



**IN THE HIGH COURT OF MALAWI**

**PRINCIPAL REGISTRY**

**CIVIL CAUSE NUMBER 532 OF 2012**

**BETWEEN:**

**McDAPHRAIN CHITHUZENI BANGO**

**PLAINTIFF**

**AND**

**ATTORNEY GENERAL**

**1<sup>st</sup> DEFENDANT**

**MALAWI TELECOMMUNICATIONS LIMITED**

**2<sup>nd</sup> DEFENDANT**

**Coram: JUSTICE M.A. TEMBO,**

Chipeta, Counsel for the Plaintiff  
Mzanda, Counsel for the 1<sup>st</sup> Defendant  
Kakhobwe, Official Court Interpreter

**JUDGMENT**

This is this court's judgment following a trial of this matter on the plaintiff's claim for damages for the false imprisonment and malicious prosecution and for costs.

The plaintiff testified at the trial of his claim. The plaintiff also filed submissions in support of his claim. The 1<sup>st</sup> defendant only filed its defence but did not attend trial. The 2<sup>nd</sup> defendant filed a defence, brought two witnesses in its own defence and also filed submissions on the factual and legal issues in this matter.

The plaintiff claims that on or about 19<sup>th</sup> April 2010, the 2<sup>nd</sup> defendant maliciously and without reasonable and probable cause laid false information before the police

against the plaintiff of having received stolen property contrary to section 328 of the Penal Code and caused the said police to arrest the plaintiff and to bring him before the Blantyre Chief Resident Magistrate Court. The plaintiff further claims that he was arrested and imprisoned at Limbe Police until 24<sup>th</sup> April 2010 when he was transferred to Chichiri Prison where he was kept until 21<sup>st</sup> May 2010 when he was released on bail.

The plaintiff further claims that on 20<sup>th</sup> August 2010 or thereabout, the Blantyre Chief Resident Magistrate Court convicted the plaintiff of the charge of receiving stolen property and the plaintiff was sent to Chichiri Prison where he was imprisoned until 1<sup>st</sup> September 2011 when he was sentenced to five years imprisonment. The plaintiff further claims that on 26<sup>th</sup> July 2012 the High Court allowed the plaintiff's appeal and quashed the conviction entered against him and also set aside the sentence.

By reason of the foregoing, the plaintiff claims that he was wrongfully imprisoned and deprived of his liberty and he was greatly injured in his credit, character, reputation and he suffered considerable humiliation, mental and bodily pain, loss of dignity and anguish, and he was put to considerable trouble, inconvenience, anxiety and expense, and he has been greatly injured in his business and he has thereby suffered loss and damage. The plaintiff claims special damages being loss of earnings due to loss of his job as a result of the prosecution herein and K44,080,000 per annum loss of business. And the plaintiff in the circumstances claims damages for false imprisonment and malicious prosecution.

The 1<sup>st</sup> and 2<sup>nd</sup> defendant deny the plaintiff's claim that he was maliciously and without reasonable cause arrested and prosecuted for the offence of receiving stolen property. They in fact claim that the plaintiff was arrested on reasonable suspicion of having received stolen property belonging to the 2<sup>nd</sup> defendant. The 1<sup>st</sup> defendant denies but the 2<sup>nd</sup> defendant admits that the plaintiff was kept in custody from the time of his arrest until his release on bail as claimed by the plaintiff. Both defendants deny the alleged loss and damage that the plaintiff claims.

The main issue for determination in this matter is whether indeed the 2<sup>nd</sup> defendant maliciously and without reasonable and probable cause laid false information before the police against the plaintiff of having received stolen property contrary to

section 328 of the Penal Code and caused the said police to arrest the plaintiff and to bring him before the Blantyre Chief Resident Magistrate Court for trial thereby falsely imprisoning and maliciously prosecuting the plaintiff.

