Aiwedia Mangi who was a friend of his father. He knows his children and could mention them. He said that Dr. Samwel who is the husband of the plaintiff was his close friend long before the dispute. He said that the plaintiff approached him saying he wanted to separate his house from the house of DW1. He told him that it was a good idea but she must involve DW1 and his relatives. She told him that she had permission from his husband and did

not want to engage anybody else. He told her that it was not good to do so. He stopped to associate with them anymore.

DW2 went to say that on 20/6/2018 while he was on the way coming from town he saw the plaintiff arguing with the police who required her to go to the police car. She was inside her house. She was later arrested and sent to the police station. He added that the house belonged to DW1 as the last born under chagga customs. He complained that he received threats so that he could not come to testify. He said that he saw the house which had been demolished.

DW3 Elia Aiwedia Mangi corroborated the evidence of DW1, in all aspects. He is his brother. He said that the house of their father was built long before the marriage of the plaintiff in 1984. He took part in supervising the building works. It was at the period when Dr. Samwel was about to get married. It was built using money from their father who was a businessman. Later on Dr. Smwel built his house joining it with the house of their father. They lived together in the houses which shared a wall. His father and his sisters lived there. Then following the death of their parents, the family sat under the chairmanship of Dr. Samwel and gave the house to DW1 as the last born as per chagga customs. He then received the report that the house was being demolished and it was a shocking news. He passed the report to DW1 and asked him to make a follow up. He expressed his dissatisfaction to what was done by the plaintiff and his brother. DW4 Rahel Aiwedia Mangi (61) supported the evidence saying the house was given to DW1 under chagga custom. They both said that the plaintiff had no right to break it. DW4 is a sister of DW1 and the plaintiff's sister in law (wife).

It was the evidence of DW8 that in 2018 he was in Moshi District as the OC-CID. The RCO was DW9 ACP Dotto Kilo Mdoe. The RCO was on leave in June 2018 leaving the office to him. Now while acting as RCO, he received a complaint from DW1, Elibariki Aiwedia Mangi who said that his house had been demolished by the plaintiff. He assigned the file to DW7 CPL Enock for investigation. He directed him to go to inspect the scene of crime and arrest the plaintiff. He directed him to move with village leaders to the scene of crime. He was also to record her statement and grant her bail. He added that made the directives on a minute as it is the practice and were complied with.

Giving details of what he got from DW7, he told the court that they told him that they arrived at the scene of crime and found that part of the house had been demolished. The plaintiff was absent. Her son who was present gave her a phone call and she came. DW7 introduced himself as CPL Enock. He also introduced the other policemen. He then told her that they had come there to investigate a case on damage to property. She moved inside her fence and locked herself. They tried to ask her to go out and go to the police station but she refused. They remained there from 3:00 PM up to 5:00 PM asking her to get out but she was not ready. Following the resistance CPL Enock picked an iron bar and attempted to break the lock in an attempt to get her out. She then told the villager chairman in chagga language that she was now ready to go. She prayed for time to prepare herself. They moved to the RCO's office. They left at around 6:15 PM and arrived at about 6:45 PM. DW7 reported to him that he had come with the suspect. He direct him to record her statement. The statement was recorded and received in court as exhibit D1.

DW5 Assistant Inspector Esau Silas Lundi (32), DW6 Assistant Inspector Jane Samwel Kaaya (31) and DW7 F. 9022 CPL Enock are the ones who moved to arrest the plaintiff. DW7 was the boss because DW5 and DW6 were police constables by then. DW7 told the court that he received instructions from DW8 SSP Jumanne on 20/6/2018 to go to Machame to arrest the plaintiff who was accused of demolishing the house of DW1 Elibariki Aiweddia Mangi. He arranged transport and picked DW5 and DW6 and moved to Machame. They picked the village chairman on the way and moved together. The plaintiff who was absent arrived. He introduced himself as CPL Enock from the RCO's office who had come to investigate a complaint of breaking the house. He also introduced DW5 and DW6. The plaintiff moved inside and locked herself. They used all the means to ask her to get out but could not agree. They stayed there from 3:00 PM up to 5:00 PM. He then decided to use some tricks. He picked an iron bar and attempted to break the door grill. She then agreed to go. They picked her to the police station where she was questioned, recorded her statement and released on bail.

