**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**SHINYANGA SUB REGISTRY**

**AT SHINYANGA**

**CIVIL APPEAL NO.13 OF 2023**

**(Arising from Civil Case No.7 before Kahama District Court)**

**MILTON TANDARI .....APPELLANT**

**VERSUS**

**1.ANNA PETRO SANGIJO**

**2. KIBA HUSSEIN MONGELWA .....RESPODNENTS**

# JUDGMENT

**6th & 21st March 2024**

**F.H. MAHIMBALI, J**

The respondents herein sued the appellant for compensation of general damages of a tune Tshs 50,000,000/= due to tort of false imprisonment instigated by the appellant being the police officer for arbitrary depriving the respondents' liberty by locking up them without reasonable and probable cause. It was alleged that the respondents were remanded and subjected for police investigations and finally were released without being charged to any competent court.

It was further alleged that the respondents on diverse dates while on their daily activities at Kahama bus stand were arrested by

one police man and told them that they were needed at Kahama police station. When they arrived, they were arrested and detained at police lockup. Upon inquiry to the arrest, they were informed that they need not to know, later on were released. They then decided to file civil suit for the claim of tune Tshs 50,000,000/= being general damages.

The matter before the trial Court was concluded in favour of the respondents whereby the appellant was ordered to pay compensation to the respondents at a tune of Tshs 8,000,000/= and costs of the suit.

Aggrieved by the decision, the appellant has approached this court with limbs of seven grounds of appeal and in addition to its three supplementary grounds of appeal were filed, whose major complaints based on the question of evidence and non-joinder of necessary party.

When the matter came for hearing the respondents' counsel filed preliminary objection based on point of law that; *the appeal by the appellant is time barred.*

I opted to hear both preliminary objection and the appeal simultaneously through written submissions. However, I am compelled to deliberate first the preliminary objection before going to the merit of the appeal.

During the hearing, the appellant enjoyed legal service of Mr. Bakari Chubwa Muheza learned advocate while the Respondents had legal service of Mr. Evodius Gordian Rwangobe, learned advocate.

Submitting to the preliminary objection, Mr. Rwangobe fortified that the judgement of the trial Court in Civil Case No.7/2022 which is the subject of the appeal was delivered on 28/4/2023 and a copy of judgement and decree were given to the parties on 20/6/2023. The appeal before this court was filed on 4/9/2023 therefore about four months and twenty-four days late.

It was contended that the appellant being aggrieved by the judgement and decree of the trial court ought to have appealed within the prescribed time by the law which is within forty five days. He further argued that the time available to appeal from the trial court (District Court) when exercising its original jurisdiction is not governed by the Magistrate Act. However, appeal on cases of tort

are not provided either under the Magistrate Act or Civil Procedure Code. Tort claims are governed by the Law Reform ( Fatal Accident and Miscellaneous Provision) Act Cap 310 as provided under section 2 of the Act. But also, the same law does not provide a specific time for appeal, hence the law of Limitation Act comes in place, specifically part II item 2 of the schedule which provides that an appeal for which no period of limitation is prescribed by the Act or any other written law the time limit is forty-five days.

Mr. Rwangobe tried to persuade this Court by refereeing to the cases of **Namahongwa Amcos and 2 Others vs Hamis Abdallah and Another,** Civil Appeal No.8 of 2015 HC at Mtwara, **Tanzania Fish Process Ltd vs Christophrt Luhangula, Civil** Appeal No.161 of 1994, and the case of **Mohamed Ahmed Soli and Omary Abdul Useja(Administrator of the estate of the Late Mohamed Useja Mwendapole) vs Rajabu Shabani Mohamed Useja),** Civil Appeal No.153 of 2019.

Mr. Rwangobe further argued that, this Court to subscribe to the above holding on the time limit for the appeal originating from

District Court exercising its original jurisdiction. He thus prayed for the appeal to be dismissed.

