

IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NO. 115 OF 2008

BETWEEN:

ALEX MBALAME.....PLAINTIFF

-AND-

MALAWI REVENUE AUTHORITY.....DEFENDANT

Coram: Hon. Justice M L Kamwambe

Mr Roka of counsel for the Plaintiff

M/s Makwinja of counsel for the Defendant

Mr Phiri.....Official Interpreter

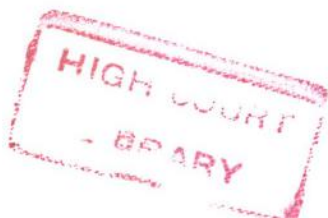
JUDGMENT

Kamwambe J

This is a claim for damages for false imprisonment, malicious prosecution and defamation, and costs of this action.

The Plaintiff was an employee of the Defendant from 2000 to 2007 where he worked as an Assistant Human Resource Officer at the Institute of Tax Administration at Chichiri in Blantyre. A guard at the Defendants Institute of Tax Administration reported to Ndirande Police the missing of a generator at the Institute. Upon instituting investigations the police found the generator in Ndirande Township. Later, the police arrested the Plaintiff on reasonable suspicion that he committed the offence of theft.

The Plaintiff testified that in July 2006 he took a broken down generator to a contractor certified by the Defendant for a quotation. While the generator



was in the custody of the contractor, a Mr Simfukwe, a guard saw it and reported the matter to police without first inquiring with Plaintiff. Thereafter, the police arrested and kept the Plaintiff in custody for 14 days. He was charged of theft by servant contrary to section 286 (1) of the Penal Code. On 24th November, 2006 the court acquitted him. He testified further that if the matter was merely reported to police without procuring his arrest, the police would have done their investigations properly which would not have led to his arrest, and that the arrest was followed by a malicious prosecution and defamation to his character.

In **Pearson Chafuli v Chibuku Products Limited**, Civil Case No. 3705 of 2001 the court said in relation to false imprisonment that:

“...the settled principle of law that where a person makes charges against another on which it becomes the duty of the Police to act, the person making the charge is liable for false imprisonment.”

In cross- examination Plaintiff came out clearly that he was not there at the Police when Simfukwe was reporting the matter and that he does not know what Simfukwe told the Police. Plaintiff was also referred to page 10 from line 18 of the court record where Simfukwe testified in criminal charges against the Plaintiff that:

“I went to Ndirande Police and reported of the missing of the generator at our offices. Statement was obtained from me and upon returning to my work place I told PW1 of this.”

From the above there is no evidence that the Defendant agent, Simfukwe, made a charge against the Plaintiff.

I do not see any evidence that a charge was made by the Defendant upon which it became the duty of the police to just prosecute as analysed by Skinner CJ in **Chintendere v Burrough Ltd** (1981-1983) 10 ALR 215 at 217 when he said:

“If the defendant, acting through his servants or agents, ordered the police to arrest the plaintiff, it is imprisonment by the defendant as well as by the police...but if the defendant merely stated the facts to the police, who, on their own responsibility took the plaintiff into custody, this is no imprisonment or trespass by the defendant. It comes down to this: if the defendant’s servants made a charge on which it became the duty of the police to act, then it is liable, but it is not liable if they gave information and the police acted according to their judgment. It is immaterial whether or not the defendant believed that the plaintiff had committed a crime, if he had not done so.”

It was stated in **Maula -v- Norse International Limited** [1992]15 MLR 331 that:

“The Defendant will not be liable if all they did was to give information about the loss of goods and asked the police to investigate.”

In the light of the above, I find that the claim for false imprisonment fails for lack of evidence to support it.

On the issue of malicious prosecution Unyolo J (as he then was) had this to say in the case of **Matanda v Sales Service Ltd and others**, [1990] 13 MLR 219(HC):

“I now turn to the claim for malicious prosecution as has been stated in several cases decided by this court, in order for a plaintiff to succeed in an action for malicious prosecution he must establish that there was no reasonable and probable cause, that is, no sufficient reason for the prosecution and he must also show malice, that is, an improper motive for instigating the prosecution. These, however, are not the only ingredients of this tort. There are two others: first the plaintiff must show that he was prosecuted by the defendant and secondly that the prosecution was determined in his favour.”

In the case of **Mbewe v Agricultural Development and Marketing Corporation** [1993] 16 (2) 594 (HC) the court held that malicious prosecution requires proof of absence of reasonable and probable cause and proof of malice in commencing proceedings. A plaintiff may prove malice by showing improper motive or purpose.

I have considered the fact that there was no document between the Plaintiff and the contractor to the effect that the generator was given to contractor for repair. Further, evidence shows that the Plaintiff did not inform his boss that he had given the contractor the generator for assessment and/or repair, and that indeed the generator was with the contractor, and not at the premises of the Respondent. The Plaintiff sought no authority from his boss, PW1, to let the generator be handled by the contractor, Mr Black, a thing which ordinarily he should have done.

In cross-examination PW1 answered 1st Plaintiff during the criminal trial as follows :

“Whenever a thing is broken down you report ...to me and I give an authority. You didn’t tell me that the generator was taken out for repairing and you said it at the police unit that you took it on your own.”

There is evidence that the generator was sold at the price of K50, 000 .00 and a deposit of K35, 000.00 was paid. It was retrieved from the purchaser at Chingeni. When it is established that the Plaintiff was prosecuted and that he has either been acquitted or his criminal matter discontinued, the court is duty bound to consider whether there was a reasonable and probable cause for instigating the 'failed' prosecution, or sufficient reason for prosecuting. The Respondent held reasonable and adequate grounds for believing that a theft had taken place. The mere fact that the prosecution has not been successful does not *per se* mean that reasonable grounds were not there. Having taken the chance to go through all the evidence, if an appeal were made, the likelihood of success would be very high. However, this is not an important consideration. Suffice it to say that there was reasonable and probable cause to initiate criminal proceedings.

Again I find that this claim for malicious damage fails.

The third claim is for defamation. Having found that the Plaintiff has lost in claims for false imprisonment and malicious prosecution, it becomes difficult to imagine how Plaintiff can be successful in defamation. The question that arises is, "if he was defamed at all, was it because of unreasonable conduct of the Respondent?" I do not think that the Respondent can be held liable for any resultant defamation as they acted in good faith and in good manner the way a responsible office should carry itself out.

I am not convinced that Plaintiff has successfully proved this claim. It also fails. I award costs to the Respondent.

Pronounced in Open Court this 2nd September, 2016 at Chichiri, Blantyre.


M L Kamwambe
JUDGE