



REPUBLIC OF MALAWI

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

PERSONAL INJURY CAUSE NO. 712 OF 2016

BETWEEN

AUBREY MATEMBA.....PLAINTIFF

-AND-

AUHAD STEEL  
MANUFACTURING.....DEEFENDANT  
COMPANY LIMITED

CORAM: THE HON. MR. JUSTICE D. MADISE

Mr. W, Kazembe, Counsel for the Claimant

Mr. Banda, Counsel for the Defendant

Mr. M. Mbekeani, Official Interpreter

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Madise, J

JUDGEMENT

## **1.0 Introduction**

- 1.1 On 28th September, 2016 Aubrey Matemba the claimant in this matter took out a writ of summons (specially endorsed) against the defendant. Auhad Steel Manufacturing company limited his employers seeking damages for defamation, unlawful imprisonment and malicious prosecution due to an event that happened on or around 27 July, 2016 at the defendant's premises. The defendant has denied the claim and has called on the plaintiff to proof his case.

## **2.0 The Pleadings**

- 2.1 The plaintiff has particularized his claim in the statement of case that has been filed, details of which will appear in the evidence. The claimant has stated and particularized his loss and damage in the following terms.

### **2.2 Particulars of loss**

1. Suffered defamation.
2. Sustained severe shock and mental anguish.
3. Deprivation of the plaintiff's liberty for a period of over 120 hours.

### **2.3 The Plaintiff therefore claims**

1. Damages for defamation.
  2. Damages for unlawful imprisonment.
  3. Damages for loss of liberty.
  4. Damages for unlawful prosecution.
  5. Special damages.
  6. Costs of this action.
- 2.4. In response to the allegations leveled in the statement of case, the defendant filed their defence in which they denied ordering the police to arrest the claimant and that the defendant had no legal authority to take the plaintiff to any court of law for prosecution. In conclusion the defendant



called on the plaintiff to prove the alleged damage suffered due to the arrest.

**3.0. The Facts**

- 3.1 The claimant presented his witness statement which he adopted when trial commenced on 24<sup>th</sup> July, 2018. He stated under oath that on 27<sup>th</sup> July, 2016 he went to the defendant's premises to sell scrap metal. While he was there the defendant called the police on the basis that as a former employee he had connived with the police to steal from the defendant's premises.
- 3.2 He was taken by the police and kept in custody for 5 days. He was not informed of the reasons for his arrest. Additionally, he was not brought before any court of law to be dealt with accordingly. After 5 days he was released from custody. He now seeks damages. The plaintiff tendered in evidence his bail bond and a medical passport.
- 3.3 In cross examination the claimant told the Court that he was suspected because he once worked at the defendant's premises. He however admitted that he did not know who called the police or what was discussed during the telephone conversation. That marked the end of the claimant's evidence.
- 3.4 In response the defendant summoned Andrew Mpondamwala factory supervisor at the defendant's company. He stated that on 26<sup>th</sup> July, 2016 Mohammed Imtiaz one of the defendant's technicians identified the plaintiff as one of the suspects who was involved in a robbery that took place at the premises. Despite this, the defendant did not arrest or confront the plaintiff when he arrived at the premises. Imtiaz simply proceeded to phone the police and informed them that one of the suspects who had robbed the defendant's company was on site.
- 3.5 Thereafter the police arrived and Imtiaz told them he was suspecting the claimant and he requested the police to investigate. The police then called the plaintiff and started asking him questions. The witness admitted that he was not present during the interrogation. After that interaction, the police

took the plaintiff for further questioning and investigations. The witness denied that Imtiaz had directed the police to arrest the claimant. That marked the end of the defendant's evidence.

#### **4.0 The Issues**

4.1 There are two main issues for determination before me.

a) Whether the defendant, caused the arrest of the claimant.

b) If yes, whether the defendant is liable in damages for false imprisonment, malicious prosecution and defamation

#### **5.0 The Law**

5.1 The burden and standard of proof. It is settled law in this Republic that in civil matters, the burden of proof lies on the party that makes an allegation that certain facts exist. The standard is on a balance/scale of probabilities. In civil matters there are two principles to be followed. Who is duty bound to adduce evidence on a particular point and what is the *quantum* of evidence that must be adduced to satisfy the court on that point?

5.2 The law is that he who alleges must prove. Where at the end of the trial the probabilities are evenly balanced, then the party bearing the burden of proof has failed to discharge his duty. Whichever story is more probable that the other must carry the day.

