

**IN THE HIGH COURT OF ZAMBIA  
AT THE PRINCIPAL REGISTRY  
HOLDEN AT LUSAKA**  
*(Civil Jurisdiction)*

**2020/HP/0586**

BETWEEN:

**BOSWELL MUCHILIMBA  
JOSEPH CHOKWILO**



**1<sup>st</sup> PLAINTIFF  
2<sup>nd</sup> PLAINTIFF**

AND

**WILLEM BOTHA (T/A PARAYS GAME FARM)**

**DEFENDANT**

**BEFORE HON MRS JUSTICE S. KAUNDA NEWA IN CHAMBERS THIS 18<sup>th</sup>  
DAY OF AUGUST, 2020**

*For the Plaintiffs : in person*

*For the Defendant : Butler and Company*

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## **R U L I N G**

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CASES REFERRED TO:

1. *William David Carlisle Wise v E.F. Hervey Limited 1985 ZR 179*

LEGISLATION REFERRED TO:

1. *The Rules of the Supreme Court of England, 1999 Edition*
2. *The High Court Act, Chapter 27 of the Laws of Zambia*
3. *The Subordinate Courts Act No 4 of 2018*

This is a ruling on an application made by the defendant on 8<sup>th</sup> July, 2020, for an order to strike out the pleadings and indorsement, pursuant to Order 18 Rule 19 of the Rules of the Supreme Court of England, 1999 edition.

The background leading to the application is that the plaintiffs commenced this action on 8<sup>th</sup> June, 2020 by way of writ of summons and statement of claim, seeking the following reliefs;

1. *Immediate payment of the sum of K150, 000.00 being monies for wrongful detention, harassment and false implication.*
2. *An order that the defendant's claims and allegations that the 1<sup>st</sup> plaintiff damaged his wire fence are false and misplaced.*
3. *Any other relief that the court may deem fit.*
4. *Costs.*

The gist of the claim as can be gleaned from the statement of claim is that the 2<sup>nd</sup> plaintiff is the landlord to the 1<sup>st</sup> plaintiff at Farm No 683 Wasala Farms in Lusaka West. The defendant runs a game ranch and is neighbour to the 2<sup>nd</sup> plaintiff, and he has secured his premises with a wire fence where he keeps dangerous animals such as lions, buffalos and monkeys among others. The plaintiffs claim that the defendant alleged that the 1<sup>st</sup> plaintiff had damaged his wire fence and has been putting litter in the form of plastics on the defendant's farm.

Consequent to that allegation, the defendant instructed police at Villa Lucia Police Station to pick up the 1<sup>st</sup> plaintiff and detain him at the said police station, on the unsubstantiated allegations. It is the 1<sup>st</sup> plaintiff's assertion that as a result of the said detention, he has suffered torture, tumor and slander at the hands of the defendant.

On 22<sup>nd</sup> June, 2020, the defendant entered conditional appearance, and filed the application subject of determination on 8<sup>th</sup> July, 2020. In



the affidavit in support of the application, which is deposed to by the defendant, he avers that in mid May 2020, he noticed that there was a huge hole in the wire perimeter wall fence of his property on the Wasala bar side, which is the 2<sup>nd</sup> plaintiff's property.

In his view, the said hole in his perimeter fence was a serious security issue, as it was large enough for a person to pass through, and was two (2) metres away from the 1<sup>st</sup> plaintiff's house, and considering that he had experienced a burglary a few days before on 1<sup>st</sup> May, 2020. The images of the hole are shown on the pictures exhibited as 'WB' to the affidavit.

He states that the 2<sup>nd</sup> plaintiff who is the owner of the property next to his was summoned, and he was present when the police went to inspect the hole in the perimeter fence. The 2<sup>nd</sup> plaintiff was asked to speak with his tenants and tell them to refrain from throwing plastics and other litter onto the defendant's property, as they presented a danger to the animals which were dying after they consumed the plastics.

The defendant also deposes that after the police carried out their investigations, they summoned the 1<sup>st</sup> plaintiff to report to the police station, but he neglected to do so, and that is how the police detained him on apprehending him. It is also the defendant's contention that the police in their own judgment decided to summon and detain the 1<sup>st</sup> plaintiff, whose house is closest to the hole in the perimeter fence. They charged him with the offence of malicious damage to property, and he is due to appear in court soon.

He states that he did not direct the police in the execution of their duties, and that the police arrived at the decision to detain, charge and prosecute the 1<sup>st</sup> plaintiff after they conducted their own investigations. That if the 1<sup>st</sup> plaintiff is aggrieved about his detention, he should sue the State and not the defendant, who merely reported the matter.

The defendant further deposes that the indorsement for the claim of K150, 000.00 on the writ of summons and statement of claim as damages for wrongful detention, harassment and false imprisonment is irregular as such a claim cannot be liquidated.

The plaintiffs filed an affidavit in opposition on 22<sup>nd</sup> July, 2020, which is deposed to by both of them. They state therein that the writ of summons and statement of claim discloses a cause of action for wrongful detention, harassment and false imprisonment. It is also their averment that they have sued the defendant because of the manner in which he participated in the apprehension of the 1<sup>st</sup> plaintiff and further, that the defendant keeps animals which may have been responsible for making the hole in the perimeter wire fence.

