

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

DODOMA DISTRICT REGISTRY

DC CIVIL APPEAL NO. 45 OF 2022

HASSANI FURAI KIJOSI.....APPELLANT

VERSUS

JUMANNE DAFI1st RESPONDENT

MOHAMED JUMANNE.....2nd RESPONDENT

JUMANNE ADAMU3rd RESPONDENT

MIKAEL EMMANUEL4th RESPONDENT

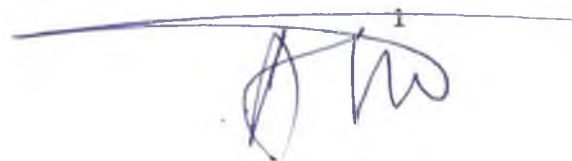
RAMADHANI ATHUMANI5th RESPONDENT

JUDGEMENT

Date of Judgment : 07/11/2023

Mambi, J.

This judgment emanates from an appeal filed by **HASSANI FURAI KIJOSI** against the respondents challenging the decision of the trial district court of



Singida. In the District court, the respondents successfully sued the appellant for malicious prosecution.

Aggrieved, the appellant filed his Memorandum of appeal relying on three similar grounds of appeal.

During hearing, both parties appeared unrepresented. While the appellant relied on his grounds of appeal, the respondents relied on their reply to the grounds of appeal. Having perused the grounds of appeal, reply and the records from the trial court, my mind directs me to one key issue that needs to be determined by this court. In my considered view the main issue is whether the respondents proved malicious prosecution at the trial court or not. It is on the records that the trial court concluded that Malicious Prosecution against the appellant. Before, I answer this issue, I wish to first highlight the concept of malicious prosecution and how can the claimant prove this tort claim. Briefly, the common law tort of "**malicious prosecution**" can be briefly defined as a prosecution on some charge of crime which is willful, wanton, or reckless, or against the prosecutor's sense of duty and right, or for ends he knows or it's bound to know are wrong and against the dictates of public policy. General, malicious prosecution is coated with two essential elements, namely, that no probable cause existed for instituting the prosecution or suit complained of, and secondly, such **prosecution** or suit terminated in some way favorably to the defendant therein. One may also refer one of the persuasive decisions from India in ***West Bengal State Electricity ... vs Dilip Kumar Ray on 24 November, 2006***. In this regard, malicious prosecution may also be referred as an **act to institute an unsuccessful criminal proceeding maliciously** and **without reasonable and probable cause**. This means

that where such prosecution causes such damage to the party prosecuted it is a tort for which he/she can bring an action. It is trite law that in addressing the claim of malicious prosecution, the court is duty bound to comply with the guiding principles or conditions of liability for such claim. It is trite law that for one to be found liable for an action for damages for malicious prosecution based upon criminal proceedings, the test is not whether the criminal proceedings have reached a stage at which they may be correctly described as prosecution; but rather the test is whether such proceedings have reached a stage at which damage to the plaintiff results. In this regard, in order for the claimant or plaintiff to succeed in claims for malicious prosecution, the very claimant must prove that there was actually a prosecution against him/her without reasonable and just cause, initiated by **malice** and the case was resolved in the plaintiff's/claimant's favor. The other requirement is that the plaintiff is duty bound to prove that damage was suffered as a result of the prosecution.

Indeed, under the common law, a prima facie case of malicious prosecution required the plaintiff to prove **intentional** and **malice** of the defendant and such prosecution must have harmed the reputation of the plaintiff, thus causing damage to the plaintiff. It follows that, to prove prima facie malicious prosecution, a plaintiff must show all four key ingredients that I have alluded above namely;

- (a) the plaintiff was **criminally prosecuted**.
- (b) the charges were actuated with **malice and no reasonable or probable cause**.
- (c) the prosecution ended in the **plaintiff's favor**.
- (d) as a result of prosecution, **the plaintiff suffered damage**

Failure to establish the above conditions will mean that the claimant failed to prove prima facie malicious prosecution. Conversely, in order to succeed in the claim related to malicious prosecution the plaintiff must prove that there was a prosecution without reasonable and just cause, initiated by malice and the case was resolved in the plaintiff's favor. I am of the considered view that, it is indeed necessary to prove that damage was suffered as a result of the prosecution.

