

**IN THE COURT OF APPEAL FOR ZAMBIA
HOLDEN AT LUSAKA**

(Civil Jurisdiction)

APPEAL NO. 033/2018

BETWEEN:

ATLAS COPCO ZAMBIA LIMITED

AND

LAWRENCE MALAMBO



APPELLANT

RESPONDENT

*Coram: Mchenga DJP, Chishimba and Majula, JJA
On 27th of June, 2018 and 24th July, 2018*

For the Appellant: Mr. A. Imonda of Imonda & Company.

For the Respondents : In Person

JUDGMENT

MAJULA, JA, delivered the Judgment of the Court

Cases cited:

1. *Richman Chulu vs Monarch (Z) Ltd* (1983) ZR 33.
2. *ZCCM vs George Nyambe* (SCZ Appeal No.95 of 1997).
3. *Claude Samuel Graynor vs Robert Cowley* (1971) ZR 50.
4. *The Attorney-General & Others vs Phiri* (Appeal No. 161/2014) (2017) ZNSC 63.
5. *The Attorney-General vs Kakoma* (1975) ZR.273.

Legislation referred to:

Criminal Procedure Code, Chapter 88 of the Laws of Zambia.

Zambia Police Act, Chapter 107 of the Laws of Zambia.

Prisons Act, Chapter 97 of the Laws of Zambia.

Other authorities referred to:

Bryan A. Garner, Black's Law Dictionary, Revised 4th edition (West Publishing Co. 1966).

This is an appeal against a judgment of the High Court granting the respondent damages for false imprisonment against the appellant. In the court below, the respondent commenced legal proceedings against the appellant and the Attorney-General, by way of writ of summons seeking, inter-alia, damages for unlawful dismissal and false imprisonment. He also claimed damages for defamation of character.

The case for the respondent, who was the plaintiff in the court below, was that he was employed by the appellant in the year 2003. On 7th August, 2009 around 03.00 hours, some police officers, including Alex Yanganani who was the arresting officer, went and arrested him from his house. During the operation, his house was searched and no properties belonging to the appellant were found. He was detained by the police, who took him to the appellant's premises the next day, where he was told that three pistons were missing from the main warehouse. He was also informed that according to the closed-circuit television (CCTV) footage, the image of the thief was similar to his. The respondent, however, denied the charge.

Consequently, he was ordered to undress and they took pictures of him wearing only his boxer shorts. He was later taken to Chingola Central Police where he spent a night. He was thereafter charged with breaking into a building and committing a felony therein. The next day, he appeared before the Subordinate Court, where bail was granted but he failed to pay K10,000.00 and provide a surety, as conditions precedent to his release. He was confined in prison from 7th August, 2009 to 2011, when he was acquitted of the criminal charged in the Subordinate Court.

In addition, he stated that he suffered while in prison and that he did not commit the offence that he was charged with.

The respondent stated that he left employment because he was frustrated. He conceded that there was nothing wrong with the police carrying out investigations on a matter reported by the appellant. Further that, there was a possibility of an honest mistake on the part of the appellant in the identification of the suspect.

During the course of the trial, reference was made of page 1 of the defendant's bundle of documents, which is a report by Delta Security team, to the appellant. According to that document, the respondent was working on the night of 22nd December 2007, around 23.30 hours, having obtained a permit to do so, on the pretext that he was going to be away the following morning. The respondent was charged for illegal access to company premises and a final written warning relating to the said charge was given on 18th

January, 2008. The same is shown on pages 3,4 and defendant's bundle of documents.

The respondent was also referred to pages 6 and 7 of the defendant's bundle of documents which is a charge form dated 28th July, 2008 indicating that he was charged with dishonest conduct for removing a wall clock without authority. The respondent was subsequently dismissed from employment with effect from 8th August, 2009 for desertion for more than 10 days.

The case for the appellant, who was the 1st defendant in the court below, was that the respondent was employed on 1st June, 2004 as a office orderly, messenger/cleaner up until he quit his employment through desertion. His employment was formerly terminated on 20th August, 2009. That there was no false report issued against him by the appellant. On or about 7th August, 2009, three pistons belonging to the appellant went missing from its warehouse and the matter was reported to the police.