On the side of the appellant, Mr. Chubwa objected the preliminary objection. He contended that the preliminary objection by the respondents' counsel that the appeal is time barred is devoid of any merit. He further stated that the Act (Cap 310) does not apply in tort of false imprisonment. Section 2 of Cap 310 is not relevant in issue. Section 1 (2) of the Act being the provision conferring applicability of the matter. The cited provision by counsel of the respondents it is clear that the Act concerns republic whereby is so suing for damages, the Government Proceedings Act applies. According to the Act, damages upon which legal action are taken, have been defined under Section 3 of the Act, thus damages includes loss of life or personal injury. That action is taken as per the Act if only has resulted to the death or injury and the action to be for the benefit of the dependants. He also argued this Court to see Section 3 &4 of the Act Cap 310.

Mr. Chubwa also alluded that, tort of false imprisonment is a common law tort, a tort which is not provided for under any written

law. The suit in the instant matter being brought by the plaint and dealt under Civil Procedure Code. Therefore, Item 1 of part II of the Law of Limitation Act, is applicable. Such item provides for ninety days to appeal where no time is provided for by any written law. Since the decree was issued on 20/6/2023 after being read on 28/4/2023, that being the case the time for appealing is ninety days recons from 20/6/2023. Mr. Chubwa then pressed for the overrule the objection with cots.

In rejoinder Mr. Rwangobe insisted what he submitted in chief and argued this Court to find the appeal is time barred.

Having heard both parties on their submission and upon scanning the trial Court's records, these are my findings to the effects.

It is trite law that every appeal be filed within the prescribed time, **see the cases of John Cornel v. A. Grevo (T) Ltd, Civil Case No. 70 of 1998 (unreported) Barclays Bank Tanzania Limited vs Phylisian Hussein Mcheni, Civil Appeal No.19 2016, (unreported) Sarepata Network Investment (SANEICO) vs**

**Bukoba District Council and Another, Civil Case No. 16 of 2021(unreported).**

In this matter the case involved a common law tort, whereby the respondents alleged to have been unlawfully detained, being angry with the act they decided to file Civil matter which ended on their favour.

The tort of false imprisonment involves unlawful restraint on freedom of movement or personal liberty. Therefore, two essential elements to constitute false imprisonment are: Detention or restraint against a person's will, Unlawfulness of the detention or restraint.

A person commits false imprisonment when they engage in the act of restraint on another person which confines that person in a restricted area. False imprisonment is an act punishable under criminal law as well as under tort law. Under tort law, it is classified as an intentional tort. See **Schenck v. Pro Choice Network, 519 U.S. 357 (1997)**

Guided by brief over overview on false imprisonment, I will proceed to determine the matter.

According to Mr. Rwangobe, the appeal is out of time hence ought to be dismissed. He also contended that since the original case fall under

category of false imprisonment which is a wrong tort done by the appellant, burdened himself, if aggrieved by the decision of the trial court was supposed to appeal within forty five days from the date when they were served with a copy of decree and judgement pursuant to Part II item 2 of the schedule of the Law of Limitation Act Cap 89 RE 2019. According to him the Magistrate court and Civil Procedure Code were not applicable.

Mr. Chubwa was against with the position of Mr. Rwangobe on the sense that since the wrong tort presented by the respondents was not wrong torts as detailed in our Law to wit Cap 310, hence suggested a new damage covered under common law which is common tort. However, the matter before the trial Court was presented as civil suit and dealt pursuant to Civil Code, hence the law applicable is Civil Procedure Code.

He also fortified that, the law of Limitation Act under Item 1 of Part II of the Schedule is clear where no any written law provides for the time limit for appeal on the matter arising under Civil Procedure to be ninety days. Therefore, since there are no any written laws providing for time limit for an appeal on matters of common tort then the time limit is ninety days. Therefore, since the appellant was supplied with the copy of judgement and decree on 20/6/2023 and lodged his appeal before this Court on 4/9/2023 hence was within the prescribed time.

