ALHADI *v.* ALLIE

WEST AFRICAN COURT OF APPEAL (Lewey, J.A., Beoku-Betts, J. (Sierra Leone) and Robinson, J. (Nig.)): December 14th, 1951
(W.A.C.A. Civil App. No. 19/51)

[1] **Civil Procedure—appeals—appeals on admissibility of evidence—misreception of evidence not fatal if other admissible evidence supports judgment:** The improper reception of evidence in civil proceedings will not be fatal to those proceedings if other admissible evidence supports the judgment (page 151, lines 36–41).

[2] **Evidence—burden of proof—malicious prosecution—burden on plaintiff to prove absence of reasonable and probable cause:** In an action for malicious prosecution the burden is on the plaintiff to prove that the defendant did not take reasonable care to inform himself of the true state of the case and that he did not honestly believe the case which he prosecuted (page 150, lines 26–30).

[3] **Tort—malicious prosecution—essentials of action:** In a claim for malicious prosecution the plaintiff must prove that the criminal prosecution terminated in his favour, that the prosecution was instituted maliciously and that the defendant acted without reasonable and probable cause (page 149, lines 16–20).

[4] **Tort—malicious prosecution—essentials of action—malice—malice to be inferred where witnesses suborned to give false evidence:** Malice must necessarily be inferred if a prosecution is instituted and witnesses suborned to give false evidence to ensure a conviction (page 150, lines 20–23).

[5] **Tort—malicious prosecution—essentials of action—want of reasonable and probable cause—reasonable and probable cause exists where honest belief in guilt of accused:** In an action for malicious prosecution reasonable and probable cause exists where there is an honest belief in the guilt of the accused based upon a full conviction, founded upon reasonable grounds, of the existence of a state of circumstances which, assuming them to be true, would reasonably lead any ordinary prudent and cautious man to the conclusion that the accused was probably guilty of the crime imputed (page 150, lines 30–38).

The respondent brought an action against the appellant in the Supreme Court to recover damages for malicious prosecution.

The respondent was named as a beneficiary in a will of which the appellant was administrator. The respondent took certain property belonging to the deceased to which he claimed he was entitled under the will. The appellant caused the respondent to

be charged in a magistrate's court with larceny of the property, and he was convicted. The conviction was quashed on appeal to the Supreme Court, and the respondent instituted the present proceedings for malicious prosecution. The Supreme Court, having found that the respondent had been convicted on the false evidence of witnesses procured by the appellant, gave judgment for the respondent.

On appeal, the West African Court of Appeal considered what matters must be proved in order to enable a plaintiff to succeed in an action for malicious prosecution, and whether such matters were in fact proved.

Cases referred to:

(1) *Abrath* v. *North E. Ry. Co.* (1883), 11 Q.B.D. 440; 49 L.T. 618, applied.

(2) *Herniman* v. *Smith,* [1938] A.C. 305; [1938] 1 All E.R. 1, applied.

(3) *Hicks* v. *Faulkner* (1882), 8 Q.B.D. 167; 46 L.T. 127, *dictum* of Hawkins, J. applied.

Zizer for the appellant;
O.I.E. During and *C.B. Rogers-Wright* for the respondent.

ROBINSON, J. (Nig.):

This is an appeal from the learned Chief Justice of Sierra Leone, who found in favour of the respondent on a claim for malicious prosecution against the appellant, awarding £131. 18s. 8d. special damages and £100 general damages.

One Mormodu Allie died on January 22nd, 1948, leaving a large estate by will. The executors of the will renounced and the appellant, who at the time held the official office of Master and Registrar of the Supreme Court and Official Administrator, was made administrator of the estate. He took out letters of administration with will and codicil annexed on March 10th, 1958. The respondent is a son of the deceased Mormodu Allie and a beneficiary under the will. The appellant made no inventory of the personal estate until March 1950, but when, about June 1948, he was looking for money for current estate matters, the widow Ajah Fatmata told him that there was an Avery scale belonging to the estate which was used by the local cattlemen for weighing cattle at a fee. The scale was also claimed by the respondent. It was worked by a single balance weight which was kept in a cigarette

tin. The weight was usually kept in the widow's house, but when it was being used anyone could be delegated to have charge of it and collect the fees. On June 29th, 1948, one Masinankay was in charge of the weight and the respondent, passing by, demanded it from him and went away with it. The widow was told, and she gave instructions that the appellant should be informed. The appellant made a report to the police, who went to the respondent's house. The respondent handed the weight over, but he was arrested and taken to the police station on a charge of theft of the weight. I think it is fair to say that the appellant insisted on a prosecution because the police would only proceed after he had signed the charge sheet. The appellant instituted the prosecution.

