

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA

HOLDEN AT SOROTI.

HIGH COURT CIVIL APPEAL NO. 3/93.

(From Soroti Chief Magistrate's Court
Miscellaneous Application No. 1 of 93
originating from Civil Appeal No.18/92)

CHARLES DIDA)
OYUGI MICHAEL)
SIMON OKELLO) APPELLANTS
CHARLES ODONGO)
SIMON OBOTE)

VERSUS

ONESIMU APILI RESPONDENT
BEFORE: THE HON. MR. JUSTICE S.G. ENGWAU.

J U D G M E N T

In Magistrate Grade 11 Court sitting at Ocherro Sub-County, the respondent/plaintiff unsuccessfully sued the appellants/defendants jointly and/or severally in general damages for unlawful arrest, false imprisonment, assault and battery and for special damages in which it was alleged that three grass-thatched houses were burnt, 25 chickens, 2 bags of beans, one pig (the values of which were not specified) cash shs 75,000/-; one pair of trousers at shs 1,200/-; one shirt worth shs 700/- and shs 8000/- for redeeming his bicycle.

In his judgment, the trial Magistrate found that the respondent was arrested, assaulted and detained in the Local Administration cells at Ocherro Sub-County. He observed that the appellants never disputed that finding. However, the trial Magistrate dismissed the claim for general damages for unlawful arrest, false imprisonment and assault on the ground that the appellants had unreasonable and probable cause to believe that the respondent was a wizard.

According to evidence before the trial Court, the respondent was suspected to have bewitched one Apeto and others before the incident. The trial Magistrate therefore held inter alia that the appellants had reasonable and probable cause to believe that the respondent was a wizard and in that regard they were right to report him to the authority as they did without any element of malice since witchcraft is a criminal offence.

As regards the question of special damages, the respondent could not succeed on the ground that he failed to prove strictly the items pleaded in the plaint. His findings were that it was the respondent who set fire to his own houses. He paid shs 8000/- just to redeem his bicycle. In the end result, the suit was dismissed with costs to the appellants which costs were later taxed in the total sum of shs 470,200/- in the absence of both parties.

In the first appeal before the Chief Magistrate at Soroti, the following grounds were raised amongst others by the respondent:-

The first ground of appeal was that the trial Magistrate erred in law and in fact in reaching a decision to the effect that the respondent had no remedy notwithstanding the finding that the claim of general and special damages for arson, unlawful arrest and false imprisonment had been proved.

Secondly, the trial Magistrate erred in law in holding that no special damages were proved by the respondent and finally that the costs awarded against the respondent were excessive and unreasonable.

In the 1st appellate Court, the respondent/appellant was the successful party. The learned Chief Magistrate observed that the findings of the trial Court were that the respondent was actually arrested, assaulted and detained in the Local Administration cells of Ocheru Sub-County. In that respect therefore, the learned Chief Magistrate wondered why the trial Magistrate found that the respondent had no remedy! Under section 3 (3) of the Witchcraft Act,

"Any person who practices witchcraft or who holds himself out as a witch, whether on one or more occasions, shall be guilty of an offence and on conviction shall be liable to imprisonment for a period not exceeding five years."

In view of the above provision, the learned Chief Magistrate rightly held that mere suspicion is therefore not enough. In the instant case the appellants/defendants merely suspected that the respondent had bewitched one Apeto and another daughter in the area. The arrest was unlawful so was the assault and there was false imprisonment. The learned Chief Magistrate then awarded general damages of shs 100,000/- for unlawful arrest, shs 300,000/- for assault and Shs 100,000/- for false imprisonment.

As regards special damages, the learned Chief Magistrate concurred with the trial Magistrate that strict proof thereof is required. In the instant case there was evidence of proof for shs 8000/- as special damages only and he awarded it.

Now this is the 2nd appeal in which several grounds were raised but only the following were argued:-

In the 1st ground, it was argued for the appellants that the trial Magistrate in the first place had no civil jurisdiction to entertain the original suit.

Section 219 M.C.A., 1970 as amended by Act 4 of 1985, enhanced the civil jurisdiction of Magistrate Grade III Court to shs 250,000/- (old currency). However, Currency Reform Statute No. 2 of 1987, knocks two zeros and thereby reducing the civil jurisdiction for Magistrate Grade III to only shs 2,500/-. Since then M.C.A. 1970 has been amended in which Civil jurisdictions for the Chief Magistrate and Magistrate Grade 1 have been enhanced to 5m/- and 2m/- respectively, but the Legislature has remained silent about the civil jurisdictions of Magistrate Grade II and Magistrate Grade III which remain at shs 5,000/- and 2,500/- respectively.


It was argued that in the particulars of special damages, the respondent/plaintiff had pleaded a claim well over shs 91,580/- above the jurisdiction of the trial Court. On that ground it was argued that the original trial was a nullity ab initio - Order 7 r.13 C.P.R.

This Court agrees with the argument for the respondents that as a matter of practice, general damages are never quantified in the pleadings and that special damages are not awarded according to the civil jurisdiction of that particular Court but based on strict proof thereof. In the instant case therefore, the trial was not a nullity as such.

In the second ground of appeal, it was argued that the learned Chief Magistrate as the 1st appellate Court failed to appraise and evaluate evidence on record: Kezekia Otim Vs. George Akileng & others (1982) HVB 42, had he done he would have arrived at a different conclusion. However, learned Counsel for the respondent dismissed that argument. It is evident from the record that the learned Chief Magistrate appraised and evaluated the evidence on record and found contrary to the trial Magistrate that the respondent was actually arrested, assaulted and falsely imprisoned. Accordingly that ground of appeal also fails.

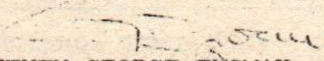
In the 3rd ground, it was argued that the learned Chief Magistrate failed to appreciate reasonable and probable cause for the arrest of the respondent who was practising witchcraft. An animal bone was found in his pocket which raised reasonable cause for his arrest and detention, it was argued. The Court also finds that ground of appeal failing on the ground that under section 3 (3) Witchcraft Act, mere suspicion is not enough.

In the last ground of appeal, both Counsel conceded that the general damages awarded by the learned Chief Magistrate were done arbitrarily. An appellate Court does not award damages beyond the jurisdiction of the trial Court. Accordingly, this is a fit case for a retrial order and I so order before a Court of competent jurisdiction. Each party to meet his own costs.


STEVEN GEORGE ENGWAU
J U D G E

1.3.95.

ORDER: Judgment to be delivered by the District Registrar at Soroti in the presence of the parties or their advocates.


STEVEN GEORGE ENGWAU
J U D G E

1.3.95.