

Republic of Malawi

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NUMBER 442 OF 2016

GOLDEN BALUWA

CLAIMANT

AND

**REGISTERED TRUSTEES OF FRIENDS OF CLAUDE
HO IN THYOLO (FOHTA)**

1st DEFENDANT

ATTORNEY GENERAL (MALAWI POLICE SERVICE) 2nd DEFENDANT

CORAM: JUSTICE M.A. TEMBO

E. Banda, Counsel for the Claimant
Mahonga, Counsel for the 2nd Defendant
Mankhambera, Official Court Interpreter

JUDGMENT

1. This is the decision of this Court following a trial in this matter on the claimant's claim for damages for false imprisonment, malicious prosecution, defamation and special damages incurred in relation to his impugned prosecution at the hands of the defendants. The claimant also sought costs of this action.

2. The defendants denied the claim.
3. The case of the claimant is that he was working for the 1st defendant as the Agriculture Instructor of the Vocational Training School from April 2014 until he resigned in 2015. He shared an office at the 1st defendant's head office at Lutchenza with the 1st defendant's Finance and Administrative Officer and Executive Director. This is because the school was still under construction and his office was not ready.
4. The 1st defendant is a non-governmental organization which among others operated a vocational school for training orphans and disadvantaged children in information technology, computer sciences, tailoring and carpentry.
5. The claimant stated that on 9th July, 2015 a laptop, laptop bag and cellphone belonging to an officer of the 1st defendant went missing in the administrative office which had been left open or unlocked. He indicated that the said office was shared by an administrative officer and office assistant Bright Denmark and that at the material time a student intern had been left in the office.
6. The claimant then indicated that on that day he came back to work after lunch but was not informed of the missing laptop and was only informed the following day. He added that his colleagues suspected that he stole the laptop since they said the intern could not.
7. He then asserted that the 1st defendant's administrative officer directed and procured a police officer at Lutchenza Police to arrest him as if he is the one who stole the laptop. He indicated that the matter was reported to police whilst he was on holiday.
8. He then stated that he was arrested and stayed in police custody from 28th July, 2015 to 31st July, 2015 when he was released on bail at the magistrate court.
9. He asserted that he was arrested without any investigation on the part of the 2nd defendant and that he was not questioned. He added that he was further prosecuted on false charges on which he was acquitted by the magistrate court. And that he lost the sum of K979 000 in travel costs for court appearances. He added that in the whole process his reputation got ruined in his community and he was therefore defamed.
10. The 1st defendant's defence is that it was duty bound to report about the theft of the laptop and that the police arrested the claimant upon their own inquiries. The 2nd defendant's defence is that the arrest and prosecution were justified since the facts disclosed a prima facie case of theft against the claimant.

11. The 1st defendant offered no evidence trial. The 2nd defendant's evidence at trial disclosed that the claimant was arrested by police officers following a report by an officer of the 1st defendant that she had gone to a shop where they usually bought stationary and the shop personnel told the 1st defendant's officer that the claimant went to the stationary shop to offer a laptop for sale. It was indicated that the description of the laptop offered by the claimant at the stationary shop was that of the stolen laptop. The police officers visited the stationary shop in the company of the 1st defendant's officer and the shop personnel confirmed the allegation against the claimant and the description of the laptop was also confirmed by the 1st defendant's officer. It is after this that the police officers arrested the claimant on suspicion of theft of the laptop, charged him and prosecuted him for the theft. The claimant was acquitted.
12. In a civil matter like the instant one, the claimant will succeed if he proves his case on a balance of probabilities. See *Nkuluzado v Malawi Housing Corporation* [1999] MLR 302 and *Miller v Minister of Pensions* [1947] All ER 372.
13. This Court observes that, as both parties are aware, for the claimant's action to succeed he must show that he was arrested and prosecuted by the defendants without reasonable and probable cause resulting in his being falsely imprisoned, maliciously prosecuted and ultimately being defamed. There must be proof that there was no lawful justification of the defendant's actions against the claimant. See *Chikago and another v Director of Anti-Corruption Bureau* civil cause number 33 of 2015 (High Court) (unreported) and *Sulaimana and Another v Attorney General* [2004] MLR 383.
14. It is a question of fact to be proved by evidence whether a claimant was arrested and prosecuted without reasonable and probable cause. An acquittal of an accused person of a criminal charge does not automatically entail that the arrest and prosecution was malicious. The claimant must show that there was no reasonable prospect of success with the proposed prosecution and that the prosecution is instigated by the defendant who acted with malice. See *Mwafulirwa v Southern Bottlers Limited* [1991] 14 MLR 316.
15. On the facts established by the evidence, this Court agrees with the defendants that the 2nd defendant had reasonable and probable cause for arresting and prosecuting the claimant considering the evidence that it had. The 2nd defendant acted after receiving a report from the officer of the 1st defendant

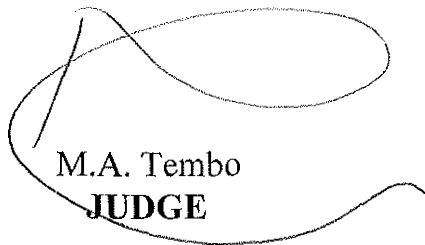
and visiting the shop where the claimant allegedly went to offer a laptop of the same description as the stolen one and where the description of the laptop was confirmed as well as the claimant's offer of the same for sale.

16. In the foregoing circumstances, contrary to the case of the claimant, the 2nd defendant had a reasonable and probable cause for arresting him and prosecuting him. Consequently, the defendants cannot be held liable for taking what was legally justifiable action in the circumstances of the present case.

17. The claims for false imprisonment, malicious prosecution and defamation therefore fail.

18. Costs normally follow the event and shall be for the defendants to be assessed by the Registrar.

Made at Blantyre this 28th October 2021.



M.A. Tembo
JUDGE