



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL APPEAL NO. 112 OF 2013**

**G4S SECURITY SERVICES (KENYA) LIMITED .....APPELLANT**

**VERSUS**

**DOMITILA KATILA .....1<sup>ST</sup> RESPONDENT**

**THE HON. ATTORNEY GENERAL .....2<sup>ND</sup> R ESPONDENT**

*(Appeal from the judgment of Honourable C Obulutsa (Mr) Senior Principal Magistrate delivered on 5<sup>th</sup> February, 2013 in CMCC No. 6784 of 2010)*

**JUDGMENT**

The first Respondent who was the plaintiff in Cmcc No. 6784 of 2010 (which is the subject of this Appeal) filed a plaint dated 28<sup>th</sup> October 2010 against the Appellant and the 2<sup>nd</sup> Respondent (Defendants) claiming both general and exemplary damages plus the costs of the suit.

It was pleaded that on or about the 4<sup>th</sup> day of March 2010 at about 6.30 pm, the first defendant's servants, agents and/or driver double parked the first defendant's motor vehicle Registration number KAP 735C behind the plaintiff's motor vehicle Registration Number KAQ 758F which had been parked outside Nation centre, Nairobi city.

It was further pleaded that at the time of double parking the said vehicle, the first defendant's said agents were aware and had knowledge that the plaintiff was inside her motor vehicle KAQ 758F and that by their reaction, they had effectively blocked her from exiting the parking lot.

In the course of asking the first defendant's said agents to remove their vehicle, the cash-in-transit administration police officers used force, unlawful language, intimidated and threatened the plaintiff with guns. As a result of the defendant's action, the plaintiff was unlawfully confined and her liberty illegally restrained from 6.30 pm – 9.00 pm when police officers from central police station came to her rescue.

The plaintiff avers that the defendants' action amounts to false imprisonment, harassment and that she suffered mental distress and infringement of her constitutional rights. She contended that she was occasioned loss and damage as a result of the defendants' actions.

The first defendant filed a defence on the 16<sup>th</sup> December 2010 denying the claim. In the said defence, it was averred that the plaint does not disclose any cause of action against the first defendant. The first defendant contended that the aforesaid motor vehicle was parked at the parking at 7.11 pm as the driver of the said vehicle with another employee of the first defendant went to safaricom offices to process a cash consignment while a third employee was left inside the vehicle of the first defendant's motor vehicle.

The first defendant further averred that their vehicle was left under protection of 4 (four) administration police officers who had been independently contracted by the first defendant to offer security services. It was contended that none of the first defendant's employees was aware or had knowledge that the plaintiff was inside her motor vehicle registration number KAQ 758F.

In further response to the claim the first defendant averred that the plaintiff did not ask any of its employees to remove the vehicle and that it was not aware of what transpired between the plaintiff and the Administration police officers. It was denied that the first defendant is liable for the actions of the Administration police officers.

The 1<sup>st</sup> defendant denied that it falsely imprisoned and harassed the plaintiff and that the plaintiff suffered mental distress, an infringement of her constitutional rights or any form of damage or loss.

The plaintiff filed a reply to defence on the 5<sup>th</sup> day of January 2011 wherein she joins issues with the first defendant in its defence. She reiterated the contents of the plaint and urged the court to strike out the defence.

The plaintiff testified as PW1. It was her evidence that in the evening of 4<sup>th</sup> March 2010, she left her office for home. She went to where her car was parked and a uniformed askari with a gun went near her car and told her to remove it from the parking but she told him that she was waiting for 5 minutes. They insisted that she removes her car but she declined because she had paid for the parking. They insulted her and told her that they would block her till midnight. She was blocked at the parking from 6.30 pm – 8.pm and she had to pick her son from school.

On cross examination she stated that the Administration police officers used force on her and that she left the parking at 10.pm.

Erick Shimon testified as PW2. He told the court that he received a call from the plaintiff at 8.pm who informed him that she had been blocked at the parking by a G4S. He went downstairs and found the G4S vehicle that had blocked the plaintiff's vehicle but there was no driver in the G4S vehicle. It was his evidence that the plaintiff left the parking at 8.30 pm.

The first defendant called two witnesses. Nicholas Njenga who works with G4S as a crew commander testified as DW1. He stated that they arrived at the scene at 7 pm and since there was no parking they double parked but left instructions with the Aps that should he be required, he should be called to move the car which he did, and only heard later that there was a misunderstanding after the Aps were asked to call him to move the vehicle.

Kepha Gaitho testified as DW2. He was an employee of G4s as a cash services manager. He received a call on 4/3/2010 at around 7 pm that their vehicle had blocked a motor vehicle along Kimathi Street where it had been parked. He called one Mr. Ndicho who was crew commander and asked him to remove the car.

After hearing the parties, the learned magistrate entered Judgment for the plaintiff and awarded her a sum of ksh. 600,000 as general damages, costs of the suit but did not award exemplary damages. That Judgment, is the subject of the Appeal herein by the first defendant/Appellant, who has raised five grounds of Appeal in its memorandum of Appeal dated 28<sup>th</sup> day of February 2013.

The grounds of Appeal in summary are that; the learned magistrate erred in failing to find that the plaint discloses no cause of action for false imprisonment, the learned magistrate erred in finding that the Appellant confined the first Respondent, the learned magistrate erred in finding that the Appellant was callous and that the learned magistrate erred in awarding general damages of ksh. 600,000 together with costs and interest.

The Appeal was disposed of by way of written submissions which this court has duly considered.

In my view, there are two issues for determination as follows;

- I. Did the obstruction of the first Respondent vehicle amount to false imprisonment
- II. Was the award of ksh. 600,000 as general damages justified.

