

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

AT DAR ES SALAAM.

CIVIL CASE NO. 157 OF 2022

LONGINO LAZARO @KASONTA.....PLAINTIFF

VERSUS

MOHAMED SUMAR.....DEFENDANT

JUDGMENT

Date of last order: 17/05/2024

Date of Judgment: 31/05/2024

A. A. MBAGWA, J.

This Judgment stems from the plaintiff's claims of malicious prosecution against the defendant. The plaintiff therefore prays for the following reliefs;

- (i) A declaration that the defendant is liable to the plaintiff for malicious prosecution.
- (ii) An order for the defendant to pay the plaintiff TZS 500,000,000/= as general damages or such other sum as this Honourable Court may deem fit and just to grant.
- (iii) Costs of this suit.



- (iv) Any other relief(s) which this Honourable Court may deem fit and just to grant.

Briefly, the factual background which triggered the institution of this case, as deciphered from the pleadings, may be recounted as follows; Sometimes in August, 2020, the defendant, Mohamed Sumar, lodged a complaint at Kibaha Police Station accusing the plaintiff, LONGINO LAZARO @KASONTA of fraudulently selling the defendant's piece of land located at Pangani area within Kibaha District in Coast Region to nine different persons.

Following that complaint, on 24th August 2020, the plaintiff was arrested and subsequently arraigned before the District Court of Kibaha in Criminal Case No. 120 of 2020 on a charge containing nine counts of obtaining money by false pretence c/s 302 of the Penal Code, [Cap. 16 R.E.2002]. Upon conclusion of hearing, the trial Court found the plaintiff guilty and therefore convicted him of four counts out of the charged nine counts. Consequently, the plaintiff was sentenced to serve one (1) year in prison for each count and the prison terms were ordered to run consecutively. Dissatisfied, the plaintiff appealed against both the conviction and sentence to the High Court via Criminal Appeal No. 120 of 2021. In its judgment dated 22nd of April 2022, the High Court (Hon. Kakolaki, J.) quashed the conviction and set aside the sentence. The High Court



judgment was not challenged by the Republic. Following the plaintiff's acquittal, he filed the instant suit for malicious prosecution.

The plaintiff contends that defendant's report to the police which prompted his prosecution was malicious in that the defendant had no reasonable or probable cause. The plaintiff contends that he suffered mental agony and shock due to inconveniences and disrepute arising from the said criminal prosecution. He also claims that he wasted his productive time for attending the case for more than two years. He averred further that the defendant's act caused the plaintiff to lose his various political posts which he held prior to his prosecution namely, ten cell leader, ward ethics committee member, ward politics committee member, secretary and teacher of a church congregation.

The plaintiff stated further that Criminal Case No. 120/2020 was a continuation of the defendant's malice towards the plaintiff as in 2013 the defendant falsely reported to police that the plaintiff and two other persons had criminally trespassed into his land and maliciously damaged his property. As a result, the plaintiff and two others were prosecuted and convicted by the District Court of Kibaha but subsequently acquitted by the High Court (Hon. Dyansobera, J) in Criminal Appeal No. 164 of 2015. Having instituted the suit, the plaintiff's efforts to serve the defendant through normal service proved futile. As such, on the 29th November,



2023, upon application by the plaintiff's counsel one Mr. Hezron Mwankenja, this Court allowed the plaintiff to serve the defendant through publication. Consequently, the summons was published in Nipashe Newspaper dated 23rd January, 2024.

Thus, on 20th February, 2024, when the matter came for mention, Mr. Mwankenja, successfully moved the court to order *ex parte* hearing against the defendant. In addition, the court ordered the suit to be disposed of by way of witness statement.

In a bid to establish the claims, the plaintiff paraded one witness namely, Longino Lazaro Kasonta (PW1) whose witness statement was adopted and admitted to form part of his testimony. Besides, the plaintiff tendered four (4) documentary exhibits namely; statement of Mohamed Sumar dated 22nd March 2013, charge dated 26/11/2013, judgment of District Court of Kibaha in Criminal Case No. 132 of 2013 dated 19/08/2015 , and judgment of the High Court at Dar es Salaam in Criminal Appeal No. 164 of 2015 dated 09/10/2017 **(exhibit P1 collectively)**, Charge dated 02/09/2020 in Criminal Case No. 120 of 2020 in the District Court of Kibaha **(exhibit P2)**, judgment of the District Court of Kibaha in Criminal Case No. 120 of 2020 delivered on 23/06/2021 **(exhibit P3)** and judgment in Criminal Appeal No. 120 of 2021 in the High Court dated 22/04/2022 **(exhibit P4)**.



In essence, the plaintiff's solo witness one Longino Lazaro Kasonta in his witness statement recapitulated the averments in the plaint.

