

IN THE HIGH COURT THE UNITED REPUBLIC OF TANZANIA

(IN THE SUB-REGISTRY OF MWANZA)

AT MWANZA

CIVIL APPEAL NO. 03 OF 2022

(Arising from Civil Case No. 14 of 2020 in the Resident Magistrate's Court of Mwanza at Mwanza before the Hon. Mr. P.P. Kubaja - RM)

FERNAND SAMI.....1ST APPELLANT

SIMEO JOSEPH2ND APPELLANT

VERSUS

PHINIAS LUGAILA.....1ST RESPONDENT

ELIAS MUSSA LUGAILA.....2ND RESPONDENT

KWIKE LUPIMO LUGAILA.....3RD RESPONDENT

PETER KIHUNGUMIKA.....4TH RESPONDENT

MARY LUGAILA5TH RESPONDENT

LAMECK NYAMA PETRO.....6TH RESPONDENT

DAUD KISUMO.....7TH RESPONDENT

JUDGMENT

24th May & 26th July, 2022

DYANSOBERA, J.:

This appeal arises from the decree of the Court of the Resident Magistrate of Mwanza in Civil Case No. 14 of 2020 whereby the respondents were found to have proved their claims on false imprisonment against the appellants and were awarded Tshs. 9, 000, 000/=.

The back ground of the matter as seen in the evidence is that following the respondents being declared by the Village Land Council as

owners of the piece of land that was being in dispute, the appellants convened a meeting and ordered the respondents to pay Tshs. 300,000/= as a fine. The respondents were further prevented from participating in any group activity, were also banned from purchasing and selling anything and their movements were restricted within a bounded area. The respondents complained to the Village Executive Officer, the Ward Executive Office, the Court and to the Police Officer but all was in vain. They decided to file a civil case which was registered as Civil Case No. 14 of 2020. In that suit, the respondents claimed payment of Tshs. 55,000,000/= as general damages for false imprisonment, interests and costs of the suit.

The trial court heard the parties and, in the end, found for the respondents. It awarded them Tshs. 9,000,000/= in that the 1st appellant was adjudged to pay Tshs. 5,000,000/= while the 2nd and 3rd appellants were ordered to pay Tshs. 2,000,000/=each. -

This finding aggrieved the appellants hence this appeal. According to the memorandum of appeal filed on 10th day of January, 2022 the following grounds of appeal have been raised: -

1. That, the trial Magistrate at RM's court grossly erred in Law and Fact to hold that, the plaintiffs in the trial court, now the respondents herein, had been prevented by the 2nd and

the 3rd defendants herein the 1st and the 2nd appellants to associate with their fellow villagers (WANANZENGO) while the evidence on record did not disclose so.

2. That, the trial magistrate, grossly erred in law and facts, when he relied on hearsay evidence of the PW4 to find that the Respondents who were the plaintiffs had proved their case against the 2nd and 3rd defendants thereto who are the 1st and the 2nd appellants herein respectively.
3. That, the trial magistrate was very wrong to rely on exhibit P.02 to reach his decision in favour of the Respondents herein while it is on record that, the said Exhibit P02 was not prepared and served to whoever it might be concerned by the 1st and the 2nd appellants herein who were the 2nd and the 3rd defendants in the trial court respectively.
4. That, the trial magistrate, the Hon. Mr. P.P. KUBAJA – RM completely wronged the appellants when he relied on the findings by the court in the Raised Preliminary Objection by the defendants. (Now the Appellants) to reach is decision against the Appellants on account that, they came with different evidence during the hearing of the main suit while in their raised preliminary objection had other facts without considering their evidence adduced during the trial and without taking into account that, during preliminary objections matters of evidence were not discussed rather points of law.

5. That, the Honourable trial magistrate erred in law and facts per se to hold that, there was unlawful restraint caused by the 2nd and the 3rd defendants thereto (Now the first and the second Appellants) respectively while there was no proof on that at all as per evidence adduced in the trial court.

6. That, it was a complete wrong for the trial magistrate to order for payment of compensation without specifically stating as to whether all plaintiffs deserve such compensation at what amount for each and that the magistrate did not state to what extent the 1st, 2nd and the 3rd defendants involved in the so purported restrain of the plaintiffs, thus the demarcation of the so stated compensation remains questionable.