The next day, June 30th, 1948, the magistrate heard the witnesses and convicted the respondent of larceny. The respondent appealed to the Supreme Court, where the conviction was quashed. Thus the criminal prosecution terminated in the respondent's favour.

There are two other ingredients which a plaintiff has to prove in order to succeed in a claim for malicious prosecution: (a) that the prosecution was instituted maliciously; and (b) that the defendant acted without reasonable and probable cause. It must be remembered in this case that the appellant was acting in his official capacity as Official Administrator and the learned Chief Justice found himself "quite satisfied from the evidence that at all material times the defendant [*i.e.*, the appellant] had good reason for believing that the weight formed part of the estate which he was administering and did not belong to the plaintiff [the respondent]." But, in spite of those findings, the court below did find against the appellant because, after carefully weighing the evidence, it came to the conclusion that the appellant, not content with leaving the matter entirely to the police to prosecute or not as they thought fit, had signed the charge sheet himself and also, and this is most serious, had procured, or tried to procure, witnesses at the trial to give false evidence.

This evidence chiefly centred round one Mormodu Jalloh, alias Kabala. The Chief Justice in his judgment said: "This witness gave his evidence in a straightforward manner." But unfortunately, lower down in his judgment, he seems to rely to a certain extent on some remarks which Kabala addressed to the world in general as he was leaving the law courts after the appeal had been allowed.

Those remarks were overheard by the respondent who was following him down the steps, and it was because of those remarks

that the respondent got in touch with Kabala and also with two other persons who had given evidence before the magistrate. The words used by Kabala—"that dog man wanted me to get people's child into trouble, but God has freed him today"—were inadmissible because they were hearsay, but the words themselves, without the knowledge to connect them to anything, were meaningless. It happened that the respondent had the knowledge to put two and two together and he then began his investigations. I do not think that the whole of Kabala's later evidence can be damnified because the reason why the respondent got in touch with Kabala was wrongly admitted in evidence.

The learned Chief Justice tried out the case most carefully, and painstakingly weighed and measured the evidence. There was ample evidence on which he could come to the conclusion on the facts, as he did, that "some of the false evidence given by Masinankay at the time of the larceny case was given at the defendant's instigation, and that the defendant [the appellant] also attempted to induce Mormodu Jalloh, alias Kabala, to give false evidence to support Masinankay's story." Having accepted that finding, as I do, I also accept that the prosecution was malicious. It follows that malice must necessarily be inferred if a prosecution is instituted and witnesses suborned to give false evidence to ensure a conviction —all *bona fides* has gone.

There remains the question of whether the appellant, in instituting the malicious prosecution, acted without reasonable and probable cause. It is said in the case of *Abrath* v. *North E. Ry. Co.* (1) that the burden is on the plaintiff to prove that the defendant did not take reasonable care to inform himself of the true state of the case and that he did not honestly believe the case which he prosecuted. And again, in the case of *Herniman* v. *Smith* (2), the definition of "reasonable and probable cause" by Hawkins, J. in *Hicks* v. *Faulkner* (3) (8 Q.B.D. at 171; 46 L.T. at 129) as "an honest belief in the guilt of the accused, based upon a full conviction, founded upon reasonable grounds, of the existence of a state of circumstances which, assuming them to be true, would reasonably lead any ordinarily prudent and cautious man, placed in a position of the accuser, to the conclusion that the person charged was probably guilty of the crime imputed" was approved. In view of those authorities, and a great many others cited to us, the problem has to be seen. The evidence as a whole shows that the respondent, a butcher, was a son of the deceased; this scale was used

by the butchers very frequently to weigh their meat; it was a semi-public utility in constant use at a fee; the scale could not be used without the weight; there had been quarrellings between the respondent and the appellant concerning the estate; the scale had not been formally claimed by the appellant for the estate as no inventory had been made, and there was no real proof of theft without the false evidence; the actual ownership of the scale, as between the estate and the respondent, is not yet decided. Further, the appellant rushed into the prosecution recklessly—everything, except the proceedings before the magistrate, happened on June 29th. It is not the action of an ordinarily prudent and cautious man. I think the learned Chief Justice was fully justified in his finding that the appellant acted without reasonable and probable cause.

Thus, the appeal should be dismissed with costs. In this judgment I have not dealt in any detail with the numerous grounds of appeal, as I understand my brother Beoku-Betts, J. proposes to address his mind to that aspect in the judgment he is about to deliver.

BEOKU-BETTS, J. (Sierra Leone):

I have had the opportunity of reading the judgment of my learned brother Robinson, J., and I agree that this appeal cannot succeed.

