

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
(CIVIL DIVISION)

CIVIL SUIT NO. 03 OF 2014

BWOGI KASTOR-----PLAINTIFF

VERSUS

1. ORIENT BANK UGANDA LIMITED

2. ATTORNEY GENERAL-----RESPONDENT

BEFORE HON. JUSTICE SSEKAANA MUSA

JUDGMENT

The facts of the plaintiff's case are that on 8th June 2012 the plaintiff was interrogated at the 1st defendant's premises for an alleged theft of 350,000,000/= that had occurred on 6th day of June 2011.

The plaintiff was later taken to the Central Police Station where he was coerced to make a statement. He was imprisoned for 4 days at the police cells and was later taken to Naguru Police department where his photographs were taken and he was later transferred to Kibuli CID Headquarters where he was later released on police bond to which he kept reporting until the bond was cancelled 4 years later.

AGREED FACTS

According to the record of proceedings/Joint Scheduling memorandum, the following are the agreed facts;

- That the plaintiff was called in for an inquiry for an alleged theft of 350,000,000/= that had allegedly occurred in the day of June 2012.
- The plaintiff was later detained at the Central Police Station.

- The plaintiff was later released on bond.

AGREED ISSUES.

(1) Whether there is a cause of action against the defendants?

(2) Whether the Plaintiff is entitled to the reliefs sought?

At the trial both parties led evidence of one witness each in proof of their respective case and other evidence was by way of documentary evidence that were exhibited at trial.

Issue 1

Whether there is a cause of action against the defendants?

The plaintiff counsel submitted that what is important in considering whether a cause of action is revealed in the pleadings are the questions whether a right exists and whether it has been violated.

The guidelines were stated by **Court of Appeal for East Africa In Auto Garage –vs Motokov (No. 3) (1971) EA. 514 (Attached is a copy of case law were the principles of Cause of Action were reiterated in the matter Civil Appeal No. 2 of 2001 Tororo Cement Co. Limited v Frokina International Ltd marked Annexure “B”)**

- (i) The plaintiff must show that the plaintiff enjoyed a right
- (ii) That right has been violated; and
- (iii) That the defendant is liable

Both the 1st and 2nd defendant filed their written Statements of defense.

The claim on which the suit was brought are stated in the plaintiff and evidenced in a witness statement sworn by Mr. Kaster Bwogi the Plaintiff in this matter the plaintiff remained totally firm and unshaken during his cross examination.

The plaintiff's counsel contends that the 1st and only witness to the 1st defendant gave evidence that she was the legal officer at the 1st defendant Bank in 2011 and came to know about the matter in about 2012 when the bank discovered a fraudulent transaction, she further testified that she has been working in the bank since 2011 to date where she is currently at the position of Head of Legal.

She did state that in as far as the assistance is given on the part of the banks, they provide documents and CCTV footage of any nature to the police and all necessary information to help the police carry out its "**successful investigation**".

The 2nd defendant did not file their witness statements nor did the 2nd defendant cross examine the plaintiff who was the only witness in his claim yet at all material times were duly served and notified of the court dates and directives.

It is the submission of counsel that it was held by Supreme Court that where a party declines to cross examine the opponent, he must be taken to admit the evidence as presented. **In Civil Suit No. 188 of 2009 Kamuntu Anthony vs Hajat Zam Sendagire & another** the principle was stated in *Habre International Co. Limited vs Ebrahim Alaraki Kassam & others, SCCA No. 04 of 1999.*

It was held that:

Whenever the opponent had declined to avail himself of the opportunity to put his essential and material case in cross examination, it must follow that he believed that the testimony could not be disputed at all

The Plaintiff was released on bond on Tuesday the 12th day of June 2012 after which his facial pictures were taken at Naguru Headquarters and advised to report on Bond which he did for over 4 years until the 25th day of August 2016 when the bond was cancelled.

