IN THE HIGH COURT OF TANZANIA

AT SUMBAWANGA

DC CIVIL APPEAL NO. 3 OF 2011

(Appeal from the decision of the District Court of Mpanda at Mpanda in Original Civil Case No. 14 of 2008)

TANZANIA ELECTRIC SUPPLY CO. LTD ..... APPELLANT

Versus

JUMANNE MASANJA (As Administrator of the Estates of the late Juma Masanja) ..... RESPONDENT

30th June & 8th September, 2014

JUDGMENT

MWAMBEGELE, J.:

This is an appeal emanating from the District Court of Mpanda in which one Juma Masanja (now deceased) sued Tanzania Electric Supply Co. Ltd (henceforth "the appellant") for malicious prosecution. Juma Masanja passed away on 29.11.2010 on natural causes. One Jumanne Masanja (henceforth "the respondent"); son of the deceased, stepped into his shoes as an administrator of his estates.

The background to the suit as can be gleaned from the proceedings in the District Court were that on or about 31.12.2002 a store belonging to the

appellant was broken into and some 204 stay plates and 205 pieces of X-arms stolen. The estimated value of the stolen items was Tshs. 2,593,164/= and Tshs. 2,475,000/= respectively. One Agnes Mbwiga; store keeper of the appellant reported the matter to the police and consequently, after investigations, the late Juma Masanja who happened to be a panel beater making grinding machines using heavy metals like stay plates, was, together with another person whose charges abated because of his death, arrested and prosecuted for stealing c/s 265 and alternatively receiving stolen property c/s 311 (1) & (2) of the Penal Code, Cap. 16 of the Revised Edition, 2002. After a full trial, the late Masanja was acquitted on 07.12.2005, it being held that the case was not proved to the standard required by criminal law; that is, beyond reasonable doubt.

Consequent upon his acquittal, on 10.12.2008, the late Juma Masanja instituted a civil suit for malicious prosecution claiming for, *inter alia*, Tshs. 60,00,000/ as general damages and Tshs. 20,000,000/= as what he called damages for loss of business. After a full trial, including efforts by the appellant to preliminarily object to the suit on account that it was time barred the District Court decided for the Juma Masanja awarding him the Tshs. 20,000,000/= prayed as special damages for loss of business. The decision did not make the appellant happy and has therefore preferred an appeal in this court advancing five grounds of dissatisfaction, namely:

1. That the Learned trial Magistrate erred in finding that the suit was instituted within the prescribed time limit.

2. That the Learned trial Magistrate erred in finding that the special damages were proved to the required standards.

3. That the Learned trial Magistrate erred in allowing the administrator of deceased estate to be joined without emending the pleadings.

4. That the Learned trial Magistrate erred in finding that the respondent herein was maliciously prosecuted by the appellant

5. That the Learned trial Magistrate erred in evaluating the evidence adduced at the trial.

The appeal was argued before me on 30.06.2014. Both parties were represented. The appellant was represented by Mr. Ndegi, learned Counsel whilst the Respondent had the services of Mr. Chambi, learned Counsel. Mr. Ndegi argued the grounds of appeal seriatim but on reaching the last ground, he realized that he had already canvassed it when arguing the fourth ground. On the first ground, the learned Counsel argued that the suit filed by the respondent was out of time in that the respondent was acquitted on 07.12.2005 and the suit was filed on 10.12.2008 which was four days' out of time. He submitted that under the provisions of section 3 (1) of the Law of Limitation Act, Cap. 89 of the Revised Edition, 2002, and this being a tort case, the suit ought to have been filed three years after the cause of action arose on 07.12.2005. He complained that the trial court referred to 08.12.2008 as the date of acquittal and 15.12.2005 as the date on which the respondent obtained the copy of judgment while in fact

those were not the correct dates as per record. Therefore Mr. Ndegi submitted on this ground that the respondent was out of time in filing the suit and thus the suit ought not to have been entertained.

On the second ground, Mr. Ndegi submitted that the special damages of Tshs. 20,000,000/= granted to the respondent as special damages were not proved. He referred to the court to the definition of special damages in the Black's Law Dictionary as an amount awarded to a complainant to compensate for a proven injury or loss. He emphasized that these are damages that are repaid upon proof of actual loss on balance of probabilities. He submitted that the trial court relied on the prayer to have the special damages granted while there was no actual proof thereof.

