



REPUBLIC OF KENYA



**KENYA LAW**  
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**Zaam Industries Limited v Odundo (Civil Appeal E237 of 2023)  
[2024] KEHC 13629 (KLR) (Civ) (7 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 13629 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL  
CIVIL APPEAL E237 OF 2023**

**H NAMISI, J**

**NOVEMBER 7, 2024**

**BETWEEN**

**ZAAM INDUSTRIES LIMITED ..... APPELLANT**

**AND**

**VICTOR OTIENO ODUNDO ..... RESPONDENT**

*(Being an Appeal against the Judgement of Hon. B. Kasavuli, Principal Magistrate  
delivered on 8 March 2023 in Milimani Civil Case No. E12620 OF 2021)*

**JUDGMENT**

1. This appeal arises from a suit filed by the Respondent against the Appellant seeking the following reliefs:
  - i. Special damages as pleaded in the sum of Kshs 20,000/=;
  - ii. General Damages;
  - iii. Exemplary Damages;
  - iv. Costs of the suit
  - v. Interest on (i), (ii), (iii) and (iv) at court rates.
2. The Respondent's claim was that on 19 November 2020, at about 12pm, he was at the Appellant's premises for purposes of effecting service of court documents. The Appellant's two employees refused to accept service, forcing the Respondent to leave the documents in accordance with the rules of service as provided by Order 5 of the Civil Procedure Rules. The two employees then directed the watchman at the gate to detain the Respondent unless the Respondent left with his documents. The Respondent



- averred that he was forced to contact and procure the services of an Advocate as well as Police Officers, who came to his rescue at about 9pm that day.
3. The Appellant entered appearance and filed a Statement of Defence dated 2nd September 2022, in which he denied the averments by the Respondent.
  4. At the hearing, the Respondent testified that he is a certified Court Process Server. He adopted his Witness Statement in which he narrated the events of the day. It was the Respondent's testimony that he was detained at the Appellant's premises despite his pleas and despite showing them his Certificate. He averred that he was denied his personal liberty for no apparent reason and was even denied opportunity to relieve himself. He had not eaten and was not even offered water to drink. The Respondent stated that he was mentally tortured since he was uncertain of the intentions of the Appellant's officers. He reported the incident at the Industrial Area Police Station, under OB Number 75/19/11/2020.
  5. The Respondent produced a bundle of documents which included his Process Server Certificate, Photograph of the lady perusing the documents, photo of his motor vehicle detained at the Appellant's premises, photo of the watchman who locked the gate, copy of the OB number, Receipt from Brian Gatune Advocate and letter from the National Police Service.
  6. On their part, the Appellant called Mohammed Alim Ali, the sole director of the Appellant company. It was his testimony that his duties include receiving and dispatching documents on behalf of the company, and in his absence, he authorises an employee of his choice to do the same. The witness stated that the premises where the Appellant company is situated is leased from Shalfa Holding, and houses several other companies. The security arrangement within the business premises is a dictate of the Landlord and the tenants, including the Appellant, have no control over it.
  7. It was the Director's testimony that he was unaware of any court proceedings involving the company. The employees identified by the Respondent were not authorised to receive documents. When the Director was called by his employees, he was informed that the Respondent had been denied entry into the premises after he refused to identify himself, having arrived past the official working hours. Further, the Director confirmed that indeed, the Respondent called the Police, but when the Police arrived at the scene, they were angered to find that the Respondent was outside the premises and not detained as he had alleged. Upon investigation, the Police dismissed the Respondent's claim and did not prefer charges against anyone.
  8. In its judgement, the trial court identified two main issues for determination:
    - i. Whether the Respondent was detained at the Appellant's premises on 19 November 2020;
    - ii. Whether the Respondent was entitled to any damages as pleaded
  9. The trial court entered judgement in favour of the Respondent in the following terms:

Liability 100%

General Damages Kshs 500,000/=

Special Damages Kshs 20,000/=

Total Kshs 520,000/=
  10. Being aggrieved by the judgement, the Appellant lodged an appeal on the following grounds:



