

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
DAR ES SALAAM DISTRICT REGISTRY
AT DAR ES SALAAM**

CIVIL CASE NO. 11 OF 2023

ZARINA MOHAMED SIDIK..... PLAINTIFF

VERSUS

RAFIKAHAWA MOHAMED SIDIK.....DEFENDANT

RULING

15th February & 17th March 2023

MKWIZU, J

It seems the parties to this case are relatives. The averment in the plaint reveals that the plaintiff was at the instance of the defendant incriminated in a criminal case No 254/2021 for using abusive language that went far to endanger peace and security, she was convicted and accordingly sentenced to a one-year imprisonment term. Her appeal to this Court was however successful on the ground that the prosecution case was not proved to the tilt.

The plaintiff is unhappy with the defendant's actions which, according to the plaint, have caused her to suffer harm in reputation and credit, humiliation, mental suffering, discomfort, lots of time, losses of the business, and other inconveniences. She has preferred this suit for malicious prosecution claiming that the defendant played an active role in her prosecution, was aware that she neither did not use abusive language and that the criminal case was initiated to injure her reputation. She is now praying for a total sum of 500,000,000/= being compensation for

injuries resulting from malicious prosecution, payment of 200,000,000/= general damages and interests.

the defendant disputes the claims, He filed a written statement of defence coupled with a preliminary objection that:

"That, the suit is bad in law for failure to join the necessary parties who are the police Force and Director of Public Prosecution as per section 2 of the Criminal Procedure Act, Cap 20 RE 2022."

When the parties came for mention of 15/2/2023, the plaintiff was represented by Mr. Hassan Salum, while the defendant was represented by Mr. Othman Kaluti, learned advocates respectively. The preliminary objection was on that same day ordered to be disposed of by way of written submissions. I thank the party's counsel for keeping to the filing schedules.

Submitting in support of the preliminary objection, Defendant's counsel said, according to paragraphs 4 and 6 of the plaint, the defendant reported the incident of uttering abusive language to the Centra police Station as mandated of him under section 7 (1) (a) of the Criminal Procedure Act, Cap 20 RE 2019. He did neither investigated the matter nor brought the criminal charges to the court. The Charge sheet that brought the plaintiff to court was drafted by the office of the National Prosecution services duly signed by the State Attorney.

He contended that the authority to conduct an investigation over any criminal matter arising from the penal code is mandated to the police Force under section 10 of the CPA and the result of the investigation is forwarded to the Director of Public Prosecution for further steps. He said

had it been that the police had no evidence, the complained criminal charges would not have been instituted in the court of law. He added that, powers of criminal prosecution in Tanzania under section 9(1) and(b) of the National Prosecution Act, Cap 430 RE 2022 is vested to the National Prosecution Services and the complainant is always the Director of Public Prosecution while the Victim of the crime is only a witness.

He urged the court to find that the Police force and the office of National Prosecution Service to be necessary parties in this case and proceed to strike out the suit for failure to join necessary parties.

In rebuttal, the plaintiff's counsel submitted that since the incident in this matter was reported by the defendant while knowing that there was no such incident or even an intention by the plaintiff to commit such an offense, the presence of the Police Force and the Office of National Public Prosecution Services in this matter is irrelevant because these organs worked on the false information reported to them by the defendant.

He asserted that the plaintiff's intention is to shift the liability to the prosecution side and the police without considering that he is the one who maliciously reported the said incident. He insisted that the preliminary objection has no merit it should be overruled with costs.

I have thoughtfully considered the party's submissions. The point raised cannot, in my view be disposed of easily without first looking at the general concept of necessary party as defined by the court's decisions including that of **Abdullatif Mohamed Hamis versus Mehboob Yusuf Osman and Another**; Civil Revision No. 6 of 2017 (CA) (unreported) to mean :

"... a necessary party is one whose presence is indispensable to the constitution of a suit and in whose absence no effective decree or order can be passed."

It went on to say:

"...the determination as to who is a necessary party to a suit would vary from a case to case depending on upon the facts and circumstances of each particular case. Among the relevant factors for such determination include the particulars of the non-joinder party, the nature of relief claimed as well as whether or not, in the absence of the party, an executable decree may be passed."(Emphasis supplied)

Guided by the above decision, the test, in this case, will be whether the absence of the Police Force and Director of Public Prosecution will obscure the pronouncement of an effective decree in this suit.

As stated earlier, the plaintiff's case is for malicious prosecution which is essentially a judicial proceeding instituted by one person against another, from wrongful or improper motive and without probable cause. It refers to the illegitimate institution of a proceeding designed at causing pain and damage to the plaintiff.

The main claim in the plaint is directed to the defendant. The averments in paragraph 4 to 6 of the plaint indicts the defendant to have on 29th November 2019 maliciously and without reasonable and probable cause reported to the central police Station, Dar es salaam that the plaintiff has on the same date at Kariakoo, Uhuru Nyamwezi area, uttered abusive words against her, an act that was likely to cause a breach of peace, prompting the arrest of the plaintiff followed by her being retained to the police for two days before she was arraigned before the District Court of Ilala at Kinyerezi charged with a criminal case No 254 of 2021 which

resulted into a convicted and a one-year imprisonment term which she served almost halfway before her acquittal after her successful appeal to this court. The framed particulars of malice under paragraph 11 of the plaint directly target the defendant in the plaint and non-other. The paragraph reads:

- "11: Particulars of Malice, lack of reasonable and probable cause:*
- i. That, defendant was aware that the plaintiff neither did nor use abusive language resulting to provoke the breach of the peace as alleged*
 - ii. That, Defendant played an active role to prosecute plaintiff in the alleged criminal case*
 - iii. That, Defendant instituted the criminal case against the plaintiff in order to injure the reputation of the plaintiff".*

My evaluation of the factual allegations in the plaint has failed to find any assertion linking the Police Force and Director of Public Prosecution with the plaintiff's claim so as to brand them as necessary parties in this suit. The tortious liabilities raised therein are all directed to the defendant.

To say the least, the plaintiff's claims can be safely and conclusively dealt with, and an executable decree is pronounced without the named parties.

As a result, and for the foregoing reasons, the preliminary point is overruled. Costs to be in the cause. Order accordingly.

Dated at Dar es salaam **this 17th** day of **March 2023**



E.Y Mkwizu
JUDGE
17/3/2023