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JAMBO FOODS PRODUCTS CO LIMITED VS HASSAN HUSSEIN MUSA AND ANOTHER (CIVIL APPEAL NO. 454 OF 2022) [2024] COURT OF APPEAL OF TANZANIA AT DAR ES SALAAM (UNREPORTED)

This decision of the Court addresses a crucial issue in relation to the tort of false imprisonment. It answers the question as to whether a person making a false report that leads to an unlawful confinement of the complainant / plaintiff may liable even when the physical act of restraining the plaintiff was performed by someone else.

The genesis of this matter began when a person called Nassor Jabir (who is it large) went to the Appellant's factory at Shinyanga while driving a truck make Mitsubishi Fuso with registration No. T862APC. The said Jabir presented a bank pay in slip showing to have deposited TZS 18,500,061.00 with the appellant's account. In turn he was permitted to load juice products worthy the said amount. The appellant in a bid of crosschecking with her bank's branch found out that the said pay in slip presented by the said Jabir was forged and no credit was deposited on her account. It is on that time when the Appellant's marketing manager went to the police station and reported the incident of theft.

After the passing of eight months, police officers from Dar es Salaam went to the first respondent's residencies, searched and arrested him and the second respondent who is the respondent's son. They were restrained at the station for three days before they were conveyed to Shinyanga. They were also instructed to transport the first respondent's motor trailer with registration No. T862ACC from Dar es Salaam to Shinyanga.

Two weeks after the arrest of the respondents, the Appellant's Marketing Manager was summoned to the Shinyanga Police station to identify the suspects and the motor truck. Upon being shown the respondents and the motor trailer he informed the police that none between the respondents was Nassor Jabir and even the motor trailer was not Mitsubishi Fuso and even its registration number is not T862APC. The respondents were then immediately released. Following their released, the respondents lodged a civil suit at the High Court against the Appellant claiming that, she maliciously and in bad faith caused their illegal arrest, false imprisonment and police investigations and consequently they claimed payment of TZS 500,000,000.00 as general damages. Having heard the parties, the High Court allowed the suit and granted TZS 250,000,000.00. as general damages.

The Appellant being aggrieved by the decision of the High Court, lodged her appeal to the Court of Appeal. During hearing of the appeal, parties adopted their written submissions and left the matter to be determined by the Court save for few issues that were raised by it.

In disposing of the appeal, the Court keenly examined the records of the trial court and found out that, the trial court decided as it did because it believed that the appellant or her workers participated in restraining and incarcerating the respondents. The Court ruled out

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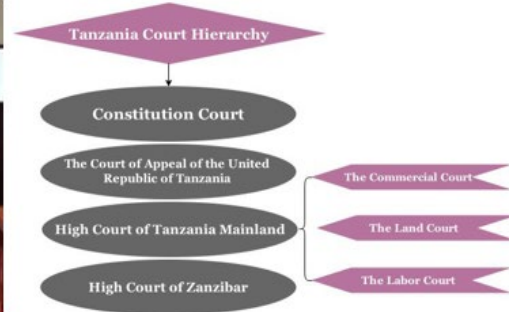
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that the said findings was improper and not backed up with the evidence on record. Instead the Court reasoned that, according to the evidence on record, the respondents' witness (PW1) testified that the Appellant's employees were present during the arrest of the respondents and they were introduced by one police officer called DOTTO. And as the said DOTTO was not summoned as a witness to the Respondents' case the allegations of PW1 on the identities of persons whom were said to be the Appellant's employees remained to be evidentially weightless.

Moreover, the Court was of the view that, the respondents did not discharge the burden of proof in the absence of concrete proof that either the Appellant or her workers reported by identifying specifically that the respondent are the ones who stole drinks by using their trailer. On this the Court was of the view that, the said proof was important because even in the absence of the evidence that a person who reports information which leads to the false imprisonment may be found liable for the tort, even where he does not directly or physically participate in the actual imposition of the confinement. The evidence on record shows clearly that what the Appellant's employee reported is that it was NASSOR JABIR who went with a pay in slip worthy 18,500,061 with a truck with registration T 862 APC FUSO. And therefore, the respondents' evidence on record did not establish the Appellant's participation in their arrest nor did it show that the respondents were the one who had stolen the goods.

In advancing its above findings the Court while citing the provisions of section 7(1)(a) and (2) of the Criminal Procedure Act [Cap. 20 R.E. 2022] (the CPA) it ruled out that, reporting to the police any crime, real or potential, is a civic duty; it is an obligation on all persons under the realm of our law, without exception. It added further that, a decision of whether to use or misuse the information received by an investigatory agency is within the exclusive domain and prerogative of the latter. After the informer under section 7(1) (a) of the CPA, has his information recorded, what happens and how such information is handled and applied by its recipient, is completely outside his control, and to hold him liable for what the investigative agency does with the information, would be offensive of section 7(2) of the CPA.

The decision stands to be a lesson with respect of a tort of false imprisonment. Although the decision endorses the duty and obligation of reporting a crime to all persons yet it remind us that a person making a false report that leads to an unlawful confinement of the complainant / plaintiff he or she may liable even when the physical act of restraining of the plaintiff was performed by the law enforcers.



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