IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB-REGISTRY OF MANYARA

AT BABATI

CIVIL APPEAL NO. 1 OF 2022

(Appeal from the judgment and decree of the District Court of Simanjiro in Civil Case No. 3 of 2021)

TETE OLONYOKE @ CHECHE OLONYOKE.....APPELLANT

VERSUS

SAMBURI SANANGA.....RESPONDENT

JUDGMENT

Date: 9/3/2023 & 26/5/2023

BARTHY, J.

Before Simanjiro District Court (hereinafter referred to as the trial court), the appellant sued the respondent on Civil Case No. 3 of 2021 for an assortment of reliefs namely; payment of Tsh. 60,000,000/- being a compensation for false imprisonment, defamation, general damages to be assessed by court, public apology for the defamatory allegations as well as costs of the suit. The respondent disputed the claims.

A brief factual background giving rise to the instant appeal as gathered from the record is that; the parties in this appeal had a long-

standing dispute over a piece of land which was then referred for adjudication before Simanjiro District Land and Housing Tribunal.

The appellant claimed that while the matter was still pending, the respondent with intention to weaken the appellant's efforts to regain the land in dispute, he made false allegations to the police which led to his arrest.

The respondent had claimed the appellant had set his boma (house with other amenities compound) on fire. The police acting on the said information they arrested the appellant and put him under custody.

It was the appellant's claim that all the allegations made by the respondent were false. The police having learnt they had acted on false report they arrested the respondent for giving false information and the charges are still pending.

Due to those allegations the appellant was arrested and restrained at the police station. The appellant had claimed that due to the arrest and restraint from false accusation his reputation has been lowered and cause him to suffer psychological problems until to-date.

The appellant therefore lodged the claim for compensation to the

tune of Tsh. 60,000,000/- The respondent disputed the claim maintaining that there was no sufficient evidence to justify it.

Upon hearing of the matter, the trial court dismissed the claim for being devoid of merits. The appellant unamused with the outcome of the case, he preferred the instant appeal with three grounds of appeal as follows;

i. *That the trial magistrate erred in law and fact by failure to consider and evaluate the evidence of each witness.*

ii. *That the trial magistrate erred in law and fact by delivering judgment without making logical analysis on reasons of the decision.*

iii. *That the trial magistrate erred in law and fact by delivering the judgment in favour of the defendant while the defendant failed to produce even a single witness.*

During the hearing of this matter the appellant was represented by Mr. Rashid Shaban learned advocate while the respondent appeared in person. By consent of the parties, the appeal was disposed of by written submissions.

Submitting on the first ground of appeal, Mr. Shaban faulted the

trial court for its failure to consider and evaluate the evidence of each witness. He submitted further that, the trial court considered only the evidence of PW3 and PW4 and disregarded the evidence of PW1 and PW2.

It was the arguments of Mr. Shaban that, the trial court's failure to consider the evidence of each witness was contrary to the requirement of the law.

To argument his position he referred to the case of **Yassin Salum Kagurukila v. Republic,** Criminal Appeal No. 106 of 2019, Court of Appeal of Tanzania (unreported), where it was held that the trial court has to consider and evaluate the evidence of each witness and make findings on the issue.

He also cited the case of **Joseph F. Mbwiliza v. Kobwa Mohamed Lyeselo Msukuma & others,** Civil Appeal No. 227 of 2019 (unreported).

Submitting on the second ground, Mr. Shaban further argued that, the trial court delivered a judgment without making logical analysis on reasons of its decision which is contrary to the law.

To buttress his argument, he cited the case of **Abubakari I. H. Kilongo & another v. Republic,** Criminal Appeal No. 230 of 2021

(unreported) where the court held that, every judgment should state facts of the case and give sufficiently and plainly the reason which justify the findings.

For the third ground of appeal, Mr. Shaban faulted the trial for deciding in favour of the respondent while the latter never called any witness to testify in support of his case. He added that, the respondent simply denied the allegations, therefore the appellant's evidence was heavier than that of the respondent.