- i. That the Honourable trial Magistrate erred in fact and in law in failing to take into consideration the evidence tendered by the Appellant in support of his defence thereby occasioning a miscarriage of justice;
  - ii. That the Honourable trial magistrate erred and misdirected himself in erroneously applying his discretion and awarding exorbitant general damages to the Respondent;
  - iii. That the Honourable trial Magistrate erred in fact in failing to find that the Respondent did not leave any evidence to prove any malice on the part of the Appellant;
  - iv. That the Honourable trial Magistrate failed to appreciate the principles of establishing false imprisonment thereby occasioning an erroneous conclusion;
  - v. That the Honourable Trial Magistrate erred in law and fact in holding that the Respondent had proved his case.
11. Parties were directed to canvass the appeal by way of submissions. The Appellant filed submissions dated 23 July 2024, while the Respondent’s submissions are dated 30 September 2024.

### **Analysis & Determination**

12. The Court of Appeal for East Africa set out the duty of the first appellant court in the case of *Selle – Vs- Associated Motor Boat Co.* [1968] EA 123 as follows -
- “An appeal from the High Court is by way of re-trial and the Court of Appeal is not bound to follow the trial judge’s finding of fact if it appears either that he failed to take account of particular circumstances or probabilities, or if the impression of the demeanour of a witness is inconsistent with the evidence generally.”
13. An appeal to the High Court is by way of retrial and the principles upon which this court acts in such an appeal are well settled. This court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect.
14. In particular, this court is not bound necessarily to follow the trial judge’s findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanour of a witness is inconsistent with the evidence in the case generally.
15. An appellate court will not ordinarily interfere with a finding of fact made by a trial court unless such finding was based on no evidence, or it is demonstrated that the court below acted on wrong principles in arriving at the finding it did. Having considered the evidence on record and the submissions by the parties, the issue for determination is whether the tort of false imprisonment was proved by the Respondent to the required standard.
16. In its judgement, the trial court referred to the Halsbury Laws of England, 4th Edition p.606 for the definition of false imprisonment. The same is defined as follows:
- “Any total restraint of the liberty of the person, for however short time by the use or threat of force or by confinement is an imprisonment. To compel a person to remain in a given place is an imprisonment, but merely to obstruct a person attempting to pass in a particular direction or to prevent him from moving in any direction but one is not. The gist of the action of false imprisonment is the mere imprisonment.



The plaintiff need not prove that the imprisonment was unlawful or malicious, but establishes a prima facie case if he proves that he was imprisoned by the defendant; the onus lies on the defendant of proving justification.”

(emphasis mine)

17. Black’s Law Dictionary, 10th Ed, defines false imprisonment as follows:

”the restraint of a person of a person in a bounded area without legal authority, justification or consent. False imprisonment is a common law misdemeanour and a tort. It applies to private as well as governmental detention.”
18. In the Ugandan case of *Mugwanya Patrick vs Attorney General High Court Civil Suit No. 154 of 2009* Justice Stephen Musota (as he then was) stated that;

“The civil tort of false imprisonment consists 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.”
19. In his *Plaint*, the Respondent pleaded that he was unlawfully detained and confined for nine hours, which action was instigated by the Appellant, and held the Appellant liable for the loss, pain and suffering occasioned to him. He averred that the two employees of the Appellant company directed the watchman at the gate to detain the Respondent unless he left with his papers. It was pleaded that the said detention by the Appellant’s agents was without consent and was unjustified.
20. The applicable law as to the burden of proof is found in Section 107, 108 and 109 of the *Evidence Act*. The duty of proving averments contained in the *Plaint* lay squarely on the Respondent. In *Karugi & Another V. Kabiya & 3 Others* [1987] KLR 347 the Court of Appeal stated that:

“[T]he burden on a plaintiff to prove his case remains the same throughout the case even though that burden may become easier to discharge where the matter is not validly defended and that the burden of proof is in no way lessened because the case is heard by way of formal proof....The plaintiff must adduce evidence which, in the absence of rebuttal evidence by the defendant convinces the court that on a balance of probabilities it proves the claim.” (Emphasis mine)
21. The Respondent produced various documents and photos to substantiate his claim. The Respondent produced his Process Server Certificate, *Plaint* and Summons to Enter Appearance in Civil Suit No. E5685 of 2020 as proof that he was at the premises on the material day for purposes of effecting service upon the Appellant. There were photographs of the Appellant’s office and the compound with the gate locked. It is notable though that the letter dated 14 December 2020 from the Industrial Area Police Station is largely illegible and of little probative value to this Court. All the evidence produced by the Respondent was not challenged by the Appellant.
22. Further, the Respondent testified that he was apprehensive of the intention of the watchman and the employees. He was denied water to drink or even access to ablution facilities.



