

IN THE HIGH COURT FOR ZAMBIA  
AT THE PRINCIPAL REGISTRY  
LUSAKA  
(Civil Jurisdiction)

2015/HP/1152

**BETWEEN:**

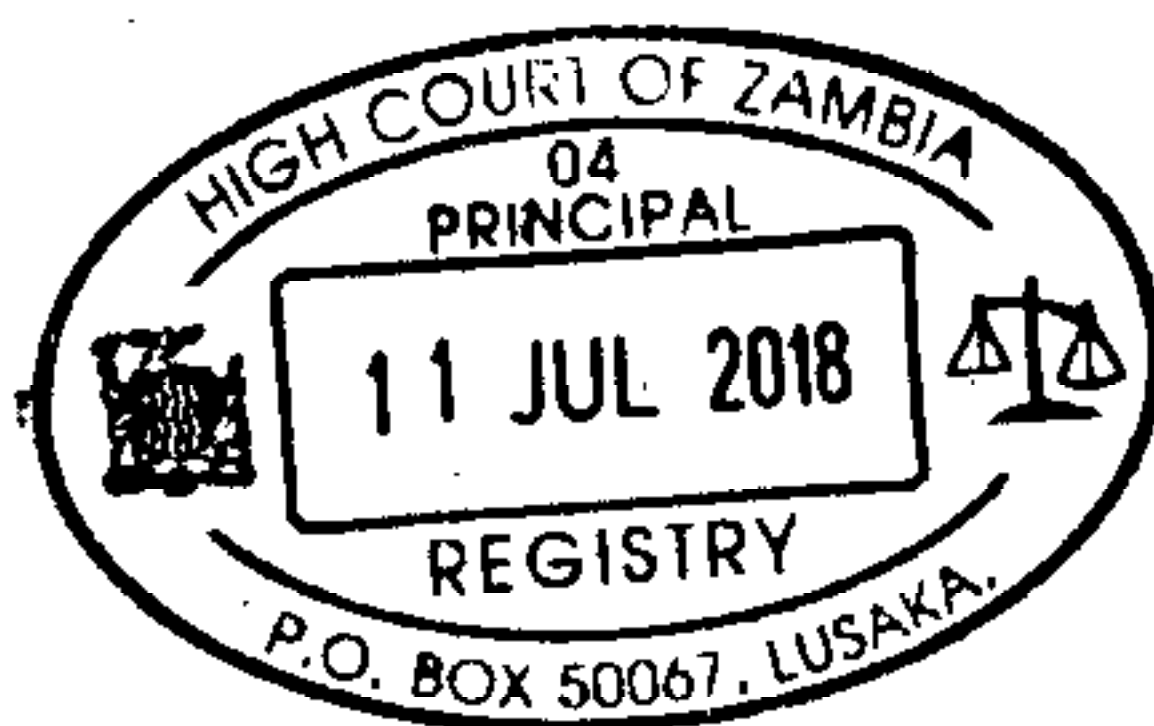
TEDDY PHIRI

AND

THE ATTORNEY GENERAL

ROBSON ZIMBA

AGNESS IMASIKU



PLAINTIFF

1<sup>ST</sup> DEFENDANT

2<sup>ND</sup> DEFENDANT

3<sup>RD</sup> DEFENDANT

**BEFORE THE HONOURABLE LADY JUSTICE M. CHANDA THIS 11<sup>TH</sup>  
DAY OF JULY, 2018**

**APPEARANCES:**

For the Plaintiff

: Mr O. Ngoma of Messrs Lungu  
Simwanza & Company

For the Defendant

: Ms K. Ndulo Assistant Senior State  
Advocate of Attorney General's  
Chambers

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**J U D G M E N T**

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**LEGISLATION REFERRED TO:**

SECTION 53 (1) OF THE IMMIGRATION AND DEPORTATION ACT NO 18 OF 2010.

**CASES REFERRED TO:**

1. BIRD V JONES (1845) 7 Q3 742
2. HICKS V FAULKNER (1878) 8 QBD 167
3. HOLGATE MOHAMMED V DUKE 1984 AC 437
4. WRIGHT V COURT (1825) 4B AND C 596

On 21<sup>st</sup> July, 2015 **Teddy Phiri** the plaintiff herein issued out of the High Court Principal Registry a writ of summons and statement of claim against the **Attorney General, Robson Zimba** and **Agness Imasiku** the defendants herein. The writ of summons was duly amended on 25<sup>th</sup> September, 2015. The plaintiff's contention was that on 9<sup>th</sup> July, 2015 he was unlawfully arrested and lodged at Zambezi correctional facility as a suspected prohibited immigrant.

The reliefs sought by the plaintiff were as follows:-

- i. Damages for false imprisonment
- ii. Damages for unlawful arrest
- iii. Damages for unlawful detention
- iv. Damages for defamation of character
- v. Any other relief the Court may deem fit
- vi. Interest and costs.