The Plaintiff testified that he was never charged in court. He denied ever being a thief and imputes the actions of the 1st and 2nd defendant as one that occurred without balance of probability.

The civil tort of false imprisonment consist of unlawful detention of the Plaintiff for any length of time whereby he is deprived of his personal liberty. It must be total restraint. This principle was stated in the case of **Civil Suit NO. 154 of 2009 Mugwanya Patrick vs The Attorney General of Uganda**

The plaintiff's counsel contended that from the evidence adduced by the plaintiff it is undoubted he was detained without justification, he was simply told he was a suspect of the theft, he was interrogated at the premises of the 1st defendant by the agents of the 2nd defendants upon the directives of the 1st defendant.

The 1st and 2nd defendants also infringed on Plaintiffs' right and subjected him to the unlawful detention as reiterated in the Plaintiffs evidence, if at all the plaintiff had committed an offence, the arresting officers were bound to produce him before court and not let him languish week after week with no hope of having his name cleared.

The plaintiff' counsel submitted that in the instant case the plaintiff had a right of freedom which he was deprived of hence the violation of the right and it was the 1st defendant who did not have any concrete proof to warrant commencement of investigations and the uncalled for engagement of the 2nd defendant.

According to counsel the plaintiff has proved to court that the plaint shows that the plaintiff enjoyed a right; that that right has been violated and the defendants are liable and the facts disclose a cause of action against the 1st and 2nd defendants.

The 1st defendant in her submission contended that there is no dispute about the plaintiff enjoying his right but denies violation of the plaintiff's right by the 1st defendant. The 1st defendant neither participated in arresting the plaintiff nor in detaining him.

The 1st defendant submitted further in the testimony of DW1-Natalie Kironde, that the 1st did not instruct the 2nd defendant's agents to arrest and detain the plaintiff. The 1st defendant simply reported the matter to police and availed that information that it had in its possession regarding the matter.

The Police identified the plaintiff, arrested him, interrogated him and detained him until his release. The 1st defendant only reported the incident of theft with the police and furnished the police with items it requested for in a bid to assist the police conduct its investigations.

The 1st defendant's witness testified that there was a fraudulent transaction of 350,000,000/= which incident was reported to the Police Force. The bank passed over necessary information for its investigations like account statements and CCTV footage.

Resolution

The plaintiff indeed enjoyed a right as granted by the Constitution and the 1st defendant does not deny this fact.

The right enjoyed by the plaintiff was violated by his arrest and imprisonment beyond the mandatory constitutional period and continued reporting to police for a period of 4 years.

False Imprisonment

It was undisputed that the plaintiff was arrested and detained for 4 days at Central Police Station before being taken to Naguru Police department and later transferred to kibuli CID headquarters.

The plaintiff was arrested on 8th June 2012 and remained in detention until 12th June 2012 without being produced in court.

The Constitution provides that a person arrested shall be brought to a court of law within 48 hours. The detention of the applicant beyond the 48 hours was indeed a violation of his constitutional fundamental rights which would entitle him to general damages.

In the case of ***Mugwanya Patrick vs Attorney General High Court Civil Suit No. 154 of 2009*** Justice Stephen Musota (as he then was) stated that;

“ The civil tort of false imprisonment consists of unlawful detention of the plaintiff for any length of time whereby he is deprived of his personal

liberty. It must be total restraint....where an arrest is made on a valid warrant it is not false imprisonment; but where the warrant or imprisonment is proved to have been effected in bad faith then it is false imprisonment."

Therefore the arrest and detention of the plaintiff for more than mandatory 48 hours or 2 days was indeed wrongful imprisonment by the 2nd defendant's agents.

It also very clear that the 1st defendant's role in the arrest of the plaintiff was that of an aggrieved party who complained to police and whatever was done by the police was in supposed to be in accordance with the powers of police as granted by the Constitution.

