

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GWAGWALADA HIGH COURT NO. 13. ABUJA
BEFORE HIS LORDSHIP: HON JUSTICE A. S. ADEPOJU.**

FCT/HC/CV/1770/2018

BETWEEN:

**MR. GABRIEL OBIEGBUCLAIMANT
AND
CHIEF OLUKAYODE AKINDELE.....DEFENDANT**

30TH JUNE, 2022

EJIKE NWAFOR for the claimant

PATIENCE OSAGIEDE for the defendant.

JUDGMENT

The endorsement on the plaintiff's Writ of Summons dated 11th May, 2018 is for:

(a) A declaration that the prosecution of the claimant in Charge No. SMCK/CR/1022/2016 by the police upon the false information by the defendant amount to malicious prosecution.

(b) Special damages.

- i. Cost of Legal fees in the sum of N300,000 (Three Hundred Thousand Naira) only at Senior Magistrate court Auta Balefi Kodape Nasarawa State.
- ii. Monies for counsel appearance at N5, 000 (Five Thousand naira) per sitting and filling of processes of court calculated at N150,000 (One Hundred and Fifty Thousand Naira) only.

- iii. Cost of transportation for charter of vehicle to and from Apo Abuja to Auta Balefi, Nasarawa State at N6000 per trip calculated at N150,000 (One Hundred and Fifty Thousand Naira) only.
- (c) Legal fees in the sum of N700,000 (Seven Hundred thousand Naira) only for instituting this case.
- (d) General and exemplary damages for malicious prosecution of the claimant in charge No. SMCK/CR/102/2016 wherein the claimant was discharged in the sum of N10, 000,000 (Ten Million Naira) only.
- (e) 10% interest on the judgment sum per annum until the entire sum is liquidated.
- (f) Cost of this suit assessed by the Honourable court.

In the statement of claim, the claimant averred to the following facts;

That he is a business man and contractor while the defendant is the proprietor of K-Bols International School, Auta Balefi Kodape, Nasarawa State. That on the 18th August, 2016 the defendant in his house engaged him to take measurement of a building roof in the school premises. He took the measurement and gave the claimant a quotation for the roofing in the sum of N3,901,070 (Three Million Nine Hundred and One Thousand Seventy Naira) only with the terms and conditions for the mode of payment stated therein. That the defendant mobilized him with the sum of N3, 500,000 (Three Million Five Hundred Thousand Naira) only at the commencement of the job leaving a balance of N401, 070 (Four Hundred and One Thousand

Seventy Naira) to be paid before the completion of the roofing as stated on the quotation.

That his workers commenced the roofing and within 3 days completed the job to 90% and for that reason he demanded the balance of N401, 070 (Four Hundred and One Thousand Seventy Naira) as contained in the quotation to enable him complete the roofing 100%. He claimed that the defendant refused to pay the aforesaid balance insisting on completion of the roofing before he could pay the balance contrary to the terms and conditions. That as a result of the nonpayment of his balance, the roofing was suspended. And while waiting for his balance, he got a distress call from the village that his brother's wife died, and had to travel to the village for the burial. He was still in the village when he got a call on the 02/09/2018 from Goshen City Police station Auta Balefi to report and answer allegation leveled against him by the defendant. And as soon as he came back from the village on 5/09/2018, he reported to the police station to honor the invitation. And to his utter dismayed, he was informed at the police station that one Engr. Afoyodion of the K-bols International School reported a case against him at the instance of the defendant and the management of the school. That he received the sum of N3,500,000 (Three Hundred Thousand Naira) from the defendant for roofing at the school premises, he abandoned the work and absconded without informing him the defendant nor the school management. And in response he informed the police all that transpired between him and the defendant. He claimed that he was detained at the instance of the defendant on 5/09/2018 from the hours of

9:00 am to 2:00 pm and was charged to court the same day. He was charged for criminal branch of trust and prosecuted on a civil transaction. The action was dismissed by the Senior Magistrate court on 12/02/2018 for lack of evidence. That he incurred the sum of N300,000 (Three Hundred Thousand Naira) and N700,000 (Seven Hundred Thousand Naira) as legal fees to prosecute the case at the Senior Magistrate Court respectively. That he wasted his valuable time and resources in attending the criminal proceedings and incurred other miscellaneous expenses such as counsel's appearance fees and filling of processes. That he was traumatized during and after the criminal case and still battling with the psychological effects till date. The claimant pleaded the following documents

- (a) Certified True Copy of Judgment delivered on the 12/02/2018.
- (b) Certified True Copy of statement of the defendant made at police station dated 5/09/2016
- (c) Certified True Copy of statement of the claimant made at the Police station dated 5/09/2016
- (d) Certified True Copy of Quotation dated 18/08/2016
- (e) Receipt of legal fee in the sum of N700,000 dated 10/05/2018
- (f) Receipt of legal fee in the sum of N300,000 dated 5/09/2016.
- (g) Certified True Copy of the record of proceedings at Senior Magistrate Court Kodape.

