

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM
CIVIL CASE NO. 84 OF 2020**

**HASSAN HUSSEIN MUSSA1ST PLAINTIFF
HUSSEIN ABDALLAH MUSSA.....2ND PLAINTIFF**

VERSUS

**JAMBO FOODS PRODUCTS CO.
LIMITED.....DEFENDANT**

Date of last Order: 04/03/2022

Date of Judgment: 11/03/2022

JUDGEMENT

MGONYA, J.

The Plaintiffs' major complaint in this matter lies on the alleged malicious acts to the Plaintiffs herein by the Defendant and its Agents based on bad faith and maliciously causing illegal arrest, false imprisonment, remanding and ultimately subjecting the Plaintiffs to police investigations and finally the release of the Plaintiff without being charged to any competent court.

The fact from the Plaintiffs' Complaint reveals that, on about, Thursday, 9th day of April 2020, at different hours and location

including the 1st Plaintiff being at his residence at Chang'ombe in Dar es Salaam with his family, and the 2nd Plaintiff while he was at his day to day business operation in Dar es Salaam, based on the reported crime by the Defendant, the Plaintiffs were arrested by police officers. The allegation towards the Plaintiffs were on fraudulently and jointly intent to defraud the Defendant as they were alleged to have issued a fake payment slip for the goods worthy **Tshs. 18,538,000.00** being alleged to be stolen from the Defendant's godown in Shinyanga Region.

From the above, it is said that the Defendant Company intentionally, without any probable cause, maliciously falsely and with bad faith reported the criminal offence at Shinyanga Central Police Station where the investigations process started liaising with the Central Police Station in Dar es Salaam. In due cause, it is alleged that both Plaintiffs were arrested and sent to the Central Police Station in Dare es Salaam before they were taken to Shinyanga under tight police escort.

It is further alleged that after the inquiry, investigations and interrogations, ultimately the Plaintiffs were released as they were seen to have not committed any crime including the alleged one.

Consequently, the Plaintiffs pray for Judgment and Decree against

the Defendant Company for:

- (i) Payment of compensation in the tune of **Tshs. 500,000,000/=**;*
- (ii) Declaration that, the arrest and false imprisonment of the Plaintiffs were illegal;*
- (iii) Interest at the rate of **7%** from the date of filing of this suit till when full payment is made;*
- (iv) **11%** court interest from the date of filing this case to the date of full satisfaction of the Decree;*
- (v) Cost be paid by the Defendant Company; and*
- (vi) Any other relief the Court may deem fit to grant.*

Throughout these proceedings, the Plaintiffs were represented by **Mr. Alex Balomi**, learned Advocate; while the Defendant enjoyed the services of **Mr. Raymond Uiso**, the learned Advocate.

In support of this case, the Plaintiffs paraded two (2) witnesses: PW1 was the 2nd Plaintiff **Mr. Hussein Abdallah Mussa**, while PW2 was the 1st Plaintiff **Mr. Hassan Hussein Mussa**. On the other side, the Defendant had three (3) witnesses to wit **Mr. Antony Paulo**, PW2 was **Godfrey Martin** while **PW3 was F5595 Detective Coplo Swalo**.

After the parties' mediation proved failure, the **Final Pre Trial Conference** was conducted where the Counsel from both sides assisted by the Court, framed and adopted the following issues for determination.

- 1. Whether or not the Plaintiffs did present fake pay-in-bank slips in the sum of TZS 18,538,000.00 to the Defendant?;***
- 2. Whether or not the Defendant maliciously reported to the police and caused the Plaintiffs maliciously arrested?***
- 3. Whether Plaintiffs suffered damages from the Police arrest; and***
- 4. To what relief the parties are entitled to?***

In the cause of determination of this suit, as both Plaintiffs are claiming under the same remedy, I will determine both Plaintiffs testimonies together.