Before me, the appellants were represented by learned Counsel, Mr. Leonard Elias Magwayega while the respondents were represented by Boniphace Sariro, learned Counsel. The hearing of this appeal was argued by way of written submissions.

Supporting the appeal, learned Counsel for the appellants merged the 1st, 2nd, 3rd and 5th grounds of appeal and argued them together. These grounds seek to challenge the evidence relied upon by the trial court to reach his decision and the court is urged to find that there is no sufficient evidence to prove the tort of false imprisonment. In these grounds, Counsel for the appellants is faulting the judgment of the trial

court for failure to find that the respondents' case was not proved on balance of probabilities as per the law requires.

A further argument was advanced on part of the appellants that the evidence of the witnesses who testified was not corroborated and the evidence of PW 4 was but a hearsay. Another challenge was on the competence of exhibit P 2.

The 4th ground of appeal is on the complaint that the trial court centered its decision on what was said during the preliminary objection by the appellants instead of paying attention to the evidence adduced in court.

Lastly, it was submitted on part of the appellants that there was no evidence disclosing that the appellants whether individually in their own capacity or in their official capacity restrained the respondents from associating with other members of the community amounting to false imprisonment.

In the reply by the respondents to the appellants' written submission, learned Counsel for the respondent Mr. Boniphace Sariro submitted that the evidence adduced by the respondents at the trial was clear, credible and direct to the fact in issue and their oral testimonies were supported by documentary evidence which was acknowledged and

exhibited in the judgment of the trial court. He emphasized that the law demanded that credibility of a witness is an important factor and not a number of witnesses. This court was referred to section 143 of the Evidence Act and the cases **of Apolonary Zachwa v. Frola Katalaiya**, Land Appeal No. 6 of 2020 and **Hemedi Said v. Mohamed Mbilu** [] TLR 113. The allegations in the 4th and 6th grounds of appeal were refuted.

I have carefully considered the submissions of both the sides and perused the impugned judgment and other materials on record. The main issue calling for consideration is whether the tort of false imprisonment was proved to the required standard.

False imprisonment otherwise called unlawful imprisonment occurs when a person intentionally restricts another person's movement within any area without legal authority, justification or the restrained person's permission. For such false imprisonment to occur, actual physical restraint is not necessary. In simple words, false imprisonment is committed by unlawful restraint of an individual's personal liberty or freedom of movement. It can be committed by words, acts or by both or by invalid use of legal authority.

As indicated above, the learned Counsel for the appellants merged the 1st, 2nd, 3rd and 5th grounds of appeal and argued them together. In

these grounds, the appellants are faulting the judgment of the trial court for failure to find that the respondents' case was not proved on balance of probabilities as per the law requires.

In order for the plaintiff to prove the tort of false imprisonment, he has to establish the following elements. One, that the defendant intended to restrict the plaintiff's freedom of movement. Two, that the defendant, directly or indirectly restricted the plaintiff's freedom of movement for a period of time, no matter how short and three, that the plaintiff was aware that his freedom of movement was restricted.

But what was the respondents' evidence? The following excerpts are self-explanatory:

Phinias Mussa Lugaila (PW1) at page 17 is recorded to have said in part as follows:

'I know I and my colleagues are prevented to participate in any community activities. I was prevented by defendants in their capacities. We were prevented from participating in any group activities at our sub village. Also, we were prevented from engagement any person to work on my farm, I was presented to purchase anything from our village. I was prevented to visit any person in our sub

village or being visited by any person. Also, letters were issued to neighbour sub village which prevent me from participating in any activity at those cub village defendants as sub village leaders are the one who preventing us to participate in community activities 1st defendant Chalo Nkingwa was sub village chairman of Nyabashi – Kitongosima village- Magu District 2nd defendant Fernand sami was "Mwananzengo" village chairman of Kigongosima village, Siomeo Joseph was a popular elder who inform the sub village what transpired before is that on June, 2018 he did arraign our dispute within village land council on Kitongosima.

