

ISAAC CHINO  
and  
THE MINISTER OF HOME AFFAIRS  
and  
THE COMMISSIONER OF POLICE

HIGH COURT OF ZIMBABWE  
KARWI J.  
HARARE, 21 OCTOBER 2011

*Ms Mutambasere*, for plaintiff  
*Mrs Mukamba*, for defendants

KARWI J: The facts of this matter are common cause. It is not in dispute that on 21 July 2006 at about 11.00 am, the plaintiff was arrested and picked up by two uniformed members of the Zimbabwe Republic Police from his workplace at TPT Transport and Equipment Company in Ardbennie, Harare. He was picked up together with his workmate, one Clement Marioni. They were taken to Southerton Police Station. Upon request by him, the police advised him that he was being treated as a suspect in a case of theft of batteries which had occurred at his workplace. He was only advised of this offence on his way to the cells where he and his workmate were detained overnight. He and his workmate had not been advised of the reason for their arrest prior to that occasion. He immediately denied the charge.

The plaintiff spent the night in the cells and was taken out the following morning in order to have his warned and cautioned statement recorded. After the recording of the statement, he was told to go home as the police said they had no sufficient evidence to further hold him in the cells. He was told to report back at the same police station on Monday. He was eventually told that he had no case to answer altogether and allowed to go. This was after police had been to visit the complainant company and found no evidence linking the plaintiff to the crime.

Plaintiff explained to court that because of the unlawful conduct by the police, he was deprived of his liberty and also suffered humiliation unnecessarily. In the premises he claimed as against defendants jointly and severally the one paying the other to be absolved;

- (a) US1000 being damages for unlawful arrest and detention,
- (b) US 500 being damages for *contumelia*,
- (c) Interest on the total sum at the prescribed rate from date of issue of summons as amended to date of full and final payment.
- (d) Cost of suit.

Issues placed before the court for determination are whether or not the plaintiff was unlawfully arrested and detained by members of the Zimbabwe Republic Police and if so whether or not the plaintiff suffered any damages and if so how much.

The first issue which shall be considered is whether or not the plaintiff was unlawfully arrested and detained. Section 25(1) of the Criminal Procedure and Evidence Act provides *inter alia* that:

- “Any peace officer and any other officer empowered by law to execute criminal warrants is hereby authorized, subject to the general or specific directions of a superior officer or person placed in authority over him, to arrest without warrant –
- (a) .....
  - (b) Any person whom he has reasonable grounds to suspect of having committed any of the offences mentioned in the First Schedule”.

In the defendants’ plea and in evidence, the defendants denied any liability as they contended that a report of theft of batteries had been made at Southerton Police Station on 21 July 2006 by one Percy Mugodori, an accountant with TPT Equipment Company, where the plaintiff was an employee. The company had reported two suspects, the plaintiff and Clement Marion. The reason why the two were the prime suspects was that they were responsible for generating the invoice which led to the missing batteries. They were the ones who were alleged to have filed the invoice and had access to the files. It was in those circumstances that they were picked up for further questioning at the police station. Defendants also contended that warned and cautioned statements were recorded in the next morning and the plaintiff was released immediately after establishing that

there was no evidence to continue detaining him. They stressed that before the arrest the police had reasonable suspicion to arrest as his employer had implicated him and all the evidence at that juncture pointed to him.

In *Allan v Minister of Home Affairs*, 1985 (1) at p 339 it was held that all interferences with the liberty of the citizen are *prima facie* odious and the defendant has the onus to prove that when he so acted he did so on reasonable suspicion. In the words of JONES AJP in *Rosseau v Boshoff* 1945 CPD 137:

“when one comes to consider whether he had reasonable grounds one must bear in mind that in exercising these powers he must act as an honest man would act, and not merely act on wild suspicion, but on suspicion which have a reasonable basis” the suspicion entertained by the peace officer must, accordingly, be reasonable; that is where as the suspicion need not be a matter of certainty, or even probability, it must not, at the other extreme, be vague, remote or tenuous. It is, perhaps, a question of a feasible possibility, a matter of likelihood. See *Beckenstrater v Rottcher & Anor*.1955 (1) SA129 (AD).

Applying the test set in the cases quoted above, it is apparent to me that the police officers who arrested plaintiff in this matter did so, on reasonable grounds. They clearly acted on the report which had been filed by the company where plaintiff worked. The report they had received had strongly implicated plaintiff and his workmate, who had been alleged had generated the invoice which was subject of the stolen batteries. The two were alleged to have had access to the files concerned. The report had been made by the company’s accountant who is presumed to have familiar with the working of the plaintiff. That, in my view constituted a reasonable ground upon which the police acted and arrested the plaintiff. This is not one of those instances of unwarranted or oppressive assumption of the power to arrest that always be challenged in the courts. I find that the police officers in this case did not subjectively harbour a suspicion that the plaintiff had committed the offence but that on an objective appraisal, there existed reasonable grounds for that suspicion, resulting from what they had ascertained prior to arresting plaintiff. The circumstances giving rise to the suspicion were such as would ordinarily lead a reasonable man to form the suspicion that the plaintiff had committed an offence.

In the circumstances, it is ordered that the claim by the plaintiff be and is hereby dismissed with costs.

*Zimbabwe Human Rights NGO Forum*, plaintiff's legal practitioners  
*The Civil Division of the Attorney General's Office*, defendant's legal practitioners