

IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA

2013/HP/1389

(Civil Jurisdiction)



BETWEEN:

KENNETH MWABA KAMANDA

PLAINTIFF

AND

MIKE CHIBWE

1ST DEFENDANT

ATTORNEY GENERAL

2ND DEFENDANT

For the Plaintiff: Ms. N. Liswaniso of KBF & Partners

For the Defendant: Major F. Chidakwa, Assistant Senior State Advocate

J U D G M E N T

Cases referred to:

1. *Mubita Mbanga vs The Attorney-General (1979) Z.R. 234 (H.C.)*
2. *Whittaker vs Sandford 110 Me. 77, 85 A. 399 (1912)*
3. *Merring vs Graham White Aviation (1919) 122 LT 44 MA*
4. *Attorney-General vs Chipango (1971) Z.R. 1.*
5. *Shipanga vs Attorney General (1976) Z. R. 224*
6. *Richman Chulu vs Monarch (Z) Lt (1983) Z.R. 33*
7. *Daniel Chizoka Mbandangoma vs The Attorney General (1979) Z. R. 45 (H.C.)*
8. *Claude Samuel Gaynor vs Cyril Robert Cowley (1971) Z.R. 50 HC*
9. *Khalid Mohammed vs The Attorney General (1982) ZLR P 49*
10. *Hicks vs Faulker (1881) 8 QBD 167*
11. *The Attorney General vs Sam Amos Mumba (1984) ZR 14*
12. *Christie vs Leachinsky [1947] A.C. 573*

Other works referred to:

1. Clerk and Lindsell on Torts (17th edn, 1995)

This is an action for false imprisonment commenced by way of writ of summons. In the accompanying statement of claim, the plaintiff avers that on 27th May, 2013, at 07:00 hours, he was driving along Winstone Road in Choma. As he approached the market, he slowed down to 0km/h so that he could park the motor vehicle at his shop when the 1st defendant approached him and requested him to accompany him (the 1st defendant) to the police station. The plaintiff was detained in police cells and at 11:02 hours, he was requested to sign a document headed notice of intended prosecution. He was released between 17:00 to 18:00 hours that very day.

The plaintiff alleges that the reason the 1st defendant detained him was because he had reported him to his superior over an accident which occurred at the plaintiff's residence which the 1st defendant did not want to record in the Occurrence Book. This made the 1st defendant very angry hence the plaintiff's detention for an offence that did not warrant an arrest.

As the plaintiff did not open his shop that day, he claims for loss of sales amounting to K60,000.00. He contends that as Choma is a small town, the arrest tarnished his image. As a result of the 1st defendant's actions, the plaintiff suffered loss of business, inconvenience and mental anguish. He

claims for damages for false imprisonment, exemplary damages, interest, any other relief the Court may deem fit and costs.

In their defence, the 1st and 2nd defendant deny the plaintiff's claims and aver that while conducting traffic patrols along Winstone Road in Choma, the 1st defendant came across a Toyota Ipsum Registration Number AJC 6087 parked on the road. The plaintiff was charged with the offence of Obstruction of Road by a motor vehicle. The plaintiff refused to drive his motor vehicle to the police station until he was forced to do so. It is contended that there was reasonable and probable cause to detain the plaintiff who later willingly signed an Admission of Guilt Form and paid a fine for the offence committed. The defendants reiterate that there was lawful justification for the plaintiff's detention.

At the trial, the plaintiff testified that on 21st August, 2011, at around 21:48 hours, a government ambulance for Choma General Hospital rammed into his wall fence pulling the wall and electric fence down. Dissatisfied with the manner in which the Police handled the matter, the plaintiff reported the matter to the District Commanding Officer, one Mr. Simfukwe, who ordered a meeting in which he reprimanded the traffic officer in charge, the now 1st defendant, for failure to deal with the accident professionally.

The plaintiff testified that on 27th May, 2013 at around 07:00 hours, when driving to his place of business, he slowed down to park, when a police vehicle

stopped him. The Police commanded him to take the vehicle to the Police station. At the station, the 1st defendant grabbed his car keys and confined him the in cells without any explanation. At around 11:00 hours, the 1st defendant forced the plaintiff to sign a form headed '**notice of intended prosecution**'. At around 16:30, the station inspector interviewed him while the 1st defendant was out of the station. When he later returned, and was questioned over the Plaintiff's detention, the defendant's response was to the effect that the plaintiff was stupid.

The witness went on to state that on that very day, his brother went to the Police Station with some money upon learning that the plaintiff had committed an offence. The 1st defendant asked for a payment of K270 without proffering any explanation, and forced the plaintiff's brother to sign a document, unknown to him. The plaintiff was also forced to sign the document as a condition for his release. As he was eager to leave the police cells due to embarrassment and the risk of losing his reputation, the plaintiff signed the document and was released at between 17:00 and 18:00 hours.

He testified further that on the day of his arrest, he did not open his shop. As an agent for Lafarge Cement and dealing in other hardware products, the plaintiff incurred a loss, as on a normal day, he made between K60,000 and K80,000 from sales. He stated, regarding the document at page 2 of the

defendant's bundle of documents, that he did not willingly sign the admission of guilt form.

In cross examination, the plaintiff testified that the Hospital built the wall fence but the electric fence was never repaired. He was convinced that the defendant arrested him in 2013 because he was reprimanded over his behaviour in 2011. It was a way of punishing him. He testified that the defendant was with his colleague who refused to participate in the arrest. He did not resist the arrest but was still dragged by the defendant. As regards the admission of guilt form, the plaintiff reiterated that his signature was the condition for his freedom. He never read the contents and neither did his brother, who signed as a witness.

The plaintiff went on to testify that he reported the 1st defendant to the new commanding officer over his unjustified arrest but the 1st defendant did not attend the meetings that were scheduled. On the day of his arrest, his business was closed as the other two people he was working with were not aware that he had been arrested since he was not allowed to communicate with anyone. The plaintiff's brother found out by other means that he had been arrested.

PW2 was Sydney Sitambuli. He testified that in May, 2013 he reported at his place of work early in the morning to clean the plaintiff's shop. When his boss, the plaintiff arrived, he went to free his parking slot so that he could park. Some Police officers approached and ordered the plaintiff to drive his vehicle to the Police Station. He did not hesitate to follow the instructions. PW2 stated