However, in my thorough findings, I have noted that it is true and correct as argued by Mr. Chubwa that phenomenon of a common law tort is not covered by our legislation to wit **"The law Reforms (Fatal Accidents and Miscellaneous Provision) Act Cap 310"**

Thus, being the case, the procedure for a person to claim for wrong tort enshrined in the Act, ought to be by way of petition citing the relevant provision contravened by the wrong doer.

In the case at hand, the respondents presented the matter before the trial Court by way of plaint and named it to be civil suit, hence dealt under the procedure covered by the Civil Procedure Code. In the light, it is correct to conclude that the suit was civil matter. Therefore, the trial Court was right to undertake the matter in that recourse. **See the case of Protace Mugondo vs Attorney General and Another, Civil Case No. 108 of 2004 (unreported), Jabil Kausarat Turabali vs Kaini Nyigu,** Civil Case No. 5 of 2019.

Taking into consideration that the Civil Procedure Code does not provide for the time limit for appeal for the person aggrieved by the findings of the trial court for claim under common law tort, then

the recourse falls under Item 1 of Party II of the schedule to the Law of Limitation Act which is ninety days.

Now, both parties were served with a copy of judgment and decree on 20/6/2023 and the appellant filed his appeal on 4/9/2023, counting from date of receiving copy of judgement and decree to the date of filing of an appeal, I find the appellant was within the prescribed time by law.

The contention by Mr. Rwangobe is not accorded any weight; first the Precedents cited are all about time limitation which serves nothing pertaining to the matter of common law tort rather insisting a person aggrieved by the decision to appeal within the prescribed time. Secondly the provisions referred under our Act Cap 310 are inapplicable in the matter at hand.

That said, I subscribe to agree with the versing of Mr. Chubwa that the appellant was within the prescribed time of appeal and I must therefore proceed to dismiss the said objection for being devoid of any merit, thus proceed to determine the merit of the appeal.

When arguing to the grounds of appeal, Mr. Chubwa for the appellant dropped grounds 2 & 3 in the additional grounds of appeal, and proceeded with the rest grounds of appeal.

Mr. Chubwa arguing on the first ground of appeal submitted that the trial Magistrate was wrong in holding that the appellant was personally liable for tort of false imprisonment basing the evidence of DW3. The evidence reveals that DW3 is not the one who actually reported the matter to police. It was DW2 Noel Richard. The trial Magistrate could not have relied on the evidence of DW3. He also fortified the appellant was performing his duties as police officer employed by the government. The respondents were detained at Kahama Police station, not at his home or somewhere else. Therefore, it was wrong for the trial Magistrate to personally hold the appellant liable.

On the other hand, Mr. Chubwa when supporting second ground of appeal averred that, exhibit P1 was admitted in contravention of the law. The exhibit was brought in Court by two documents titled NOTICE TO PRODUCE filed on 8/7/2022. One was under Order XIII Rule 1 (1) of the Civil Procedure Code, Cap 33 RE

2019. And the other was under section 68 of the Evidence Act. The former notified the trial Court of intention to rely on the documentary evidence which was not filed with the plaint. The latter demanded the appellant to produce original copy of exhibit P1 alleged to be in his possession.

Mr. Chubwa further contended that Order XIII Rule 1 (1) of the CPC was inapplicable and does not concern with production of documentary of evidence after the plaint is filed. Therefore, exhibit P1 was not properly brought in evidence. However, the said demand under section 68 of the Evidence Act is ineffectual as no statement to the effect that secondary evidence will be produced in the court upon failure on the part of the appellant. The appellant was personally sued which means he had no capacity to get the original document of the police.

