

IN THE HIGH COURT OF TANZANIA
AT DODOMA

PC CIVIL APPEAL NO. 6 OF 2002
(SINGIDA DISTRICT COURT CIVIL APPEAL NO. 77 OF 2000
- ORIGINAL CIVIL CASE NO. 96 OF 1999
ILONGERO PRIMARY COURT)

TATU KIUNGWE APPELLANT

Versus

KASSIM MADAI RESPONDENT

JUDGEMENT

KAIJAGE, J.

In Ilongero Primary Court Civil Case No. 96/1999, the respondent, **KASSIM MADAI**, sued the appellant, **TATU KIUNGWE**, claiming compensation to the tune of TShs.462,600/= following an allegation that the latter maliciously prosecuted the former vide Criminal Case No. 177/1998 which was earlier filed in the same court. At the conclusion of the trial, respondent's claim was dismissed. Subsequently, the respondent successfully appealed to the District Court of Singida District which overturned the lower

court's decision thereby awarding the sum of TShs.300,000/= to the respondent as compensation. Dissatisfied with the decision of the 1st appellate court, the appellant has now appealed to this court.

Facts constituting the background to the present appeal could be stated, briefly, as follows; Sometimes in 1998, the appellant complained to the village authorities and later to the police that cash to the tune of TShs.30,000/= was stolen from her. The respondent who was suspected to have stolen the money, was later taken to court to answer a charge preferred under the provisions of S.295 of the Penal Code. This was Ilongero Primary Court Criminal Case No. 177/1998. Incidentally, the charge was not established on the standard required in criminal cases. Consequently, the respondent was acquitted. Following his acquittal, the respondent instituted civil proceedings giving raise to the present appeal.

In its decision, the 1st appellate court stated the following, among other things;

"The trial court dismissed appellant's claim on the ground that it was not established that the respondent prosecuted the appellant maliciously vide criminal case No. 177/1998. I have gone through criminal case No. 177/1998 judgement and find the following words;

'----Mlalamikaji hakuibiwa fedha zake
bali alizua shtaka hili baada ya yeye na
mume wake kushindwa kulipa deni alilokubali'.

-----."

The 1st appellate court concluded its judgement thus;

"---- From these words I am satisfied that the
prosecution was based on malice and therefore
the trial court misled itself that there was no
malice and therefore this appeal is allowed and
that respondent is to pay appellant compensation
of Shs.300,000/= with costs."

It be observed, at this stage, that the 1st appellate court in its
decision, completely disregarded the evidence and the decision of the
lower trial court in civil case No. 96/1999. Instead, it relied on and
took into account the decision of the same trial court in criminal case
No. 177/1998. It is, however, interesting to note that both cases
were tried and their respective decisions were given by the same
magistrate.

Going by the judgement in Civil Case No. 96/1999, the trial court has this to say, among other things;

“--- ushahidi wa shauri la jinai Na. 177/1998 unaonyesha kuwa ulikuwa hafifu ukashindwa kumtia hatiani mshtakiwa yaani mdai kwa sasa, lakini ushahidi huo una chembe chembe ya kuonyesha kuwa mdaiwa alikuwa katendewa jambo au tendo la kuingiliwa ndani kwake hali hii inadhihirisha kuwa mdaiwa hakuwa amezua shtaka kwa mdai kwa nia mbaya, hivyo hila kwa mdai haipo --- pana sababu ya kumshtaki mdai wakati ule kwani alikuwa amepoteza ushahidi wa kuwahusisha mdai na wenzake moja kwa moja haukupatikana na katika jalada la jinai Na. 177/1998, ndiyo maana mdai hakupatikana na hatia ---”
[Emphasis supplied].

From the foregoing, it appears that on the basis of the evidence adduced before it and upon evaluation of same, the trial court was satisfied that the appellant acted reasonably and not maliciously when she set in motion the prosecution of the respondent vide Ilongero Primary Court Criminal Case No. 177/1998.

In disregarding the findings and the decision of the lower trial court, the first appellate court allowed itself to be influenced by the

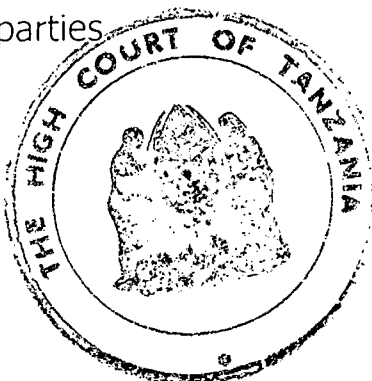
decision of a criminal court which did not determine the issue whether or not the respondent was maliciously prosecuted by the appellant. A criminal court is not the proper forum for determining the rights of those claiming damages for malicious prosecution. Only a civil court via a civil suit can determine such matters. In the present matter, a decision of a criminal court is only relevant to determine the question as to whether or not the respondent was acquitted. Considering the standard of proof required in Civil and Criminal matters, the 1st appellate court must have slid into a fundamental error by disregarding the decision of the trial court (in a civil matter) without assigning reasons.

In my judgement, I find no material upon which to sustain the decision of the 1st appellate court. Accordingly, the appeal is allowed. Consequently, the decision of the 1st appellate court is set aside. Costs should follow the event.



S.S. KAIJAGE
JUDGE
19.10.2005

Delivered this 12th day of December, 2005 in the absence of the parties



S.S. KAIJAGE
JUDGE
12.12.2005