I do not understand what the plaintiff means or insinuate that that the actions of the police where on instructions of the 1st defendant. The police does not take directives from the complaints and once they have taken over the complaint they become wholly responsible for their actions. They are never agents of the complainants like the 1st defendant in this matter.

That is why once police is not given credible evidence in any matter the file would be closed for lack of evidence. Alternatively, if the complaint is frivolous or baseless without cogent evidence such complainant can be charged with giving police false information.

The plaintiff's right was violated by the 2nd defendant's servants in the course of their employment since they never detained the plaintiff beyond 48 hours on instructions of the 1st defendant.

Once the detention or imprisonment is established the onus shifts to the defendant to show that it was reasonably justifiable and no such attempt was made in the instant case. See ***Sekaddu vs Ssebadduka HCCA No. 30 of 1964 [1968] EA 213***

I therefore find that the imprisonment and detention of the plaintiff was wrongful & illegal and was a violation of his right.

Whether the Plaintiff is entitled to the reliefs sought?

General damages

General damages are such as the law will presume to be direct natural probable consequence of the act complained of. In quantification of damages, the court must bear in mind the fact that the plaintiff must be put in the position he would have been had he not suffered the wrong. The basic measure of damage is restitution. See ***Dr. Denis Lwamafa vs Attorney General HCCS No. 79 of 1983 [1992] 1 KALR 21***

The character of the acts themselves, which produce the damage, the circumstances under which these acts are done, must regulate the degree of certainty and particularity with which the damage done ought to be stated and proved. As much certainty and particularity must be insisted on, both in pleading and proof of damage, as is reasonable, having regard to the circumstance and nature of the acts themselves by which the damage is done. See ***Ouma vs Nairobi City Council [1976] KLR 298.***

The plaintiff has also sought general damages for imprisonment and detention and continued reporting to police for over 4 years ending on 25th August 2016.

The plaintiff in his witness statement did not guide court on the nature of general damage suffered apart from the 2,000,000/= that was extorted from him to secure his release.

The court awards the plaintiff a sum of 25,000,000/= for the quantum of general damages for suffering arising out of the arrest and illegal detention/false imprisonment and continued reporting to police for 4 years without being discharged of any wrong doing.

Exemplary and Punitive Damages

The plaintiff also sought punitive or exemplary damages for False imprisonment and detention.

Punitive damages are intended to punish the defendant for the wrong done to the plaintiff and for acting as a deterrent. See ***Rookes vs Barnard & Others [1964] AC 1129***

In the case of ***Obongo vs Municipal Council of Kisumu [1971] EA 91*** the court held that; “ ***It is well established that exemplary damages are completely outside the field of compensation and although the benefit goes to the person who was wronged, their object is entirely punitive***”.

The plaintiff was detained for 4 days without being charged in any court of law and this is contrary Article 23(4) of the Constitution. Any violation of the Constitution by the 2nd defendant’s agents/servants who are mandated to protect and uphold it must attract a punitive sanction against the offenders or violators.

I award punitive damages of 10,000,000/= for the false imprisonment & detention of the plaintiff and continued suffering while on police bond for 4 years.

Interest

Section 26 provides for an award of interest that is just and reasonable. In the case of ***Kakubhai Mohanlal vs Warid Telecom Uganda HCCS No. 224 of 2011***, Court held that;

“ A just and reasonable interest rate, in my view, is one that would keep the awarded amount cushioned against the ever rising inflation and drastic depreciation of the currency. A plaintiff ought to be entitled to such a rate of interest as would not neglect the prevailing economic value of money, but at the same time one which would insulate him or her against any economic vagaries and the inflation and depreciation of the currency in the event that the money awarded is not promptly paid when it falls due”

General damages and Punitive damages shall attract an interest of 12% from the date of judgment until payment in full.

Costs

The plaintiff is awarded costs of the suit against the 2nd defendant.

It is so ordered.

SSEKAANA MUSA

JUDGE

28th /06/2019