

the prosecution. The evidence of the prosecution witnesses, which the magistrate said he believed, was more in support of the appellant's case. This showed that the appellant at night-time found himself in the same predicament as, if not a worse one than, the witness Kamara who, according to the magistrate, "got into a state of emergency." In those circumstances, can it be said that the appellant did not exercise that degree of care and attention that a reasonable and prudent driver should exercise in the circumstances? The answer appears clearly to be in the negative. As I have already stated, the question whether or not a person has driven without due care and attention is always a question of fact for the magistrate and his finding on the point ought not to be disturbed. Where, however, a conviction on a question of fact is obviously and palpably wrong this court will set such conviction aside. After a careful review of the whole evidence I find that the conviction here was obviously and palpably wrong. In the circumstances the appeal succeeds.

I hereby allow this appeal. The conviction is hereby quashed. The sentence is set aside. If the fine has been paid it should be refunded to the appellant.

*Appeal allowed.*

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BAYON v. GBOW, KAMARA and BENDU

SUPREME COURT (Marke, J.): September 16th, 1964  
(Civil Case No. 409/62)

- [1] **Civil Procedure—costs—successful party—successful defendant may be deprived of costs of improperly pleaded defence:** A successful defendant may be deprived of the costs of and connected with drawing, filing and delivering a defence which is pleaded imperfectly and in violation of the rules (page 130, lines 10–35; page 132, lines 29–32).
- [2] **Civil Procedure—pleading—defective pleadings—costs—successful defendant deprived of costs of improperly pleaded defence:** See [1] above.
- [3] **Civil Procedure — pleading — defence — implicating third person not joined is gross violation of rules:** For a defendant to plead in answer to an allegation of malicious prosecution that a third person, not joined as a party, caused the plaintiff to be prosecuted and had reasonable and probable cause is a gross violation of the rules which it is counsel's duty to bring to the notice of the court by interlocutory proceedings (page 130, lines 26–35).

- [4] Civil Procedure — writ of summons — name of party — description of party — legal description to follow, not precede, name of party: In the title of the action set out in a writ of summons any legal description of a party, such as liquidator, executor or administrator, is added after the name of the party and not before (page 129, lines 22–25).
- [5] Civil Procedure — writ of summons — name of party — description of party — religious description to be omitted unless party sued as such: A religious description of a party, such as “Alhaji,” should not ordinarily appear in a writ of summons unless the party is sued in that capacity, in which case the description should follow the party’s surname (page 129, lines 25–27).
- [6] Civil Procedure — writ of summons — name of party — names of parties to be set out in full: The title of the action set out in a writ of summons should contain the full names of the parties, if known, but the defendant may be described by surname and initials if his full name is not known (page 129, lines 17–22).
- [7] Tort — malicious prosecution — defence — implicating third person not joined is gross violation of rules: See [3] above.

The plaintiff brought an action against the defendants in the Supreme Court for malicious prosecution.

In the statement of claim, the plaintiff alleged that the defendants caused a charge of fraudulent conversion to be preferred against him without reasonable and probable cause. In the defence, the defendants denied this and alleged that a third person had caused him to be prosecuted and had had reasonable and probable cause. The action went to trial on these pleadings. The third person was not a party.

The plaintiff had custody of the key of a deceased person’s safe. Before the deceased died, the safe contained a large sum in currency notes and some cash. There was evidence that it still contained a large quantity of currency notes after his death and while the plaintiff had the key. Some six weeks after the death it was opened and there was no trace of the currency notes. The plaintiff asked for time to consider his explanation. Before he gave it, the police arrested him and brought him to court. He was convicted and sentenced in the Supreme Court but the conviction and sentence were set aside by the Court of Appeal.

The plaintiff contended that his arrest and prosecution had been caused by the defendants and he and his witnesses testified that the first defendant came with the police when he was arrested. The first defendant said he was called by the police to make a statement

and did so. The police diary and case file named a third person as the informant.

