



IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
CIVIL CAUSE NUMBER 1490 OF 2015

BETWEEN:

LASTON MWAHA t/a MUWAHA OFFICE

SUPPLIER AND GENERAL DEALERS-----PLAINTIFF

AND

GLADYS MASINA t/a GLALEE ENTERPRISES-----1st DEFENDANT

THE ATTORNEY GENERAL----- 2ND DEFENDANT

CORAM: HON. JUSTICE M.C.C. MKANDAWIRE

Mataka, Counsel for the Plaintiff

Chapo, Counsel for the 1st Defendant

Mrs Mbewe, Court Reporter

ITAI, Court Interpreter

JUDGMENT

By a writ of summons the plaintiff's claim against the defendants is for false imprisonment, malicious prosecution and defamation. The plaintiff alleges the following under three different heads of claims:-

False Imprisonment

On or about the 5th of April 2015 the plaintiff was arrested by the 2nd defendant's agent i.e. police officers from area 18 police station on allegations that he received stolen property. The plaintiff remained in jail from 5th April 2015 to 23rd of October 2015 when he was acquitted by the magistrate for lack of evidence. The arrest of the plaintiff is said to be devoid of reasonable and/or probable cause on the part

of the police as they worked on the first defendant's information without investigating the truth of the matter.

Malicious Prosecution

That there was no reasonable cause for the police to suspect that the plaintiff had committed the alleged offence.

Defamation

By the reason of the arrest the plaintiff's reputation had been seriously injured and lowered and has suffered considerable distress and embarrassment. The plaintiff was handicapped and paraded in an open police vehicle on several occasion when he was being taken to police. The plaintiff claims he was a very well known businessman and resident in Lilongwe at the material time.

As a result of all this the plaintiff suffered general damages resulting in economic and financial loss as his business could not operate for 4 days which led to reduction in profits.

The plaintiff therefore claims for:

- a) Damages for false imprisonment for 4 days
- b) Damages for malicious prosecution
- c) Damages for defamation
- d) Damages for loss of business profits
- e) Costs of this action

The second defendant filed its defence in which it says:

1. On 5th of April the plaintiff was arrested by its officers from area 18 police station. The 2nd defendant however denies the allegation of false imprisonment and malicious prosecution.
2. The 2nd defendant contends that the complaint they received disclosed a prima facie case of receiving stolen property and its officers had reasonable and probable cause to arrest the plaintiff and as such the arrest was justified.

The plaintiff was the only witness in this case. On or about the 5th of April 2015, The 2nd defendant's agents who are police officers from area 18 police station arrested the plaintiff on allegations that the plaintiff had received stolen property. In

arresting him, the police worked on the 1st defendant's information without investigating the truth. The plaintiff described how the entire events unfolded and that he was handicapped and paraded in an open police vehicle on several occasions when he was being taken to police. He remained in police custody until his acquittal by the magistrate on 23rd October 2015. Whilst in prison he underwent untold sufferings, discomfort and humiliation including loss of liberty for 4 days.

The defendants did not come forward to give evidence in defence. It therefore remains on record that the evidence of the plaintiff has not been contradicted. I have looked at the 2nd defendant's defence. It is too general and the court did not find any reason for doubting the story told by the plaintiff. The purpose of affording a defendant chance to be heard is obvious. It assists the court to have a balanced story and at the end of the day, the court will make its assessment of the evidence after having heard both sides. When a defendant does not want to utilize such an opportunity, the obvious conclusion by any reasonable court would be that the plaintiff's story is true unless it does not make any sense at all. The evidence of the plaintiff which I have chosen to believe is that the 1st defendant reported to the 2nd defendant that the plaintiff had received stolen property. After the report, the 2nd defendant arrested the plaintiff.

I have looked at several case authorities as to what amounts to false imprisonment. The cases of **Tembo vs Industrial Development Group (1)** 1993 16 2 MLR 865, **Kampani and Others vs ESCOM** 2016 MW HC 574 and **Chiumia vs SOBO LTD** 1991 MLR 38 at 46 just to mention a few.

From the evidence on record which evidence has not been contradicted, the arrest herein was procured by the 1st defendant in that the 1st defendant laid a charge of receiving stolen property against the plaintiff. There is no evidence on record that the police had caused investigations after such a report. The police proceeded to arrest the plaintiff and drove him whilst handicapped in an open motor vehicle. The plaintiff was prosecuted without any real basis and the 2nd defendant had totally failed to turn up to the court and say anything on the issues raised herein. I therefore believed the plaintiff that the prosecution lacked sufficient or reasonable ground and it was malicious. It is therefore not amazing that the trial court had acquitted the plaintiff for lack of evidence. I also find that it is defamatory to incarcerate the plaintiff and bring him before a court of law for criminal trial where

there are no reasonable grounds for doing so. This conduct by the 2nd defendant lowered the estimation of the plaintiff in the eyes of reasonable members of society.

The court is accordingly satisfied that the plaintiff has on a balance of probability satisfied it that he was falsely imprisoned, maliciously prosecuted and defamed. The defendants are therefore found liable with costs. I order that damages should be assessed by the Registrar.

DELIVERED THIS

DAY OF JANUARY 2018 AT LILONGWE

M.C.C MKANDAWIRE

JUDGE