DW6 who is a female police had a special role in the arrest. She told the court that she approached the plaintiff with the view of arresting her after the introduction made by DW7. She had locked herself inside and was talking to her husband. They waited for a long time but she could not get out. When DW6 insisted that she was needed at the police station she said that she was not sure if they were policemen from the RCO's office. When it was beyond tolerance DW7 picked a hammer from a mason and beat the lock. She then agreed to get out. She gave her time to prepare herself. They moved together to the RCO's office. Her statement was recorded by DW7 who proceeded to grant her bail.

The evidence of DW9 ACP Dotto and that of DW10 ACP Hassan Mohamed Msangi was brief compared to the others. DW9 said that he was not in Moshi at the material time because he was on leave. He left the office to DW8. He learnt of the incidence on his arrival. DW10 denied to know the plaintiff and what had happened to her. He denied to give any instructions to the RCO in respect of any of issues of the plaintiff under discussion. He said that he had just come in respect of the court summons but had no hand in the matter. He demanded to be given any proof that he had ever had any contact with the plaintiff in the matter so that he could lay his hand on it. There was no such evidence in court.

I will now move to the discussions. I will start with the first and second issues. Looking at the pleadings, evidence and the issues, one can see that the plaintiff is suing to recover damages arising out of an unlawful arrest and detention. She is alleging to have been unlawfully arrested and detained on orders of the police and the first defendant which have caused her to suffer damages as shown above. She is therefore suing under the law of torts.

The law of torts has its origin in the Common Law of England. Its principles were received in this country and are applicable. This court has jurisdiction to apply common law principles under section 2 (3) of the Judicature and Application of laws Act cap 358 R.E. 2019. It is an infringement of an individual's private or civil rights which where proved attract damages to the plaintiff. To constitute tortious liability the following conditions must be met. i) Duty of care imposed by law. There must be a duty on the part of the defendant imposed by law exercisable in favour of the plaintiff. ii) Breach of the duty. The defendant must breach that duty. iii) Damages arising out of

the breach. The plaintiff must have suffered damages as a result of the breach of the duty.

In our case the plaintiff alleges that she was arrested and detained illegally. She suffered damages in the course and claims compensation. For this suit to succeed, there must be evidence of breach of a duty recognised by law or violated of it leading to damages on the part of the plaintiff. We must at the law and see if it was observed in the course of the arrests and detention, if any.

I will start by examining the law on arrest and detention to some details. I will also look at the powers of officers during arrest. The relevant law is **The Criminal Procedure Act, cap 20 R.E.2019** (the CPA) and **The Police Force Auxiliary Services (Police General Orders) orders 2021- The PGO**. The CPA gives powers and procedures of arrests and detention of offenders. The PGO, among other things, outlines the structure of the police force and duties and responsibilities of various office bearers.

Arrests generally fall under Part II – A (b) of the CPA. It is entitled "*Arrest and warrant of Arrest*". It runs from Section 11 to 33 but I will examine sections 11, 12, 13, 14, 16, 20, 21, 22 and 23 because these are the ones which appear to be relevant in this case. Section 11 reads as follows:-

*"11-(1) In making an arrest, the police officer or other person making the arrest **shall actually touch or confine the body of the person being arrested** unless there be a submission to the custody by word or action.*

*(2) Where the person to be arrested forcibly resists the endeavor to arrest him, or attempts to evade the arrest, the police officer or other person **may use all means necessary to effect the arrest**". (Emphasis added)*

Section 11 directs the police to start with a gentle approach, to **touch** the person to be arrested and then put him under restraint. The law requires the police to start with a polite approach but if he resists, the law allows the police to use all necessary means to effect the arrest. Section 12 prohibits the police to put the person so arrested to more restraint than it is necessary to prevent his escape. It means that the person so arrested must not be subjected to any force than it is needed to take him to the police station. Section 13 has a requirement for a warrant of arrest where need be. The First schedule to the Criminal procedure Act is relevant here. It has a list of offences which require a warrant of arrest and those which do not require a warrant of arrest. Offences related to damage to property does not need an arrest warrant. Section 14 gives circumstances under which a police may arrest without an arrest warrant. This includes a situation where one commits the offence of breach of peace in his presence, people who willfully obstruct the police in execution of their duties, people who are found with things which are reasonably suspected to be stolen properties or used in the commission of crimes, people who are found lying or loitering around with reasonable suspicion that they have committed an offence etc. These people may be arrested without a warrant of arrest.