That upon examination and analysis of the surveillance cameras installed at the premises, the police reasonably suspected the image of the intruder to be that of the respondent. Consequently, the respondent was arrested, detained and charged with one count of breaking into a building and committing a felony therein contrary to **Section 303 (a) of the Penal Code**.

At the conclusion of the prosecution evidence in the Subordinate Court, the respondent was found with a case to answer

and was placed on his defence. At the end of the trial, the presiding Magistrate found that there was doubt as to the identity of the respondent on the CCTV. That during the subsistence of his contract of employment, the respondent was on 18th January, 2008, charged with illegal access to computers and Atlas Copco premises contrary to clause 20 of the Grievance and Disciplinary Procedure Code. On 28th July, 2008, he was charged with dishonest conduct in that he allegedly removed a wall clock from the training room without authority and hid it in the ladies' toilet. The respondent left employment on 20th August, 2008, almost a year before his arrest.

Armed with an acquittal certificate, the respondent proceeded to sue the appellant in the High Court, for, inter-alia,, damages for false imprisonment and damages for defamation of character.

On the evidence led, the court below found in favour of the respondent and ordered that he be paid damages for false imprisonment to be assessed by the Deputy Registrar. She dismissed the respondent's claim for unlawful defamation of character.

Dissatisfied with the judgment of the High Court, the appellant launched its appeal before this court advancing the following grounds of appeal:

Ground one

The Judge in the court below erred in law and fact when she stated on page J10 lines 3 to 9 of the Judgment that the

suspicion by the appellant was baseless or based on unreasonable grounds because there was sufficient evidence on record showing that the respondent was found with a case to answer and put on his defence by the Magistrate thereby indicating the existence of reasonable and probable grounds.

Ground two:

The Judge in the court below erred in law and fact what she stated on J10 lines 18 – 19 of the Judgment that the report made by the appellant to Zambia Police was malicious because there is no claim or evidence on record supporting any allegations of malicious prosecution and the evidence shows that the respondent was found with a case to answer and put on his defence by the Magistrate thereby indicating the existence of reasonable and probable ground for reporting the case to Zambia Police.

Ground three:

The Judge in the court below erred in law and fact when she held that the appellant to be liable for damages for false imprisonment because there was no false imprisonment as the respondent stayed in prison by virtue of an order of a court of competent jurisdiction after the respondent failed to meet bail conditions set by the Magistrate the appellant never imprisoned nor caused the respondent to be falsely imprisoned.

The appellant filed its heads of arguments on 20th February, 2018. In regard to ground one it was submitted that the evidence disclosed reasonable and probable cause for the appellant to report the theft of its property to the police and express its opinion as to the prime suspect based on the CCTV footage.

Counsel further argued that the appellant's employees, who reported the matter to Zambia Police, had a constitutional right under **Article 20(i) of the Constitution of Zambia**, to add their opinion based on the CCTV footage. Counsel referred the court to the case of ***Richman Chulu vs Monarch (Z) Ltd***¹ where it was held inter-alia that false imprisonment arises where there is evidence that an arrest which led to the detention was unlawful and made without reasonable or probable cause.

The case of ***ZCCM vs George Nyambe***² was also brought to our attention for the proposition that courts have a duty in cases of false imprisonment, to ensure that people are not frightened to report matters to the authorities for fear of facing litigation from people they reported.

In relation to ground two, Counsel argued that the respondent did not seek damages for malicious prosecution and did not lay any evidence to support any allegation of malicious prosecution.

Turning to ground three, Counsel pointed out that after that offer of receiving the report of theft, verifying the report by reviewing the scene of crime and watching the CCTV, the respondent was detained at Chingola Central Police Station for some time before being conveyed to court.

He noted that the respondent failed to meet bail conditions and was kept at Chingola State Prisons until he was acquitted.