On the third ground of appeal Mr. Chubwa proceeded to challenge the validity of exhibit P1 for being unclear. Despite that the document was a photocopy, yet the document was supposed to resemble with the original one. The exhibit does not show what the

document was all about. Indeed, exhibit P1 did not qualify the test enshrined under section 65 of the Evidence Act.

On the fourth ground, Mr. Chubwa questioned the admissibility and reliance of exhibit P1. According to him such document was fundamental for the claim of false imprisonment against the appellant. Being the case, the document was legally required to be attached with the plaint at the time of institution of the suit hence ought not to be acted upon. He referred this Cout to the case of **Yara Tanzania Limited vs Ikuwo General Enterprises Limited,** Civil Appeal No.309 of 2019.

Mr. Chubwa arguing fifth ground of appeal submitted that the trial Court erred in relying to Exhibit P1. The trial Court judgement reveals that exhibit P1 was electronic evidence after the evidence of the respondents revealed so. Both respondents testified that the first respondent secretly took a photo of exhibit P1 by using her mobile phone. She did not mention kind of her mobile phone. Therefore, according to him Mr. Chubwa stated that after the document being taken a photo, it turned to be electronic evidence. Section 64A (3) of the Evidence Act defines what is electronic evidence.

However, section 18 of the Electronic Transaction Act, specifically under sub section 2, gives prerequisite for the electronic evidence to be admitted and acted upon in proceedings.

In the case at hand no any story was offered by the respondent showing conformity with the stipulated condition above. The trial magistrate, therefore ought to have expunged it from the court record. He convinced this Court by referring to the case of **Christina Thomas vs Joyce Justo Shimba,** Pc. Civil Appeal No.84 of 2020.

In respect to ground six, Mr. Chubwa submitted that the trial court was wrong when held that the respondents were arrested and detained at police station following complains tabled by DW2 and another. Mindful the appellant did not take his own move to arrest and detain the respondents. The complaints were about respondents' failure to abide to the bus stand rules. According to the evidence on records, the respondents alleged conduct amounted to the breach of peace at the bus stand. As obligation of the police force is to maintain peace and security amongst the people therefore some measures were to be taken. The appellant was among the authorities that enforces compliance of the rules. Also proved by DW2 and DW3.

The findings by the trial court by the evidence of the respondents was to the effect that the respondents were not informed of any offences under which they were arrested, citing section 23(1) of CPA such findings were misconceived. This is because failure or otherwise of not informing a culprit with an offence charged with, this is not among of elements of a tort false imprisonment. He referred to the case of **Pechulis vs City of Chicago,** (1997) U.S Dist.

Therefore, as correctly submitted the appellant was under legal authority to enforce the rules and maintain peace. The evidence of the appellant was to the effect that after the respondents were tabled at police station, he did let the police procedures to take place. Thus, he did not personally order for lock up of the respondents. It was therefore wrong for the trial court to ignore such piece of evidence.

In respect to the seventh ground, Mr Chubwa stated that the trial Magistrate was wrong in awarding the respondents' general damages while no specific damages proved. The respondents' plaint had jointly prayed for general damages at a tune of Tshs 50,000,000/= but in their testimony, the 1st respondents claimed the

said damages (compensation) of Tshs 50,000,000/= was for her own. The 2nd respondent claimed it for both. In final conclusion the trial magistrate awarded the respondents a tune of Tshs 8,000,000/=

Mr. Chubwa's quarrel is that the respondents never adduced evidence to the extent that they had special damage. He referred to the case of **Njombe Community Bank and Another vs Jane Mganwa,** Dc Civil Appeal No.3 of 202.

He however versed that in the matter at hand no any social status of the respondents had been established that was to be restored by awarding them a general damage. Therefore, it was irrational for trial Magistrate to award the respondents such compensation for damages. He finally pressed for the appeal to be allowed with cost and this court be pleased to do away with the trial court judgement.