At the trial, the plaintiff testified. The 2<sup>nd</sup> defendant's witnesses were Colonel Kaleke (retired), the Security Manager for the 2<sup>nd</sup> defendant, and Detective Sub-Inspector Banda of the Malawi Police Service. As far as the evidence of the parties is concerned it is common cause that the plaintiff, was indeed arrested by the police on 19<sup>th</sup> April 2010 at the 2<sup>nd</sup> defendant's offices in Lilongwe. He was subsequently charged before the Blantyre Chief Resident Magistrate Court with the offence of receiving stolen property being cables belonging to the 2<sup>nd</sup> defendant. The plaintiff was later convicted of the offence and sentenced accordingly. The plaintiff appealed against the conviction to the High Court which allowed his appeal and quashed the conviction and set aside the sentence.

What is in dispute however is the claim by the plaintiff that it is the 2<sup>nd</sup> defendant's officer, Colonel Kaleke who is also the 1<sup>st</sup> witness for the 2<sup>nd</sup> defendant, who instructed the police to arrest the plaintiff on the charge herein maliciously and without probable cause. This therefore calls for an examination of the circumstances leading to the arrest of the plaintiff herein.

The plaintiff's evidence on the disputed issue herein was as follows. The plaintiff stated that he is a businessman. He stated further that on or about the 19<sup>th</sup> May 2010 he was in Lilongwe and spoke on the phone with Colonel Kaleke after the retired Colonel called on the phone of Honourable Mtendere for whom the plaintiff worked. The plaintiff asserted that Colonel Kaleke quizzed him about the plaintiff's cables which were at MANICA, a freighting company, premises in Blantyre. Further that, among other things, Colonel Kaleke asked the plaintiff if he had purchase documents for the cables and the plaintiff confirmed that he had the said purchase documents. The plaintiff further stated that Colonel Kaleke then asked the plaintiff to take the purchase documents to the 2<sup>nd</sup> defendant's offices in Lilongwe. The plaintiff said this surprised him. The plaintiff stated further that he asked Colonel Kaleke if he could allow the plaintiff take the purchase documents to Blantyre where Colonel Kaleke was and where the plaintiff's cables where. Colonel Kaleke is said to have insisted that the plaintiff go to the 2<sup>nd</sup> defendant's Lilongwe offices.

The plaintiff stated further that later the same day he took his purchase documents to the 2<sup>nd</sup> defendant's offices at Lilongwe. The plaintiff stated that to his ultimate surprise he was confronted by two police officers who told him that they had been instructed by Colonel Kaleke to arrest the plaintiff. The plaintiff stated that he was arrested by the police officers and taken to Blantyre in the 2<sup>nd</sup> defendant's vehicle. The plaintiff was later charged of receiving stolen property being copper cables belonging to the 2<sup>nd</sup> defendant and the matter proceeded to his conviction before the Magistrate Court and subsequent quashing of the said conviction by the High Court on appeal. During cross-examination the plaintiff stated that he was arrested on suspicion that he stole the 2<sup>nd</sup> defendant's copper cables. He insisted that he produced documents at the 2<sup>nd</sup> defendant's Lilongwe offices which showed that the cables in issue were his.

Colonel Kaleke was the 1<sup>st</sup> witness for the 2<sup>nd</sup> defendant. He testified about how the plaintiff was arrested. He informed this Court that he was responsible for the security of all assets and personnel of the 2<sup>nd</sup> defendant. He further stated that the 2<sup>nd</sup> defendant often had its copper cable network vandalized by vandals who look for copper wires and that this compelled the 2<sup>nd</sup> defendant to put in place several security measures including reliance on tip-offs from members of the general public with a reward. He further stated that on or around 9<sup>th</sup> April 2010, he received a tip-off that there were some people who were planning to export scrap metals including the 2<sup>nd</sup> defendant's copper wires. Further, that on 11<sup>th</sup> April 2010 he received another tip-off that there was a truck registration number LA 3301 with a trailer registration number LA 3090 that was loaded with two 20 foot containers with numbers FSCU 3889267 and ZIMU 1383808 and they were carrying scrap metal which included the 2<sup>nd</sup> defendant's burnt copper cables. The informant indicated that the cables were destined for the Republic of South Africa but the names of those involved in the export were not disclosed. On 12<sup>th</sup> April 2010, Colonel Kaleke received a further tip-off that the truck in issue herein was seen going into the MANICA container depot at Chichiri upon which he went there to see if this was true. He saw the truck come out of the depot but without the containers herein. He then informed the Police anti-vandalism Team about the information so far. On 13<sup>th</sup> April 2010, he went to MANICA container depot in the company of the Police Anti-Vandalism Team and who managed to establish that a certain Mr Harawa, working for Hanse Fracht, is the one who had knowledge