The 1<sup>st</sup> plaintiff states that he is always away at work, and he could therefore not have caused the hole in the fence, even though his house is close to the said fence. It is further averred that the 1<sup>st</sup> plaintiff has been detained twice by the police at the hands of the defendant. The 1<sup>st</sup> plaintiff denies that he resisted arrest, but that rather, he was picked from his home using the defendant's motor vehicle.



The averment is also that the plastics found on the defendant's farm could have been carried there by wind, and not by the plaintiffs.

No affidavit in reply was filed. I have considered the application. It was brought pursuant to Order 18 Rule 19 of the Rules of the Supreme Court of England, 1999 edition, which provides that;

***“(1) The Court may at any stage of the proceedings order to be struck out or amended any pleading or the indorsement of any writ in the action, or anything in any pleading or in the indorsement, on the ground that -***

***(a) it discloses no reasonable cause of action or defence, as the case may be; or***

***(b) it is scandalous, frivolous or vexatious; or***

***(c) it may prejudice, embarrass or delay the fair trial of the action; or***

***(d) it is otherwise an abuse of the process of the Court;***

***and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be”.***

In paragraph 6 of the affidavit in support of the application, the defendant avers that the plaintiff's action discloses no reasonable cause of action because the 1<sup>st</sup> plaintiff was detained by the police and not him. He further deposes that the sum of K150, 000.00 that is claimed as damages for wrongful detention, harassment and false imprisonment is irregular, as it cannot be liquidated.

When it comes to a cause of action, the case of **William David Carlisle Wise v E.F. Hervey Limited** <sup>(1)</sup> held that;

***“A cause of action is disclosed only when a factual situation is alleged which contains facts upon which a party can attach liability to the other or upon which he can establish a right or entitlement to a judgment in his favour against the other”.***

In this matter, the plaintiffs have based their claims for damages for wrongful detention, harassment and false implication on the assertion that the defendant allegedly without reasonable cause reported the 1<sup>st</sup> plaintiff to police, who detained him.

As seen, the defendant contends that no reasonable cause of action has been disclosed as he claims that the police exercised their independent discretion to apprehend, detain and charge him for the offence of malicious damage to property, and that the plaintiffs cannot claim damages for the said wrongful detention, harassment and false implication as liquidated amounts.

Without going into the merits of the claim, it is trite there are elements that need to be proved to establish a claim for wrongful detention, which in essence, is a claim for false imprisonment. Therefore, if the defendant feels that he is not liable for the plaintiffs' claims, he can join the Attorney General to the proceedings. The defendant cannot argue that no cause of action has been disclosed because he feels that he is not liable for the plaintiffs' claims.



The plaintiffs' claim that there was wrongful detention, and as to whether the defendant is liable for the claim, can only be determined once evidence is led. That claim fails.

With regard to the claim for the payment of K150, 000.00 as damages for wrongful detention, harassment and false implication, these are pecuniary damages, or damages meant to compensate an individual for actual losses, and they can be quantified and calculated. Therefore, they have to be assessed on the plaintiffs succeeding on the claim. In that regard, the claim of K150, 000.00 for the said damages for wrongful detention, harassment and false accusation is irregular. However, this irregularity can be cured by way of amendment.

I note that this matter has been commenced in the High Court. However, by virtue of the Subordinate Courts Act No 4 of 2018, the jurisdiction of the Subordinate Court was amended as follows;

***“Section 20 (1) of the principal Act is amended by the deletion of—***

***paragraph (a) and the substitution therefor of the following:***

***(a) in all personal suits, whether arising from contract, tort, or from both, where the value of the property, debt or damage claimed, whether as balance of accounts or otherwise is, where the court is presided over by a—***

***(i) chief resident magistrate, not more than one hundred thousand kwacha;***

*(ii) principal resident magistrate not more than ninety thousand kwacha;*

*(iii) senior resident magistrate, not more than seventy thousand kwacha;*

*(iv) resident magistrate not more than fifty thousand kwacha; and*

*(v) magistrate of the first class, not more than thirty thousand kwacha.*

*(b) paragraph (c) and the substitution therefor of the following:*

*(c) to hear and determine any action for the recovery for land where—*

*(i) the value of the land in question is two hundred thousand kwacha;*

*(ii) the rent payable in respect of thereof does not exceed the sum of fifty thousand kwacha by the year; or*

*(iii) in case of a Subordinate Court presided over by a chief resident magistrate, principal resident magistrate or a senior resident magistrate, the rent payable in respect thereof does not exceed one hundred thousand kwacha by the year”.*

Therefore, the claim for damages for wrongful damages, harassment and false implication, being damages that are unliquidated, as they have to be assessed on being proved, this is a matter that can be properly determined by the Subordinate Court within its jurisdiction.




Pursuant to Section 23 (2) of the High Court Act, Chapter 27 of the Laws of Zambia, which provides as follows;

*“(2) Any cause or matter may, at any time or at any stage thereof, and either with or without the application of any of the parties thereto, be transferred by the Court or a Judge from any subordinate court to any other subordinate court or to the Court, or from the Court to any subordinate court, or from any Session or sitting of the Court to any other Session or sitting”,*

I transfer this matter to the Subordinate Court at Lusaka for hearing and determination. Costs shall be in the cause.

**DATED AT LUSAKA THIS 18<sup>th</sup> DAY OF AUGUST, 2020**

  
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**S. KAUNDA NEWA**  
**HIGH COURT JUDGE**