

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**(CIVIL DIVISION)**

**CIVIL SUIT NO. 0112 OF 2016**

**MWESIGWA FRANCIS**

=====

**PLAINTIFF**

**VERSUS**

**1. ATTORNEY GENERAL**

**2. FESTO TURINAWE**

=====

**DEFENDANTS**

**BEFORE HON. JUSTICE SSEKAANA MUSA**

**JUDGMENT**

**BACKGROUND**

The plaintiff instituted this suit against the defendants for exemplary and/or punitive damages, special damages, general damages, interest of 18% from the date of filing, an order for the release of the Transfer forms and Car log book for Motor vehicle Registration No. UAB 417K by Uganda Police Jinja Road Police Station and costs for the suit.

On 12<sup>th</sup> July 2012, the plaintiff was searched and arrested by officers of the Uganda Police and Festo Turinawe at Luzira at the Headquarters of M/s Sterling Civil Engineering Ltd when he had gone to pick the transfer form and log book of a motor vehicle Registration No. UAB 417K Micro Bus Mitsubishi Rosa from

M/s Sterling Civil Engineering Ltd and he was re 6:00 O'clock and the transfer form and the car log book were retained by the said officer of Uganda Police.

The plaintiff was rearrested on the 16<sup>th</sup> July 2012 at 9:00 O'clock and detained at Jinja Road Police Station until the 18<sup>th</sup> July 2012 when he was released on Police Bond.

According to the Joint scheduling memorandum, the parties agreed on the following issues to be resolved by this court;

1. *Whether the arrest and imprisonment of the Plaintiff was lawful?*
2. *Whether Uganda Police Jinja Road Police station is lawfully retaining the Transfer forms and Car log book for the scrapped Motor Vehicle Reg. No. UAB 417K?*
3. *Whether it was the Plaintiff or the 2<sup>nd</sup> Defendant who had bought Motor Vehicle Reg No. UAB 417K from M/s Sterling Civil Engineering Ltd?*
4. *What Remedies are available to the parties?*

### Issue 1

#### **Whether the arrest and imprisonment of the Plaintiff was lawful?**

Counsel for the plaintiff, submitted in line with this issue that the arrest was established by the 2<sup>nd</sup> Defendant on 12<sup>th</sup> July 2012 who made a baseless report to the Police under CRB 2762/2012 and the Plaintiff was arrested and was informed by the OC Jinja Road Police Station that the 2<sup>nd</sup> defendant had reported him as a High Way Robber who robbed a vehicle along Mukono Jinja, he made a police statement and released on the same day without any charges preferred and that the Resident State Attorney declined to sanction the file and therefore dismissed

the allegations and that there was malice by the 2<sup>nd</sup> Defendant and relied on the authority of **AG vs Hajji Adam Farajala (1977) HCB 29** where it was held that;

*“malice necessary to be established is not even malice in law such as may be assumed from the intentional doing of a wrongful act, but malice in fact- **malus animus**- indicating that the party was actuated either by spite or ill will toward an individual or by indirect or improper motives, though these may be wholly unconnected with any uncharitable feelings towards anybody.”*

He further submitted that the Plaintiff was on 16<sup>th</sup> July 2012 at 9:00 O'clock re-arrested and detained until 18<sup>th</sup> July 2012 when he was released on Police Bond and cited **Section 4 (3) Police Act Cap 303** which states that;

*“No person shall arrest, detain or institute Criminal Proceedings except as is provided for under a written law or the Constitution.”*

Counsel for the 1<sup>st</sup> Defendant submitted that the 2<sup>nd</sup> Defendant reported the matter to the Police that the Plaintiff called the 2<sup>nd</sup> Defendant and offered him a deal to buy scrap from Sterling Civil Engineering Ltd which had been offered to the Plaintiff but failed to raise the money to buy it. That the 2<sup>nd</sup> Defendant mobilized his business friends and collected the money as a group and gave it to the Plaintiff to purchase the scrap and they were to share the proceeds from the same, however, the Plaintiff collected the scrap without the knowledge of the 2<sup>nd</sup> Defendant.