Section 15 gives power to Senior Police Officers to give direction to junior officers to effect arrest. The law provides as under:-

*"... shall deliver to the officer required to make the arrest **an order in writing** specifying the person to be arrested and the offence or other cause" (Emphasis added).*

Section 16 extend the arresting powers to private persons in respect of offences committed before them making reference to Section 14. It means that if circumstance shown under section 14 exists, even an ordinary citizen may make an arrest. Subsection (2) appears to be more relevant to this case and is reproduced in full as under:-

*"16(2) A person found committing an offence involving **injury to property may be arrested without a warrant by the owner of the property** or his servants or a person authorized by the owner of the property."(Emphasis added)*

It means that owners of properties, if they see that a person is damaging or committing injury to the property, they may arrest themselves, their servants or persons authorized by them without a warrant of arrest.

Section 20 gives the police power to break for purposes of making an arrest when resisted. Section 21 direct the use of reasonable force in arrests. The words used are:-

*"... shall not, in the course of arresting a person, **use more force or subject a person to greater iniquity than is necessary to make the arrest** or prevent the escape ..." (Emphasis added)*

The police are prevented to do anything which is likely to cause the death of the person so arrested. That means that even where force is applied as

a matter of necessity, still they have a duty to ensure that the person so arrested reach the police station and the court while is still alive. They have to use all what they can do to avoid killing that person save on situations of protecting the life of other people.

Section 22 has a protection to arresting people. It reads:-

*"22 Where a person who arrests another person... in circumstances referred to in section 16, **the arrest shall not be taken to be unlawful by reason only that it subsequently appear, or is found by the court that the other person did not commit the offence**" (Emphasis added)*

It means that the end result does not make the arrest unlawful if it was made following the laid down procedure or on reasonable belief that the person so arrested had committed the crime.

Section 23 require the police to inform the person the offence with which he is suspected to have committed.

Duties and Responsibilities of the Regional Crimes officer (the RCO) are contained under PGO 6: 16 and 17. It is provided that subject to the direction of the Director of Criminal Investigations (DCI), the RCO is primarily and directly responsible to all matters of criminal investigation in the region with power to give direction to all CID personnel in the region, supervise criminal investigations of serious crimes in the region, provide assistance and guidance to district units (the OC-CID) etc. The PGO gives him power to control CID operations in the region. He is the regional crimes master and

has power over all the districts in matters falling under him. He can assign duties to police officers under him and direct things to be done and receive the feedback.

Next is an examination of case law. Case law has it that, in cases of arrest and detention, the plaintiff's duty is only to prove that there was an arrest, detention or imprisonment and that he suffered damages. Once detention or imprisonment is established, the onus shifts to the defendant to show that the arrest or detention was reasonably justified. This position was succinctly stated by Samatta, J (as he then was) in the case of **Moris A. Sasawata v Matias Malieko** [1980] TLR 158 where it was held thus:-

*"To succeed in a case of false imprisonment, **a plaintiff does not have to satisfy the trial court that the restraint was unlawful.** He does not shoulder that burden. It is for the defendant to prove that the restraint was lawful. All that the plaintiff need demonstrate is that he was restrained by the defendant."* (Emphasis added)

Similarly, in the case of **Augustino Peter Mmasi v Tausi Selemeni**, Civil Appeal No. 56 of 2014, CAT, at Dar es salaam (unreported) at pages 9 & 10, the Court held as follows:-

*"Once the detention or imprisonment is established, as was the situation in the case at hand, the **onus shifts on the defendant to show that the restraint was reasonably justifiable ...**"* (Emphasis added)