On the side of the respondents Mr. Rwangobe, in reply to the submission by Mr. Chubwa, submitting to the first ground he averred that the evidence of DW3 was to the effect that, he directed the matter to be reported to DTO or OCS. The DW1 sent police officer, after had been availed information by the DW3 whereby the respondents were arrested and upon arrival to the police station the

DW1 directed the respondent to be put inside the lockup without informing the offence for the arrest. Mr. Rwangobe was of the formed view that without DW3 the matter could not be reported to DTO or OCS and thus the arrest of the respondents would have not effected.

Arguing to the 2nd ground Mr. Rwangobe provided that the ground is baseless on the sense that Exhibit P1 was not admitted under the alleged law. The records of the trial court reveal that Notice to produce the original detention book which was in possession of the appellant on 8/7/2022 was pursuant to section 68 of the Evidence Act. Therefore, the assertion that Exhibit P1 was wrongly admitted is not true. In that line Order XIII Rule 1(1) of CPC cannot stand as per the trial court records.

In respect to third ground, Mr. Rwangobe stated that exhibit P1 is the copy of detention book, which was admitted upon introduction of notice to produce the original document made before the trial court. Therefore, the trial court was right to rely on it as the same was legally filed.

Mr. Rwangobe countering the fourth ground probed that Order XIII Rule 1(1) of CPC requires a part to provide a notice to produce the document which was not attached to the plaint and section 68 of the Evidence Act requires to file notice to produce the other party whose secondary evidence is within in his possession to let the either party to rely on it. That was what the respondents did. Thus exhibit P1 was correctly tendered and legally relied by the trial court.

On the fifth ground Mr. Rwangobe submitted that Section 64A (3) of the Evidence Act, defines the term electronic evidence.

From that definition, for the document to be referred as electronic evidence, the following elements must exist; data or information must be stored in electronic form or electronic media, such data must be retrieved from a computer system. Thus, the exhibit P1 is detention Book which in its from physical exhibit which can be touched. Therefore, there is no way exhibit P1 can be termed to be electronic evidence as argued by Mr. Chubwa.

With respect to sixth ground Mr. Rwangobe argued that the allegation by Mr. Chubwa is devoid of any merit. He also submitted that the Counsel for the appellant had failed to disclose which

evidence was ignored by the trial Court as correctly held in the case of **Titus Mwita Matinde vs Daniel J. Singolile,** Misc. Civil Application No.3 of 2022.

On the seventh ground of appeal Mr. Rwangobe stated that according to PW1 and PW2 testified that on 24/3/2022 one police officer came and told the respondents that they were needed at police station by OCS(DW1), thus the respondents went to the police station, after had arrived there, they were arrested and put into lockup without any justifiable cause. He referred this court to the case of **Theresia Isaya vs Agness Adolph**, Civil Appeal No.10 of 2019. Where by the Court listed elements of tort of false imprisonment.

From the precedent above it is clear that there was no any lawful cause for restraint against the respondents and thus amounted to false imprisonment which was rightly established before the Court of law.

Arguing the first ground in the additional ground of appeal Mr. Rwangobe submitted that the trial magistrate did not error in law by awarding general damages because general damages are awarded

regarding to evidence before the court as correctly established by the respondents. He cited the case of **Ashraf Akber Khan vs Ravji Govind Varsan,** which cited the case of **Anthony Ngoo and Another vs Kitinda Kimaro**, Civil Appeal No.25 of 2014 (unreported) where the court held that the law is settled that general damages are awarded by the trial judge after consideration and deliberation on the evidence able to justify the award. The judge has discretion in the award of general damages. Mr. Rwangobe pleased this court to dismiss the appeal for lack of merit and thus the trial court judgement be upheld.

Mr. Chubwa had nothing to rejoinder he only left for court's determination.

Having heard both parties to the suit and upon thorough scanning of the trial court records here are my findings to the effect: However my disposition of this appeal will be general but intact on the grounds of appeal.