The defendants filed their memorandum of appearance and defence on 14<sup>th</sup> October, 2015, in rebuttal to the plaintiff's claims. The defendants refuted all the allegations by the plaintiff. They averred that the plaintiff was never arrested as a prohibited immigrant but for obstructing an officer on duty and conduct likely to cause the breach of peace.

The matter was heard on 12<sup>th</sup> April, 2016. The plaintiff called two witnesses and the defendants also called two witnesses to buttress their claims.

The first witness was the plaintiff whose evidence was basically that on or about 9<sup>th</sup> July, 2015 he went on a business trip to Zambezi District with his Chinese business associate a, **Mr Yang**. The plaintiff alleged that as they were lodging at Zambezi Motel, he was awakened around 21:00 hours by the 2<sup>nd</sup> and 3<sup>rd</sup> defendants who were in the company of his Chinese associate. The plaintiff stated that upon inquiring from the 2<sup>nd</sup> and 3<sup>rd</sup> defendants why they chose to approach his associate in the night, they became annoyed and an exchange of words ensued.

He further testified that before he was arrested and taken to Zambezi prison, the two defendants threatened to take him to the police cells. The plaintiff went on to assert that he was grossly defamed by the 2<sup>nd</sup> and 3<sup>rd</sup> defendants when they detained him at prison for one night as a prohibited immigrant. The plaintiff also informed the Court that the incident happened on 10<sup>th</sup> July, 2015 but he statement exhibited by the defendants on page one of their bundle of documents showed that events in question occurred on 26<sup>th</sup> January, 2009. The plaintiff refuted having paid any admission of guilt fee to the police.

In cross examination the plaintiff confirmed that he was arrested and charged for being a prohibited immigrant. He denied having been indicted for conduct likely to cause the breach of peace. In further cross examination the plaintiff conceded that the 26<sup>th</sup> January, 2009 as indicated on the statement recorded by the immigration officers was in respect of the date of issue of his passport and not when the offence occurred. He stated that

according to the statement recorded the offence took place on 10<sup>th</sup> July, 2015 and that he was charged by the immigration officers.

PW2 was **Amos Musonda** the Prison's officer. The witness produced a warrant and a prison register to confirm that the plaintiff was admitted to prison. The warrant and the register were marked as exhibits **TP1** and **TP2** respectively. PW2 testified that the plaintiff was detained as a suspected prohibited immigrant.

In cross-examination when the witness was tasked to read the contents of exhibit "**TP1**", he conceded that the plaintiff was placed in detention at Zambezi prison for obstructing officers on duty.

PW2 also conceded that the documents on page 1 of the defendant's bundle of documents showed that the plaintiff was charged with obstructing an immigration officer on duty.

In re-examination PW2 clarified that exhibit "**TP1**" was a warrant of detention for prohibited immigrants.

The defendants called the two immigration officers hereinafter referred to as **DW1** and **DW2** in aid of their defence.

**DW1** was **Agness Imasiku** the Immigration Assistant who testified that during the night of 9<sup>th</sup> July, 2015, she went to



Zambezi Motel with the 2<sup>nd</sup> defendant to verify on the immigration status of a Chinese national.

DW1 explained that when they approached the Chinese national he informed them that he was legally in the country and that his resident permit was in his vehicle that was parked outside. The Chinese national also told them that the keys to the vehicle were with the plaintiff who was in another room. The witness testified that upon being led to the plaintiff's room by the Chinese national, the plaintiff was offended and inquired why they did not go to his room during day time. She further stated that the plaintiff accused them of being corrupt officers and harbouring ill intentions against him. Efforts to calm him down and explain that the officers were merely carrying out their duties proved futile.

It was DW1's testimony that the plaintiff only released the car keys after being told that he was to be charged with an offence of obstructing officers on duty pursuant to *Section 53 (1) of the Immigration and Deportation Act No 18 of 2010*. The witness informed the Court that the plaintiff was taken to Zambezi police station with the help of three other police officers who were sent by the Officer in charge for reinforcement.

DW1 went on to state that the plaintiff was detained at the police inquiries office because as immigration department they did not have holding facilities. The witness further narrated that the plaintiff was taken to the immigration office the following day 10<sup>th</sup>

July, 2015 where he was formally warned and cautioned for the offence of obstructing officers on duty. Thereafter the plaintiff was lodged at Zambezi prison. DW1 informed the Court that they were only prompted in conjunction with the police to reduce the charge levelled against the plaintiff to that of conduct likely to cause breach of peace upon the District Commissioner's request that he be treated with some leniency.

In cross-examination DW1 told the Court that the plaintiff was only released the following day on 10<sup>th</sup> July, 2015 which was a Saturday, after he was fined K40.00 by the police.

The witness also confirmed that under warn and caution statement recorded by Robson Zimba for the offence of obstructing officers on duty, the plaintiff denied the charge.

In further cross examination, the witness stated that although the entry against the plaintiff in the prison's register read prohibited immigrant, he was detained for obstructing officers on duty.