See also the case of **Sekaddu v Ssebadduka** [1968] 1 EA 213 on the shifting of the burden. The defendant must lead evidence to prove that the arrest and detention was lawful failure of which give a right for damages to the plaintiff. The Court of Appeal gave another direction in **African Gem Mining Ltd v. Andrew Natai** Civil Appeal No. 16 of 2010 (CAT-unreported) where it said as under:-

*" ... the appellant committed the tort of false imprisonment because **he initiated the arrest and prosecution of the victim without a reasonable or probable cause**" (Emphasis added)*

The court set the principle that the arrest and detention must have been done without *reasonable or probable cause*. So we will have to go to the evidence to see if there is evidence on the part of the defendant showing that the arrest was done with reasonable and probate cause. In line with this, as I have pointed above, we will have to see if the defendants breached their duty under the law as shown above, in the course of the arrest and detention of the plaintiff. In other words, we will have to see if the defendnats have managed to show that the arrest and detention was lawful.

There is no dispute that the plaintiff was arrested and detained at the police station. Their dispute is on the duration but I don't find that as being material. The plaintiff has shown that she was arrested and detained at the central police station at the RCO's office where she made a statement. All the defendants except PW10 agree that the plaintiff was arrested and detained at the police station. The plaintiff has therefore discharged her duty of showing that she was arrested and detained at the office of the regional

crimes officer. The burden now shifts to the defendants to show if the arrest and detention had legal justification.

The evidence shows that DW9, the RCO was on leave. He left his office to DW8. Both DW8 and DW9 agree that the police received a complaint from DW1 that her house was being demolished at Machame. This is an area within Kilimanjaro region in Hai district which fall under the control of the RCO. DW8 who was the acting RCO said that he assigned the file to DW7 on *a minute*. He did so in writing directing DW7 to go to Machame and see what had been done and if found to be correct, make an arrest. DW7 picked DW5 and DW6 and moved to Machame. They picked the village chairman and moved together to the scene of crime. The first defendant who was the complainant was with them showing the way.

The evidence of DW5, DW6 and DW7 show that DW7 introduced himself to the plaintiff that they were policemen from the RCO's office. That they had come to arrest her on account of breaking the first defendant's house. The plaintiff moved inside the house and locked the grill. PW6 who is a police woman moved close to her and asked her to cooperate but she could not agree. She told her that all what was needed was to go to the police station to make a statement but she refused. The plaintiff demanded to be shown an RB, an arrest warrant and identity cards. When she was asked about the uniforms she said that they might have been stolen from some place. DW6 managed to talk with the plaintiff's husband through the plaintiff's phone who could not be of any assistance. He too demanded the arrest warrant, name and force numbers. He could not give any assistance to the police who remained at the scene of crime from 3:00 PM up to 5:00 PM. At this hour,

the police decided to break the door grill as a means of forcing the plaintiff to get out and go to the police station. She agreed to move and they moved to the police station where they recorded her statement and granted her bail.

Looking at what was done by the police, I could not see any fault of procedure which could make the arrest illegal. There was a complaint received by the RCO. He is the regional crimes master who has control of the region including Hai district. He assigned the matter to DW7 on a minute (in writing) in compliance with section 15. DW7 and other policemen moved to the scene of crime and witnessed that part of the house had been demolished. They were satisfied that there were reasonable grounds to believe that the plaintiff had committed the crime of malicious damage to property which according to the Criminal procedure Act attract an arrest without warrant. DW7 complied with section 23 and informed the plaintiff that she was under arrest accused of demolishing the house and was needed at the police station. The plaintiff resisted and moved to lock herself inside the house. After a lapse of 3 hours DW7 broke the grill of the door. He exercised the powers which he had under section 20. This softened the plaintiff who opted to cooperate. She was never beaten or assaulted. She has a friendly encounter with DW6 who is a female police officer. They took her to the police station where she was detained for purposes of recording her statement and granted bail. There was no use of any force save for the exchange of words with some policemen on her arrival which may be normal. That was not a breach of the law but something which was provoked by the report that she had refused the arrest. They wanted to see the stubborn woman! The arrest and detention of the plaintiff was therefore done in

compliance with section 11, 12, 13, 14, 15, 16, 20, 21, 22 and 23 justified and legal.