As aforementioned when I started to discuss the genesis of this suit is rooted on accusation of false imprisonment implicated to the respondents which led for them to file civil suit against the appellant.

The major complaint is centred on the question of evidence.

It was Mr. Chubwa submission that, the trial court erred to pose its findings basing on the testimony of DW3 who actually did not report the matter to the police station.

Mr. Rwangobe asserted that, the appellant was personally liable due to his directive for the matter to be reported to police, the act which led for the arrest and detention of the respondents, if the appellant would have not directed so the respondents would not have been arrested and detained.

I have keenly followed the evidence of DW3, it is true that is the one who directed the informer that he should refer the matter to police for settlement, as they were assured with police officer that whenever there is problem, they should report the matter to the police.

However, trial Court judgement at page 7, conclude that the matter before police was reported by DW2 and DW3.

In my view there was variance of evidence as to who reported the matter at police. Even if DW3 directed other persons to report

the matter at police station, the question to ask does it suffice to find guilty against the appellant for false imprisonment?

The trial magistrate versed that the detention of the respondents was false imprisonment and thus injured them.

I am declined to agree the findings by the trial magistrate. Because what DW2 and DW3 did was the reporting the commission of crime as enshrined in our law. See section 7 (1)(a), and 9 (1) of the Criminal Procedure Act Cap 20 RRE 2022.

DW3 as a leader of bus stand after had received information about contravention of the rules regulated the attendants/agents at bus stand, he advised the matter to be reported to police station for settlement which is absolutely right.

Section 7 (1)(a) *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;*

*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.*

*Section 9(1) Information relating to the commission of an offence may be given orally or in writing to a police officer or to any other person in authority in the locality concerned'*

In my conclusive view the testimonies of DW2 and DW3 had nothing to proof for the offence of false imprisonment.

The other complaint was admissibility of exhibit P1, which was police register book. According to Mr. Rwangobe accuses that the respondents were restrained in police custody and not registered in the book entry of the police. Thus signify the ill motion of the appellant to condemn them without justifiable reason. Mr. Chubwa is against the admissibility of such exhibit first, it did not follow legal procedure and the enabling laws were not correct to wit Order XIII Rule 1 and Section 68 of the Evidence Act.

I have looked for the notice to produce Exhibit P1, it true that it was filed later after the plaint had already been lodged before the court of law and thus the two notices made; one was under Section 68 of the Evidence Act and the second was under Order XIII Rule 1 of the Civil Procedure Code.

I wish to reiterate the said section;

" *Secondary evidence of the contents of the documents referred to in paragraph*

*(a) of subsection (1) of section 67 shall not be given unless the party proposing to give such secondary evidence has previously given to the party in whose possession or power the document is, or to his advocate, such notice to produce it as is prescribed by law; and if no notice is prescribed by law, then such notice as a court considers reasonable in the circumstance of the case:*

*(b) Provided that the notice shall not be required in order to render secondary evidence admissible in any of the following cases–*

*(a) when the document to be proved is itself a notice;*

*(b) when, from the nature of the case, the adverse party must know that he will be required to produce it;*

*(c) when it appears or is proved that the adverse party has obtained possession of the original by fraud or force;*

*(d) when the adverse party or his agent has the original in court;*

*(e) when the adverse party or his agent has admitted the loss of the document;*

*(f) when the person in possession of the document is out of reach of, or not subject to, the process of the court;*

*(g) in any other case in which the court thinks fit to dispense with the requirement."*

Order XIII Rule 1

*"The parties or their advocates shall produce, at the first hearing of the suit, all the documentary evidence of every description in their possession or power, on which they intend to rely and which has not already been filed in court, and all documents which the court has ordered to be produced".*

From the extract I am of the formed view the notices made by the respondents' counsel when intended to produce such document relied on wrong provision; the provision cited in Section 68 of the Evidence Act was not certain and thus was irrelevant. The proper provision could suffice is Order XIII Rule 1 of the Civil Procedure, which provides requirement to file notice to produce document which were not annexed with pleading during its filing.