DW1 testified that they used the warrant exhibited as **TP1** (warrant of detention of suspected prohibited immigrant) to lodge the plaintiff in prison because those were the only warrants that the immigration department stocked.

whose acts he is liable, or the result of his ordering, procuring, instigating or actively inciting the arrest. In **Bird v Jones**<sup>1</sup>, a case cited by counsel for the defendant, Lord Patterson defined false imprisonment as a restraint on the liberty of the person without cause, either by confinement in prison, stocks house, even by forcibly detaining the party in the streets against his will.

It is trite that a law enforcement officer is authorised by statute to make an arrest with or without a warrant in prescribed circumstances. It must be noted that in order for an officer to make an arrest, there must be reasonable and probable cause. In **Hicks v Faulkner**<sup>2</sup>, reasonable and probable cause was said to mean an honest belief in the guilt of the accused based upon reasonable grounds of the existence of a state of circumstances which assuming them to be true would lead any ordinary man placed in the position of the accuser to the conclusion that the person charged was probably guilty of the crime imputed.

*Section 53(1) of the Immigration and Deportation Act Number 18 of 2010 creates an offence of obstructing an immigration officer in the course of their duties. Section 53(1) reads:*

*“Any person who resists or wilfully obstructs an immigration officer in the due execution of an immigration officer’s duties or any person acting in aid of such person commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for period not exceeding two years, or to both.”*

Further *Section 6(1) of the Immigration and Deportation Act* allows the department of immigration to enter and search without a warrant the premises of a person which an officer has reasonable grounds to believe there is evidence in contravention of the Act.

A law enforcement officer is liable for false imprisonment if he unlawfully arrests or detains another in circumstances which do not amount to a valid arrest (see the case of **Holgate Mohammed v Duke**<sup>3</sup>). A law enforcement officer would also be liable for false imprisonment if he detains the person for an unreasonable time without taking him before a magistrate (see **Wright v Court**<sup>4</sup>).

In the matter before me I have analysed the evidence adduced on record and I must state that the plaintiff did not favourably impress me as a truthful witness. Firstly, the plaintiff endeavoured to mislead the Court by giving an impression that the statement recorded from him by DW2 on 10<sup>th</sup> July, 2015 produced at page one in the defendant's bundle of documents was dubiously recorded on 26<sup>th</sup> January, 2009 when infact not. The plaintiff did however concede in cross examination that the 26<sup>th</sup> January, 2009 was actually captured on the statement as the date of issue of his passport. Secondly, the picture portrayed by the plaintiff in his testimony was that he was arbitrarily arrested and detained as a prohibited immigrant by the 2<sup>nd</sup> and 3<sup>rd</sup> defendants. On the contrary, I find that the warrant of detention marked as exhibit "**TP1**" shows that the plaintiff was lodged into Zambezi state prison on account of having obstructed immigration officers on duty and not as a prohibited immigrant. I



therefore find the submission by the plaintiff that he was unlawfully detained on unmeritorious charge of being a prohibited immigrant to have no semblance of authenticity.

In contrast to the plaintiff the 2<sup>nd</sup> and 3<sup>rd</sup> defendants gave evidence in a straight forward and perfectly frank manner. I saw nothing in their demeanor while giving evidence which would justify me coming to the conclusion that they were all liars determined to conspire together to concoct a series of false allegations against the plaintiff.

Having carefully considered the evidence on record and having had an opportunity to observe the parties giving evidence before me, I am more inclined to believe the version of the incident as testified by the immigration officers, DW1 and DW2 to that of the plaintiff. I would not say the defendants in the matter before me were hasty overzealous and possibly inconsiderate in the manner they dealt with the plaintiff. In my considered opinion the defendants as immigration officers were doing their lawful duty in verifying the status of the Chinese national who had travelled to Zambezi District with the plaintiff. It is clear to me that the plaintiff's reaction of resorting to anger and aggression towards the defendants upon being asked to release the car keys to enable the officers access the documents of the Chinese national was unreasonable and an unlawful over reaction.

Under the circumstances it is apparent that the defendants acted with reasonable and probable cause in charging and detaining

the plaintiff for the offence of obstructing immigration officers on duty.

The defendants were duty bound to carry out their operations at any time without obstruction. A member of the public who impedes law enforcement officer in the due execution of their mandate does so at his own peril. It is therefore my firm holding that a prisoner whose liberty has been taken away by lawful authority has no residual liberty enabling him to bring a claim for false imprisonment against law enforcement officers or prison authorities in respect of his confinement within a particular part of the prison.

The defendants cannot therefore be condemned for the action taken in this case. It is my observation that the plaintiff was the author of his own misfortune and his detention pending formal arrest was necessary owing to the fact that he was not a resident of Zambezi District. I am satisfied that there was lawful authority to justify the plaintiff's detention and I dismiss his claims with costs to the defendants.

Dated at Lusaka this 11<sup>TH</sup> day of JULY, 2018



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**M. CHANDA**  
**HIGH COURT JUDGE**