The next witness that is Elias Mussa Lugaila (PW 2) at pages 23-24 is recorded to have stated thus: -

'What I know, am among the persons who were prevented participants on community actually by sub village leaders of Nyabashi and Kitongosma village leaders of Nyabashi and kitongosima village. We are preventing to participate with other villagers in any activities, to pay a visit to our other villagers or other villager to pay a visit to us. We are even burned from participating in ay groups activities. Also, letter were sent to neighbours sub village which prevent us to participate in any group activities. Also

letters were sent to neighbour sub village which prevent us to participate in any group activity on the said village. The leaders who present us are village chairman Ferdinand SMI, SUB village chairman Chalo Nkingwa and the popular elder.....name if forget but present in court.

Also, Laurent Petro Nyama who testified as PW3 is recorded to have testified thus:

'They course of all these are, in 2018 there was a land dispute between us and all the plaintiff of which we filed the case at the village Land Counsel where we won the case and we were given back our Land.

Following that these people summoned all the villagers where we were fined Tshs. 300,000/= in every family. The reason for us being fined was the village cannot be sued So we were even barred from associating with our fellow villagers. The decision was given by the villager but the ring leader was the village chairman. Your honour, villagers were forbidden to come into our families and we were denied the access to go in any family we were totally restrained. After that we were chased to go away from the village your honour, we were even told not to purchase or buy necessities.

Your honour, following that, we were subjected into hardship life, we were getting domestic services in expensive price. For instance, we are all farmers and am personally the fishman, so whenever I get fish I can not even be able to sell them since no one can purchase. But

again, an act of being restrained to associate with my fellow villagers has left me with lonely I have also deprived the right to join other associations, if we get funeral no one can come to comfort us.

The other witness, PW 4 one Thomas Nathanael Makolobela told the trial court thus:

I live at Nyanguge Magu. Before retirement I was living thereat as the Division Officer (Afisa Tawala). I was in service, my job description required me to supervise developmental activities within the division but again I was required to maintain the peace and tranquility within the area (Justice of Piece).

I know all the plaintiffs and the defendants are residents of Kitongo Village at Kitongo Sima Ward and that Ward was within the area of my operation at the time serving the government. About this matter, I remember I was still in service I got the opportunity of visiting the kitongoji of Nyabashi and kitongo Sima Village where all the patua are resident there.

Your honour, all plaintiff were claiming to have been prevented to associated with their fellows. So, I managed to go there and instructed the VEO to call the villagers at the said suburb so that we can resolve their dispute.

Your honour, I successfully managed to talk with all villagers and instructed them through the constitution of United Republic of Tanzania on how they were supposed to live.'

Going by the above evidence, it is clear that the respondents proved the tort of false imprisonment. It is true that the burden of proof lied on the respondents but in the case under consideration, I am in no doubt as was the trial court, that the respondents discharged the burden. Admittedly, the burden of proof lies on the party who asserts the truth of the issue in dispute. If that party adduces sufficient evidence to raise a presumption that what is claimed is true, the burden shifts to the other party, who will fail unless sufficient evidence is adduced to rebut the presumption. The court makes its decision on the "balance of probabilities", and this is the standard of proof required in civil cases.

In the case under consideration, the respondents proved that the appellants intentionally restricted their freedom of movement. The respondents were aware that their freedom of movement was restricted. The appellants failed to prove that the respondents consented to that restraint and also failed to give legal justification.

The argument by the appellants learned Counsel that the appellants, then 2nd and 3rd defendants had no leadership positions at Kitongoji and village levels and could not therefore order for the restraint of the respondents, is to say the least, misplaced. The evidence by the respondents was clear that the appellants restrained them as individuals and the orders which were later reduced in writing were made by the

appellants in the meeting. PW 1, in his evidence was clear that Fernand Sami was Mwananzengo village chairman while the 2nd appellant Simon Joseph was a popular elder. This evidence was not controverted.

As the respondents physically and mentally suffered due to fear and nervousness, humiliation and mortification from indignity and disgrace consequent to an illegal restraint, the damages were rightly awarded to them.

I find nothing to fault the trial court's finding.

In the final analysis, I find this appeal devoid of any merit and accordingly, dismiss it with costs.

W.P. Dyansobera

Judge

26.7.2022

Judgment delivered under my hand and seal of the court in chambers this 26th day of July, 2022 in the presence of the 1st appellant, 2nd 3rd, 5th and 7th respondents but in the absence of the 2nd appellant and 2nd, 3rd and 4th respondents.

W.P. Dyansobera

Judge

