

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

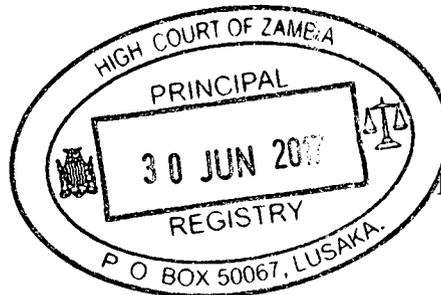
2013/HP/0885

B E T W E E N

BILLIARD MUKUNKAMI

AND

ATTORNEY GENERAL



PLAINTIFF

DEFENDANT

Before the Hon. Mrs. Justice F. M. Chisanga, this 30th day of June, 2017

For the Plaintiff: Mr. G. Locha, Messrs Mweemba and Company

For the Defendant: Major C. Nambote, State Advocate

J U D G M E N T

Cases Cited:

1. *Martin vs Watson (1996) AC Page 74*
2. *Glinsky vs MC Iver (1962) AC 726*
3. *Mohamed Arun and Jogenda Kumar Bunerjee and Others (1947) AL 322 at 330.*
4. *Abrath vs The North Eastern Railway Company in the Law Reports Vol XI 1882 P 440*
5. *Tempest vs Snowden (1952) 1KBD P 130*
6. *Hicks vs Faulkner (1881) 8 QBD 167 P 130 and 170*
7. *Shauban Bin Hassien and Others v Chong Fook Kan and Another (1969) 3 All E.R. 1626 at 1630*
8. *Martin vs Watson (1996) 1 AC 74*

Legislation referred to:

1. *Mvunga & Ng'ambi in Torts (2011) UNZA Press*

This is an action for damages for wrongful and malicious prosecution, damages for embarrassment, mental distress and inconvenience, and costs.

The statement of claim states that the plaintiff conducted business as an agent of Zambian Breweries, and traded as BILJOE Enterprises. Between the 8th and 9th June 2009, the plaintiff was charged with the offence of issuing cheques on an insufficiently funded account contrary to Section 33(1) of the National Payment System Act Number 1 of 2007. It was alleged that he had willfully and with intent to defraud, issued cheques in favour of Zambian Breweries PLC on an insufficiently funded account.

Despite explaining to the police that he was authorized to issue the cheques by Barclays Bank, and that he did not issue the cheques with intent to defraud, nor did he know that the account in question was insufficiently funded, the Zambia Police proceeded and charged him with the subject offence. He was as a result arraigned and prosecuted in the subordinate court from 2009 to 23rd August 2011 when he was acquitted of all charges by that court. The prosecution was wrongful, malicious and baseless for being conducted despite overwhelming evidence availed to the police showing that the plaintiff did not issue the cheques with intention to defraud but was allowed to do so by his bank. These circumstances gave rise to his claims.

The defendant avers that the plaintiff's prosecution was lawful and based on the evidence collected during investigations preceding the prosecution.

At the trial, the plaintiff testified to the following effect. He used to run a business trading as Biljoe Enterprises. This business was an agent for Zambian Breweries and used to sell that entity's products. The material period is early part of June 2009. The plaintiff had an account with Barclays Bank PLC. Prior to that, he had suffered thefts by his workers who used to connive with drivers from Zambian Breweries. As a result, his account was overdrawn. This prompted the bank to direct the plaintiff to surrender his cheque book in order for the bank to monitor the account. The plaintiff referred to the letter to that effect at page 17 of the plaintiff's bundle of document. I should reproduce it:

Subject: RE: CLOSING STOCKS AS AT 21.01.09
From: Mutale, Thandiwe: BB Zambia (thandiwe.mutale@barclays.com)
To: Bmukunkami2005@yahoo.com;
Cc: lefai.lombanya@barclays.com; Cynthia.Munganga@zambia.bafrica.com;
Date: Monday, February 2, 2009 1:22 AM

Good morning Mr. Mukunkami,

I have been trying to phone you since Friday but your phone is not reachable. Please call me as soon as you get my message. Your account is overdrawn again and the last time we had a meeting you told me that the account would be regularized by month-end January because you would have returned the empty cases that you were still holding but the situation has gone from bad to worse. This has left us with no option but to unpay one of the cheques. In view of this we recommend that you bring the cheque book to the bank and any cheques that need to be signed will be done from here after we have analysed the account and we are sure that you are issuing on a funded account.

Please call me as soon as you get this message.