about the ownership of the two containers herein. Mr Harawa was questioned by police and he gave information that eventually led to the establishment of the fact that the plaintiff indeed owned the scrap metal in one of the containers in issue herein. Further that some of the contents in one of the containers were bags containing burnt copper cables of the 2<sup>nd</sup> defendant. The police investigation which was closely followed by Colonel Kaleke culminated in the Colonel asking the plaintiff to go to the 2<sup>nd</sup> defendant's offices to present ownership papers for the 2<sup>nd</sup> defendant's cables herein. Colonel Kaleke informed this Court that police were standing by at the 2<sup>nd</sup> defendant's offices with a view to arresting the plaintiff if he did not present valid papers for his ownership of the 2<sup>nd</sup> defendant's cables.

Colonel Kaleke further stated that on 23<sup>rd</sup> April 2010, the plaintiff went to the 2<sup>nd</sup> defendant's Lilongwe offices but could not furnish ownership papers for the 2<sup>nd</sup> defendant's cables and was accordingly arrested. The 2<sup>nd</sup> defendant provided transport for the plaintiff to be brought to Blantyre by police. The plaintiff was then interrogated by police in the presence of Colonel Kaleke but the Colonel says that the plaintiff could not explain how he obtained the ownership of the 2<sup>nd</sup> defendant's cables that were found in his scrap metal bags herein. Colonel Kaleke stated that other people who were involved in the scrap metal export scheme herein had not been arrested by police since they went into hiding. He confirmed that the plaintiff was convicted by the Blantyre Chief Resident Magistrate Court but that the conviction was quashed on appeal by the High Court on technical grounds.

In cross-examination, Colonel Kaleke indicated that he was not present in Lilongwe when the plaintiff was arrested.

The 2<sup>nd</sup> witness for the 2<sup>nd</sup> defendant, Detective Sub-Inspector Banda also narrated to this Court along the same lines as explained by Colonel Kaleke on how the plaintiff was arrested. He informed this Court that in terms of investigations and arrest of the plaintiff his team worked hand in hand with Colonel Kaleke. He however stated that from the time the 2<sup>nd</sup> defendant's cables were found at MANICA the 2<sup>nd</sup> defendant did not tell the police about the plaintiff. Rather, that upon first arresting Mr Harawa the police were led to the plaintiff. Detective Sub-Inspector Banda further stated that he was not present at the time the plaintiff was arrested in Lilongwe. He however stated that of the bags of scrap metal which were found in the containers at MANICA 13 of those bags were identified by the

plaintiff as belonging to him and these contained the 2<sup>nd</sup> defendant's burnt copper cables. He finally stated that the plaintiff was subsequently prosecuted and convicted before the Blantyre Chief Magistrate Court but that the conviction was later quashed on appeal before the High Court.

In their written submissions the plaintiff and the 2<sup>nd</sup> defendant both rightly submitted on the standard of proof in civil cases such as the instant one as well as the applicable law on both the claim of false imprisonment and malicious prosecution.

Indeed, the standard of proof in civil matters is on a balance of probabilities. And he who asserts the affirmative on an issue bears the burden of proof to that requisite standard. The plaintiff therefore bears the burden of proof on his claims to the requisite standard.