It is the Plaintiffs' testimony that, on or about, Thursday, 9th day of April 2020, at different hours and location, the 1st Plaintiff being in his usual business of transportation, operating Uber services received a police phone call from the Central Police Station where he was needed to submit himself at the said station. On his arrival at the said Police Station, he was arrested.

On the other hand, the 2nd Plaintiff testified to the effect that, on the same day while he was idle sitting with his family at his residence at Chang'ombe Toroli in Dar es Salaam, he was invaded by five people out of them, three introduced themselves to be police officers; while other two gentlemen introduced themselves to be employees of the Defendant's Company, despite of not having any identity cards to that effect.

Upon enquiry to their arrest, they were informed that their arrest based on a reported crime by one of the Defendant's Company employee namely; **Anthony Paul** who testified as **DW1**. It was alleged that both Plaintiffs jointly fraudulently with intent to defraud, presented a **fake Bank pay-In-Slip** were purported to be for payment to the Defendant's Company for the goods worthy **Tshs. 18,538,000.00** procured from the godown of the Defendant Company in Shinyanga Region. Further to that, those goods belonged to the Defendant's Company. It is after the arrest, it is said that, without any probable cause, maliciously, falsely and with bad faith, the matter was confirmed as the criminal offence that had occurred in Shinyanga where they set in motion for investigation in that respect.

The Plaintiffs further testified that, after the arrest, the assigned Police started liaising with the Central Police in Dar es

Salaam where both Plaintiffs were arrested and under stringent security escort of police were transported to Shinyanga. Whereas at the Shinyanga Police Station, further inquiry, investigations and interrogations were conducted to both Plaintiffs, and further subjected under police custody for two weeks and later charged with an offence of obtaining goods by false pretence. However, the charge was withdrawn on the grounds that, the Defendant's Company has no evidence which connected the Plaintiffs with the alleged charged offence followed with the simple deduction that, the Plaintiffs were mistakenly arrested.

It is from the withdrawal of the misconceived charge, the Plaintiffs decided to write the Defendant the demand letter which was admitted in court as **Exh. P1** claiming a total sum of **Tshs. 500,000,000/=** being compensation for unlawful and malicious arrest. However, the said letter was ignored, hence this suit where both Plaintiffs are now claiming the total sum of **Tshs. 500,000,000/=** being compensation for unlawful and malicious arrest, general damages to be assessed by the honorable court, 13% commercial interest per annum from the date of the date of judgment till full satisfaction of the Decree, 11% court rate from the date of the decision of the court to full satisfaction of the

Decree, costs of the suit and any other reliefs the court may deem fit to grant from the Defendant.

Defence had three witnesses. **DW1** was **ANTONY PAULO**, Defendant's Marketing Manager whom testified to the effect that on 21st August 2019, **Mr. Nassor Jabir** went to their Company **JAMBO FOOD PRODUCTS** with the Fuso with registration number **T862 APC** and consumed the goods worth **Tshs. 18,500,061/=**. The witness further testified that, after he had detected that the paying in slip from Mr. Jabir was fake, where he decided to report the matter to Police Station at Shinyanga. At the Police, the witness reported theft of **Tshs. 18,500,000,061/=** whereby it is said that, the person involved in the said theft went to the Defendant's the factory with a vehicle, with **Reg. No. 862 APC**. He said it was from there, Investigation to that effect commenced.

This witness also confirmed later to have seen the Plaintiffs at the Shinyanga Central Police Station and confirm none of them was **Mr. Nassor Jabir** as he knows the latter.

DW2 identified himself as **GODFREY MARTIN**, NMB Geita Branch Manager and a resident of Geita Town. The witness identified and confirmed that the Defendant herein is their client.

Further that on 15/11/2019 his office received a complaint from the Defendant that there is an amount to the tune of **Tshs. 18 Million** which was supposed to appear in their account, however, the same is nowhere to be found.

DW2 confirmed after investigation that the pay in slip which was brought to them in reflection of the said amount was a fake one. The reason given, that the stamp on the document was not from the bank, that the signature thereto is not of any of the bank's employees and finally that the said transaction was not from their bank. Those findings are said to have been communicated to Jambo Food Products the Defendant herein through the letter dated 31st August, 2020.