The question at this juncture is; did the respondents at the trial court prove the above ingredients of malicious prosecution or not? Did the trial court analyze the evidence of both parties based on the above four ingredients for proof of malicious prosecution. It was the duty of the trial court to show if the four ingredients of malicious prosecution were proved. The other issue as an ingredient of the tort of malicious prosecution, is whether the defendants at the District Court acted maliciously. This court will in the due course answer those questions. It should be noted that like the concept of lack of reasonable and probable cause, the concept of malicious is not easy to prove and define but it has been suggested that "malice exists unless the predominant wish of the accuser is to vindicate the law" [See **STEVENS VS. MIDLAND COUNTIESJRY** (1854) 10 Ex. 352, 356 quoted in Winfield and Jollowizc on Tort P.350]. The question is whether there was any evidence by the respondents at the trial Court to show that the appellant acted or prosecuted them maliciously.

Going through the trial records and the evidence by the respondents, I find that at the trial court, the claim on malicious prosecution by the respondents was not proved on the balance of probabilities basing on the four ingredients

of the malicious prosecution. It is on the records that the trial court did not give reasons on its decision as to how it reached to conclude that the respondents proved malicious prosecution. It is trite law that the judgment must show how the evidence has been evaluated with reasons. It is a well settled principle of the law that every judgment must contain the **point or points for determination, the decision thereon and the reasons for the decision**. The decision maker such as the chairman in our case is bound to give reasons before making his decision. Failure to do so left a lot of questions to be desired. The guiding principles for making decision and writing judgment are found under Order XXXIX rule 31 of the Civil Procedure Code, Cap 33 [R.E2019]. The provision states that:

"The judgment of the Court shall be in writing and shall state—

*(a) **the points for determination;***

(b) the decision thereon;

*(c) **the reasons** for the decisions; and*

(d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled, and shall at the time that it is pronounced be signed and dated by the judge or by the judges concurring therein".

Under the above provision of the law, the word "**shall**" according to the law of Interpretation Act, Cap1 [R.E.2019] implies mandatory and not option. This means that any judgment must contain point or points for determination, the decision thereon and the reasons for the decision. See also the decision of the court in ***Jeremiah Shemweta versus Republic*** [1985] TLR 228,

In my readings and perusal of the judgment of the trial court, I did not find any reason made by the trial magistrate for his decision.

As pointed above, for one to succeed in this tort he must prove cumulatively all the four ingredients outlined. It is not enough just to say one has been arrested and held by the police or any law enforcement officer and claim that there was malicious prosecution. Equally, where one is arrested, sent to the court, and acquitted, one cannot automatically claim for malicious prosecution without proving such claim. This means that for one to succeed in the tort of malicious prosecution he not only needs to prove unreasonableness of the defendant in prosecuting a criminal case but also malice. It is not enough to prove malicious prosecution by merely basing the decision on the fact that the defendant prosecuted the plaintiff, it must be proved that defendant acted maliciously. It appears the trial court having found that the respondents were arrested and prosecuted, it went on concluding that there was maliciously prosecution without analyzing the evidence in line with ingredients of malicious prosecution.

I must say and it is a common ground that to prove the malicious prosecution, the plaintiff/Plaintiff (the respondents at the trial court court) is/are duty bound to show on the balance of probabilities that the defendant actually maliciously prosecuted the plaintiff. The court must apply all tests of malicious prosecution before making its decision.

Looking on the evidence for the respondents at the trial court in totality this Court is satisfied that the respondents failed to prove malice on the part of the appellant.

I also at this juncture wish to highlight that it is the duty of the State to protect its citizens against evils. Indeed, section 9(1) and (2) of the Criminal Procedure Act, Cap 20 [R: E 2022] categorically calls upon citizens to report criminal acts to the police. The law further calls upon the police to act reasonably on the information reported to them in their failed to prove if the appellant and the police acted unreasonably in arresting and finally prosecuting them.

In light of the above reasoning this Court finds the respondents failed to prove their claims at the trial court. Basing on my observations and analysis I find this appeal merited and deserve to be allowed. The decision of the the trial court is set aside. Given the circumstance of this case, I make no orders to costs.



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A.J. MAMBI

JUDGE

07.11.2023

Judgment delivered this day of 07 of November, 2023 before both parties.



A handwritten signature in blue ink, appearing to read "A. Mambi".

A.J. MAMBI

JUDGE

07.11.2023

Right of appeal explained



A handwritten signature in blue ink, appearing to read "A. Mambi".

A.J. MAMBI

JUDGE

07.11.2023