#### **5.3 False Imprisonment**

This tort is the deprivation of liberty or freedom of movement without lawful cause. There must be no justification whatsoever why the right to freedom of movement should be restrained. The question before me is whether the police can violate this right when they arrest on reasonable suspicion or probable cause. Obviously the answer is in the negative. False imprisonment is the infliction of bodily restraint which is not expressly or impliedly authorized by law. See W.A. Mzungu vs. Blantyre Print and Publishing Co. Civil Cause No 1577 of 1995 (Unrepresented)



5.4 in Kadango vs. Stage Coach {2000-2001} MLR 182, Tembo J as he was then called

*"The defendant will be liable for false imprisonment if they laid a charge against the plaintiff on which it became the duty of the police to arrest the plaintiff. They will not be liable if all they did was to give information to the police about the loss of money at their premises.*

5.5 James Saulosi and Goodwell paketi vs. Bata shoe company (Malawi) Limited. Unyolo J then

*"The crucial issue in false imprisonment is to decide whether the defendant's servant merely stated the facts to the police or whether they made a charge against the plaintiff. It is accepted that conveying one's own suspicion to the police who on their own responsibility, take the plaintiff into custody, is not making a charge.*

#### 5.6 Defamation

A defendant is liable for defamation if he publishes to some person other than the plaintiff some false and defamatory story which injures the plaintiff's reputation. Three elements must be present for a defendant to be liable for defamation.

1. False story
2. Publication to third party
3. Injury to reputation.

5.7 Defamation is the intentional false communication published or publicly spoken that injures another's reputation or good name. It holds a person to ridicule, scorn or contempt in a respectable and considerable part of the community. (Black Law Dictionary 6<sup>th</sup> Ed. 1990). In Uren vs. John Fairfax & Sons Ltd [1967] 11 CLR 118, 150 Windeyer, J.

*It seems to me that properly speaking, a man defamed does not get compensation for his damaged reputation. He gets damages because he was publicly defamed. For this reason, compensation by damages operates in two ways: - as vindication of the plaintiff to the public and as a consolation to him for a wrong done. Compensation is here a solatium rather than a monetary recompense for harm measurable in money.*

5.8 In simple terms the tort of defamation is the publication of a false statement which intends to lower a person in the eyes of right thinking members of society. Such false publication must result in the public shunning or avoiding the person so defamed. The false statement must expose the person to hatred, ridicule and contempt. Once the statement is adjudged to be defamatory it is actionable per se.

5.9 Malicious prosecution

The tort operates where there is prosecution which is done maliciously and without lawful or reasonable cause. Where an arrest is made without reasonable and probable cause which ends in prosecution and the person so charged is acquitted he may seek remedy for malicious prosecution. Apart from proving that it was the defendant who was responsible for the laying of the charge, the plaintiff must further show that the prosecution was without reasonable cause.

5.10 In an action of this nature the Plaintiff must show first that he was prosecuted by the defendant. That is to say that the legal process which was baseless in law was set in motion against him on a criminal charge. Secondly that the prosecution was determined in his favour. Thirdly that it was without reasonable cause and was Malicious.

5.11 In Danby vs. Beardsley (1880) 43 LT. 603 Lopes J. described a prosecutor as a man who is actively involved and instrumental in putting the law in motion without probable cause. Mere suspicion is not a justification to commence a prosecution. See Meering vs. Graham White Aviation Co [1919] 122 LI at 56.

Plaintiff must simply prove absence of a proper motive and absence of reasonable cause.

## **6.0 Arguments**

6.1 Both parties have filled their submissions in aid of their positions in this matter. In brief the claimant had cited several decided cases on the law of defamation, false imprisonment and malicious prosecution. The claimant maintains the defendant laid a charge against him to the police and the police acted on that strength and arrested and detained him. Through his lawyer he has argued that, that was a clear breach of the law in this regard. Hence they want the defendant to pay damages for the loss and suffering the claimant endured during the 5 days of incarceration.

6.2 On the other hand the defendant has argued that all that the defendant did was to present Imtiaz's suspicion to the police who on their own authority arrested the plaintiff. They concluded that the law as it is does not fault anyone who simply gives information to the police. They prayed to Court to have the case against them dismissed with costs.

## **7.0 The finding**

7.1 In this matter there is no dispute that the claimant was arrested by the police while at the defendant's company. There is no dispute that he was given police bail after 5 days. There is no dispute that he was not taken before any court of law until today. The question before me is whether the defendant had laid a charge against the claimant or simply gave information to the police.

7.2 The answer is in the evidence. Imtiaz told DW1 that he called the police to inform them that one of the people he suspected to be one of the robbers who attacked him was at the premises. DW1 stated that this is all Imtiaz told the police and nothing else. Why Imtiaz himself did not testify poses more questions than answers.



- 7.3 In this regard what DW1 told the Court borders on hearsay. However, the truth of the matter is that Imtiaz called the police and we will never know what was discussed in that telephone conversation. Sadly, the police officer who received the report or the arresting officer or and the investigator did not come to Court to tell me what transpired.
- 7.4 On a balance of probabilities I do not think Imtiaz simply gave a report to the police. I am convinced that he laid a charge against the claimant hence an arrest and detention was effected. To show that the police never investigated this matter but simply acted on Imtiaz's charge, the police never prosecuted the claimant.
- 7.5 Looking at the law and the evidence in its entirety, I now proceed to find in favour of the claimant and find the defendant liable in damages for defamation, false imprisonment and malicious prosecution. Costs are awarded at the discretion of the court much as they follow the event. I condemn the defendant to pay the costs of this action.
- 7.6 The claimant must take out summons for assessment of damages before the Registrar within 21 days.

I so order

**Pronounced** in open Court on 22<sup>nd</sup> October, 2018 at Blantyre in the Republic.



Dingiswayo Madise  
**Judge**