THE ATTORNEY-GENERAL v SAM AMOS MUMBA (1984) Z.R. 14 (S.C.)

SUPREME COURT
SILUNGWE, C.J., NGULUBE, D.C.J., AND MUWO, J.S.
22ND DECEMBER 1982 AND 15TH JUNE 1984
(S.C.Z. JUDGMENT NO. 6 OF 1984)

Flynote
Civil Procedure - Damages - Nominal damages - Loss of business as.
Tort - False imprisonment - Arrest - Grounds of - Failure to furnish grounds - Effect of - Furnishing of untrue grounds - Effect of.

Headnote
The respondent was arrested without warrant by the Police. He was not told of the grounds of his arrest until after about six hours after his arrest.

In claim for false imprisonment, the High Court upheld his claim, and an awarded the respondent a total sum of K7,700.00 damages, K1,200.00 of which being nominal damages for loss of business. The Attorney-General appealed to the Supreme Court.

Held:
(i) Where a Police Officer makes an arrest without warrant, it is incumbent upon him to inform the person so arrested of the grounds for his arrest unless he himself produces a situation which makes it practically impossible to inform him.
(ii) Failure to inform the arrested person as soon as is reasonably practicable to do so of the true reason of his arrest will, in a proper case, constitute false imprisonment.
(iii) It is not enough where a Police Officer makes an arrest without warrant, that a Police Officer has reasons for effecting an arrest without a warrant if such reasons are kept to himself, or if the reasons given are not true. In either situation, such a Police Officer may be held liable for false imprisonment.
(iv) Where loss of business forms part of the claim, it must be pleaded as special damages and strictly proved.

Cases cited:
(1) Dallison v Gafferey [1965] 1 Q.B. 345.
(2) Wiltshire v Bannet [1966] 1 Q.B. 312.
(3) Walters v W. H. Smith and Sons Limited [1914] 1 K.B. 395.
(4) Christie v Leachinsky [1947] A.C. 573.
(5) Kawimbe v Attorney-General (1974) Z.R. 244.
(6) Attorney-General v Kakoma (1975) Z.R. 212.
(7) Attorney-General v Mwaba (1975) Z.R. 218.

Legislation referred to:

Constitution of Zambia, Cap. 1, Art. 20 (2).

For the appellant: A. M. Kasonde Principal State Advocate.
For the respondent: M. Banda, of Chigaga and Company.

p15

Judgment

SILUNGWE, C.J., delivered the judgment of the court.

This is an appeal against a judgment of the High Court whereby the respondent (then plaintiff), succeeded in an action for false imprisonment and was awarded a total sum of K7,700 damages, K1,200 of which being nominal damages for loss of business.

The respondent is an advocate of the High Court for Zambia engaged in legal private practice and has an office in Cha Cha Cha Road, Lusaka. On October 16th, 1980, a small party of Police Officers-many of whom were armed with firearms-went to the respondent's office at about 0930 hours, led by Assistant Superintendent Chiluba. The respondent was taken into custody and conveyed to Lusaka Central Police Station under an armed guard. Although the respondent remained in police custody from about 0930 hours to about 1700 hours, the action for false imprisonment relates to the period between 0930 hours and about 1530 hours, when the police produced a search warrant to him. Until then, the respondent had not been told by the police and so he had not been made aware, of any reason or reasons for his detention, although, as it transpired, he was held on suspicion that he had participated in, or been in one way or another connected with, an alleged coup d'etat attempt earlier on that date. His office was searched in the afternoon for weapons of war and subversive literature but none of these items was found there.

There are two issues for decision in this case: the first one is as to liability; and the second is as to damages, however, the second issue is dependent on the first one being resolved in favour of the respondent.