Upon conclusion of hearing, Mr. Mwanjenja, learned advocate filed final written submissions. I am quite grateful to the plaintiff's counsel for his insightful submissions. Suffice it to say that I have thoroughly canvassed and considered his submissions in composing this judgment.

Having appraised the plaintiff's evidence and the counsel's submissions, I find a purchase in the counsel's submissions that in a suit for malicious prosecution, the following issues are pertinent for determination:

- 1. Whether the defendant maliciously prosecuted the plaintiff and the matter ended in favour of the plaintiff.*
- 2. Whether there was any probable or justiciable cause of the said prosecution.*
- 3. Whether the plaintiff suffered any damage.*
- 4. What reliefs are the parties entitled to.*

At the outset, I wish to remark that, according to paragraphs 3 up to 8 of the plaint, the cause of action arose from Criminal Case No. 120 of 2020 which resulted into Criminal Appeal No. 120 of 2021. Nonetheless, the plaintiff, in his witness statement and final written submissions, significantly referred to Criminal Case No. 132 of 2013 and Criminal Appeal



No. 164 of 2015. With due respect to the plaintiff's learned counsel, this was incorrect and out of context. I say so because a cause of action which accrued in 2017 could not be entertained by this court after expiry of three years.

Section 4 of the Law of Limitation Act, [Cap.89 R.E. 2019] provides:

*"Subject to the provisions of this Act **the right of action in respect of any proceeding, shall accrue on the date on which the cause of action arises.**"*
[Emphasis Added]

Further, section 6(d) of the LLA reads:

*"In the case of a suit for malicious prosecution, the right of action shall be deemed to **have accrued on the date on which the plaintiff was acquitted or the prosecution was otherwise terminated.**"*
[Emphasis Added]

In the suit at hand, the plaintiff was convicted in **Criminal Case No. 120 of 2020** but acquitted on appeal by this Court in **H.C. Criminal Appeal No. 120 of 2021** on the 22nd of April, 2022. Thus, on the 19th day of September, 2022, when the plaintiff instituted this suit, he was within the prescribed time of three years. However, this is not the case in respect of Criminal Case No. 132 of 2013 and Criminal Appeal No. 164 of 2015 which



was decided on 09/10/2017. Reckoning from 09/10/2017 to 19/09/2022 when the present suit was filed, it is obvious that three years had expired. It is noteworthy that, the cause of action is stated under paragraph 4 of the plaint in which the plaintiff pleaded as follows;

"4. That on an unknown date in August 2020 the defendant without any probable or reasonable cause maliciously reported to the police at Kibaha police station that the plaintiff had fraudulently sold his piece of land to nine different persons, which report the defendant knew to be false and untrue".
[Emphasis Added].

As hinted above, the plaintiff has substantively referred to Criminal Case No. 132 of 2013 and H.C. Criminal Appeal No. 164 of 2015 which was decided by Hon. Dyasobera, J on 9th October, 2017. As such, I did not consider the plaintiff's claims in respect of Criminal case No. 132 of 2013 and H.C. Criminal Appeal No. 164 of 2015 because one, they were not pleaded in the plaint as part of the cause of action and two, the claims are out of prescribed time of three years within which a tortious claim ought to be instituted. On this position, I am fortified by the settled position that parties are bound by their own pleadings and no one is entitled to go astray. See the cases of **James Funke Ngwagilo v. Attorney General** [2004] T. L. R. 161; **Scan Tan Tour v. The Catholic**



Diocese of Mbulu, Civil Appeal No. 78 of 2012, **Lawrance Surumbu Tara v. The Hon. Attorney General And 2 Others**, Civil Appeal No. 56 of 2012 and **Salim Said Mtomekela v. Mohamed Abdallah Mohamed**.

Having made the above remarks, let me now proceed to determine the 1st issue in this suit to wit, *whether the defendant maliciously prosecuted the plaintiff and the matter ended in favour of the plaintiff.*

In his own testimony, the plaintiff under paragraph 21 of his witness statement testified that;

"21. However again on August 2020 the Defendant proceeded to initiate the prosecution against me maliciously and without probable and reasonable cause as he authorized his son Mehboob Alberali Sumai by way of defective power of Attorney to report the matter at Kibaha Police Station that I had fraudulently sold the Defendant land to nine different persons which report the Defendant knew to be untrue. As result of the said false report made by Defendant on 24th August 2020, I was arrested by the Police and arraigned before Kibaha District Court and charged with nine counts of obtaining money by false pretenses." [Emphasis Added]