It was contended that the respondent was never falsely imprisoned as he was in lawful custody. To support this proposition, Counsel cited the provisions of **section 26 (a) of the Criminal Procedure Code, section 17(4) of the Zambia Police Act, and section 55 (1(a) of the Prisons Act.**

He wound up his submissions by submitting that the fact that the respondent was in prison for two years before his acquittal, does not automatically entitle him to damages for false imprisonment. Counsel urged the court to allow the appeal and set aside the judgment of the lower court.

We have carefully examined all the evidence on record and taken into consideration the arguments by both parties.

In this matter what confronts us is whether or not the claim of false imprisonment has four elements namely:

- i) Intent

- ii) Actual confinement in boundaries not of the Complainant's choosing.
- iii) A casual link and
- iv) Awareness of the confinement.

What this boils down to is that in order to succeed in a claim for claim of false imprisonment one must prove that there was willful detention, the detention was without consent and the detention was unlawful.

The case of **Richman Chulu vs Monarch**¹ referred to considered the issue of false imprisonment and held under inter-alia that:

"A false imprisonment only arises where there is evidence that the arrest which led to the detention was unlawful since there was no reasonable or probable cause.

b. A person will not be liable in trespass for merely setting into motion the machinery of law, he must be the direct and immediate cause of the false imprisonment.

c. Reporting crime and even signing a charge sheet which may lead to an arrest is insufficient to make the giver of the information liable for the imprisonment even if there is insufficient evidence to prosecute, unless the report was made malafide."

In **Claude Samuel Gaynor vs Cyril Robert Cowly**³ it was held that:

“In an action for false imprisonment it is necessary for the Plaintiff to prove nothing but the imprisonment itself. It is for the Defendant to discharge the onus of justifying it.”

It was clear from the foregoing that the principles of false imprisonment are well settled. Our understanding is that if a person is detained by the police and there is reasonable and probable cause for believing that the person has committed a crime, there can be no false imprisonment.

Black’s Law Dictionary defines reasonable and probable cause as:

“Such grounds as justify any one in suspecting another of a crime and giving him in custody thereon. It is a suspicion founded upon circumstances sufficiently strong to warrant reasonable man in belief that charge is true.”

What is cardinal to note, is that even if the information given to the police does not have sufficient evidence to prosecute, the person giving the information is not liable.

Having scrutinized the facts before us, the appellant’s employees had watched CCTV footage and according to them, they identified that image on the footage by a few features, namely the left handedness, the wide nose, the shape of his legs and formed the view that these features matched those of the respondent. It was against this back ground that a report was made to the police. The police proceeded to investigate the matter, charged and

arrested the respondent. He was prosecuted and subsequently acquitted. We do not find any malafide in the report made to the police.

The fact that the respondent spent close to 20 months in custody is not the fault of the appellant. The respondent was granted bail by the learned trial Magistrate and he was unable to meet the bail conditions, that cannot be blamed on the appellant.

It is our well considered view that there was reasonable and probable cause for the appellant to set into motion the machinery of the law by reporting the matter to the police. It cannot be said that they ought to have conducted further investigations before reporting to the police, it was for the police to carry out investigations. The Investigations were to be carried out by the police. The only thing the defendant has to prove is that the imprisonment was justified.

We are fortified in our reasoning by the holding of the Supreme Court in the case of the ***Attorney-General & Others vs Phiri***⁴ which held that:

1. False imprisonment consists in unlawfully and either intentionally or recklessly restraining another person's freedom or movement from a particular place. The restraint must be total for a time however short. There is no false imprisonment if a person's arrest is justifiable or if there is reasonable and probable cause of restraint.
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On account of what we have stated in the preceding paragraphs, we are of the firm view that the appeal has merit. The false imprisonment finding cannot be sustained.


We accordingly uphold this ground of appeal.

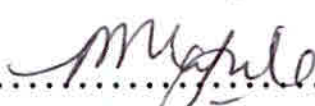
The reliefs granted by the court below namely damages for false imprisonment, on account of our finding are set aside.

We award costs to the appellants to be taxed in default of agreement.

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 C.F.R. MCHENGA
DEPUTY JUDGE PRESIDENT

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 F.M. CHISHIMBA
COURT OF APPEAL JUDGE

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 B.M. MAJULA
COURT OF APPEAL JUDGE