As regards the first issue, Mr Kasonde, learned counsel for the appellant, while conceding that the respondent had been taken into custody, argued that his arrest and detention by the police had been based on a reasonable suspicion of his having committed a treasonable offence and that the arrest and detention were thus legally justified. In support of his argument, he cited *Dallison v Cafferey* (1), *Wiltshire v Bannet* (2) and *Walters v W. H. Smith and Sons Limited* (3). All these cases are similar in the sense that, as Mr Banda, learned counsel for the respondent rightly submitted, not only was there an arrest made in each one of these cases but, more importantly, reasons for the arrest were given to the accused. In the present case, however, it is common cause, and this is clearly reflected in the judgment of the trial court, that there was no evidence of the respondent's arrest as such, he was merely taken into custody. Worse still, the respondent was at no time given any reason why he should suffer deprivation of his liberty of movement. This, again, is common cause. In these circumstances, we have no difficulty whatsoever in holding that the cases cited above cannot conceivably be in aid of the appellant in the present case.

It is trite law that, even in a case where a police officer makes an arrest without a warrant upon a

reasonable suspicion that a felony or some other arrestable crime not requiring a warrant, has been committed, it Is incumbent upon him to inform the person so arrested of the true ground for his arrest, unless the circumstances are such that he must know the

p16

general nature of the alleged offence for which he is detained, such as being caught red-handed or that he himself produces a situation which makes it practicably impossible to inform him, for example, where he counter-attacks or runs away. Indeed, Article 20 (2) (b) of the Constitution explicitly provides that:

"20 (2) Every person who is charged with a criminal offence -

(b) shall be informed as soon as is reasonably practicable, in a language that he understands and in detail of the nature of the offence charged."

It follows that, even in a case where an arrest without warrant is properly made, failure to inform the arrested person as soon as it is reasonably practicable to do so, of the true reason or nature of the offence allegedly committed by him will, in a proper case constitute false imprisonment. A classic illustration of this is to be found in the case of *Christie v Leachinsky* (4). There, the appellants, who were Liverpool police officers, arrested the respondent without warrant. At the time, they suspected, and had reasonable grounds for suspecting, that he had stolen or feloneously received a bale of cloth but they did not give this as the ground for his arrest, professing to arrest him on a charge of "Unlawful possession" under the Liverpool Corporation Act, 1921, though in the circumstances, the Act admittedly gave them no power of arrest without warrant.

The respondent was taken to a police station and there detained in custody until the following day when he was brought before a magistrate on the charge of "Unlawful possession" and then remanded in custody for a week prior to his subsequent release on bail. The appellants sought to justify the unlawful arrest on the ground of reasonable suspicion.

The House of Lords (per Viscount Simon) said, *inter alia*, at page 687, that the authorities therein cited, seemed to establish the following propositions (but, for our purposes, it suffices to reproduce propositions 1 and 2 only):

"1. If a policeman arrests without warrant upon reasonable suspicion of felony, or of other crime of a sort which does not require a warrant, he must in ordinary circumstances inform the person arrested of the true ground of arrest. He is not entitled to keep the reason to himself or to give a reason which is not the true reason. In other words, a citizen is entitled to know on what charge or on suspicion of what crime he is seized.

"2. If the citizen is not so informed but is nevertheless seized, the policeman, apart from certain exceptions, is liable for false imprisonment."

On the strength of this authority, therefore, it is not enough that a police officer has reasons for effecting an arrest without a warrant if such reasons are kept to himself, or if the reasons given are not true. In either situation, such a police officer may be held liable for false imprisonment.In other words, legally justifiable reasons for depriving a person of his

freedom of movement must not only be present at the time of the deprivation, but also communicated to him as soon as it is reasonably practicable to do so, in a language that he understands. Further it matters not in a proper case, that a police officer has a reasonable suspicion on the basis of which a person is taken into custody if that person has not been arrested. That is, for the concept of "reasonable suspicion" to succeed, it is a prerequisite that there must have been an arrest made.

In the present case, as previously stated, there was no arrest made, and, no reason or reasons given for the detention of the respondent. In these circumstances, it is irrelevant whether or not the appellant's servants or agents, namely, the police, had a reasonable suspicion connecting the respondent with the commission of a treasonable offence. For the reasons given, it is clear that the appellant had no lawful justification to deprive the respondent of his freedom of movement. We are accordingly satisfied that the issue of liability was properly resolved by the High Court. The appeal based on the ground of liability is thus dismissed.

Now that the first issue has been resolved in the affirmative, the second one-which relates to damages-falls to be considered.