*Rgds
Thandiwe*

Prior to this, the bank had written to **Zambian Breweries PLC** on 3rd October 2008, giving a cheque guarantee for K90,000,000 in favour of **Biljoe Enterprises**. The said guarantee is in the following terms:

When the cheque book was withdrawn from the plaintiff, all transactions on the account were being monitored by the bank. Whenever the plaintiff needed to order stock from **Zambian Breweries PLC**, he had to get cheques from the bank, for him to order stock. At no time was he allowed to order stock without the bank's approval as the bank was solely responsible for his cheque book.

In June of 2009, the plaintiff approached the bank, informing them that he needed to make four (4) orders. He was given four blank cheques, and as agreed, he was to deposit the proceeds of these four consignments he would order into his account.

He ordered the four consignments, not at once, but one after the other. After selling the stock, he made about five deposits into his account. The four cheques he issued were worth about K239,000 rebased, while he had deposited K274,000. Surprisingly the four cheques he had issued were unpaid. The police and officers from **Zambian Breweries** went to the plaintiff, and he was arrested. The stock in his shop was confiscated. As a result, his business was closed from that day to date.

The plaintiff was interrogated, and explained to the arresting officer what had transpired. The interrogating officer told the plaintiff that he had done nothing

wrong, but that the bank had made a mistake. The plaintiff was thereafter released.

To his surprise however, he was, six months later, taken to court and tried for the offence of issuing a cheque on an insufficiently funded account with willful intent to defraud, on four counts. He was acquitted of all the counts after the trial. Afterwards, the plaintiff asked the officer why he was prosecuted when the officer knew very well that the plaintiff was not at fault but the bank, as the plaintiff would not have issued those cheques had the bank not given them to him.

The plaintiff further explained to the court that at the time the cheques were dishonoured, he had made deposits into his account, as shown by the bank statements appearing at pages 21 - 40 of the plaintiff's bundle of documents. The statement at page 38 showed that on 6th June 2009, he made a cash deposit of K109,930,000, and K51,600,000 respectively. Another cash deposit had been made on 3rd June in the sum of K38,592,300. The sum of K33,280,000 was deposited on 4th June, and K35,740,000 on 5th June. He had also made a cheque deposit of K2,944,500.

He had deposited the proceeds as agreed, and there was money in the account at the time the cheques were dishonoured. All this information was availed to the police at the time he was arrested. The plaintiff also referred to the document at page 20, indicating the seizure of the stock he had by Zambian Breweries.

The plaintiff also explained that that was not the first time the bank had erroneously dishonoured the plaintiff's cheques, and apologized as a result to Zambian Breweries. He referred to the letters at pages 16 and 18 to that effect. He had explained all this to the police but they maliciously proceeded to prosecute him. This caused him a lot of distress and malicious damage to his reputation. That is what prompted him to commence this action

In cross examination, the plaintiff testified that at the time of the transactions in question, the account was overdrawn. There were deposits on the account, although it was not in credit, but overdrawn. He said the police received information from Mr. Roland Chileshe, who was the plaintiff's relationship manager at Zambian Breweries, and Mrs. Clare Chibesakunda.

When referred to page 19 of the plaintiff's bundle of documents, he said that was the revised credit limit from Zambian Breweries. He went on to state that the cheques that were unpaid were in the respective sums of K62,041,436, K59,285,058.00, K59,129,870, K59,285,058.00, bringing the total to K239,000,000. He issued those cheques in five days from 3rd to 7th June. When referred to the letter of guarantee at page 15, he explained that the statement that the bank would pay all correctly drawn and dated cheques by Biljoe Enterprises in favour of Zambian Breweries other than endorsee to the extent of K90,000,000, non-cumulative during any one week meant that if the plaintiff did not order any stock in one week, but orders in the next, he could not make double orders the next week. He also explained that he had a three day credit

to distribute their products had paid the company by four cheques, which when presented, were referred to drawer.

The witness instituted investigations, which revealed that the client had a three days credit facility under which he could get goods and pay for them after three days. He also had a cheque guarantee with Barclays Bank for K90,000,000. The witness discovered that the four cheques could not be honoured due to insufficient funds in the client's account. Upon establishing the foregoing, the witness summoned the plaintiff and interviewed him as he was sole signatory of the account in question, for Biljoe traders. The explanation given by the plaintiff was not satisfactory. As a result, the witness arrested the plaintiff and charged him with the offence of issuing a cheque on an insufficiently funded account contrary to Section 33(1) of the National Payments systems Account No 1 of 2007.

