



Republic of Malawi



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IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NUMBER 6 OF 2017

HONOURABLE RASHID GAFFAR

CLAIMANT

AND

DIRECTOR OF THE ANTI-CORRUPTION BUREAU

DEFENDANT

CORAM: JUSTICE M.A. TEMBO

Chalamanda, Counsel for the Claimant

Chiwala and Khunga, Counsel for the Defendant

Makhambera, 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 wrongful arrest and false imprisonment, malicious prosecution and defamation. The claimant also sought costs of this action. The defendant denied the claim.
2. The claimant indicated in his statement of claim that he was arrested on 20th June 2011 and was subsequently prosecuted without reasonable and probable cause and consequently defamed at the instance of the defendant on a charge

of conspiracy to defraud that was levelled against him alongside two others, namely His Worship Mzonde Mvula and Kondi Msungama, on which he was subsequently acquitted. The defendant denied the claim.

3. In his evidence, as the only witness at the trial, the claimant stated as follows. That on the 20th of July, 2011 he was called to the Anti-Corruption Bureau office and he was arrested on the charge of conspiracy to defraud contrary to section 323 of the penal code in a matter where the other accused persons were Mr. Kondi Msungama and Mr. Mzonde Mvula. He referred to and exhibited a copy of the charge sheet marked "RG1".
4. The particulars of the conspiracy charge were that the claimant and his two co-accused on or about 21st February 2011, in Blantyre, conspired together to extort money to the value of five million kwacha from Ramesh M. Patel a businessman by threatening that there existed a warrant of arrest in the name of the said Ramesh M. Patel before His Worship Mzonde Mvula, Principal Resident Magistrate purportedly obtained by the Anti-Corruption Bureau, the execution of which could be stopped by the said Mzonde Mvula only upon payment of the sum demanded.
5. He stated that he was interrogated for long hours and made to record a statement. He produced a copy of his statement marked "RG2". And that he was finally released on bail, after being held by the Anti-Corruption Bureau for 10 hours.
6. He then stated that he was released on bail, with conditions which included surrendering his passport, reporting to police weekly and seeking permission to leave Blantyre or Malawi.
7. He asserted that from the moment he was arrested, the news of his arrest and trial was making headlines in papers, radio and television. He referred to the newspaper article which he marked as "RG3".
8. He stated that before the commencement of the criminal case against him, the Anti-Corruption Bureau approached him and proposed that he should become State witness. In return for becoming witness they were to drop all charges against him.
9. He stated that however, through his counsel, he refused to make any agreement with the defendant. He further stated that, if he were to testify, he would only do it in manner permissible under law and not in the manner that the defendant had suggested. He referred to and exhibited the correspondence

between his lawyer and the Anti-Corruption Bureau which he marked as "RG4". He further produced the proposed agreement drawn up by the defendant which was marked "RG5". The draft agreement proposed that charges would be dropped if he testified against the other two co-accused's involvement in acts that were contrary to the Corrupt Practices Act.

10. He stated that he was consequently prosecuted under criminal case number 88 of 2011 at the Magistrate's court in Blantyre for conspiracy to defraud contrary to section 323 of the penal code. And that his case was referred to the High Court. He stated that he was acquitted in the High Court of all charges. He referred to a copy of the judgement which he marked "RG6".
11. He stated that the Anti-Corruption Bureau being dissatisfied with the outcome of the case lodged an appeal under criminal appeal number 7 of 2012. And that the appeal was dismissed. He referred to and exhibited a copy of the appeal and the judgement which he marked as "RG7" and "RG8" respectively.
12. He asserted that from the moment of his arrest up to the time that he was acquitted his reputation was injured, he was falsely imprisoned, maliciously prosecuted and deprived of his liberty. And that he stated that he suffered great psychological trauma during the period on his arrest and prosecution, his relationship with his family, friends and business community were greatly affected.
13. He asserted further that he found it very difficult to travel out of the country due to the bail conditions that had been imposed. He stated that he had surrendered his passport to the Ant-Corruption Bureau. And that every time that he wanted to travel, he had to seek permission for the release of his passport. He referred to and exhibited a copy of an application for the release of his passport which he marked "RG9".
14. He then stated that his political career was in jeopardy. And that he was exposed to his political opponents and lost the trust of his constituents. Further, that it cost him a lot of time to earn back the trust that had been lost.
15. He stated that he also lost some business partners and clients. And that his business went through turbulent times due to the story of his involvement in corruption, the arrest and prosecution.
16. He asserted that he was detained at the instance of the defendant for 10 hours under the pretext of interviews. And that he was only allowed bail after undergoing a grueling interview.