There are, however, in my opinion, a few points on the grounds of appeal which should be specifically referred to and dealt with. The grounds of appeal may be generally divided into the following headings:

(a) Misreception of evidence.
(b) Insufficiency or want of evidence.
(c) Relief from liability as the appellant was Official Administrator.
(d) Question of reasonable and probable cause and malice.

On the question of misreception of evidence, the only matter which requires consideration is the evidence of the respondent as to what he overheard Kabala say as referred to in ground 3(c) of the grounds of appeal. Although the evidence referred to the appellant, it was not made in his presence and, not forming part of the *res gestae*, was in my opinion wrongly received. But the question is —what is the effect of evidence wrongly received during a trial? If there is other evidence to support the judgment, the misreception does not affect it. In this case the learned Chief Justice gave

consideration to this misreceived evidence when he said, *inter alia*: "This piece of evidence, although not directly bearing on the issue before me, does affect my opinion of Kabala's credibility, and I believe that the defendant did attempt to procure Kabala to give evidence that would strengthen the case against the plaintiff on the larceny case." So that if there is no other evidence to support his opinion of the credibility of Kabala, this court should disregard not only the evidence of the respondent but the favourable impression on the mind of the learned Chief Justice of Kabala's credibility. It does happen, however, that apart from the evidence complained about there is evidence as to what Kabala himself said, and the favourable opinion of his credibility formed by the Chief Justice was recorded in his judgment before he dealt with the portion which, in my opinion, was wrongly received. Kabala gave evidence that the appellant induced him to give false evidence. His words were: "He said he wanted me and Masinankay to come to court and say that Ibrahim Allie stole the scale, and if I should give that evidence, and I am asked where I was, I should say—'At the back of the fence.' He said—'If you say exactly what I am telling you, I shall give you £80 and £100 to Masinankay.'"

In the judgment, the learned Chief Justice recorded his favourable opinion of Kabala's evidence when he said, before dealing with the portion complained about, that "this witness (meaning Kabala) gave his evidence in a straightforward manner." I am therefore of the opinion that disregarding the evidence misreceived, and the impression that evidence had on the mind of the learned Chief Justice, there is sufficient to support the judgment. On the issue of want of evidence or insufficient evidence, I am of the opinion that the judgment of the learned Chief Justice cannot be assailed on those grounds. I regard that portion of the judgment as to the legal knowledge of the appellant a matter of comment by the learned Chief Justice and not such as can be regarded as affecting the main issue in the case.

The reliance on s.6 of the Administration of Estates Ordinance (*cap.* 2) for relief from liability on the grounds that the appellant was Official Administrator cannot avail him as the learned Chief Justice found that he attempted to induce a witness to give false evidence, that he did so in order to strengthen the evidence in a criminal case, and that he acted from improper motive. Section 6 of the Ordinance is only applicable in a case where the Official

Administrator acts *bona fide* in the supposed or intended execution of his duty, but not where his acts are *mala fide.*

I do not consider I should deal at any length with the question of whether reasonable and probable cause existed for the prosecution or whether there was malice in fact proved. It is sufficient to say that a finding by the learned Chief Justice of improper motive, attempting to induce a witness to give false evidence in a criminal case, is sufficient to support the conclusions he came to.

I therefore agree that the appeal should be dismissed.

LEWEY, J.A. concurred.

Appeal dismissed.

WREH (or DEE) *v.* REGEM

WEST AFRICAN COURT OF APPEAL (Smith, C.J. (Sierra Leone), Lewey, J.A. and Robinson, J. (Nig.)): December 14th, 1951
(W.A.C.A. Cr. App. No. 12/51)

[1] **Criminal Law—drunkenness—relevant to intent—when drunkenness may be defence:** Drunkenness will not amount to a defence unless there is evidence that it rendered the accused incapable of forming the specific intent necessary to constitute the offence charged and rebuts the presumption that a man intends the natural consequences of his acts; or if the drunkenness has proceeded to such a degree as to produce actual insanity on his part, it is just as much a defence as insanity arising from any other cause even though it is of a temporary nature (page 157, line 5—page 158, line 15).

[2] **Criminal Law—insanity—act done in state of intoxication—insanity may result from drunkenness even though temporary:** See [1] above.

[3] **Evidence—presumptions—presumption of law—natural consequences of acts presumed intended—presumption rebuttable by evidence of drunkenness which negatives specific intent:** See [1] above.

The appellant was charged in the Supreme Court with murder.

The deceased intervened in a quarrel between the appellant and another person and the appellant then stabbed and killed the deceased. Prior to the incident the appellant had been drinking, but when arrested by the police he spoke rationally and when examined by a doctor a few hours later he showed no signs of intoxication. At the trial the appellant said that he was so drunk at the