The witness also spoke to a Mrs. Thandiwe Mutale at Barclays Bank. She informed him that the cheque book of the account holder was kept by the bank so as to control the issuance of cheques. She also informed him that it was not in order for the account holder to issue cheques or a cheque above K90,000,000. The total of the four cheques issued was K239,000,000.

Defence witness also spoke to a lady from the clearing house known as Sipiwe, who confirmed that all the four cheques passed through the clearing process. DW1 explained that when interviewing the plaintiff, he told the plaintiff that the cheques he had issued bounced because the account had insufficient

funds to honour the cheques and not that the plaintiff was not at fault, but the bank.

Defence witness went on to say that he equally spoke to the Credit Manager of Zambian Breweries who said she contacted the plaintiff after the cheques had bounced, so that the cheques could be made good but the plaintiff did not attend to payment.

The witness went on to say that if the bank had indicated the cheques bounced due to other reasons other than insufficient funds, he would not have charged and arrested the plaintiff. He did so because of information received from Zambian Breweries and the bank.

When cross examined the witness stated that he obtained a bank statement, and was aware that several deposits has been made in that account. In addition to the K90,000,000 bank guarantee, he learnt that the plaintiff had a three days credit facility. The four cheques did not exceed the maximum bank guarantee individually. According to defence witness, the cheques issued by the plaintiff could not have been covered by guarantee because three were issued on the same date, exceeding the cheque guarantee of K90,000,000. The guarantee was in respect of one cheque at a time. He arrested the plaintiff in good faith because the cheques bounced due to lack of fund in the account.

He also came to learn that the plaintiff convinced the relationship manager to give him four cheques because there would be two holidays in between. He was

not aware that the bank would release cheques if there were funds in the account. The three cheques exceeded the guarantee and the account was overdrawn.

When re-examined, the plaintiff testified that although several deposits had been made, the funds in the account were insufficient to clear the issued cheques. When getting the four cheques, the plaintiff convinced the relationship manager that he would be issuing the cheques within the limits and would abide by the arrangement made with the bank.

This marked the close of the plaintiff's case.

Written submissions were filed on the plaintiff's behalf. The law relating to malicious prosecution is cited, particularly **Mvunga & Ng'ambi in Torts (2011) UNZA Press, *Martin vs Watson (1996)*¹ and *Glinsky vs MC Iver*².**

According to learned counsel the prosecution of the plaintiff was unwarranted, there being no reasonable and probable cause for doing so. Having heard the plaintiff's explanation, the police should not have proceeded to charge and prosecute the plaintiff. The prosecution was thus malicious.

I have considered the evidence led by the plaintiff, and the defence witness. The evidence reveals that the plaintiff ran a business known as Biljoe Traders under which he sold Zambian Breweries products. Due to dishonest dealings concerning his employees and drivers of Zambian Breweries, he began to fail to manage his bank account at Barclays Bank. Concerned at this failure, the

bank put measures in place, to enable it monitor the plaintiff's account. He was directed to surrender his cheque book. This directive is found in the e-mail from Mutale Thandiwe of Barclays Bank. The said e-mail is at page 21 of the plaintiff's bundle of documents and is in the following terms:

Subject: RE: CLOSING STOCKS AS AT 21.01.09
From: Mutale, Thandiwe: BB Zambia (thandiwe.mutale@barclays.com)
To: Bmukunkami2005@yahoo.com;
Cc: lefai.lombanya@barclays.com; Cynthia.Munganga@zambia.bafrica.com;
Date: Monday, February 2, 2009 1:22 AM

Good morning Mr. Mukunkami,

I have been trying to phone you since Friday but your phone is not reachable. Please call me as soon as you get my message. Your account is overdrawn again and the last time we had a meeting you told me that the account would be regularized by month-end January because you would have returned the empty cases that you were still holding but the situation has gone from bad to worse. This has left us with no option but to unpay one of the cheques. In view of this we recommend that you bring the cheque book to the bank and any cheques that need to be signed will be done from here after we have analysed the account and we are sure that you are issuing on a funded account.

Please call me as soon as you get this message.

*Rgds
Thandiwe*

The evidence also reveals that Barclays Bank had informed Zambian Breweries that Biljoe Enterprises enjoyed a cheque guarantee for K90,000,000. This is found in the letter dated 3rd October 2008, produced at page 14 of the plaintiff's bundle of documents.