17. He then asserted that he believed that his arrest was without basis, as it later turned out, he was only arrested so that the defendant could scare him into becoming its witness, who would testify to the matters that were beyond his knowledge. Further, that after his refusal to be the defendant's witness, the defendant commenced proceedings against him. And that he believed that the proceedings against him were commenced to spite him for refusing to be the type of witness they wanted him to be.
18. He stated that consequent to his arrest and prosecution, he was portrayed as a crooked, untrustworthy conman rather than a credible and reputable businessman or honorable Member of Parliament. And that he was greatly injured in his credit, character and reputation and he suffered considerable mental and bodily anguish. He stated that his family, children and friends were subjects of ridicule and scorn.
19. During cross-examination, he stated that he knows Ramesh Patel and that he had called him as his witness in this matter. However, as it later turned out Ramesh Patel never came to testify.
20. He stated that Ramesh Patel is not his business associate but rather his building contractor and was such at the time the claimant was arrested herein. He added that he knows the family of Ramesh Patel as his sister and Ramesh Patel married into the same family.
21. He then asserted that he was approached by his friend Kondi Msungama to link him up with Ramesh Patel. And that, contrary to the statement of Ramesh Patel to the Anti-Corruption Bureau that he told Ramesh Patel about the warrant of arrest for Ramesh Patel sought by the Anti-Corruption Bureau, it is actually Ramesh Patel who briefed him about the issue of the warrant of arrest. He asserted further that he did not remember telling Ramesh Patel about the warrant of arrest. When asked to read what Ramesh Patel stated in his statement on how he came to know about the warrant of arrest and upon reading the statement of Ramesh Patel that it is him who told Patel of the warrant of arrest, he stated that he does not remember anything because the incident happened a long time ago.
22. He then stated that he does not remember that His Worship Mvula asked for money because he could not recall what happened back then.
23. When he was asked to read what Ramesh Patel stated in his sworn statement about the incident at Wanderers Club, alleging that he was there and

- negotiated down the sum demanded by His Worship Mvula not to issue the alleged warrant of arrest against Ramesh Patel, he stated that he did not go to Wanderers Club to execute the deal, but he was there because he used to frequent the club by virtue of being a chairperson of the club.
24. He stated that he asked Ramesh Patel to report to police about the alleged demand for money by His Worship Mvula to make the warrant of arrest not be issued, but when he was shown a statement where Ramesh Patel explained how he reported the matter to the Anti-Corruption Bureau on his own accord, he insisted that he advised Ramesh Patel to report to police and maintained that he had forgotten what happened in the past.
 25. On the issue of him being detained for 10 hours, he stated that he went to the defendant's office at 8 am but agreed that he was arrested at 9.53 am and was taken to court around 2.44 pm and was released on bail by the court late in the afternoon or late evening. And that he spent the whole day at the defendant's office.
 26. He admitted signing on the warrant of arrest at his time of arrest in the presence of his lawyer from Knight and Knight. He also asserted that he believed that his arrest was unlawful because he was innocent and not at fault.
 27. He confirmed that he was arrested months before the negotiation for him to become a State witness started. And conceded that he cannot say that he was arrested because he declined to be a State witness. However, he maintained his belief that he was prosecuted because he declined to be State witness. Especially, because the defendant had heard from Ramesh Patel that he was not part of the conspiracy and that his only crime was linking up Ramesh Patel and Kondi Msungama. He asserted that he was asked very tough questions which he said were torturous. He confirmed that this interview was conducted in the presence of his lawyer.
 28. He asserted that he sued the Anti-Corruption Bureau because they are the ones who arrested him, and the media were reporting on his arrest. He asserted that that he has evidence of his defamation given the bad publicity he got in the newspapers that he produced. He added that even his children were being laughed at in school because of his arrest.
 29. He agreed that he was charged with the conspiracy count only.
 30. During re-examination, he stated that his memory on what happened was coming back slowly. He reiterated that Patel told him about the money being