The last Defendant's witness was **F5595 Detective Coplo SWALO MGAYA** a Police Officer working with the Anti-Robbery Department at Shinyanga Central Police Station as an Investigator. The witness testified to the effect that he knows **Mr. Antony Paul Budotela** (the PW2 herein). The witness named Mr. Budotela to be the person working with Jambo Foods Products at Shinyanga who reported the theft incident to the Police; with the particulars that there was a stolen consignment from the Defendant whereas the said consignment was carried by the Mitsubishi Fuso bearing Registration Number **T862 APC**.

The witness testified that after the Plaintiffs have been arrested in Dar es Salaam and brought to Shinyanga, it is when **Mr. Budotela** (the PW2 herein) confirmed neither among the two Plaintiffs is **Mr. Jabir** who is known to him, hence the Plaintiffs were not involved in the alleged theft. It is from the said confirmation, the witness stated to have released the Plaintiffs.

At the closure of the Defendant's case, this court ordered both Parties to file their respective final submissions. However, it is only the Plaintiffs' counsel who adhered to the said order while on the other side, the Defendant decided not to file the same. I am grateful to the Plaintiffs' counsel for his detailed and professional final submission in respect of this matter.

It is after that submission, I am now in place to determine the controversy between the Parties as hereunder.

To start with the first issue, as to ***Whether or not the Plaintiffs did present fake pay-in-bank slips in the sum of TZS 18,538,000.00 to the Defendant?*** From the history of this case, indeed, the presentation of the fake pay-in slip to the Defendant Company is the central issue which triggered into the arrest of the Plaintiffs in connection with the stolen goods worthy the sum of **TZS 18,538,000.00** belonged to the Defendant. This

act resulted later on to so many other implications which led to the instant case.

It is from the record that in committing the alleged offence, the trailer used had **registration No. T 862 ACC**. This assertion was confirmed by DW 1 **Mr. Antony Paulo** who is the Defendant's Marketing Manager who also reported the matter to Police to that effect. Further, it is still DW1 who mentioned one **Mr. Nassor Jabir** who is said to have gone to the Defendant's factory. This was also confirmed by DW1 after he has seen the Plaintiffs and made it clear that among them there is no **Mr. Nassor Jabir** who is said to have issued a fake cheque as he knows that person. Further, it is DW's testimony that even the car which was used to collect the consignment at the Defendant's factory, was not **T 862 APC** but rather the one involved was **T 862 ACC**, the fact which was confessed by the case investigator at Shinyanga Police Station by the saying that there was a mistake of fact from DW1 in that effect. Similarly, from the Plaintiffs' testimonies, they have testified to the effect that they have never transacted any business with the Defendant's Company. Their testimonies were well corroborated by the Defense Witnesses DW1 and DW3.

From the above facts, there is no need to labor in order to determine the first issue as to whether or not the Plaintiffs did present **fake pay-in-bank slips** in the sum of TZS **18,538,000.00** to the Defendant as they were not there in a first place neither their car being involved in the said theft. In the event therefore, the 1st issue is answered **NEGATIVELY**.

The second issue is *Whether or not the Defendant maliciously reported to the police and caused the Plaintiffs maliciously arrested?*

As seen above, that it was DW1 Mr. Antony Paulo the Defendant's Marketing Manager who reported the matter to Shinyanga Police Station respectively where **a Criminal Case Investigation File No. SHY/IR/800/2020** was opened and **RB** was issued to arrest the Plaintiffs herein. Therefrom, investigations commenced implicating the Plaintiffs in which case the Plaintiffs were unlawful incarcerated into a remand custody for couple of days at Dar es Salaam and later two weeks at Shinyanga before they were released.