To the contrary, the plaintiff is the one who appears as being the cause her the problems. She became difficult unnecessarily! DW1, DW2, DW3 and DW4 said that there were two houses which were joined by one wall. The late Aiwedia Mangi had his house which was joined by the wall to the house of his son, Dr. Samwel, the husband of the plaintiff. They lived that way for many years and there was no problem. They say that the house of Mzee Aiwedia was built by himself. DW3 took part in supervising the construction long before the plaintiff was married. They said that it was given to DW1 following the death of their parents. The plaintiff agree that the two houses were joined together but say that both were built by her husband. She did not deny that Mzee Aiwedia and the mother lived in the house till the end of their life. She did not deny that it was given to DW1. This is seen clearly in the evidence in court from herself. She had this to tell the police in her statement, Exhibit D1:-

"SWALI: Je kuna nyumba ambayo imebomolewa kwa lengo la kutenganisha na inasadikika kuwa wewe ndiye uliyebomoa, unasemaje kuhusu swali hili?"

*JIBU: Mimi sijabomoa nyumba yake isipokuwa **nimetenganisha nyumba yangu na nyumba ya baba mkwe ambayo ilikuwa imeungana na nyumba yetu** na mume wangu na nimefanya hivyo kwa maelekezo ya mume wangu...."* (Emphasis added)

This literally means that she has not demolished the house of DW1 but was merely separating their house from that of her father in law which were joined by a wall. She made a similar story in her evidence when she said the following:-

*"Thus after the death of my mother in law, we agreed with my husband that I should remain for six months for supervising the renovation of the house. **My husband wrote a letter to his relatives informing them about the renovation.**" (Emphasis added)*

This letter is what was referred to above by DW1 in his testimony. The letter which they discussed with Mr. Ngiloi in Dar es Salaam and which he gave the police. DW4 Dr. Samwel agreed that his house was joined with that of his father. He supported what was said by his wife, the plaintiff. He said:-

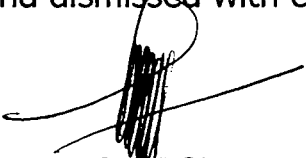
*"It was not construction. **It was separation of houses.** There was another site from the one which was being renovated... it was a big construction" (Emphasis added)*

So it is true that there was a house of the late Aiwedia Mangi which was joined to the house of Dr. Samwel. This house was later given to DW1. The decision to separate the two houses was made by Dr. Samwel who assigned his wife, the plaintiff to do the job. The plaintiff agreed that she engaged masons to separate the houses. The police met them on the day of arrest. One of the masons was PW1 Wilson Mushi who agreed that the police found him at the scene of crime doing the job. He said clearly that they found him there working with his two assistants.

If that was the case, why did she resist the arrest? I think that she had no reason to resist the arrest. She was just required to give cooperation and tell the police what she was doing. Failure to give cooperation to the police and asking unnecessary questions is what caused her to suffer the hardships and not the defendants. It is thus my finding that the arrest and detention of the plaintiff was in line with the law and thus legal. That discussion resolves the first and second issues. With this finding and decision, a discussion on issue number three becomes useless for damages in a tortious action cannot arise where there is no breach of duty.


But a word by way of passing may be useful to parties. It appears that there is a land/probate dispute behind the scene. It has reached an advanced stage because when I visited the area, I could not see the house of the late Aiwedia Manigi. It was completely demolished and the plaintiff and her husband are controlling the whole area. This is a serious issue in light of the evidence of record. I argue the brothers to sit down and find a solution to the problem before it turns to be a *blood feud* and pass to the next generation.

As for the last issue which is on the relief, I will only say that the suit was filed without any legal base and dismissed with costs. It is ordered so.



L.M. MLACHA
JUDGE
22/11/2022

Court:- Judgment delivered. Right of appeal explained.



L.M. MLACHA
JUDGE
22/11/2022