The bank stated that it was guaranteeing to pay on demand any amount not exceeding ZMK90,000,000.00. The amount was non-cumulative during any one week and the bank's liability was up to a maximum of K90,000,000.00.

The letter went on to state that the bank's understanding was that it was to pay all correctly drawn and dated cheques by Biljo Enterprises on the particular Branch at Kafue House in Cairo Road, in Zambian Breweries favour other than endorsee to the extent of ZMK90,000,000.00 non-cumulative during any one week. It was understood that the bank's liability under the guarantee would not exceed ZMK90,000,000.00.

The plaintiff's firm enjoyed a credit limit of K123,300,000.00 with Zambian Breweries. This credit limit was based on the value of the K90,000,000.00 bank guarantee, and the allowance given for the value of empties and price change. The letter dated 3rd August 2007 at page 19 of the plaintiff's bundle of documents attests to this arrangement. Thus far, these facts are common cause and I so find.

It is equally undisputed that in June 2009, the plaintiff informed the bank that he needed to make four orders, and he was given four cheque leaves. As per arrangement, the plaintiff would deposit the proceeds of these four consignments into his account. I accept that the plaintiff made four orders consecutively. After he had sold the stock, he made cash deposits into his account, in the respective sums of K109,930,000.000, K51,600,000.00,

K38,592,300.00, K33,280,000.00, K35,740,000.00 and a cheque deposit of K2,944,500.00. These deposits were made from 4th to 6th June 2009.

The plaintiff issued four cheques for the total value of K249,000,000.00 which were unpaid by the bank. Those reflected in the bank statement at page 38 of the plaintiff's bundle of documents are an unpaid cheque on 05th June 2009, in the sum of K59,285,058.00. Another entry of 8th June 2009 showed that a cheque in the sum of K59,255,058.00 had been unpaid. Another entry on 10th June 2009 showed an unpaid cheque of K59,129,870. Yet another in the sum of K62,000,000.00 was unpaid.

Consequently, Mr. Roland Mpundu Chileshe complained to the defence witness that the plaintiff had issued a cheque on an insufficiently funded account. The defence witness instituted investigations which established that the plaintiff had a three days credit facility under which he could get goods and pay for them after three days. The defence witness also discovered that the plaintiff had a cheque guarantee with Barclays Bank in the sum of K90,000,000.00. He also found that the four cheques issued to Zambian Breweries could not be paid because of insufficient funds. The defence witness also summoned the account holder Billiard Mukunkami, the plaintiff. Because the plaintiff gave an explanation that was not satisfactory, the defence witness charged him with the offence of issuing the cheques in question on an insufficiently funded account. Before doing so, he also spoke to the relations manager, Ms. Thandiwe Mutale who informed him that the account holder had his cheque

book kept by the bank so as to control the issuance of the cheques. She also told the defence witness that it was not in order for the account holder to issue cheques or a cheque above the sum of K90,000,000.00. She revealed that the plaintiff requested for four cheque leaves because there were two holidays.

The foregoing facts are not contested. It is equally common cause that the cheques passed through the clearing process at the bank, and that Ms. Clara Chibesakunda the credit manager at Zambian Breweries informed the defence witness that when the four cheques were unpaid, she called the plaintiff to liquidate his indebtedness, but her efforts did not yield any fruit. Despite the explanations rendered by the plaintiff, the defence witness went ahead to prosecute him, because the three cheques exceeded the cheque guarantee and the account was already overdrawn.

It is uncontested that the plaintiff was acquitted of the charges preferred against him. These are the facts on which the plaintiff founds this action. The issue to be determined is whether the proceedings instituted against the plaintiff were malicious, without reasonable and probable cause. If that question be determined in the plaintiff's favour, I should determine whether he suffered damage. It should be remembered that the claim of malicious prosecution is predicated on abuse of the court process by wrongfully setting the law in motion, and is designed to discourage the perversion of the machinery of justice for an improper purpose. The damages that may be claimed are under three heads, that is; damage to the person, damage to

property and damage to reputation. See **Mohamed Arun and Jogenda Kumar Bunerjee and Others**³.