The fact of DW1 reporting the matter to Police was also corroborated by **DW3 F5595 Detective Coplo Swalo Mgaya** the case investigator who confirmed that DW1 reported that the trailer with Registration **No. T862 APC** transported the alleged

stolen goods from Defendant's godown. However, after the Plaintiffs have been arrested and transported to Shinyanga, it came to the knowledge of both the investigator and DW1 that the Plaintiffs' vehicle is not the one which was reported. This fact has been evidenced by PW1 when testifying the fact that Fuso with registration **No. T862 APC** is against Fuso with Registration **No. T862 APC** which initially the same was owned by him before he sold the same to his son (PW2). From the testimony of both Plaintiff, the Trailer with Registration **No. T 862 APC** is said to have been seen in the Defendant's cameras and which in fact is said to have been physically at the Defendant's factory on that day and not the Plaintiff's Trailer with Registration **No. T.862 ACC.**

Both Plaintiff testified to the effect that this fact was placed before DW1 who ignored the same and proceeded with the arrest exercise of the Plaintiffs. Out of this fact, I had to refer to the testimony of PW1 who is said to have been introduced to two officers from the Defendant's company who was in company of two police officers who went to arrest him at his home at Chang'ombe Toroli Rwegasore Street House No. 14. In his words he said;

*"After two months, at my house Chang'ombe Toroli Rwegazore Street House No. 14 around 15:00 hours, came four Police Officers at my home. One of them, I noted his name, **DOTTO** with two staffs from Jambo Foods Products Shinyanga who said that I was their accused where my vehicle was used to the theft that occurred at their factory."*

From the above, I have asked myself, if two out of four people who went to arrest PW1 came from the Defendant's Company, they should have taken seriously the registration number of the trailer which belongs to the Plaintiff and compare with the one which is said to have been seen at their factory. However, they denied to have taken PW1's statements seriously and ignored the same which led into a serious confusion of mixing the registration number of which brought a mistake of fact which led to the instant controversy.

This position was also testified by DW3 who confirmed the existence of the CCTV footages showing Fuso with Registration **No. T862 APC** to have consigned the goods stolen and also which was concerned with presentation of the fake Bank-Pa-In Slip by one person known as **Nassor Jabir**.

In my considered view, and after the Police DW3 had confirmed that it was the DW1 who gave them the information to that effect, I hesitate to forward the blame towards Police who were the mere recipients to the report before them. In my considered opinion, the complainant that is DW1 was supposed to have all the proper and correct information taking into consideration the report from the CCTV cameras reporting the matter to police.

Under those circumstances, I have to ask, as what was the rush to report to the police the half cooked information which was later confirmed to be a mistake of fact but ignored and caused all this trouble? Indeed, this act is extremely strange, hence concluded to be **malicious and unusual**.

It is from the record and particularly when **DW3** was called to testify in Court, he clearly and openly told the Court to have seen the footages of a Fuso with Registration **No. T.862 APC** and not T862 ACC carried the goods from the Defendant's godown. This testimony also tallies with the testimonies of the Plaintiffs (PW1 & PW2) that, there was earlier information in the system that there was a mixed up of registration numbers, to the extent of Plaintiffs' relatives to plead on that, but this information was simply ignored by the Defendant who proceeded to facilitate

the Plaintiffs arrest. Further, DW3 told the Court that, the CCTV footages were detected not implicating the Plaintiffs **even before the plaintiffs were arrested**. Consequently, this mark the conclusion of the fact that the **Plaintiffs' arrest was made maliciously and unjustified**.

Consequently, the second issue as to whether or not the Defendant maliciously reported to the police and caused the Plaintiffs maliciously arrested is answered **POSITIVELY**.

The third issue is whether Plaintiffs suffered damages from the Police arrest.