On the third ground, the appellant complained that the trial court erred in allowing the respondent to be joined as an administrator of the estates of deceased Juma Masanja without amending the pleadings. Mr. Ndegi for the appellant submitted that he expected a death certificate to be produced to verify the death of the deceased so that the administrator could step into his shoes properly short of which the respondent was wrongly joined.

On the fourth and fifth grounds the appellant contended that the trial magistrate erred in holding that the late Juma Masanja was maliciously prosecuted in that the parties to the suit were the Republic on the one side and Juma Masanja on the other. It was not shown anywhere that the appellant was a party to the suit. Mr. Ndegi cited the provisions of section

8 (1) (a) and (b) of the Office of the Attorney General (Discharge of Duties) Act, 2005, sections 7 and 10 of the Criminal Procedure Act, Cap. 20 of the Revised Edition, 2002 and section 9 (1) of the National Prosecutions Act, 2008 to substantiate that what Agnes Mbwiga did was to report the crime to the police who under the auspices of the Attorney General and Director of Public Prosecutions investigated and subsequently prosecuted the late Juma Masanja. He submitted that the appellant is not to blame at all as what it did was to report the crime and had no hand as to what went on after that as the matter was left in the hands of the superstructural organs of the state.

On the other hand, Mr. Chambi, Counsel for the respondent responded that the suit was filed in time in that the criminal case was finalized on 07.12.2005 but the respondent was served with the documents on 15.12.2005. He therefore submitted that the limitation period should be reckoned from the date on which he got the judgment; not the date of acquittal.

On the second ground Mr. Chambi submitted that special damages were proved in that the respondent stated that he was making Tshs. 500,000/= and that there was proof that he was making such money.

On the third ground, Mr. Chambi submitted that in the light of Order XXII Civil Procedure Code, Cap. 33 of the Revised Edition, 2002, the Administrator of the estates of the late Juma Masanja was properly introduced in the case.

On the last two grounds Mr. Chambi joined hands with the appellant's Counsel on provisions and legislation cited by Counsel but that the same are not applicable in the present case in that the law applicable in the present instant is one of tort. He stressed that in suits for malicious prosecution, there are three ingredients which must be proved; a report over the criminal matter, prosecution actuated by malice and an acquittal of the Plaintiff. That the basic ingredient here is malice and that there was ample evidence that the said Agnes Mbwiga reported the matter maliciously as she was aware that the late Juma Masanja was a panel beater who used heavy metal akin to the ones stolen in his works and she is the one who allegedly identified the heavy metal as the ones among the stolen items.

I have given due consideration to the rival arguments presented to me during the hearing of this appeal. I thank both learned counsel for the industry exhibited in representing their clients. I commend them for the good work well done. The ball in now in my court to decide. I shall deal with the grounds of appeal in the order they appear in the memorandum of appeal and as argued by both learned Counsel.

The bone of contention in the first ground of grievance rests on the question whether or not the suit was filed in time. The appellant opines that the cause of action arose when the judgment which acquitted was handed down while the respondent is of the view that such cause of action arose when the judgment was supplied to the respondent. This issue will

not detain me. I do not think what the respondent states depicts the correct position of the law. It is crystal clear that the respondent was aware that he was acquitted of the charges leveled against him when the judgment was delivered to him on 08.12.2005. That he was acquitted was not news broken to him on 15.12.2005 when he was served with the documents. He was aware of the acquittal since 08.12.2005; the day the judgment was delivered. It does not seem to me that the respondent is correct when he states that time should start to run against him when the judgment was supplied to him. A cause of action for malicious prosecution accrues when the criminal proceeding on which the suit is based has been terminated in the plaintiff's favor. In the instant case it is 08.12.2005. The position would not have been the same if the Republic appealed in which case the cause of action would have accrued on the date when the appeal would be finalized in favour of the respondent. The first ground of appeal succeeds.