The statement made by **Brett MR in Abrath vs The North Eastern Railway Company**⁴ articulates the elements that require to be proved by a plaintiff in an action for malicious prosecution. He said:

".....it is not enough for the plaintiff to show, in order to support the claim which he has made, that he was innocent of the charge, upon which he was tried; he has to show that the prosecution was instituted against him by the defendants without any reasonable or probable cause and with a malicious intention in the minds of the defendants, that is, not with the mere intention of carrying the law into effect, but with an intention which was wrongful in point of fact. It has been decided over and over again that all three points must be established by the plaintiff and that the burden of each of them lies upon the plaintiff."

In **Tempest vs Snowden (1952) 1KBD P 130**, Denning LJ as he then was said the following in relation to reasonable and probable cause at page 138:

"In my opinion in order to determine the question of reasonable and probable cause the judge must first find out what were the facts as known to the prosecutor, asking the jury to determine any dispute on that matter and then the judge must ask himself whether those facts amounted to reasonable and probable cause."

I have equally derived guidance from **Hicks vs Faulkner**⁵, where Hawkins J restated the burden cast on a plaintiff when he said:

"In false imprisonment, the onus lies upon the defendant to plead and prove affirmatively the existence of reasonable and probable cause as his justification, whereas in an action for malicious prosecution, the plaintiff must allege and prove affirmatively its non-existence."

He went on to restate the definition of reasonable and probable cause as follows, at page 171:

“.....Now I should define reasonable and probable cause to be, an honest belief in the guilt of the accused based upon a full conviction, founded upon reasonable grounds, of the existence of a state of circumstances which, assuming them to be true, would reasonably lead any ordinarily prudent and cautious man, placed in the position of the accuser, to the conclusion that the person charged was probably guilty of the crime imputed. There must be: first, an honest belief of the accuser in the guilt of the accused; secondly, such belief must be based on an honest conviction of the existence of the circumstances which led the accuser to that conclusion; thirdly, such secondly mentioned belief must be based upon reasonable grounds: by this I mean such ground as would lead any fairly cautious man in the defendant’s situation so to believe; fourthly the circumstances so believed and relied on by the accuser must be such as amount to reasonable ground for belief in the guilt of the accused...The question of reasonable and probable cause depends in all cases, not upon the actual existence, but upon the reasonable bona fide belief in the existence of such a state of things as would amount to a justification of the course pursued in making the accusation complained of no matter whether this belief arises out of the recollection and memory of the accuser or out of information furnished to him by another. It is not essential in any case that facts should be established proper and fit and admissible as evidence to be submitted to the jury upon an issue as to the actual guilt of the accused.” [underlining mine]

I also consider it helpful to refer to Lord Devlin’s statement in ***Shauban Bin Hassien and Others v Chong Fook Kan and Another (1969) 3 All E.R. 1626 at 1630***, where his Lordship said:

“Suspicion in its ordinary meaning is a state of conjective or surmise where proof is lacking; “I suspect but I cannot prove.” Suspicion arises at or near the starting point of an investigation of which the obtaining of prima facie proof is the end. When such proof has been obtained, the police case is complete.”

These persuasive authorities indicate that the plaintiff is required to prove that he was acquitted of the offences he was charged with, and that there was no reasonable and probable cause for the said prosecution. The plaintiff has shown that he was acquitted of the charges preferred against him. It remains to examine whether there was reasonable and probable cause to prosecute the plaintiff. I must conclude that the defence witness believed in the guilt of the plaintiff, as this is borne out by the fact that the plaintiff was prosecuted. The facts on which this belief was based bear repetition.

1. *The plaintiff's cheque had been withdrawn by the bank, and he was being given cheque leaves for him to order the stock he required from Zambian Breweries PLC.*
2. *The plaintiff had a non-cumulative weekly cheque guarantee in the sum of K90,000,000, given by Barclays Bank. The bank would honour cheques in the total sum of K90,000,000 per week. This meant that if plaintiff drew cheques not exceeding the sum of K90,000,000 in any one week, the bank would make good those cheques, notwithstanding that there were insufficient funds in the plaintiff's account.*
3. *The plaintiff had a three days credit facility with Zambian Breweries under which he could obtain stocks, and pay for them three days later.*
4. *The plaintiff obtained four cheque leaves from Ms. Thandiwe Mutale, which he issued in the various amounts of K62,041,436.00, K9,285,098, K59,129,870 and K59,285,433. Ms. Thandiwe Mutale informed the defence witness that the plaintiff was not supposed to issue cheques*

exceeding K90,000,000.00. The defence witness was availed the bank statement at page 38 of the plaintiff's bundle of documents. The cheques that were unpaid were for K62,041,436.00, K59,285,058.00 and K59,129,870 respectively. According to page 38, these cheques were issued on 5th June 2009, 6th June 2009 and 6th June 2009 respectively.