In his submissions, Counsel for the Appellant told the court that the obstruction did not amount to false imprisonment. It was his contention that the first Respondent had to show that there was imprisonment and that the same was unlawful and that a mere interference of freedom of location does not amount to false imprisonment. The court was told that what happened to the first Respondent did not amount to false imprisonment but just a mere interference. He contended that none of the elements of false imprisonment were proved and that the magistrate erred in finding that liability had been established.

In the alternative and in the event that the court finds that liability was proved, he submitted that the award of ksh. 600,000 was excessive and asked the court to reduce the said amount to ksh. 20,000.

Counsel for the first Respondent submitted that it was not a merely partial interference but was false imprisonment. She averred that the Appellant prevented the first Respondent from leaving a public parking which she had paid for. The court was told that the first respondent was threatened and she felt fear not only for herself but also for the vehicle. That the Appellant interfered with the first Respondent's freedom of movement. She asked the court to dismiss the Appeal and confirm the quantum of damages citing the case of **Charles Mwapagha vs Kenya Airways Ltd & Another Hcc 477/2008**.

Counsel for the 2<sup>nd</sup> Respondent supported the Appeal. He submitted that the tort of false imprisonment was not proved since the first Respondent was free to move about save for her vehicle. He contended that the award of ksh. 600,000 was excessive and asked the court to allow the Appeal and set aside the Judgment of the Lower court.

The court has given due consideration to the submissions by the parties.

I now proceed to consider the issues for determination and as I do that, it is important for the court to consider what constitutes false imprisonment.

The tort of false imprisonment is established on proof of;

- 1) The fact of imprisonment and
- 2) Absence of lawful authority to justify that imprisonment.

Imprisonment is defined as complete deprivation of liberty for any time, however short, without lawful cause.

According to clerk and Lindsell, on Torts, 18<sup>th</sup> Edition,

**“Imprisonment is no other thing but the restraint of a man’s liberty whether it be in the open field, or in the stocks or in the cage in the streets or in a man’s own house, as well as in the common gaols and in all the places the party so restrained is said to be a prisoner so long as he hath not his liberty freely to go at all times to all places whither he will with – out bail or mainprise or otherwise”**

The writer goes on to say;

**“The prisoner may be confined within a definite space by being put under lock and key or his movements may simply be constrained at the will of another.”**

According to the law of torts by Fleming, the action for false imprisonment protects the interest in

freedom from physical restraint and coercion, against the wrong of intentionally and without lawful justification subjecting another, to a total restraint of movement by either actively causing his confinement or preventing him from exercising his privilege of leaving the place he is.

The writer goes on to state;

***“As its name seems to imply, the action was probably at first designed to furnish redress against wrongful incarceration in the colloquial sense, but has long outgrown these modest beginnings. It is now regarded as a sufficient deprivation of freedom if the driver of a car proceeds at such a speed as to prevent a passenger from alighting; if a person is cast adrift in a boat, or submission to the control of another is procured by threat of force or assertion of legal authority, as when a store detective or (even more) a policeman without actually laying hands on the plaintiff or formally arresting him gives him to understand that he must submit or else be compelled.”***

The restraint must of course, occur against the plaintiff’s will, so that voluntary compliance with a police request to come along and clear himself does not necessarily amount to imprisonment.

In the same book, it is continued;

***“The older notion of confinement, however, has been retained in the requirement that the restraint be total. A partial obstruction of the freedom to go whither one pleases does not constitute imprisonment, though it might support an action on the case.”***

To be liable in false imprisonment, it must be demonstrated that the defendant had the necessary intention, as well as the ability to detain the claimant. It must be shown that had the claimant attempted to leave the premises controlled by the defendant, the defendant would have taken steps to stop him.

It has been said that the intention necessary for the commission of the tort is the intention to do the act which causes the imprisonment. It is the imprisonment that must be intentional. A negligent act cannot found an action in false imprisonment if it results in another being imprisoned and that other, suffers legally recognized damage. The appropriate action is negligence.

Back to our case, the plaintiff testified that her motor vehicle was blocked by the Appellant and that she could not leave the parking. The question that one needs to ask is whether, that amounted to false imprisonment or not. With the various definitions of false imprisonment that we have explored above, it is apparent that the restraint must be total. No evidence was adduced by the first Respondent to proof that the restraint was total. Indeed the evidence on record shows that it was her vehicle that was blocked but not her movement.

Counsel for the 1<sup>st</sup> Respondent has argued that by blocking the first Respondent’s vehicle, the Appellant interfered with her freedom of movement. I do agree with that submission to some extent, but as long as the restriction was not total, I have difficulties in accepting that there was false imprisonment.

The other ingredient that the first Respondent had to proof is absence of lawful authority in order to justify false imprisonment. In the circumstances of this case and going by the evidence on record, I would have been prepared to hold that there was absence of lawful authority if the first ingredient of false imprisonment had been proved. But having made a finding that the first respondent did not proof that she was falsely imprisoned, the issue of whether there was lawful or unlawful authority is immaterial in the circumstances of this case. In my view any cause of action that the plaintiff may have had lay elsewhere but not in a claim for false imprisonment.

In the end, I find and hold that the learned magistrate erred in reaching the decision that he did, in finding the Appellant liable. I allow the Appeal, set aside the decree dated 5<sup>th</sup> February, 2013 and substitute the same with an order dismissing the first Respondent’s suit with costs.

Dated, Signed and Delivered at Nairobi this 22<sup>nd</sup> day of **November, 2017**

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**L. NJUGUNA**

**JUDGE**

***In the presence of:-***

..... *for the Appellant*

.....*for the 1<sup>st</sup> Respondent*

.....*for the 2<sup>nd</sup> Respondent*