The foregoing would have finally determined this appeal. However, I do not find myself resting in peace without resolving other issues just in case I am held to have erred in reaching the above conclusion. This takes me to the second ground of complaint which is that the special damages of Tshs. 20,000,000/= awarded to the respondent were not proved. As rightly put by the learned Counsel for the appellant, and conceded by the learned counsel for the respondent, it is the law that special damages must be specially proved.

it is the law in our jurisprudence founded upon prudence that special damages, being exceptional in their character, must be pleaded specifically and strictly proved – see: ***Zuberi Augustino Vs Anicet Mugabe*** [1992] TLR 137, ***Maritim and Another Vs Anjere*** [1990-1994] 1 EA 312 and ***Stanbic Bank Tanzania Limited Vs Abercrombie & Kent (T) Limited***, Civil Appeal No. 21 of 2001 (unreported), to mention but a few. I think it was Lord Macnaghten who laid down the principle in ***Stroms Bruks Aktie Boiag Vs John Peter Hutchinson*** [1905] AC 515 at page 525 in the following terms:

> "Special damages on the other hand are such as the law will not infer from the nature of the act. They do not follow in the ordinary course. They are exceptional in their character and, therefore, **they must be claimed specifically and proved strictly.**"
> [Emphasis supplied]

The above principle, which is often quoted in common law jurisdictions, was followed by the Court of Appeal as a correct statement of the law in the ***Stanbic Bank*** case (supra) in which, reiterating its earlier position in the ***Zuberi Augustino*** case (supra) in which it held that special damages must be specifically pleaded and strictly proved, the Court held:

> "Although not as comprehensively expressed, this Court in one of its decisions – ***Zuberi***

> ***Augustino v Anicet Mugabe***, [1992] TLR 137, at page 139 said:- It is trite law, and we need not cite any authority, that special damages must be specifically pleaded and proved."

In the case at hand, were special damages specifically pleaded and strictly proved? This is the question to which I now turn. I have scanned the record of the trial count. It is obvious that damages of Tshs. 20,000,000/= were pleaded in the Plaint. This is evident in the prayers of the Plaint. The issue arose at the trial as to how the respondent came about the loss of what he called damages of TShs. 20,000,000/= and attempted to explain but met an objection from the appellant's counsel. It was at that point in time when it was realised that the Tshs. 20,000,000/= which were referred to in the prayer as simply damages were actually special damages. Despite the objection by the appellant's counsel, the respondent inadequately explained how he came about them. In cross examination he explained that he used to make one grinding machine a day which earned him about Tshs. 500,000/=. However, later in the very cross examination, the respondent changed the goal post and stated he made one grinding machine in three which earned him the said Tshs. 500,000/=. Having read the entire record, I am satisfied that the respondent treatment of what he referred to as special damages – prom the way they were pleaded and proved - fell short of the standard laid down in the above cases. What we have from the respondent is just an allegation that he earned such an amount in a day or three. No witness was called to support him. Neither were any receipts brought to strictly prove that he used to earn that

amount in a day or even three days. And just thinking aloud, if indeed the respondent earned such amount in a day or even three days, he would have been one of the millionaires of this country. Nonetheless, the second ground of grievance therefore, like the first one, succeeds.

I still wish to tackle the third ground as appearing above and as argued by the two Counsel for the parties. This ground hinges on the fact that the respondent was wrongly joined as an administrator of the estates of deceased Juma Masanja as the pleadings were not amended to accommodate him. It was also claimed by Mr. Ndegi for the appellant that a death certificate would have been produced to verify the death of the deceased so that the administrator could step into his shoes properly.

This point of grievance will not detain me, for the complaint is groundless and it appears the learned Counsel for the appellant did not read the record between the lines, for had he done that he would not have failed to realize that the respondent's prayer to amend the pleadings so as to accommodate the administrator of the estates was granted by the court on 11.03.2011. The Amended Plaint was duly filed in court on 11.03.2011 and the court ordered on the same day that it should be supplied to the appellant. This ground has no merit and therefore fails.

The last two grounds were consolidated by both learned brothers when arguing the appeal and the court will follow suit. This is a complaint to the effect that the court erred in the evaluation of evidence and in holding that the respondent was maliciously prosecuted. In fact, Mr. Ndegi for the

appellant invested a lot of efforts on this consolidated ground when arguing it that the court wonders why it was argued last. However, in reflection, perhaps Mr. Ndegi was employing the tactics of the Biblical Jesus Christ to bring good things last. The tactic reminded me of the Biblical wedding ceremony in Canaan where, when the wedding ceremony ran out of wine, Jesus transformed water into wine and that wine happened to be the best compared to what the participants had taken before. It was exclaimed by the chief waiter (who was then not aware of the miracle) that the bridegroom had departed from their custom by serving the best wine last instead of serving it first.