5. *The plaintiff's evidence indicates that another cheque in the sum of K59,285,056.00 was unpaid.*

It will be observed that despite the deposits made into the account by the plaintiff, Biljoe Trader's Account was overdrawn. This is shown by page 38 of the plaintiff's bundle of documents. At page 39 is a definition of the letters DB, which appear against each balance entry on the statement. Those initials stand for "Overdrawn Balance". The plaintiff conceded as much in cross examination.

As earlier observed, the defence witness was informed that the plaintiff was not supposed to issue cheques exceeding K90,000,000 in any one week.

These are the facts on which the defence witness proceeded to charge and prosecute the plaintiff. The question, as already stated, is whether on these facts, reasonable and probable cause to prosecute the plaintiff was established. My considered view is that it was reasonable to conclude that the plaintiff had committed the offence he was charged with. I reach this view on the following considerations:

Firstly, at the time the plaintiff issued those cheques, the account in question was overdrawn. He averred that he did not know that his account was overdrawn. I gather this is the explanation he gave to the defence witness. The defence witness obviously disbelieved this explanation, or found it unsatisfactory. As a reasonable man, he was entitled to disbelieve that a reasonable business person would be unaware of the state of his account.

Secondly, although he had seen that the bank was to scrutinize the account before the plaintiff could issue a cheque, he was also informed by Ms Thandiwe Mutale that having been given those cheque leaves he requested for, the plaintiff was not supposed to issue cheques exceeding K90,000,000 in any one week. She also informed him that the plaintiff had asked for four cheque leaves because of the two holidays. Given this information, it was reasonable for the defence witness to conclude that the plaintiff had committed the offence of issuing a cheque on an insufficiently funded account. He would reach this conclusion because the account was overdrawn, the K90,000,000 cheque guarantee given by the bank was exceeded by the combined cheques, and the plaintiff was aware that he could only issue cheques not exceeding K90,000,000 altogether in any one week, if this account had insufficient funds.

It should be remembered, as stated in *Hicks vs Falkner opcit* that the question of reasonable and probable cause depends in all cases, not upon the actual existence, but upon the reasonable bona fide belief in the existence of such a state of things as would amount to a justification of the course pursued in

making the accusation complained of, and this is so even when information is furnished to the prosecutor of another.

Clearly, the defence witness believed, as informed, that the plaintiff was availed four cheque leaves in advance and was not supposed to exceed K90,000,000 when issuing them. It has not been shown that his belief in the explanation given to him by Ms Thandiwe Mutale was not bona fide. That being the case, it cannot be concluded that he was moved by an improper motive in prosecuting the plaintiff. I should state here that at that stage, the defence witness was not required to disbelieve Ms. Thandiwe Mutale in preference for the plaintiff's version. All he needed was information that pointed to the probable guilt of the plaintiff. I thus accept that the prosecution was intended for a proper purpose and not an improper one, as the information the defence witness was availed entitled the defence witness to prosecute the plaintiff. In saying so, I discount the claim that the defence witness agreed with the plaintiff that it was the bank that had made a mistake as the information he received clearly indicated otherwise.

Martin vs Watson⁷ articulates the circumstances in which a police officer will be excused in a wrongful prosecution case. Lord Keith said:

“Where an individual falsely and maliciously gives a police officer information indicating that some person is guilty of a criminal offence and states that he is willing to give evidence in court of the matter in question, it is properly to be inferred he desires and intends that the person he names should be prosecuted. When the circumstances are such that the facts relating to the alleged offence

can be within the knowledge only of the complainant, as was the position here, then it becomes virtually impossible for the police officer to exercise any independent discretion or judgment, and if a prosecution is instituted by the police officer the proper view of the matter is that the prosecution has been procured by the complainant.”

Turning to the instant case, the assertion that the plaintiff was not supposed to issue cheques above K90,000,000 at the material time was within the knowledge of Ms Thandiwe Mutale. I do not see how the defence witness could be faulted for relying on her statement in making up his mind to prosecute. I thus find the element of malice unproved as the absence of reasonable and probable cause has not been proved by the plaintiff and dismiss the claims as a result, with costs to be agreed and in default taxed.

Dated the^{30th}.....day of^{June}..... 2017



F. M. CHISANGA
HIGH COURT JUDGE