Counsel further submitted that the Police Force carried on investigations as it is mandated to and that on 12<sup>th</sup> July 2012, the Plaintiff was not arrested but merely

taken to the police station to record a statement and on 16<sup>th</sup> July 2012 the Plaintiff was arrested upon a reasonable suspicion that he had committed an offense and released on bond on the 18<sup>th</sup> July 2012 well within the legally prescribed 48 hours. He quoted **Section 23 of the Police Act Cap 303** which provides that

*“A police Officer may without a Court Order and without a warrant arrest a person if he or she has a reasonable cause to suspect that the person has committed or is about to commit an arrest able offence.”*

He also relied on the case **Kateregga vs Attorney General EALR 287** where it was held that;

*“For malicious arrest and or prosecution to exist,. There must be proof of ill motive on the side of the person who actuated the arrest.”*

Counsel for the 2<sup>nd</sup> Defendant submitted that the Plaintiff having failed to raise money to purchase the scrap, approached the 2<sup>nd</sup> Defendant and assigned him the offer, 10,000,000/= (ten million) was given to the Plaintiff to make the purchase by the 2<sup>nd</sup> Defendant who had raised from business colleagues and in return the proceeds had to be shared.

The 2<sup>nd</sup> Defendant was aggrieved by the actions of the Plaintiff who had gone to pick the scrapped vehicle without the knowledge of the 2<sup>nd</sup> Defendant who had raised the money and so he complained to Police who went had to arrest the Plaintiff.

## **Resolution**

In the case of *Mugwanya Patrick vs Attorney General H.C.C.S No. 154 of 2009* Justice Stephen Musota (as he then was) stated that:

*“The civil tort of unlawful detention of the plaintiff for any length of time whereby he is deprived of his personal liberty. It must be total restraint.... Where an arrest is made on a valid warrant it is not false imprisonment; but where the warrant or imprisonment is proved to have been effected in bad faith then it is false imprisonment”*

It appears that the Police arrested and imprisoned the Plaintiff with sufficient ground or evidence that the accused was probably guilty of the complaint made by the 2<sup>nd</sup> Defendant and the file was thereafter submitted for sanctioning to the Director of Public Prosecutions.

In the case of *Glinsk vs Mclver [1962] AC 726 Lord Devlin* held that;

*“reasonable and probable cause means that there must be sufficient ground for thinking that the accused was probably guilty..... ”*

I agree with the submissions of counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants that the police arrested the plaintiff upon a complaint from the 2<sup>nd</sup> Defendant over fraud committed against him and his business colleagues by the plaintiff and that the police acted under **Section 23 Police Act Cap 303** to effect the arrest and furthermore, the plaintiff failed to adduce evidence that the Defendants especially the 2<sup>nd</sup> defendant in regards to the complaint he claims 2<sup>nd</sup> Defendant had made about the plaintiff being a High Way Robber which would have proved that they acted maliciously or had ill motives during the arrests simply

because the 1<sup>st</sup> Defendant submitted that the first arrest was for the plaintiff to make a statement and that was evidenced by his release on that same day and then the second arrest was due to the findings after the police investigating and finding that the subject matter complained of was in custody of the plaintiff and this arrest only lasted for a period of 48 hours as prescribed by law that is from 16<sup>th</sup> July 2012 to 18<sup>th</sup> July 2012 and further the plaintiff failed to prove the malice or the ill motive of the 2<sup>nd</sup> Defendant but rather makes a basis from the fact that on the first arrest the plaintiff was released on the same day without charges and that the Resident State Attorney didn't prefer any charges.

I therefore find that the arrest and imprisonment of the plaintiff was lawful.

## **Issue 2**

**Whether Uganda Police Jinja Road Police station is lawfully retaining the Transfer forms and Car log book for the scrapped Motor Vehicle Reg. No. UAB 417K?**

Counsel for the plaintiff submitted that on arrest by the Uganda Police Station and later his release, he was not able to use his Motor Vehicle Registration No. UAB 417K since the log book together with the transfer forms were retained by the officers and had made several demands but the Uganda Police Officers had failed to release them to the plaintiff.

He further submitted that URA could not transfer the vehicle to his names because there was no original logbook.

Counsel for 1<sup>st</sup> Defendant submitted that the Plaintiff was aware that the log book got misplaced and had written a letter to the Managing Director of Sterling

Civil Eng. Ltd on 17/05/2012 requesting for a photocopy of the log book and URA gave him directions on how to proceed and have the property transferred into his name. That it was the plaintiff's obligation to fulfill the directions.

He further submitted that it is trite that even if the original log book is lost, it does not stop a vehicle from operating as even the Agreement of purchase was with the plaintiff or it could be got from the seller by the plaintiff.