Be it as it may, it seems to me, in the instant case, this was the strongest ground of all grounds and Mr. Ndegi rightly put a lot of force into it. The ground prompts me to answer the question whether the appellant through its officer Agnes Mbwiga who reported the crime to the Police after some 204 stay plates and 205 pieces of X-arms were stolen from its store amounted to maliciously prosecution. In order to prove a case for malicious prosecution, some ingredients must be brought to the fore. These are first, there must be prosecution in criminal proceedings of the Plaintiff; secondly, the criminal proceedings must terminate in favour of the Plaintiff; thirdly, such prosecution must be without reasonable and probable cause; fourthly, such prosecution must be actuated by malice and lastly, the Plaintiff must have suffered damages as a result of such prosecution – see **S. P. Singh's Law of Tort**, Sixth Edition, Universal Law Publishing Co. Pvt. Ltd at page 290 and the decision of this court of ***Jeremiah Kamama Vs Bugomola Mayandi*** [1983] TLR 123. As good

luck would have it, there is a plethora of authorities on this subject and I will be guided by these authorities to determine this question. The hallmark of all these authorities is to the effect that information given to the police in order to detect crime is privileged. This court [Mfalila, J. (as he then was)] was confronted with an identical situation in ***Rwekanika Vs Binamungu*** [1974] 1 EA 388. His Lordship quoted *in extenso* the following passage from Gatley on Slander, 6th Edition at pp. 218 – 19:

> "It is the public duty of everyone who knows, or reasonably believes that a crime has been committed to assist in the discovery of the wrongdoer. Any complaint made, or information given for that purpose to the police, or to those interested in investigating the matter, will in the interests of society, be privileged, and the mere fact that the defendant has volunteered the information will make no difference. So that when a person has reason to believe that a crime has been committed, it is his duty and his right to inform the police. If he states only what he knows, and honestly believes, he cannot be subjected to an action of damages merely because it turns out that the person as to whom he has given the information is after all not guilty of the crime. It is therefore a settled principle of law that where an individual gives

> information or makes a statement to an officer of the law, whose duty it is to detect and prosecute criminals . . . to the effect that someone has committed a crime, such information or statement has the protection of privilege. This is so in the best interest of society, and the suppression of crime could not otherwise be enforced.
>
> **"If the charge is made honestly and to the proper authorities, the mere fact that it is found to be groundless, or that proceedings in respect of it are subsequently abandoned will not destroy the privilege** ..."
>
> [Emphasis mine].

Having quoted the above passage, His Lordship went on:

> "It is settled law that statements made in aid of justice are privileged qualifiedly and in this category falls all information given to the police in order to detect crime. The reasons are obvious – the protection of public order."

Thereafter the court unreservedly adopted the above pronouncements as founded on good sense, because the preservation of public order through

detection and punishment of crime must override individual convenience and quiet.

I fully share the sentiment by his lordship Mfalila, J. (as he then was) as expounded in the ***Rwekanika*** case. In the instant case, the appellant, through Agnes Mbwiga; its employee, reported the matter to the Police and the information was qualifiedly privileged. The appellant cannot therefore be held liable for the damages, if any. I am satisfied that the District Court applied wrong principles to award special damages to the respondent.

It may not be out of place to remind the parties to this appeal, particularly the respondent, that it is the duty of every citizen of this country to give information on crimes and whoever reports the same is protected from any criminal of civil proceedings. This is the tenor and import of section 7 (1) (a) and (2) of the Criminal Procedure Act, Cap. 20 of the Revised Edition, 2002. These provisions read:

> "(1) Every person who is or becomes aware–
>
> (a) of the commission of or the intention of any other person to commit any offence punishable under the Penal Code; or
>
> (b) ...
>
> shall forthwith give information to a police officer or to a person in authority in the locality

who shall convey the information to the officer in charge of the nearest police station.

(2) **No criminal or civil proceedings shall be entertained by any court against any person for damages resulting from any information given by him in pursuance of subsection (1).**

(3) ..."

[Emphasis added].

The last two grounds of appeal, as consolidated, like the first and second grounds, have merit.

The sum of it all is that, all said and done I find myself constrained to hold that the District Court entered into an error in deciding the case for the Plaintiff while the suit was time barred, while there was no specific pleading and strict proof of special damages and while the report made by the appellant through its employee Agnes Mbwiga was qualifiedly privileged.

I find merit in this appeal and allow it with costs.

DATED at SUMBAWANGA this 8th day of September, 2014.

J. C. M. MWAMBEGELE
JUDGE