With regard to the law of false imprisonment both the plaintiff and the 2<sup>nd</sup> defendant correctly submitted on the applicable law. The law is that a defendant is not liable for false imprisonment if he merely conveyed information to the police of his suspicion and the police acted according to their own judgment by taking the plaintiff into custody. *Matanda v Sales Services Limited and others* [1990] 13 MLR 219, *Manda v Ethanol Company Limited* [1993] 16 (2) MLR 572, *Kanyemba v Malawi Hotels Limited* [1991] 14 MLR 157, *Chimtendere v Burroughs Limited* [1981-83] 10 ALR (Mal) 215, *Chiumia v Southern Bottlers Limited* [1991] MLR 38, *Nsanjama v National Oil Industries Limited* [1995] 2 MLR 654, *Press (Farming) Limited v Issat* [2000-2001] MLR 373 and *Kadango v Stagecoach Malawi Limited* [2000-2001] MLR 182. Further, an arrest if made on reasonable suspicion, is lawful notwithstanding that the suspected offence was not in fact committed; the fact that the accused person is later acquitted does not mean that his initial arrest was unlawful. *Iphani v Makandi Tea and Coffee Estate* [2004] MLR 91 and *Mhango v Attorney General* civil cause number 199 of 1994 (High Court) (unreported).

With regard to malicious prosecution, both the plaintiff and the 2<sup>nd</sup> defendant rightly pointed out that the tort of malicious prosecution is proved if the plaintiff shows that he was prosecuted by the defendant, that the prosecution ended in the plaintiff's favour, that there was no reasonable or probable cause for the

prosecution and that the prosecution was actuated by the defendant's malice, that is, improper motive. *Matanda v Sales Services Limited and others* [1990] 13 MLR 219, *Manda v Ethanol Company Limited* [1993] 16 (2) MLR 572, *Mbewe v Agricultural Development and Marketing Corporation* [1993] 16 (2) MLR 594, *Phiri v Lujeri Tea Estate* [1981-83] 10 ALR (Mal) 398, *Mwafulirwa v Southern Bottlers Limited* [1991] 14 MLR 316, *Mvula v Norse International Limited* [1992] 15 MLR 331, *Nguza v Mzuzu City Council* [1995] MLR 161 and *Nzunga v Blantyre Print & Publishing Company* [1999] MLR 282.

The plaintiff noted the law on evidence that failure to call a crucial witness works against a party that fails to call such a witness. That in such circumstances the Court will assume that the only reason why such a witness is not called is that the evidence is adverse to the party who should have called such a witness. *Mpungulira Trading Ltd v marketing Services Division* [1993] 16 (1) MLR 346.

The 2<sup>nd</sup> defendant also pointed out that involvement of a defendant in investigations by providing resources to aide in efficient and effective investigations is not tantamount to malicious prosecution. *Lapukeni v Commercial Bank of Malawi* [1996] MLR 139.

In his written submissions the plaintiff argued that with regard to the evidence, it is quite clear that the defendants are liable for his false imprisonment herein. The plaintiff argued that the evidence on record shows that the 2<sup>nd</sup> defendant did more than just give information of its suspicion to the police about the plaintiff. Further, that the police did not act on their own independent judgment. The plaintiff points out that Colonel Kaleke for the 2<sup>nd</sup> defendant actively quizzed him about ownership of the cables when he spoke to the plaintiff on the phone and directed him to present ownership papers for the copper cables. Hence, that it is highly likely that Colonel Kaleke played an appreciable role in the arrest of the plaintiff herein. In fact, that it is highly likely that Colonel Kaleke planned for the police to arrest the plaintiff at the 2<sup>nd</sup> defendant's Lilongwe offices as testified by the plaintiff. Further, that the police actually carried out investigations hand in hand with the 2<sup>nd</sup> defendant who actively participated at every stage of the process. The plaintiff argued that this is what the 1<sup>st</sup> and 2<sup>nd</sup> defendant's witnesses stated in evidence.