### **Resolution**

According to letter dated 05/09/2014 marked **PE-2** which is a letter to the Managing Director Sterling Civil Engineering Ltd from the Plaintiff requesting for a photocopy of the Log Book, the plaintiff in the letter stated that when he went to Police to pick the log Book however failed to get it. On the same letter there are directions dated 08/09/14 from Sterling Civil Eng Ltd that state that:

*"Ples go to URA licensing and apply for Duplicate logbook as per Police note attached..."*

Furthermore directions from Mpairwe from URA that state that;

*"Please Apply for validation/ Transition of Motor vehicle before transfer can be processed."*

It appears that the plaintiff was aware of the misplaced log book and was given further directions to follow so as to have the Motor Vehicle transferred to his names as per the letter marked PE-2 which was written by him to the Managing

Director Sterling Civil Engineering Ltd which same letter has direction of different officers from Sterling and URA.

Based on that same letter I therefore find that the Uganda Police at Jinja Road Police Station had informed the plaintiff that the logbook together with the transfer forms had been misplaced and so they were not retaining any log book or transfer form for Motor Vehicle Registration No UAB 4176K under CRB 2762/2012.

### **Issue 3**

#### **Whether it was the Plaintiff or the 2<sup>nd</sup> Defendant who had bought Motor Vehicle Reg No. UAB 417K from M/s Sterling Civil Engineering Ltd?**

The plaintiff's counsel submitted that he had purchased the said Motor Vehicle from Sterling Civil Eng. Ltd per the delivery note and the release of the scrap. PW1 Twinamasiko Gordon during cross examination stated that he was told by the plaintiff that they were going to purchase scrap and also witnessed the paying of Ugshs 10M at the standing headquarters.

Counsel for the 1<sup>st</sup> Defendant submitted that the 2<sup>nd</sup> Defendant brought a complaint that the plaintiff approached him with a deal to purchase scrap from Sterling Civil Eng. Ltd since the plaintiff had failed to raise the money, that the 2<sup>nd</sup> defendant mobilized money from the business colleagues and gave it to the plaintiff to go purchase the scrap and the proceeds were to be shared. However the plaintiff collected the items without the knowledge of the 2<sup>nd</sup> defendant.

In the 2<sup>nd</sup> defendant's witness statement, he stated that the plaintiff was their proxy in the purchase of the assorted scrap from M/s Sterling Civil Engineering



Ltd. That the business colleagues retained the receipts so that the plaintiff collected the scrap with their consent. He further states that the plaintiff together with two of the contributors to the deal went to Sterling Headquarters at Luzira and handed over the money to the cash office and returned the original receipt to the 2<sup>nd</sup> defendant and his business colleagues and that on 31<sup>st</sup> May 2012, without the knowledge of the 2<sup>nd</sup> defendant and his business colleagues secured release of some of the scrap items and he collected scrap LB-020, Mitsubishi Rosa Reg. No. UAB 417K which he kept in a place unknown to the 2<sup>nd</sup> defendant and his business colleagues. The plaintiff sold the scrap vehicle and agreed in writing to refund Ugshs. 4m, the value of the scrap vehicle which agreement he made with one of the 2<sup>nd</sup> defendant's business colleagues. That the 2<sup>nd</sup> defendant wrote to Sterling Civil Engineering Ltd stopping the release of any other scrap.

### **Resolution**

The 2<sup>nd</sup> Defendant does not deny the fact that the plaintiff physically paid the money to Sterling for the purchase of the scrap however, he submits that the Plaintiff was given the money to go and purchase since he was known at Sterling and the mere fact that he brought the deal to purchase the scrap but did not have the money. The 2<sup>nd</sup> defendant attached a receipt of payment of the Ugsh 10M to Sterling for the purchase of the scrap and further an agreement of acknowledgement to pay Ugshs 4M. According to the delivery note which stated that;

*“sold from Mukono workshop to Mr. Francis the station wagon as scrap material .....*”

and release of the scrap which stated that;

*“Please release the scrap light vehicle upto 6 MT out of the scrapped vehicles cleared for sale”*

The general principal in civil matters states that he who alleges must prove and the onus was on the plaintiff to prove that he actually purchased the said scrap, however according the evidence adduced in Court and the witnesses, the plaintiff failed to prove that the origin of the money used to purchase was never from the 2<sup>nd</sup> defendant or his business colleagues.

Therefore I agree with the 2<sup>nd</sup> defendant that the plaintiff was a proxy and was given the money by the 2<sup>nd</sup> Defendant and his business colleagues to purchase the scrap material from Sterling Civil Engineering Ltd.

**Issue 4**

**What Remedies are available to the parties?**

Basing on the resolution of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> issues and the evidence adduced in court, the plaintiff is not entitled to any remedy.

However, I will award general damages of .....Ugshs 10M to the 2<sup>nd</sup> Defendant and costs of the suit to all the defendants.

I so order.

**SSEKAANA MUSA**  
**JUDGE**  
**20<sup>th</sup> December 2019**