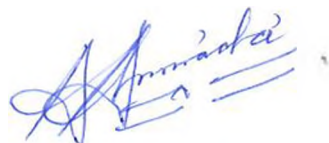
The plaintiff tendered the charge in Criminal Case No. 120 of 2020 which was admitted and marked as exhibit P2. Exhibit P2 shows that in Criminal Case No. 120 of 2020, the plaintiff was facing charges of nine (9) counts of obtaining money by false pretence. The particulars of offence were to the effect that on diverse date between 2012 and 2015 at Pangani area within Kibaha District in Coast Region by false pretence and with intent to defraud or deceive obtained money Tshs.3,800,000 from Solomoni Lufunda, Tshs. 1,000,000/= from Mariam Hamisi, Tshs.70,000/= from Atwai Ramadhani, Tshs.800,000/= from Tofili Bikwaga, Tshs. 200,000 from Mwanahawa Ally, Tshs.600,000/= from Msafiri Kilumbi, Tshs.400,000/=, from Joseph Madaji, Tshs.800,000/= from Heleen Lazier, and Tshs. 3,300,000/= from Sijali Mohamed as consideration for the sale of land situated at Pangani area within Kibaha District in Coast region while knowing the said piece of land did not belong to him.

Although the plaintiff did not tender the proceedings of Criminal Case No. 120 of 2020, the judgment of the trial court (Exhibit P3), to a large extent, tells what led to the prosecution of the plaintiff. It was Mehboob Sumar who testified at the trial court as PW1 that he owns the farm at Pangani area through power of attorney since 2014. Mehboob testified further that before he owned the said farm, the same was owned by his father one Mohamed Sumar (the defendant) who is living in Canada and that they



bought the said farm since 1989. Mehboob received a phone call from the area chairman that the accused person (the plaintiff) was selling the land to the people who had started constructions. He further told the court that when they visited the land in dispute, they were invaded by the accused person hence he decided to report the matter to the police station. The above piece of evidence shows that Mehboob Sumar reported to the police encroachment into his land. Further, Atwai Ramadhani (PW5), one of the purchasers of land, had it that after receiving the information that the land which was allegedly sold to them by the plaintiff (accused person) belonged to Mehboob Sumar, he reported the matter to the police station for obtaining money by false pretence. The evidence of Atwai was corroborated by the evidence of one F. 882 DC Elisha (PW11) who testified that, on 22nd June 2020 he was given a case file by the OCCID for investigation. Elisha narrated that in that case file, the complainants were accusing the plaintiff (accused person) for falsely selling them pieces of land which he did not own.

Having scanned the judgment of the District Court of Kibaha, I learned that, it was the victims of the alleged sale of land who triggered the prosecution of the plaintiff in Criminal Case No. 120 of 2020. The plaintiff did not tender the informant statement which prompted the investigation



and subsequent prosecution of the plaintiff in Criminal Case No. 120 of 2020.

Thus, I am opined that based on the documentary evidence adduced by the plaintiff, it cannot be said with certainty that it is the defendant's report which initiated the plaintiff's prosecution for obtaining money by false pretence. The only evidence which directly links the defendant is the defendant's statement recorded on 22nd March, 2013 (Exh. P1). However this statement relates to Criminal Case No. 132 of 2013 and H.C. Criminal Appeal No. 164 of 2015 which I have held that they are irrelevant to instant case.

In sum, I am of the considered view that the 1st issue was not proved.

I now turn to consider the 2nd issue to wit, "*whether there was any probable or justiciable cause of the said prosecution.*" Having made a proper scrutiny of the evidence on record in particular the judgment in Criminal Case No. 120 of 2020 (exhibit P3), it is my unfeigned findings that there was justifiable cause for prosecuting the plaintiff. This is augmented by the fact that the plaintiff was prosecuted, found with the case to answer and finally convicted by the trial court. He came to be acquitted by this court on appeal. At any rate, in the circumstances where the plaintiff was convicted by the trial court after a full trial, it would be bizarre to hold that there was no probable cause for prosecution.



Coming to the 3rd and 4th issues namely, *whether the plaintiff suffered any damages, and to what reliefs are the parties entitled to*, indeed, there is no gainsaying that the plaintiff suffered damage because his freedom was curtailed from 23rd June, 2021 up to 22nd April, 2022 when he was acquitted on appeal. It is also common cause that the plaintiff encountered inconveniences during prosecution of the case. The plaintiff also claimed that he lost political positions following his conviction. Nonetheless, as I held hereinabove the prosecution was not activated by malice as contended by the plaintiff because there was justifiable cause. Besides, the plaintiff failed to prove that it was the defendant who triggered his prosecution in respect of Criminal Case No. 120 of 2020 and later Criminal Appeal No. 120 of 2021.

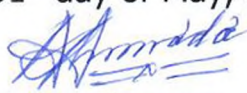
All the above considered, I have no hesitation to hold that the suit is without merits. Consequently, I dismiss it. Since the matter was heard *ex parte*, I make no order as to costs.

It is so ordered.

The right of appeal is explained.

Dated at Dar es Salaam this 31st day of May, 2024.




A.A. Mbagwa

JUDGE
31/05/2024