The plaintiff argues that, having been acquitted of the charges leveled against him the imprisonment of the plaintiff from the date of his arrest to the date he was granted bail was therefore false imprisonment inflicted by both defendants herein. Accordingly, the plaintiff submits that on the evidence in this matter the defendants are liable to pay damages for the plaintiff's false imprisonment. However, the 2<sup>nd</sup> defendant takes a contrary view to this.

The 2<sup>nd</sup> defendant makes three arguments. Firstly, that the 2<sup>nd</sup> defendant was initially not aware that the plaintiff was involved in the illegal possession of the 2<sup>nd</sup> defendant's cables when Colonel Kaleke reported the matter concerning containers at MANICA to the police. The plaintiff's involvement in the matter was revealed as a result of police investigations into the plaintiff's accomplices who were interrogated first. The 2<sup>nd</sup> defendant further stated that when police later discovered that the plaintiff was working for Honourable Mtendere, who was an acquaintance of Colonel Kaleke, the police employed an investigative tactic by using Colonel Kaleke to talk to Honourable Mtendere and the plaintiff so as not to arouse suspicions. Further, that by merely speaking to the plaintiff on the phone and asking him about his consignment at MANICA, Colonel Kaleke did not lay any charge against the plaintiff to the police. The 2<sup>nd</sup> defendant therefore submits that the 2<sup>nd</sup> defendant cannot be liable for false imprisonment when the police only used Colonel Kaleke to gather some facts in their investigations.

Secondly, the 2<sup>nd</sup> defendant states that the plaintiff did not deny to the police or to the criminal trial court that the consignment of the 2<sup>nd</sup> defendant's copper cables at MANICA belonged to him. Therefore, that the issue of how the 2<sup>nd</sup> defendant's burnt copper cables are distinguishable from other burnt copper cables is not of any relevance at this point, and that in any case, it is a technical question which the 2<sup>nd</sup> defendant duly dealt with at the criminal trial court. Further, that the plaintiff having accepted that the 2<sup>nd</sup> defendant's burnt copper cables were his he was requested to produce the purchase documents that originated from the 2<sup>nd</sup> defendant. The 2<sup>nd</sup> defendant argues that the verification of such documents was a matter to be done only by the 2<sup>nd</sup> defendant and not the police. Further, that what happened was that upon the documents not being verified as having been issued by the 2<sup>nd</sup> defendant to the plaintiff all that the 2<sup>nd</sup> defendant's officers at Lilongwe did was to relay that information to police. The 2<sup>nd</sup> defendant argues that the verification of cable ownership documents by the 2<sup>nd</sup> defendant does not amount to



laying of a charge against the plaintiff when it was the police who requested that information and then acted on their own judgment and decided to detain the plaintiff in the course of their investigations.

Thirdly, the 2<sup>nd</sup> defendant states that it is not disputed that the plaintiff had a consignment at MANICA consisting of the 2<sup>nd</sup> defendant's copper wires for which he had no purchase documents originating from the 2<sup>nd</sup> defendant. Further, that the plaintiff could not explain his possession of the 2<sup>nd</sup> defendant's copper wires and it could reasonably be presumed that they were stolen hence there was reasonable ground for a lawful detention by the police. Further, that even if the plaintiff was discovered, immediately after detention but before commencement of his criminal trial, not to have committed the offence, that would not have made the detention unlawful given that initially there was a reasonable ground for the detention in that he could not explain his possession of the 2<sup>nd</sup> defendant's copper wires without ownership documents. The 2<sup>nd</sup> defendant argued that, therefore, the fact that the plaintiff was later acquitted by the High Court has no effect as far as liability for false imprisonment is concerned the detention of the plaintiff having been lawful as it was on reasonable suspicion.