Mr Kasonde attacks the measure of damages, claiming that the award to the respondent of K6,500 and K1,200 as general and nominal damages, respectively, was wrong in principle and manifestly excessive in all the circumstances of the case.

We shall, in the first place, discuss the question of nominal damages. Mr Kasonde argued that the award to the respondent of K1,200 nominal damages for loss of business was misconceived in law and that, in any event, this item should have been pleaded as special damages and strictly proved.

In dealing with this issue, the trial court found that, the respondent's office had been sealed off, there was no evidence as to the shortfall in financial terms and that, in the absence of such evidence, it could only award nominal damages.

We agree with Mr Kasonde that "loss of business" ought to have been pleaded as special damages and strictly proved. It is clear, both on the pleadings as well as on the evidence, that neither was loss of business specially pleaded nor strictly proved. In those circumstances it was a misdirection for the trial court to award nominal damages. The trial court's approach would have been appropriate had this item been properly pleaded. The best the court could have done in the circumstances was possibly to take that aspect (loss of business) into account in its computation of general damages. The appeal based on this ground succeeds and so the award of K1,200 nominal damages is set aside.

In regard to general damages, Mr Kasonde submitted that the Sum of K6,500 was extremely excessive, even if one took into account the respondent's professional status. He relied on *Kawimbe v Attorney-General* (5) and *Attorney-General v Kakoma* (6) where this court awarded damages in the sums of K200 and K350 respectively, for false imprisonment for

a period of two days in each case, in respect of residential detention orders and failure to furnish the detainees with grounds for detention with fourteen days.

Mr Banda, for the respondent, argued that the general damages were not excessive. He submitted that what was crucial was not the period of false imprisonment, but the conduct of the police, especially at the time of taking the respondent into custody, namely, that his office was surrounded by armed police officers, that he was taken outside the office and conveyed to Lusaka Central Police Station. That conduct on the part of the police, Mr Banda continued, was damaging to the respondent's status as his source of income was dependent on what his (respondent's) clients thought of him. Mr Bandas principal authority was *Attorney-General v Mwaba* (7) where an award by the High Court to the plaintiff - a medical doctor-of damages in the sum of K8,000 for false imprisonment and assault was upheld by this court.

We reaffirm what was said in *Kawimbe* (5) (per Baron, D.C.J., at page 247 lines 11-14) that:

> "The award of general damages in cases of false imprisonment must . . . always take into account the circumstances of the arrest and detention, the affront to the person's dignity and the damage to his reputation."

As these factors were absent in that case, this court proceeded to consider the question of damages purely on the basis of unlawful deprivation of liberty of the most humble citizen for two days and increased the appellant's award from K50.00 to K200.00.

Similarly in, *Kakoma* (6) there was no evidence led as to the plaintiff's professional occupation or other relevant circumstance, and so, the plaintiff's award of K1,000.00 was, on appeal to this court, reduced to K350.00.

In the present case, the necessary factors referred to in *Kawimbe* (5) are present and must necessarily be taken into account in assessing the respondent's damages. This case is, however, distinguishable from *Mwaba* (7) and cases of a similar nature because, although the necessary factors were equally present there, there, was moreover "ample evidence on which the learned trial judge could reasonably find that the plaintiff's allegations as to ill-treatment had been proved" and, in those circumstances, there was no basis on which this court could interfere with such finding. The ill-treatment referred to there related to the plaintiff's unlawful removal from his place of detention (under the Preservation of Public Security Regulations) by servants of the government and having been taken to, and, wrongfully imprisoned at, an unknown place for a period of five days during which he was assaulted and intimidated by servants of the government. And so, on the facts as found by the learned trial judge, he as justified in holding that that was a case for exemplary damages and the figure of K8,000.00 could not, on appeal, be disturbed by this court.

In the present case, there was no evidence of ill-treatment or any other aggravating features. Consequently, we regard the sum of K6,500 compensatory damages as excessive. We allow the appeal, set aside the

award made by the learned trial judge and, in all the circumstances of the case, substitute an award of K1,500.00. Costs in this court shall follow the event.

Appeal allowed in part
