

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
DAR ES SALAAM SUB-REGISTRY
AT DAR ES SALAAM
CIVIL CASE NO. 11 OF 2023
ZARINA MOHAMED SIDIK..... PLAINTIFF
VERSUS
RAFIKAHAWA MOHAMED SIDIK.....DEFENDANT**

JUDGMENT

MKWIZU, J

The facts of this case are one of its kind that denies the famous aphorisms that *"A mother is a precious gift to be cherished and respected"*. The plaintiff, Zarina Mohamed Sidik is a biological daughter of the defendant, Rafikahawa Mohamed Sidik, earning their lives through businesses at Kariakoo area in Dar es salaam. As the facts would show, the two had no good terms. According to PW1, there was a lot of disagreement and misunderstanding between her and her mother that culminated into a report made to the police on 29th November 2019 by the defendant accusing the her for uttering abusive language in a manner that was likely to cause a breach of peace. Plaintiff was arrested, charged and ultimately convicted by the Kinyerezi District Court in criminal case No. 254 of 2921 for using abusing language and accordingly sentenced to a one-year imprisonment term that subjected her to serving the meted sentence to almost half way before her conviction and sentence was quashed by this court, Masabo J in Criminal Appeal No. 200 of 2021(part of exhibit P1).

PW1 believes that the case was fictional. That the reporting of the incident to the police by her mother(the defendant) was done maliciously done without any reasonable or probable cause condemning the

defendant for taking an active role in the prosecution of her case which was concocted just to injure her reputation and as a result she has suffered harm in reputation and credit, humiliation, mental suffering, discomfort, time wastage, loss of business, and other inconveniences. She is now praying for judgment and decree as follows:

- i. Payment a total sum of money to the tune of Tanzania Shillings Five Hundred Million (Tshs. 500,000,000/=) being the compensation for injuries the plaintiff suffered caused by malicious prosecution.
- ii. Payment of a total sum of Tshs. 200,000,000/= being the general damages,
- iii. Payment of interest on the decretal amount at a court's rate of 12% from the date of judgment to the date of full and final payment
- iv. Costs of suit be provided for
- v. Any other relief(s) that this Honourable court may deem fit and just to grant.

The defendant's evidence was a denial of all the accusations by the plaintiff. Recounting on what had happened, DW1 said, on 29/11/2019 at around 11.00hrs he received a customer in her shop located at Nyamwezi Street Kariakoo looking for a generator. While negotiating, the plaintiff came inducing the customer to go and buy a generator in her shop the request that was declined by the customer insisting that he would buy from the defendant's shop. The plaintiff was irritated by the customer's reaction. She began to utter abusive words against the defendant. The defendant said, she fell into tears as she could not stand hearing such insults from her own daughter. She was shortly found by

her son Hanifu Mohamed Sidik crying and that the efforts to be calmed was interrupted by the plaintiff who again started to abuse her brother Hanifu Mohamed Sidik telling him: "*Wewe ndio dalali wa huyo mlemavu nitakufundisha adabu na wewe nitawamgwahia tindikali*"

In that a stance, she said, they closed the shop and went to the central police to report the incident. On her way, just close to the plaintiff shop that was just nearby, the plaintiff moved to her pushed her and spit out on her telling her to go anywhere she wished to. At the police, she reported the incident and left after the interview with the police. This evidence was corroborated by DW1, the defendant's son.

Both counsels did file their closing submissions. On his party, the plaintiff's counsel was of the view that the plaintiff's case has been established to the required standard while the defendants' counsel was of a different view.

As narrated above, this suit is based on tort of malicious prosecution. Essential ingredients constituting the tort of malicious prosecution have been painted by the Court of Appeal for Eastern Africa in **Mbowe Vs East Mengo Administration** [19721 EA 352 at 354 as follows:

- i. That Criminal proceedings must have been instituted by the defendant, that is he was instrumental in setting the law in motion against the plaintiff.
- ii. The defendant must have acted without reasonable or probable cause.
- iii. The defendant must have acted maliciously, that is, he must have had an intent to use the legal process in question for some other than its legally appointed and appropriate purpose.

- iv. The criminal proceedings must have terminated in the Plaintiff's favour, that is, the plaintiff must show that the proceedings were brought to a legal end and that he has been acquitted of the charge.

See also: **Hosia Lalata V. Gibson Mwasote** (1980) TLR 154. And in terms of the decisions in **Mbowa v. East Mengo Administration** [1972] EA 353 all the ingredients above are to be established by the plaintiff. The defunct East Africa Court of Appeal held: -

"The plaintiff in order to succeed, all the four essentials or requirement of malicious prosecution; as set out above, have to be fulfilled and that he has suffered damage. In other words, the four requirements must "unite" in order to create or establish a cause of action. If the plaintiff does not prove them, he would fail in his action."

Before the commencement of the trial three issues were framed

- 1) Whether the criminal case No 254 of 2021 was instituted by the defendant maliciously and with intent to defame the plaintiff,
- 2) whether the defendant's complaint was adjudicated in the plaintiff's favour and
- 3) To what reliefs the parties are entitled to.

