

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(DAR-ES-SALAAM DISTRICT REGISTRY)**

**AT DAR-ES-SALAAM**

**CIVIL CASE NO. 131 OF 2020**

**DIANA KAJUMULO ..... PLAINTIFF**

**VERSUS**

**ESTER RICHARD NDUTO ..... DEFENDANT**

**JUDGMENT**

Date: 08/05 & 28/06/2023

**NKWABI, J.:**

This is a claim under false imprisonment, which is however, disputed by the defendant who asked this court to dismiss it with costs. The plaintiff, testified and tendered several exhibits. The defendant defended herself and was flanked by one witness. The plaintiff claimed that she was detained and held in police cell on 15<sup>th</sup> August, 2019 at around 11:30 am to 16<sup>th</sup> August, 2019 at around 1:30 pm when she was released without being charged with any offence. The defendant had reported to the police that the plaintiff obtained building materials from the defendant by false pretences, which according to the plaintiff, the report was false, untrue and actuated by malice.

The plaintiff is therefore claiming for the following reliefs:

1. The defendant to pay to the plaintiff the sum of Tanzanian Shillings seven hundred million (Tzs 700,000,000/=) only, being damages arising out of false imprisonment.
2. The defendant pays to the plaintiff special damages to the tune of T.shs three hundred million (Tzs 350,000,000/=) sic only, being loss of expected business profit.
3. The defendant pays the plaintiff the sum of Tanzanian shillings three hundred million (Tzs 300,000,000/=) only, being exemplary damages,
4. The defendant pays plaintiff's costs of the suit, and
5. Any other relief(s) this honourable Court may deem fit.

The defendant disputed the claim and demanded the plaintiff to prove her suit. It is thus, parties were required to bring their evidence to prove their case. On the first day of the hearing, the Court drew up the following issues for its consideration and determination.

1. Whether the plaintiff was forcefully imprisoned.
2. If the answer in the (1) is yes, whether the defendant was responsible for the alleged imprisonment.
3. What remedies are the parties entitled to.

The plaintiff is represented by Mr. John D. Kamugisha, learned counsel while the defendant is represented by Mr. Claudio Msando, also learned counsel. After the close of the defence case, the learned counsel filed written submissions for and against the case. I profoundly respect their submissions.

I will consider the 1<sup>st</sup> issue which is whether the defendant falsely imprisoned the plaintiff. While it is the testimony of the plaintiff that she was reported to the police to have obtained building material by false pretences, that she was then arrested and thrown into police custody for 24 hours or so. It was also testified that the report was false and malicious.

On her side, the defendant admits to have reported the matter to the police but the plaintiff was not put in police cell. The matter was resolved after the plaintiff paid for the building materials. So, there is nothing wrong with the report. In any case the plaintiff failed to prove that she was incarcerated in the police custody.

It is overused law that to constitute false imprisonment there must be restraint of the plaintiff's liberty. That was position was underscored in a case which is cited by the counsel of both parties which is **Moris A. Sasawata v. Matias Malieko** [1980] TLR 158 HC where it was stated that:

- i. *"to constitute false imprisonment there must be restraint of the plaintiff's liberty;*
- ii. *the actual perpetrator of an act which in law turns out to be a tort is personally liable for damages;*
- iii. *in a suit for false imprisonment the plaintiff can recover damages for loss of reputation;*
- iv. *it is the duty of the court in civil proceedings to draw the attention of the parties to some ambiguity, factual error or omission in their pleadings."*

See also **Simon Chatanda v. Abdul Kioma**, [1973] LRT No. 11, HC cited by the counsel for the plaintiff.

Just as stated by the counsel for the respondent, which I accept as established law, that he who alleges must prove. See **Barka Saidi Salumu v. Mohamedi Saidi** [1970] HCD No. 95, Hamlyn, J. where he held:

*"This clearly is not so, and the litigant should produce what evidence there is to establish her case."*

In this case, the plaintiff is under the obligation to prove her allegations of false imprisonment. The counsel for the defendant submitted that there is no evidence on record to prove that the plaintiff was falsely imprisoned on

the material day because there is no evidence and no police officer from Mabwepande police station who came to testify and the defendant's counsel asked this Court to hold adverse inference against the plaintiff.

Indeed, it is mundane law that the contents of the document must be proved by the document itself, be it primary or secondary, see **Ramji Vs Shivji Jossa & Sons** [1965] EA 125. See also section 63 of the Evidence Act, Cap. 6 R.E. 2022. Thus, since the plaintiff claims was put into the police lock-up for 24 hours or so, which incidence was recorded by the police, she ought to have tendered the detention register or a certified copy of the same. Though there is no law which requires to proof a fact by more than one witness, in the circumstance of this case, the plaintiff may be required to bring a police officer from the police station to tender the police detention register (O.B.) and testify on it. Failure of which, adverse inference has to be accorded against the plaintiff for such failure. I follow the decision in **Hamza Byarushengo v. Fulgencia Manya & 4 Others**, Civil Appeal No. 246 of 2018, CAT (unreported) where it was stated that:

*"In the circumstances, the sound recording of the said libelous allegations was material evidence and failure to produce it entitled the trial court draw an inference adverse*

*to the appellants' case. See **Azizi Abdalah v. Republic** [1991] TLR 71. Probably, the video sound recording could have possibly remedied what was missing in the blank dots. Without exact words complained of, the substance and effect of the alleged defamatory word is not enough to prove defamation and as such, the respondents were not better placed to make the appropriate defences. See **Nkalubo v. Kibirike** (supra).*

In the premises, it is impossible to affirmatively say that the plaintiff proved that she was falsely imprisoned, as submitted by the counsel for the plaintiff on the first paragraph of the introduction on the written submission. The first issue should therefore be decided in the negative.

Since I have determined that the plaintiff has failed to prove the claimed false imprisonment (unlawful confinement), it is impossible for this Court to find the defendant liable for any general damages, special damages or exemplary damages for the tort has not been proved by the plaintiff. It is therefore opportune moment to hold that the 2<sup>nd</sup> issue which is if the answer

in the (1) is yes, whether the defendant was responsible for the alleged imprisonment (unlawful confinement) naturally crumbles to the ground.

Lastly, in respect of the last issue, that is what remedies are the parties entitled to. The parties in this suit are entitled to a relief of dismissal of the suit with costs for want of merits.

It is so ordered.

**DATED at DAR-ES-SALAAM this 28<sup>th</sup> day of June, 2023.**



  
J. F. NKWABI

**JUDGE**