Rules construed:

Supreme Court Rules (Laws of Sierra Leone, 1960, *cap.* 7), O.XVII, r.3.  
"Every statement of claim shall state specifically the relief which the plaintiff claims . . . and it shall not be necessary to ask for general or other relief, which may always be given, as the court may think just, to the same extent as if it had been asked for."

*S. H. Harding* for the plaintiff;  
*Buck and Smythe* for the defendants.

MARKE, J.:

The claim in this action is against the defendants for damages, that is to say for £1,037 special damages and for general damages.

Before proceeding with this judgment there are two observations which appear pertinent at this stage. In the first place it has always been the practice of this court that the title of the action set out in the writ should contain the full names, including the surnames, of the plaintiff and of the defendant, if known. If the full names of the defendant are not known he may be described by his initials and his surname. Where it is necessary to add a description in the title, such as liquidator, executor, administrator (in other words a legal description) it is added after the name of the party and not before. The word "Alhaji" is a religious description and should not ordinarily appear in the title of the action unless the party is sued in that capacity when such a description should follow his surname.

The next observation is as regards the relief which the plaintiff seeks. Our rules (O.XVII, r.3) expressly state that every statement of claim shall state specifically the relief which the plaintiff claims. The specific relief claimed by the plaintiff is not stated in the statement of claim in this action. No objection having been made by the defendants' counsel to this defect and the pleadings having otherwise been drawn for a claim for malicious prosecution, I allowed the action to proceed with the clear understanding that this must not be regarded as a precedent for not observing the rules and practice of this court in the future.

Having thus expressed myself I proceed with my judgment. The plaintiff in para. 4 of the statement of claim alleged:

"On March 30th, 1962 the defendants maliciously and without reasonable and probable cause, accused the plaintiff

of having converted the sum of £2,200 which was alleged to have been kept in a safe, and caused a charge of fraudulent conversion to be preferred against the plaintiff before the Magistrates' Court, Kenema."

5 The statement of claim went on to allege that the plaintiff was tried and convicted in the Supreme Court and sentenced to a term of imprisonment, after which he appealed to the Court of Appeal for Sierra Leone where his conviction was quashed and the sentence set aside. Then followed the claim for damages.

10 The defendants in their statement of defence alleged:

"The defendants each and every one of them will deny they ever prosecuted the plaintiff or caused him to be prosecuted without reasonable or probable cause in any court whatever."

15 Here again the plaintiff's counsel was content for this form of plea to remain in the record of this case. If the defendants did not prosecute the plaintiff what is the significance of the words "without reasonable or probable cause"? Is the counsel for the defendants averring that the defendants did not prosecute the plaintiff at all or that they did not prosecute the plaintiff without reasonable or  
20 probable cause? The two averments are contradictory. If he says that the defendants did not prosecute the plaintiff that is one thing: but when he goes on to say that the defendants did not cause the plaintiff to be prosecuted without reasonable and probable cause he is admitting that he caused the plaintiff to be prosecuted but had  
25 reasonable and probable cause for doing so.

In the next paragraph counsel for the defendants goes on to say that one Chernor Lamin, who is not a party to this action, caused the plaintiff to be arrested and prosecuted. What it is most  
30 astounding to find in a pleading in an action of this nature are the words: "In doing so Chernor Lamin had reasonable and probable cause." I can only say, and that with much regret, that neither counsel for the plaintiff nor counsel for the defendants has been of much assistance to the court by shutting their eyes to and condoning  
35 such a gross violation of the rules, which it was their duty to have brought to the notice of the court by interlocutory proceedings.

From the evidence before me I find that one Lamin Gbow during his last illness got the safe in his bedroom to be opened in the presence of some of his children and his wives. Out of the  
40 safe was produced some currency notes, which were counted on that occasion and amounted to £2,100. There were also two bags of cash, each of which contained £100. His verbal instructions

were that the £200 in the two bags was to be used for his funeral obsequies according to the local custom of their village or tribe, and the £2,100 to be handed to his children for their use.