To this ground, he referred the case of **Hemedi Saidi v. Mohamed Mbilu** [1984] TLR 113 where it was held that, the person whose evidence is heavier than that of the other must win. Hence, Mr. Shaban urged the court to quash and set aside the judgment of the trial court.

The respondent on his reply submission he contended that, the trial court had well considered and evaluated the evidence of each witness particularly that of PW1 and PW2. He further argued, the trial court also evaluated the weakness, inconsistencies and contradictions of the appellant's case as vividly seen on page 3 and 6 of the typed judgment.

The respondent was firm that, the trial court properly analysed the evidence of both sides and made a reasoned decision. He was also of the

opinion that the trial court was right to dismiss the appellant's case for having contradictory, inconsistent and insufficient evidence.

Responding to the third ground, the respondent contended that no particular number of witnesses is required to prove any fact; rather what is important is the credibility of the witness.

The fortify his arguments, the respondent referred the case of **Yohannis Msigwa v. Republic** [1990] TLR 148 and **Goodluck Kyando v. Republic** [2006] TLR 367.

The respondent argued that, the appellant's evidence was neither strong nor heavy to establish the claims. It was therefore his conclusion that, the appellant failed to prove his claims, thus the case was dismissed.

On rejoinder submission the appellant maintained that, there were four witnesses who established the case against the respondent compared to the respondent who did not call any witness. The appellant was of the view that his evidence was watertight and the trial court ought to have decided in his favour.

On rejoinder submission, Mr. Shaban essentially reiterated his submission in chief and added that, the evidence of PW3 and PW4 was

considered in nutshell while the evidence adduced by the appellant (PW1) and PW2 was never taken into account.

Having gone through the rival submissions of the parties in respect of this appeal, in determining the merit of this appeal or otherwise, all three grounds of appeal are centered in a single issue as to whether the trial court failed to analyse properly the evidence adduced by the parties and arrive into erroneous conclusion.

I have carefully gone through the judgment of trial court in order to determine the basis of the appellant's claims. The trial court had raised two issues for determination as follows';

I. *Whether the appellant was falsely imprisoned*

II. *What reliefs parties are entitled to.*

In resolving this appeal, all the grounds of appeal will be addressed together as they are inter-related. Having gone through the records of the trial court, it is clear that the trial court considered the evidence of PW1, PW3 and PW4 and that of the defendant/respondent in its judgment. However, the evidence of PW2 was not considered.

Going through the judgment of the trial court, there is no doubt that

the evidence of PW2 was not accorded any weight on the analysis made by the trial court in its findings.

It is now an established principle that, the trial court had the duty to evaluate the evidence of each witness as decided in the case of **Paulina Samson Ndawavya v. Theresia Thomas Madaha,** Civil Appeal No. 45 of 2017 (unreported) where it was held that, it is a duty of the trial court to evaluate evidence of each witness and make findings.

This being the first appellate court it has to step into the shoes of the trial court and re-assess the evidence and come to its findings. Therefore, the evidence of PW2 will be re-assessed with other evidence on record in addressing the grounds of appeal.

In all grounds of appeal, the trial court is reproached for not having logical analysis of evidence as well as reasons for the decision. Also, the impugned decision is faulted for deciding in favour of the respondent who had not called a single witness to testify on his favour.

In addition to that, the trial court is assailed for not deciding the matter in appellant's favour. The appellant believes that he had stronger evidence which established his claim compared to the respondent who never called any witness. The appellant therefore claimed he had stronger

evidence than that of the respondent, the reference being the case of **Hemedi Saidi v. Mohamed Mbilu** (supra).

The respondent maintained that, no particular number of witnesses is required to prove any fact, rather what is important is the credibility of the witness. His arguments were buttressed with cases of **Yohannis Msigwa v. Republic** [1990] TLR 148 and **Goodluck Kyando v. Republic** [2006] TLR 367.

As rightly submitted by respondent that, there is no particular number of witnesses required to establish a fact. What is taken into consideration is the weight of the evidence adduced by the witness.