In determining this issue, as far as I have already established that the Plaintiffs' arrest was maliciously, I have decided to begin by saying that: "***Every human being deserves dignity and a freedom to movement.***" Short of that, there must be a reasonable cause to terminate those rights. To start my point, I would like to define what is "***HUMAN DIGNITY***" to be followed by the "***FREEDOM TO MOVEMENT***"

Human dignity is at the heart of **human rights**. What is human dignity exactly? At its most basic, the concept of human dignity is the belief that **all people hold a special value that's tied solely to their humanity**. It has nothing to do with their

class, race, gender, religion, abilities, or any other factor other than them being human. The term "dignity" has evolved over the years. The actual meaning of the word "dignity" established that someone deserves respect regardless of their status. It is something all humans are born with. **Simply by being human, all people deserves respect.** Human rights naturally spring from that dignity.

Human dignity in our Jurisdiction is well recognized in our **Constitution of the United Republic of Tanzania, (1977)**. This right is well articulated under **Articles 12 and 13** respectively. I would like to quote the same in Swahili as I tend to see that even the person who doesn't know this Language of the Court can easily get the concept:

"12. -(1) Binadamu wote huzaliwa huru, na wote ni sawa.

(2) Kila mtu anastahili heshima ya kutambuliwa na kuthaminiwa utu wake.

13.-(1) Watu wote ni sawa mbele ya sheria, na wanayo haki, bila ya ubaguzi wowote, kulindwa na kupata haki sawa mbele ya sheria."

From the above, it is simply said that "**All human beings are born free and equal in dignity and rights.**" When we are saying that everyone is equal, indeed, they are all equally deserving basic respect and rights. One would ask as to why is human dignity so important when it comes to human rights? Recognizing human dignity and the universality of human rights isn't just so individuals can be protected and respected. It's for the good of the entire world. If everyone's rights were respected and everyone got equal opportunities to thrive, the world would be a much happier, more peaceful place.

Further to this, is the right of movement of which again is the Constitutional right. The same states:

17.-(1) Kila raia wa Jamhuri ya Muungano anayo haki yakwenda kokote katika Jamhuri ya Muungano na kuishi katika sehemu yoyote, kutoka nje ya nchi na kuingia, na pia haki ya kutoshurutishwa kuhama au kufukuzwa kutoka katika Jamhuri ya Muungano.

(2) Kitendo chochote cha halali au sheria yoyote yenye madhumuni ya -

(a) kupunguza uhuru wa mtu kwenda atakako na kumweka chini ya ulinzi au kifungoni; au

(b) kuweka mipaka kwa matumizi ya uhuru wa mtu kwenda anakotaka ili-

(i) kutekeleza hukumu au amri ya mahakama; au

(ii) kumlazimisha mtu kutimiza kwanza wajibu

wowote anaotakiwa na sheria nyingine kuutimiza; au

(iii) kulinda manufaa ya umma kwa jumla au kuhifadhi maslahi fulani mahususi au maslahi ya sehemu fulani ya umma, kitendo hicho hakitahesabiwa au sheria hiyo haitahesabiwa kuwa ni haramu au ni kinyume cha ibara hii.

I have decided to take all the trouble to quote the above Constitutional rights Articles in order to show that **indeed all human beings even in Tanzania are equal and deserves to be treated with respect.** From the ambits of **Article 17(1)(a) of the Constitution (Supra)** above, the strength here is, one has to be confined with legal and justifiable causes. Short of that, that will be against human rights.

Coming back to the case at hand, I have heard all the evidence showing that indeed, the Plaintiffs were not involved at all to the said theft for the Defendant's company. This was Plaintiffs cry of which was duly confirmed by even the

Defendant's witnesses, being **DW1** and **DW3** respectively. From all that had happened, I have noted two major problems / shortcomings from the Defendant. In a first place, there was no any kin interest in taking carefully the proper information in respect of the theft that had occurred before reporting the matter to Police. As testified by DW3, the case investigator confirmed that it was DW1, the Defendant's Employee who reported the matter to Police where investigation was conducted and finally the Plaintiffs were unlawfully arrested. It does not cross one's mind that, after reporting to police and even after it was detected that there was an error to the registration number, even before the arrest and transporting Plaintiffs to Shinyanga, it is strange that the Defendant kept on ignoring that crucial information. It is my stand that, even if the first mistake had already taken place, but, immediate after having a knowledge that there was a mistake of fact, the Defendant was supposed to acknowledge the proper information, go back to the cameras and come up with the proper information and rectify the wrong even by simply showing to the Plaintiffs that indeed there was a mistake and plead the Plaintiffs to excuse them for what is said to have been an oversight. Things could not have reached this far and cause so much pain and humiliation to the Plaintiffs.