This Court has considered the evidence as given by all the witnesses and notes that the plaintiff was indeed only discovered after the initial detention and interrogation by police of the plaintiff's alleged accomplices in the copper wire export venture. At that stage Colonel Kaleke cannot be said to have laid a charge to the police against the plaintiff. It is however clear in the evidence of both defence witnesses that Colonel Kaleke was ever present during police investigations and the police say they worked hand in hand with him. The question therefore is whether the fact that Colonel Kaleke worked hand in hand with the police in the course of the investigations herein amounted to his laying a charge against the plaintiff herein. In the totality of the evidence this Court finds as a fact that the plaintiff has not proved that Colonel Kaleke actually laid a charge against the plaintiff of receiving stolen property. All that Colonel Kaleke did was to assist the police with gathering information say by speaking to the plaintiff on the phone of Honourable Mtendere and facilitating the verification of the plaintiff's ownership papers at the 2<sup>nd</sup> defendant's offices. It appears to this Court that the police after gathering all the information herein, even with the aid of the 2<sup>nd</sup> defendant, decided to detain the plaintiff as they did with all the other accomplices. The situation would have been

different if Colonel Kaleke had actually went to the police with the name of the plaintiff indicating that the plaintiff had received the 2<sup>nd</sup> defendant's stolen copper wires. This court does not believe what the plaintiff said that he was told by the police officers at the 2<sup>nd</sup> defendant's offices that they were instructed by Colonel Kaleke to arrest him. The evidence of both the plaintiff and the 2<sup>nd</sup> defendant suggests clearly that the whole purpose of the plaintiff going to the 2<sup>nd</sup> defendant's Lilongwe offices was for the plaintiff to produce ownership documents for the copper wires. It appears improbable that in that situation then there would be a standing instruction for the police officers at Lilongwe to arrest the plaintiff in any event. In view of the foregoing, this Court finds that the 2<sup>nd</sup> defendant did not lay a charge against the plaintiff as claimed. Even if this Court had found that the 2<sup>nd</sup> defendant laid a charge against the plaintiff for receiving stolen property herein, from the totality of the evidence it appears that the charge would in the circumstances have been laid upon reasonable suspicion of the plaintiff as argued by the 1<sup>st</sup> defendant in its last two submissions on the issue of false imprisonment. No wonder the plaintiff was found guilty by the criminal trial court and only acquitted on appeal. It must be remembered that an arrest if made on reasonable suspicion, is lawful notwithstanding that the suspected offence was not in fact committed; the fact that the accused person is later acquitted does not mean that his initial arrest was unlawful. See *Iphani v Makandi Tea and Coffee Estate* [2004] MLR 91 and *Mhango v Attorney General* civil cause number 199 of 1994 (High Court) (unreported). In view of the fact that no charge was laid by Colonel Kaleke herein and further that the arrest herein was on reasonable suspicion the plaintiff having failed to produce ownership documents the imprisonment cannot be unlawful. The plaintiff has therefore failed to prove that he was falsely imprisoned and his claim fails.

With regard to the claim of malicious prosecution, the plaintiff submitted that the defendants are liable to pay damages for malicious prosecution. Further, that the plaintiff was accused of receiving stolen property. The plaintiff argued that when he sought to show the defendants receipts as proof that the alleged stolen property was duly and properly purchased the defendants did not pay any attention. The plaintiff asserted that this shows that there was no reasonable and probable cause for the prosecution of the plaintiff. The plaintiff further argued that the prosecution that he suffered was glaringly malicious given that there does not seem on the facts

to be any proper motive or purpose for having the plaintiff prosecuted. And that the ultimate acquittal of the plaintiff confirms this view.

The plaintiff notes that the 2<sup>nd</sup> defendant asserts that there was reasonable suspicion for arresting the plaintiff. He argues that the 2<sup>nd</sup> defendant's assertion is based mainly on the allegation that the plaintiff failed to produce ownership documents. Further, that in that case the onus of proof falls on the 2<sup>nd</sup> defendant to show that the plaintiff failed to show ownership documents. The plaintiff claims that the 2<sup>nd</sup> defendant has not proved its allegation. The plaintiff pointed out that both defence witnesses were not present at Lilongwe when the plaintiff went to show his ownership documents. Further, that none of the relevant officers of the 2<sup>nd</sup> defendant were paraded as witnesses to prove the allegation that the plaintiff failed to show ownership papers. The plaintiff argued that failure to call those officers must be taken to mean that there evidence would have been adverse to the relevant material claim by the 2<sup>nd</sup> defendant.