However, since there were no any suggestive statements in plaint that there is original document which is in possession of the either side then Section 68 of the Evidence Act was ineffectual as no statement to the effect that secondary evidence will be produced in the court upon failure on the part of the appellant.

I am also worried with duo of notices; it seems the Learned Counsel for the Respondents was not sure with what had presented before the Court of law other than betting before temple of justice.

Meanwhile, the assertion that exhibit P1 was electronic evidence and was supposed to adhere to the procedure of admissibility of electronic evidence as lightly argued by Mr. Chubwa I do concur with him.

Section 3 of the Electronic Transaction Act clearly defines data and data massage to mean;

Data

> *"means any information presented in an electronic form"*
>
> data message *"means data generated, communicated, received or stored by electronic, magnetic optical or other means in a computer system or for transmission from one computer system to another"*

Section 64A (3) of the Evidence Act define electronic evidence to mean:

> *"any data or information stored in electronic form or electronic media or retrieved from a computer system, which can be presented as evidence"*

Therefore, based on extract of Section 3 of Electronic Transaction Act, and the definition of electronic evidence as per the Evidence Act, the print out of document from a mobile phone is an electronic evidence and thus fall under the strict electronic evidence as it is data generated from an electronic device.

I also agree with Mr. Chubwa that Exhibit P1 was not certain as was quite different with what submitted by Mr. Rwangobe. It is the respondents' evidence that their names were written in the police book register, but Mr. Rwangobe tells this Court the respondents were detained without their names to written in police detention book. Since the Exhibit was not clear and controversial with what the respondents testified in Court and argument of their advocate, then the trial court could not have relied on such exhibit.

Generally, as to the weight of evidence against the claims by the respondents before the trial court, I should first overview the general principle applicable on the offences of false imprisonment for one to succeed.

Tort is a Civil wrong. Civil wrong arises when a person breaches a legal duty owed to another. A legal duty to act arises when one is required to

act in a particular way. See the case of **Ryland vs Fletcher** (1868) LR 3 HL 330: (13861-73) All Er Rep1.

In the case of **Onkarmal vs Banwari Lal,** AIR 1962 Raj 127, it was held that in order to amount to false imprisonment the essential elements are that; there must be a total restraint, for howsoever short a time, on the liberty of person, without law justification, and actual imprisonment in jail is not necessary. **See also the case of Syed Mahd, yusu-ud Din vs Secy.of State of India** (1903) 5 Bom LR 490.

A person may be not personally liable if proves the following; There was only partial restraint and other reasonable and palatable ways of escape were open to the plaintiff which he could have made use. **See Maharani G. Kaur of Nabha vs Province of Madras,** AIR 1942 Mad 539, **Bird vs Jones (**1845) 7 QB 742.

The situation created was a result of the agreement between the plaintiff and the defendant to which the principle of volent non fit injuria was applicable. **See Herd vs Weadale,** 1915 AC 67.

He did not cause the arrest of the plaintiff. **See Bheema vs Donti, (**1875) 8 MHC 38

The detention was lawful. **See State of U.P vs Tulsiram,** AIR 1971 All 162.

Now in the case at hand, the trial records provide that there were a set of rules enacted to regulate the attendants or persons at bus stand. Amongst them, were respondents. The records also reveal that DW2 and DW3 were leaders at bus stand and were charged with the responsibilities of ensuring that the rules enacted are safeguarded. And whenever there is a person infringing those rules, he should be reported to police for rehabilitation. **See page 45,46,48 and 49 of the typed proceedings.** Through the testimonies of DW2 and DW3 is alleged that the respondents breached the provided rules and thus were reported to police station.

