

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

PC. CIVIL APPEAL NO. 35 OF 2017

(Arising from Misungwi District Court Civil Appeal No. 04 of 2016, original from Inonelwa Primary Court Civil Case No. 29/2015)

MATHIAS MAKALWE APPELLANT

VERSUS

MASHAURI MAKALWE RESPONDENT

JUDGMENT

03/10/2018 & 24/01/2019

RUMANYIKA, J.:

The straight forward 2nd appeal (original Civil Case No. 29/2015) is against judgment and decree of 24/04/2017 of the District Court Misungwi (the Dc). The later having reduced a Shs. 1,000,000/= ward of general damages it appears for a tort of malicious prosecution to Shs. 100,000/= (a hundred thousand) without costs. Mathias Makalwe (the appellant/judgment debtor) is not happy. Hence the appeal.

The two (2) grounds of appeal revolve around points as follows:

1. that the respondent's case had not been proved on balance of probabilities.
2. that award of the impugned shs. 100,000/= compensation was not justifiable for no tort of malicious prosecution was ever proved.

Parties appeared in person. They relied on petition and reply to petition of appeal respectively.

Briefly, the evidence on record, therefore a historical back ground runs as under: Following charges, therefore Criminal Case No. 125 of 2014 in Inonelwa Primary court, and upon conviction, Mashauri Makalwe (the respondent) was, on 23/02/2015 sentenced and he paid a fine of Shs. 380,000/= . But by way of Revision No. 10 of 2015, the District court quashed the conviction on 27/07/2015. That on that basis now, he claimed Shs. 5,000,000/= being general and, it appears special damages for the tort of malicious prosecution.

The central issue is whether case of malicious prosecution was, from the beginning proved on balance of abilities. The answer is no! It is trite law that in order for a tort of malicious prosecution to stand, a number of criteria needed to co-exist:-

- (a) that the plaintiff was criminally prosecuted.
- (b) that the charges were actuated with malice.
No reasonable or probable cause.
- (c) that the prosecution ended in the plaintiff's favor.
- (d) that as a result of prosecution, the plaintiff suffered damage.


All the ingredients may have been established except that the respondent was, end of the day convicted and accordingly sentenced by the trial Inonelwa Primary court. I do not think that the ingredient

“prosecution being concluded in favor of the plaintiff” was so extensive that it cut across into the Court of Appeal of Tanzania or this court for case of a 2nd appeal for that matter. After all the respondent didn’t tell all. The respondent is not on record even having attempted to say that appellant was the one who actually put the criminal proceedings into machinery without reasonable and probable cause. Nor did the revising court in it’s decision suggest that one. It is very unfortunate that the two courts below did not address the crucial aspect of evidence. Moreover, it is not clear what culminated into revision proceedings instead of appeal. Now that case was, from the start not on the balance of probabilities proved, appeal is allowed with costs. Ordered accordingly.

Right of appeal explained.


S. M. RUMANYIKA
JUDGE
18/01/2019

Delivered under my hand and seal of the court in chambers this 24th day of January, 2019 in the presence of the appellant in person and in absence of the respondent.


O.H. Kingwele
DEPUTY REGISTRAR
24/01/2019