The plaintiff further argued that the cables that the 2<sup>nd</sup> defendant claims to belong to it were burnt cables and therefore the question is how can one tell that a given burnt copper cable belongs to the 2<sup>nd</sup> defendant and thereby have reasonable suspicion.

The 2<sup>nd</sup> defendant argues that it should not be found liable for malicious prosecution. Firstly, it argues that the plaintiff must satisfy all the four elements of the tort before a finding can be made in his favour which has not done. The 2<sup>nd</sup> defendant asserted that in the present matter the prosecution of the plaintiff was not initiated by the 2<sup>nd</sup> defendant. Further, that the prosecution initially did not end in favour of the plaintiff. Further still, that there was reasonable and probable cause for prosecuting the plaintiff since he had failed to explain his possession of the 2<sup>nd</sup> defendant's copper wires without ownership documents. Lastly, that the plaintiff has not adduced any evidence imputing malice on the part of the defendants in prosecuting him. Secondly, the 2<sup>nd</sup> defendant argues that it aided the police with resources so as to improve the efficiency and effectiveness of their investigations. The 2<sup>nd</sup> defendant stated further that the High Court has taken judicial notice of want of resources for effective police work and that therefore a defendant who aides the police with resources to help investigations cannot be said to be liable for malicious prosecution. Hence, that the 2<sup>nd</sup> defendant cannot be said to have had any

malice on its part in the prosecution of the plaintiff herein. This has not been disputed by the plaintiff.

This Court notes that the evidence of Colonel Kaleke shows that despite that he was not at Lilongwe when plaintiff failed to produce copper wire ownership documents but only got a report, which is clearly hearsay as rightly noted by the plaintiff, he was present at Blantyre when the plaintiff was asked by police about his ownership of the 2<sup>nd</sup> defendant's copper wires and the plaintiff could not explain how he obtained ownership of the 2<sup>nd</sup> defendant's copper wires found in some of his bags at MANICA. The fact that the relevant report from Lilongwe about the plaintiff's failure to produce ownership documents is hearsay is superseded by the fact that once the plaintiff was interrogated in Blantyre he still failed to provide an explanation how he came by the 2<sup>nd</sup> defendant's copper wires. The police therefore at that point had properly formed a reasonable suspicion to ground the plaintiff's arrest herein. This finding by the police confirms whatever transpired at Lilongwe resulting in the arrest of the plaintiff. As found on the false imprisonment claim, there is therefore every reason to convince this Court that the police had reasonable suspicion for arresting and thereafter prosecuting the plaintiff herein. In the circumstances, the plaintiff has failed to prove his claim that he was maliciously prosecuted since he could not explain how he came by the 2<sup>nd</sup> defendant's copper wires.

The argument by the plaintiff that the burnt copper wires could not raise the suspicion herein has been dealt with by the 2<sup>nd</sup> defendant who indicated that the plaintiff accepted on the phone with Colonel Kaleke that the cables were from the 2<sup>nd</sup> defendant but that he had documents to prove his ownership of the same. This is clear from the evidence of Colonel Kaleke in paragraph 37 of his witness statement and which was not disputed at all by the plaintiff. In any event, the 2<sup>nd</sup> defendant has technical knowhow pertaining to what the specifications of its cables are and should easily know the same even if burnt. In view of this, and the fact that the plaintiff has not proved any malice on the part of the prosecution more so where the plaintiff was initially convicted by the trial court there must surely be reasonable and probable cause for the prosecution of the plaintiff.

In the totality of the evidence herein this Court finds that the plaintiff has also failed to prove his claim that he was maliciously prosecuted there being reasonable and probable cause for his prosecution herein.

The plaintiff's claim has failed in its entirety.

Costs normally follow the event and shall therefore be for the successful defendants.

Made in open court at Blantyre this 10<sup>th</sup> June 2015.

M.A. Tembo  
**JUDGE**