On the death of Lamin Gbow the key of the safe was handed to the plaintiff who kept it till about 42 days after the death of Lamin Gbow. During that period the safe was opened by the plaintiff in the presence of some people including Chernor Lamin to get money for certain funeral ceremonies, on the day of the death and on the third and seventh days following the death. Some witnesses swore that when the safe was opened on those several occasions they saw a large amount of West African currency notes in the safe. Other witnesses (that is the plaintiff and his witnesses) swore to the contrary. When the safe was opened on the 43rd day after the death of Lamin Gbow, there was no trace of the £2,100. Chernor Lamin attempted to attack the plaintiff when no money was found in the safe on that occasion, but better counsel prevailed and the matter was reported to some elderly people of their town, Largo. The elderly people of Largo demanded an explanation of the plaintiff as to the disappearance of the £2,100. The plaintiff asked for time to consider before making his explanation. Before he had given his explanation he was arrested by the police at Largo and taken to Kenema Police Station where he was charged and brought before the magistrate.

The first point to consider is who in fact did cause the plaintiff to be arrested? The plaintiff and his witnesses said that the first defendant came to Largo with some policemen and arrested him. The first defendant categorically denied this and said that he was invited by the police when he was performing some court duty at Kenema, to attend at the police station when he was asked to make a statement of what he knew of the matter. He did so and was made one of the witnesses for the prosecution at the trial of the plaintiff.

The police diary and the police file of this case were produced in evidence. From the police diary it is palpably clear that it was Sarnoh or Chernor Lamin who made the report as a result of which the plaintiff was arrested. The police took statements from 11 other people apart from the first defendant.

The information leading to the issue of the warrant for the arrest of the plaintiff was sworn to by a police corporal. I accept as correct what is disclosed in the police station diary and police case file. I found it difficult to believe the evidence of the plaintiff and his witnesses. The plaintiff from his demeanour in the

witness box and the hesitant manner in which he answered questions impressed me, not only as an untruthful witness but one who was trying to keep back some of the facts in an attempt to deceive the court. His witnesses I found equally unreliable. I find as a fact  
 5 that the plaintiff was not prosecuted by the defendants jointly or severally and that the law was not set in motion against him on a criminal charge by any of the defendants.

Mr. Harding argued that even though the first defendant may not have signed the charge sheet he would nevertheless be liable  
 10 if he held himself out as the prosecutor. There is no evidence here that the first defendant ever did so hold himself out.

Mr. Harding however conceded that if the first defendant was called by the police to make a statement and did not go to the police station of his own free will to make a statement, he would not be  
 15 liable. I accept as fact the first defendant's evidence when he said that the police at Kenema invited him to the station and on his arrival there he made a statement of what he knew of the facts leading to the discovery of the disappearance of the £2,100 from the safe. Mr. Harding further conceded that in view of the evidence  
 20 of the defendants the second and third defendants would not be liable.

In view of the above, the plaintiff has failed to prove the first essential ingredient of his claim against the defendants, namely, that the defendants jointly or severally caused him to be arrested  
 25 or prosecuted. The plaintiff having failed to prove this ingredient, the other ingredients such as reasonable and probable cause, malice and that the prosecution ended in the plaintiff's favour, will not arise. The plaintiff's claim is therefore dismissed.

On the question of costs, I feel that the defendants should not be allowed the costs for drawing, engrossing, making copies, filing  
 30 and delivering of the document headed statement of defence in view of my remarks earlier in this judgment.

The order of the court is:

- 35 (a) The plaintiff's claim is dismissed.
- (b) The plaintiff to pay the defendants' costs of this action save and except the defendants' costs for drawing, engrossing, making fair copies, filing and delivery of the defendants' statement of defence including costs for instructions for defence.
- 40 (c) Costs to be taxed.

*Order accordingly.*