What I can say out of all this is that, the Defendant and his assistants, lacked humility and sense of humor in handling this matter. In fact, after reading this suit's pleadings, I was of the firm observation that, this was the very fit case for Mediation. However, unfortunately, Mediation proved failure, hence hearing and finally this judgment. I can't skip repeating saying that this case was the best case for mediation as the cause of controversy was already known by the parties.

From all that had happened, it is obvious that both Plaintiff having spent almost three weeks in remand, being transferred from Dar es Salaam to Shinyanga under police escort, arrest in front of the family members (for PW2) have humiliated both Plaintiffs and lowered their dignity. Above all, out of this, their rights were interfered unfairly. Further, their right to be free and limited movement without any reasonable cause, was unjustifiable. It is obvious that confining someone for that period of time, have affected them not only physiologically but also financially as their daily work for a living was suspended as a result of the Plaintiffs unlawful wrongful arrest and confinement.

In the case of ***LEMI ARON V. REPUBLIC (1977) TLR No. 40 (HCT AT Dodoma) Mwesiumo, Ag. J.*** once defined the term “**wrongful confinement**”. He held:

"The term wrongful confinement under section 253 of the Penal Code may be defined as a restraint of a person by another by either a moral or physical force which may be in a form of threats of violence or actual usage of violence upon the restrained victim without sanction of the law or contrary to the provisions of the law of the land."

Further, the Plaintiffs also testified that the movement of their vehicle from Dar es Salaam to Shinyanga and way back to Dar es Salaam was at their own expenses. This too was very unfair. Out of this too, they have also suffered damages, of which the Plaintiffs deserves compensation.

Consequently, the third issue as to ***whether Plaintiffs suffered damages from the Police arrest, is answered POSITIVELY.***

In the upshot, based on what I have endeavored to state herein above, **this court is satisfied that the Plaintiffs**

herein have successfully prove their case to the standard required in civil litigation respectively.

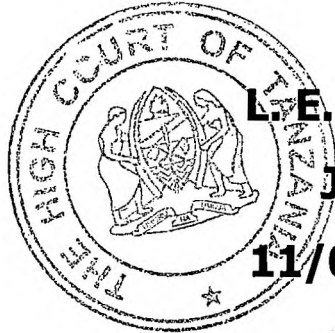
Consequently, I hereby find the Defendant herein liable for Plaintiffs' unlawful arrest, torture and wrongful confinement.

In the event therefore, in regard to the third issue as **to what reliefs are the parties entitled to?** I proceed to grant the Plaintiffs the following reliefs:

- (i) Plaintiffs are entitled to the Payment of compensation to the tune of Tshs. 250,000,000/= by the Defendant for unlawful arrest, torture and wrongful confinement;***
- (ii) The court further declares that the Plaintiffs' arrest and unlawful confinement was illegal and unlawful;***
- (iii) Interest at the rate of 7% from the date of obtaining Court's Judgment and Decree in respect of this decision to the date of full payment; and***
- (iv) Cost to the Plaintiffs to be paid by the Defendant's Company accordingly.***

It is so ordered.

Right of Appeal Explained.



A handwritten signature in black ink, appearing to read "L. E. Mgonya".

L. E. MGONYA

JUDGE

11/03/2022

Court:

Judgement delivered before Honourable V.M. Nongwa Deputy Registrar in the presence of Mr. Raymond Uwisio for Defendant, also holding brief for Mr. Balomi Advocate for Plaintiffs; this 11th March 2022.



A handwritten signature in black ink, appearing to read "L. E. Mgonya".

L. E. MGONYA

JUDGE

11/03/2022