As admitted, defendant did report the plaintiffs' irritating acts to the central police on the material date and there is no dispute that it is the said report that culminated into the plaintiff's arrest, trial, conviction and sentence.

The records are also very clear that, that conviction was in the end quashed by this court, Masabo J, on the reason that the charges were not

proved to the tilt. That means the criminal charges ended in favour of the plaintiff. In that stance, I am settled that the plaintiff has accurately managed to establish ingredients (i) and (iv) affirming the 2nd issue framed by the court and the parties in this matter.

I now move to the 1st issue on whether the defendant report to the police was actuated by malice, without reasonable and probable cause, with intent to defame the plaintiff. I have perused the pleadings, evidence by the parties including all documents in exhibit P1 tendered by the plaintiff in this case. According to the defendant, she was annoyed by the abusive language and threat uttered by her own daughter, the plaintiff in this matter. The plaintiff is alleged to have told the defendant:

"wewe msenge, mwanaharamu mkubwa, Malaya mkubwa, wewe sio mama yangu baba hajakuoa wewe, mwizi mkubwa, sitaki kukuona hapa na utaondoka hutofanya biashara hapa na nitahakikisha nimekuua kwa nia yoyote ile au nitakumwagia tindikali ufie mbali"

I have tried to figure out the reasons for the alleged malice instigated by the defendant against her own daughter, but the records could not at all render any assistance. Going by exhibit P1, while testifying in court as DW1, at the trial court, the plaintiff denied having any grudges with her mother and her evidence was supported by Dw3 her own daughter. In such a situation, I find no reason why defendant would have from nowhere frameup a case, fabricating the above statement to incriminate her own daughter against her own daughter if not for the alleged abusive language.

All in all, the fact that the report to the police by the defendant was to procure the police's intervention after the exasperating abuses from the plaintiff including a grave threat that she would use whatever means possible to let the defendant die has remained composed even after the cross examination by the plaintiff's counsel. No wonder why even the decision by this court, (Masabo J) was constructed on failure by the prosecution to lead evidence on how the uttered words had provoked the breach of peace , and not that the words were not uttered.

This takes me to the question whether the uttered words could be the reason , probable or reasonable for the report made to the police by the defendant. In looking at this issue, the court will be assisted by the definition of the words reasonable and probable cause given by the Court of Appeal in **Seif Mohamed Maungu v Wendum Lameck Sawe t/a W.L. Sawe Garage**, Civil Appeal No. 102/2013 (CAT unreported) where quoting the definition in **Hicks v. Faulkner** (1878) 8 QBD 161 at 171 the Court held –

*"Reasonable and probable cause is **an honest belief** in the guilt of the accused **based on a full conviction founded upon reasonable grounds, of the existence of a circumstances**, which assuming them to be true, would reasonably **lead any ordinary prudent man and cautious man placed in the position of the accuse to the conclusion that the person charged was probably guilty of the crime imputed.**"(Emphasis added)*

I have reviewed the alleged uttered words, and I am settled that, any reasonable man would under the circumstances be annoyed and offended by the plaintiffs' utterances creating on the cautious mind a criminal culpability that is worth reporting to the police under section 7(1) of the CPA Cap 20 RE 2019 which is worded that:

"7(1) Every person who is or becomes aware-

(a) of the commission of or the intention of any other person to commit any offence punishable under the Penal Code;

(b) N/A

shall forthwith give information to a police officer or to a person in authority in the locality who shall convey the information to the officer in charge of the nearest police station.

The defendant had a genuine issue to bring to the hands of justice and this would not be achieved if not for the reporting of the matter as dictated by the law in the quoted provisions above. This justifies why the defendant resorted into reporting the matter to the police the task that ended after her report in 2019 until when she was called in 2021 as a witness in a criminal case that was lodged by the prosecution against the plaintiff. My findings are also fortified by the decisions of this court in **Rashid Said Geuza Vs. The Regional Police Commander and AG**, Civil Case No. 2 of 2012 (unreported) where it was held that for malice to be imputed to a party, the accuser must have been actuated by spite or ill-will and not by a genuine desire to bring to justice the person alleges to be guilty of crime.

I am certainly not converted by the plaintiff's counsel argument in page 4 and 5 of his final submissions, that since the prosecution failed to prove the breach of peace, then the plaintiff was maliciously prosecuted. In fact, the position is in the opposite that a mere acquittal in a criminal trial is not necessarily proof to a false and malicious complaint by the defendant. This position was held in **Bhoke Chacha V Daniel Misenya** [1983] TLR 329 that :

"It is for the appellant to prove that the respondent's report was malicious... This can be done by adducing evidence which will lead to the Court to make finding whether the respondent acted maliciously."

The first issue is thus answered in negative. The conclusion in this issue renders the third issue insignificant in this matter. The plaintiff's case is therefore without merit. It is dismissed in its entirety with costs.

Order accordingly.

DATED at Dar es salaam this 23rd February 2024




E.Y. Mkwizu

JUDGE

23/2/2024

COURT: Right of Appeal explained


E.Y. Mkwizu

JUDGE