The issue for determination is whether the appellant established the claim. It is apparent that this matter is dwelt on the claim of false imprisonment.

I have thoroughly gone through the plaint in order to see whether the particulars of the false imprisonment were clearly stated. The appellant's claim that he was falsely imprisoned by the respondent is based on his arrest made by the police acting on the information supplied by the respondent.

This is supported by the evidence of PW4 one Elia Meena who by then was the OC-CID for Simanjiro District supported with the testimony of appellant himself, PW2 and PW3. The respondent had reported the appellant and another person that they had set his boma on fire.

The appellant was therefore arrested and put under restraint from 10.00 hours to 16.00 hours. In the case of **Moris A. Sasawata v. Matias Malieko** [1980] TLR 158 it was held that;

> *In order 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.*

In the instant matter there is no doubt that the appellant was arrested and kept under police restraint for about 8 hours. With the evidence available on record, it is clear that the respondent was responsible for the appellant's restraint. The respondent on his testimony before the trial he also admitted to have made a report to the police.

The respondent was then arrested for giving false information to the police. It is therefore clear that, the report and restraint of the appellant was not justifiable as the alleged arson was never committed. In that account, Mr. Brother Judge Kilekamajenga in the case of **Theresia Isaya v. Agnes Adolf,** Civil Appeal 10 of 2019, High Court at Bukoba, [2021] TZHC 3266, he observed that, false imprisonment does not apply where the restraint is justifiable.

As the law requires who alleges to prove, the burden of proof lied to the appellant to prove on the balance of probability that he was falsely imprisoned. With the evidence available on record, there is no doubt that the appellant discharged the burden, as provided under Section 110 (1) of the Evidence Act [CAP 6 R. E 2022], (the Act). As the respondent could not prove the restraint was lawful.

I therefore come to the findings that the appellant proved his claim of being falsely imprisoned. Thus, I find the first and third grounds of appeal being meritorious. Now this leaves this court to determine the reliefs sought.

The appellant had sought for assortment of reliefs including the compensation for false imprisonment, defamation, general damages to be

assessed by court, public apology for the defamatory allegations as well as costs of the suit.

Going through the plaint and evidence on record, the tort of defamation was not pleaded nor proved before the trial court. Hence, there won't be compensation for the same or the relief of public apology.

Assessing general damages is in the discretion of the court, however, the discretion should be exercised judicially coupled with reasons.

The appellant on his testimony he stated that, after the arrest and restraint he lost peace, he was disturbed, he suffered psychologically and his reputation was damaged. The appellant's witnesses testified to affirm the humiliation the appellant had suffered from the action of the respondent.

From the evidence on record, it is clear that the appellant did suffer from mental torture and his reputations tarnished in the society. The appellant is entitled to damages as a consolation for his mental agony, humiliation of his dignity and lowered reputation from the arrest and restraint caused by the respondent.

This now brings in the question as to what damages and compensation is the appellant entitled to? This being not an easy task, when faced with the similar situation the court in the case of **Morris A. Sasawata v. Mathias Malieko (supra)** had this to say;

> *"However difficult the task of assessing damages may be in a particular case/ the Court must endeavour to do its best and reach at a figure, which it considers in the circumstances of that case to be reasonable, white remembering that, it is not the duty o f the Court in a Civil case to punish the wrong doer but to compensate the victim."*

The appellant on his plaint has prayed to be paid a total amount of Tsh. 60,000,000/- which this court considers it to be too excessive and unjustifiable. In that view, the amount of Tsh. 3,000,000/- will meet the end of justice. I thus order the respondent to pay the appellant the damages to the tune of Tsh. 3,000,000/- and the costs of this suit.

I order accordingly.

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
MANYARA SUB-REGISTRY

Dated at **Babati** this 26th day of May, 2023.

G. N. BARTHY,

JUDGE

Delivered in the presence of Mr. Festo Jackson holding brief of Mr. Sashid Shaban for the appellant and the parties in person.