It is further provided, when police got information about the contravention of the rules, DW1 (the appellant) who was OCS directed one police officer to attend and arrest the respondents. When respondents were at the police station they were put into lockup and later were warned. Through the verse of DW1 averred that the respondents were bailed by one ***smart.*** See page 43 of the typed proceedings.

Dw3 also told the court that he informed them about their offences but after had been bailed they settled the matter amicably.

The complaint of the respondents is that they were arrested and imprisoned without being informed with any of the offence. And thus,

DW3 is the one who engineered their arrest and false of imprisonment and thus has to be liable.

With the above parts of testimonies, there is no doubts that the respondents were arrested and detained at police custody. The issue is, was it lawful?

As aforesaid, a person is not held liable for the offence of false imprisonment when discharging his legal duty. It is provided that DW1 was OCs means a commanding officer of police station. He is a law enforcer. It is however provided that; he took that recourse of detaining the respondents after had been informed about their breach of peace at bus stand in accordance to the rules established. I must therefore conclude that since the appellant had been informed with the commission of the offence by the respondents, then, he was absolute correct to direct his subordinate to arrest the respondents in order to calm the situation. DW2 and DW3 confirmed that they reported the matter at police station to seek assistance about the conduct of the respondents. Section 7 and 9 of CPA allows for any person to report any syndicate information of crime commission. Therefore, the arrest and detention against the respondents was lawful. **See State of U.P vs Tulsiram**, ( supra).

Since the issue of breach of peace and of contravention of the bus stand rules were settled amicably, then it was wise to conclude that the respondents contributed to their arrest. Which in turn can not amount to false imprisonment. The respondents are the ones who contributed for occurrence of the arrest had they respected the rules regulating the bus stand, they could not have been arrested. See **Herd vs Weadale** (supra).

The appellant did not engineer himself to arrest the respondents without cause, there was motives behind to wit information gathered from DW2 and DW3. **See Bheema vs Donti** (supra). Thus, cannot be held personally liable. My brethren justice Twaib in the case of **Protace Mugondo vs Attorney General and Another (supra**), held that there is no false imprisonment if the ether party succeeded to plead that the detention was lawfully and justifiable.

In a similar vein, I must therefore conclude that, the trial court erred in its finding when ruled that the appellant was personally liable for false imprisonment against the appellant without taking into cognisance that the appellant was acting in the capacity of executive officer/ law enforcer abided by the law to do so.

The other issue is an award of Tsh 8,000,000/= being general damages. According to Mr. Chubwa alleges since that there were no

special damages claimed and proved, the trial court erred to award the stated amount without any justification. The assertion was opposed by Mr. Rwangobe who stated that the award by the trial court based on its discretionary powers and that the absence of claim of special damages does not ouster the court to try the matter.

I sincerely agree with Mr. Rwangobe that not in all circumstances special damages must be pleaded for instance in the case at hand. However, it is trite law that, specific damages ought to be proved. See in the case of **Zuberi Augustino versus Anicet Mugabe (1992) TLR 137, the case of Jnakirama Lyer versus Nilkanta Lyerx, AIR 1962 SC 633. And the case of Solvochem Holland BV versus Chang' Quing International Investment Co. Ltd, Commercial Case No 63 of 2020 (unreported).** Much as award of general damages is at the discretion of the trial court as correctly argued by Mr. Rwangobe, that does not mean the trial court can award them arbitrarily. There must be some basis for the award as it was said in **The Attorney General v. Roseleen Kombe (as the Administratrix of the late Lieutenant General Imran Hussein Kombe, deceased) [2005] T.L.R. 208.**

Now, in my close digest and findings made herein above, it is clear that since the claims by the respondents were not founded and thus the

trial Court erred to award the Respondents Tshs 8,000,000/= without any legal justification.

In subsequent therefore, this appeal is allowed for being brought with sufficient cause and consequently the decision of the trial court is quashed and set aside with costs to the appellant.

Right of further appeal is explained.


F.H. Mahimbali

Judge.

20/03/2024