

IN THE HIGH COURT OF TANZANIA

TANGA SUB-REGISTRY

AT TANGA

CIVIL CASE NO. 05 OF 2023

RAJABU FAKI MBWANA PLAINTIFF

VERSUS

KHALID AHMED MUSTAFA 1ST DEFENDANT

MBARAKA MAKBEL MBARAK 2ND DEFENDANT

JUDGMENT

19/03/2024 & 19/04/2024

NDESAMBURO, J.:

The plaintiff initiated this civil suit seeking compensation for false imprisonment allegedly perpetrated by the defendants on occasion dated the 27th of November 2022. In the filed plaint, the plaintiff contends that on the 9th of March 2022, he entered a contract with the defendants for the sale of his property located at plot No. 37 Block 231 Kana in Tanga City. Before this sale agreement, the plaintiff had leased a portion of the property to HTT for installing a telecommunication tower. The plaintiff asserts that the

defendants were to assume the lease from HTT and receive rental payments accordingly. However, the defendants failed to effectuate the transfer, leading to HTT's payment of rent to the plaintiff on the 13th of July 2022.

Upon learning of this payment, the defendants, accompanied by police officers went to his garage. They took him to the police station where it allegedly coerced the plaintiff into signing an agreement to pay them an increased sum. Subsequently, on the 27th of November 2022, the defendants, accompanied by the police, went to his house and purportedly searched the plaintiff's residence and subjected him to false imprisonment until the following day. While still unlawfully detained, the plaintiff was escorted by the police to withdraw funds from his bank account and pay the defendants. As a result of these actions, the plaintiff seeks compensation for general damages arising from stress, mental pain, embarrassment, and inconvenience caused by the defendants, along with interest, costs, and any other relief deemed appropriate by the court.

On the other hand, the defendants contested the claim by submitting a written statement of defence, seeking the dismissal of the suit with costs. They argued that upon discovering that the plaintiff had received rental payments from HTT, a tenant on their property, they requested reimbursement from the plaintiff. Allegedly, the plaintiff refused to refund the rent, prompting the defendants to report the matter to the Chumbageni police station, resulting in the issuance of RB No. TAN/RB/4050/2022 and the opening of an investigation for obtaining money by false pretences against the plaintiff. Subsequently, the plaintiff was arrested and underwent standard criminal procedures. Before being brought to court, the plaintiff was granted bail by the police. At this juncture, the plaintiff proposed an amicable resolution, culminating in an agreement to refund the money within a month. Regrettably, the plaintiff failed to honour this commitment, prompting the defendants to resort to involving the police once again. The defendants deny any false imprisonment of the plaintiff.

Before the hearing began, three key issues were delineated to aid the court in adjudicating the case. These issues were:

- i. Whether the detention was unlawful.*
- ii. If number one is answered in the affirmative, whether the defendants were responsible.*
- iii. To what reliefs are the parties entitled to?*

During the hearing of the matter, the plaintiff was unrepresented while the defendants had the service of Mr. Ahmad Abdallah, a learned counsel.

The plaintiff presented three witnesses. Conversely, the defendants called two witnesses. None of the sides tendered any documentary exhibits. The plaintiff made final submissions, and I appreciate his diligent effort, his submission will be considered while determining this matter.

To begin the plaintiff's case, was Rajabu Faki Mbwana, the plaintiff himself who testified as PW1. In his testimony, he testified that on the 1st of April 2022, he entered into a sale agreement with the defendants for the sale of his house located at plot no. 37 Block 231 at the Kana area in Tanga. In the sold plot in the backyard, there is an area which he had rented to TIGO for a lease of 30 years. He informed the defendants of the existing contract and that TIGO will

pay them directly. However, on the 13th of July 2022, TIGO deposited the rent into his bank account. Sometimes in August 2022 he wrote to TIGO informing them of the changes and asked them to pay the rent directly to the defendants, the letter was copied to the defendants.

On the 3rd of September 2022, he was arrested at his garage by two police officers accompanied by the defendants and taken to Chumbageni police station. He was informed of accusations, including collecting rent from TIGO. Later on, he was granted police bail and ordered to report back on the 3rd of October 2022. On that date, he met the two defendants at the police station, where he was falsely asked to sign an agreement to refund them Tshs. 9,000,000/= within one month.

He further testified that he was unable to meet the deadline and on the 27th of November 2022, the defendants, accompanied by police went to his house, searched his residence took him to Chumbageni police station where he was detained overnight. In the morning, he was escorted by the police to his bank. There, he

withdrew Tshs. 9,000,000/= and handed it to the defendants before being released from police custody.

Tima Rajabu Faki, PW2, testified that on the 27th of November 2022, around 9:00 pm, she was called by her father, PW1. Upon going outside, she observed two vehicles: one police vehicle and another private vehicle, with her father inside the police car. Her father was then taken to the police station. The next morning, accompanied by her brother, she visited her father at the Chumbageni police station, where he was taken out of the police cell. Subsequently, accompanied by the police, they returned home, and later, the police, her father, and brother left for the bank.

The plaintiff's final witness, Salehe Rajabu Faki, testified as PW3. He stated that on the 30th of September 2022, the second defendant, accompanied by two police officers, took his father from their garage to Chumbageni police station. At the police station, he bailed out his father, who was then ordered to report the following day. At the police station the next day, his father was coerced into signing an agreement acknowledging a debt and was given a month

to repay that debt. On the 27th of November, 2022 PW2 informed him over the phone of his father's arrest. On the next day, he went to Chumbageni police station where he accompanied his father from the police station to their home and subsequently to the bank, where his father withdrew cash and handed it over to the second defendant.