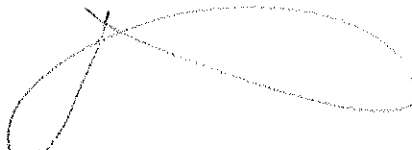
- demanded and asked him for help with raising the said sum. And that he advised Patel not to pay if he was innocent. He added that he encouraged Patel to report to the authorities.
31. He also wondered how as a well to do business who imports oil into the country he could be implicated in the matter by the defendant who knows his status as such and considering that the sum in issue was alleged to be K3 million only and he earns hundreds of millions.
 32. He indicated that Patel made his own statement at the defendant and that he never took part in the same. He reiterated that it is Patel who told him about the warrant of arrest and not the other way round as alleged by Patel in his statement to the defendant.
 33. He then explained that he underwent much suffering as a result of the issues in this matter.
 34. He then denied taking part in the conspiracy.
 35. He asserted that he declined to be a State witness because the defendant wanted him to testify about people whose roles he did not know in the saga in question. That is all the evidence there is.
 36. 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.
 37. This Court observes that, as correctly submitted by both parties in this matter, for the claimant's action to succeed he must show that he was arrested and prosecuted by the defendant 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.
 38. 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.

39. This Court agrees with the defendant's submission that the defendant had reasonable and probable cause for arresting and prosecuting the claimant considering the evidence that it had when one considers the statement given by Ramesh Patel about the involvement of the claimant who is alleged to have notified Patel about the alleged warrant of arrest. Patel further told the defendant that he met the claimant in the presence of some of the alleged extortionists at Wanderers Club where the claimant negotiated the extortion sum downwards. Faced with such information, it appears the defendant had reasonable and probable cause for forming the view that the claimant was part of the conspiracy to extort money from Patel.
40. It is without a doubt true that the claimant is a wealthy person and that this may have been known to the defendant. However, regrettable as it may be, the facts as they stood entitled the defendant to take the course of action it took. The defendant was presented with facts that revealed that there was a reasonable prospect of a successful prosecution with regard to the conspiracy considering the version of events from Patel and the defendant did what it is mandated to do at law which was to arrest and institute the prosecution of the claimant.
41. The claimant wondered how he the defendant would reasonably believe that he would get involved in a conspiring to extort money from his own contractor. That had to be weighed against the clear statement of Patel that the claimant indicated to Patel that he was going to meet some of the alleged extortionists and that eventually the meeting indeed occurred at Wanderers Club where the claimant is said to have negotiated the extortion sum. The decision by the defendant to believe Patel does not appear unreasonable in such circumstances.
42. The claimant has correctly submitted that the prosecution was unsuccessful for the reasons indicated by the High Court and the Malawi Supreme Court of Appeal.
43. However, whatever those Courts said does not detract from the fact that the defendant had before it facts that showed the involvement of the claimant in the conspiracy and led the defendant to have a reasonable and probable cause to arrest and prosecute the claimant. That is the gist of the matter.

44. The claimant contended that he was prosecuted out of spite for declining to be a State witness at the criminal trial in issue herein. He however conceded that the decision to arrest him was made way before this proposal by the defendant. This Court agrees with the defendant that the defendant was within its rights to decide how best to prosecute the matter herein including exploring the possibility of the claimant being used as its witness. The proposal of the defendant to use the claimant as its witness and the falling through of the negotiations in that regard does not appear to form a basis for malice on the part of the defendant as a prosecuting authority herein.
45. In the foregoing circumstances, contrary to the submissions by the claimant, the defendant had a reasonable and probable cause for arresting him and prosecuting him. Consequently, the defendant cannot be held liable for taking what was legally justifiable action in the circumstances of the present case.
46. The claims for false imprisonment, malicious prosecution and defamation therefore fail.
47. Costs normally follow the event and shall be for the defendant.

Made at Blantyre this 1st October 2020.



M.A. Tembo
JUDGE