23. In their submissions, both the Appellant and Respondent have relied on the case of Daniel Waweru Njoroge & 17 Others -v- The Hon. Attorney General Civil Appeal No. 89 of 2010, in which the Honourable Court held;

“Harper & James in their Book, the Law of Torts authoritatively state that false imprisonment must include the following elements, namely:

- i. There must be detention i.e unlawful restrain of a person's liberty or movement.
- ii. That the detention needs to be forceful. Threats of force by conduct or words coupled with the apparent ability to carry out such threats are sufficient.
- iii. Detention must be total i.e. it must be within boundaries. The restrain must be total rather than a mere obstruction of the right to go where the Plaintiff pleases. Imprisonment is something more than a mere loss of freedom to go where one pleases; it includes the notion of restraint within some limits defined by a will or power exterior to our own.
- iv. Detention must be for an appreciable time, however short.
- v. The detention must be unlawful and must be against the Plaintiffs will.
- vi.. Malice is not an imprisonment, ingredient in the tort of false imprisonment.”

24. The Respondent having presented evidence to support his claim, the onus now fell on the Appellant to prove justification, if any. The trial court noted that the Defence Witness was not at the scene, hence he could not have been a suitable or competent witness to what transpired on that day. His testimony was based on what he was informed by his employees. Further, the witness confirmed that the employees, Susan and Florence, were his agents, thus he could not escape liability for their acts or omissions.

25. The next question for this Court to address is whether the damages awarded by the trial court were exorbitantly high. The guiding principle was restated by the Court of Appeal in the case of Hellen Waruguru Waweru (Suing as the legal representative of Peter Waweru Mwenja vs. Kiarie Shoe Stores Limited [2015] eKLR, thus:

“As a general principle, assessment of damages lies in the discretion of the trial court and an appellate Court will not disturb an award of damages unless it is so inordinately high or low as to represent an erroneous estimate. It must be shown that the Judge proceeded on wrong principles or that he misapprehended the evidence in some material respect and so arrived at a figure which was either inordinately high or low. The Court must be satisfied that either the Judge, in assessing the damages, took into account an irrelevant factor, or left out of account a relevant one or that; short of this, the amount is so inordinately high that it must be a wholly erroneous estimate of the damages.” (Also see Butt vs. Khan [1981] KLR 349)

26. In the case of Mwaura & 2 others v Kenya Pipeline Company Limited & 2 others (Civil Case 355 of 2007) [2023] KEHC 18403 (KLR) (Civ), three plaintiffs sued seeking damages for unlawful arrest, false imprisonment and malicious prosecution. On appeal, the Court awarded general damages for false imprisonment in the sum of Kshs 1,000,000/- each.

27. The trial court awarded the Respondent Kshs 500,000/= for false imprisonment, which the Appellant took issue with. However, I note that the Appellant did not submit on the issue of quantum of damages



but instead focussed on the argument that the Respondent did not prove his case. On the basis of the trial court record, I find no reason to upset the court's decision. There is no justification for holding that the learned Magistrate misapplied his discretion and awarded exorbitant general damages. The Appellant has not provided any comparative authorities to support this ground. Similarly, it has not been demonstrated that in assessing the damages, the trial Magistrate took into account an irrelevant factor, or left out of account a relevant one.

28. In the end, it is my considered finding that the appeal lacks merit and is hereby dismissed with costs assessed at Kshs 40,000/=.

**DATED AND DELIVERED AT NAIROBI THIS 7 DAY OF NOVEMBER 2024.**

**HELENE R. NAMISI**

**JUDGE OF THE HIGH COURT**

Delivered on virtual platform in the presence of:

..N/A..... for the Appellant

..Ms. Achila h/b Onenga..... for the Respondent