In his defence, DW1 testified about the sale contract entered into with the plaintiff regarding the property located at plot no. 37 Block 231 Kana in Tanga City. Further, within the property, there was a tenant with a communication tower. Upon seeking rent from the tenant and being informed that it had already been paid to the plaintiff, they visited the plaintiff for clarification. He proceeded to testify that, the plaintiff refused to pay them and they subsequently reported the matter to the police station, where a charge of obtaining money by false pretences was opened against the plaintiff via RB no. TAN/RB/4050/2022. On that day, accompanied by the police, they visited the plaintiff's house, where he was taken to the police station. After that, they were ordered to report to the police station on the following day. In the morning while at the police station, and upon a

discussion, the plaintiff agreed to settle the matter amicably and requested a month to settle the debt in writing.

DW1 further testified that while awaiting payment, they received a letter from the plaintiff's advocate instructing them to take legal action. In response, they returned to the police station, where they were asked to assist the police in locating the plaintiff's residence, which they did. They were then instructed to return to the police station the following morning. The next morning, the plaintiff proposed an amicable settlement and expressed readiness to pay the debt, which they accepted. After a brief wait, the plaintiff paid them Tshs. 9,000,000/= within two hours. DW1 asked this court to dismiss the plaintiff's case.

DW2, Khalid Ahmed Mustafa, testified that he was familiar with the plaintiff, who sold them a house/plot in the Kana area. In the sold plot, there were tenants and among them was TIGO, which had erected a communication tower. It was Mr. Rajabu who had contracted with TIGO and hence he was maintaining communication with them. While still in the title transfer process, they discovered

that the plaintiff had collected rental charges from TIGO. Attempts to clarify the situation with the plaintiff proved unfruitful, leading them to seek police intervention. A charge of obtaining money by false pretences was filed against the plaintiff. However, the plaintiff requested to settle the matter amicably and asked for a month to repay the debt.

He proceeded to testify that, the agreed-upon time elapsed without repayment, and they decided to return to the police station. The police asked them to assist in locating the plaintiff. The plaintiff was found and the police then took action as per their procedures.

They visited the police station on the following day where the plaintiff agreed to pay them to resolve the matter, which they agreed. On being cross-examined, DW2 denied having falsely imprisoned the plaintiff; rather, it was the police who detained him according to their protocol. DW2 requested the court to dismiss the case with costs.

Following the conclusion of the defence's case, the appellant requested permission to submit a final written submission, a request

that was granted by the court. I appreciate the submission, which will be carefully reviewed in the process of determining this appeal.

After summarizing the evidence from both sides, this court will now proceed to determine the three framed issues. The first issue is whether the detention was unlawful.

It is crucial to acknowledge at this point that false imprisonment constitutes a distinct tort under common law principles, requiring specific elements to be established for liability. Unlawful detention stands as a critical element to be proven in a tort of false imprisonment. In this case, the plaintiff bears the duty to demonstrate that his restraint on the 27th of November 2022, at Chumbageni police station was unlawful, while the defendants are tasked with proving that the detention was lawful.

Both parties agree on the sale of the plot between them and acknowledge the presence of a tenant who had erected a communication tower on the property in question. The defendants testified that upon discovering that the plaintiff had received rent from TIGO and efforts to secure a refund were unsuccessful, they

reported the matter to the police station. Consequently, an offence of obtaining money by false pretences was opened against the plaintiff under RB No. TAN/RB/4050/2022. The plaintiff does not contest that TIGO made payment into his bank account, which rightfully belonged to the defendants. Furthermore, he does not dispute that police officers, accompanied by the defendants, visited his residence, resulting in his arrest and subsequent detention at the police station until the following day.

The question at hand is whether the defendants falsely imprisoned the plaintiff by reporting the matter to the police station. In his final submission, the plaintiff contends that the defendants instigated the unlawful actions leading to his detention. Moreover, he argues that since the issue was civil, the plaintiff's arrest was deemed unlawful and illegal. I disagree with the plaintiff's claim that the arrest and subsequent restraint at Chumbageni police station were executed by the defendants. Instead, these actions were a result of a lawful process done against him following the report via RB No. TAN/RB/4050/2022. The defendants merely reported the matter to the police station and assisted in locating the plaintiff. The decision to

open the charge and detain the plaintiff was made by the lawful authority as part of their lawful procedures, and which was beyond the control of the defendants. That authority is responsible for maintaining public order and safety, enforcing laws, and preventing, detecting, and investigating crimes, within their mandate, they are authorized to arrest individuals suspected of committing offences, gather evidence, and uphold the law within a specific jurisdiction. This means that what they did was within their lawful authority. In my judgment, the defendants' decision to report the incident to the police and identify the plaintiff's residence as the victims of what happened to them were justified, as they had reasonable and probable cause. See **Massoud Issa Sungura and 10 Others v Security Group (T) Ltd**, Civil Appeal No. 176 of 2018, CAT (Unreported) where the Court of Appeal held:

"If the victims of crimes who lodged complaints with the police were subjected to an action for malicious prosecution, the repression of crime would be incubus".

Therefore, I conclude that the plaintiff's detention was the outcome of a lawful process following the report made by the defendants to the police. Hence, the plaintiff's detention was lawful.

Since the first issue has been decided against the plaintiff, the second issue becomes redundant. Furthermore, the defendants were not responsible for restraining the plaintiff in any way.

Regarding the relief sought by the parties, the defendants have requested costs in their written statement of defence and testimonies. However, considering the existing relationship between the parties and maintaining harmony, I hereby order that each party bear its costs.

In the end, the suit is hereby dismissed. Each party is to bear its costs.

It is so ordered.

DATED at **TANGA** this 19th April 2024




H. P. Ndesamburo

JUDGE