The defendant on the other hand filed a statement of defence dated 15th February, 2019 claims that he is a Chartered Accountant and one of the

shareholder of the K-bols International School Auta Balefi Kodape-Karu LGA. He denied that the quotation was only meant for the mode of payment, but was a normal contractual negotiation as it was with for previous contract negotiated and awarded to the plaintiff. According to the defendant, the N3,500,00(Three Million Five Hundred Thousand Naira) paid to the plaintiff was the full negotiated contract as it was the practice in the Four(4) earlier separate contract awarded to the plaintiff on the same project. And that the practice of full payment of negotiated and agreed sum to the plaintiff before the commencement each contract, Five (5) separate contract including the subject matter before the court was on compassionate ground since the plaintiff admitted in confidence to him that he lack the financial capacity to carry out the contract. That the plaintiff carried out only 77% of the job before he abandoned the project and approximately 23% carried out by another competent and professional contractor who had been carrying out similar contract in the same project. And that at no time did the plaintiff made any claim of any amount as balance due to him before he was invited by the Goshen divisional Police Station. That the plaintiff did not communicate any information to him that he lost his brother's wife and had to travel for the burial. The defendant further denied that the report at the Goshen police station against the plaintiff was at his instance, and was not in a position to influence the plaintiff's detention and the decision or action of the Goshen Police station. And he never requested for the arraignment and prosecution of the plaintiff or any other person in court by the Goshen police station. He also pleaded the Judgment delivered by the Senior

Magistrate Court of Auta Balefi Karu Nasarawa State, even though it is a civil action rather than a breach of trust, as instituted by the Goshen Police station, such divergence of opinion is normal in litigation and not indictment on the professionalism, capability and good intention of the Nigeria Police Force. He also denied giving any false information to the police. He therefore urged the court to dismiss the claim of the plaintiff.

The claimant filed a reply dated 4th March, 2019, with an additional witness statement on Oath dated same day. After the exchange of pleadings, the matter went into full trial with the plaintiff adopting his original and additional witness statement on Oath on the 4th November, 2019. The plaintiff's counsel tendered documents pleaded in the statement of claim, were admitted and marked Exhibits A1-A9 respectively.

The content of the witness statement on Oath is not different from the facts contained in the pleadings. In the same vain the defendant also adopted his witness statement on Oath also similar to the pleadings, and there were no documents tendered. Both witnesses were duly cross examined by counsel to the respective parties. The evidence of the witnesses under cross examination shall be examined in the course of this Judgment.

At the end of the case for the defendant, both parties filed their adopted final written addresses, sequel to Order of court granting leave to the respective parties to file out of time.

In the defendant's final written address, the counsel for the defendant, **Patience Osagiede** distilled two issues for determination by the court to wit:

(a) Whether the prosecution of the claimant at the Senior Magistrate court was malafide?

(b) Whether under the facts of this case, the claimant is entitled to succeed in a claim for malicious prosecution.

The claimant also formulated two similar issues for determination by the court to wit:

(a) Whether the claimant was charged to court and prosecuted based on malicious falsehood report made by the defendant at the police station.

(b) Whether the claimant is entitled to his claims against the defendant.

Because the issues formulated by both parties are one and the same, I will adopt that of the defendant. It is convenient to start by determining the tort of malicious prosecution. In the case of **M.I. (NIG) LTD. VS. HARRY(2019) LPELR 445 CA**, the court opines:

“As the name implies, malicious prosecution means prosecution that is activated by malice and entirely undertaken against a person without any reasonable or probable cause. Malice will arise for instance where at the end of investigation of a complaint by the police no cause was revealed but the complainant insist that the police must charge the plaintiff to court or if the facts of a complaint are to the knowledge of a complainant false.

Malice will also arise where a complainant misled the police by presenting suborned, paid or arranged witness to support a false complaint or where a complaint in any other unlawful way influences the police in prosecuting a plaint over trumped up allegation.” - per Garba JCA.

See further the case of **BAYAM V. AGANA(2010) LPELR 9159 CA**, the court also held:

“This by virtue of the above definitions it would be apt to say that malicious prosecution denote the institution of a criminal or civil .proceedings for an improper purpose and without probable or just cause. As a matter of principle, the tort place a burden on the plaintiff to prove the following four elements:

(a)The initiation or continuation of a lawsuit

(b)Lack of reasonable or probable cause

(c) Malice and

(d)Favourable termination of the lawsuit.” - per Saulawa JCA.

The pertinent question that arise for determination is whether the defendant’s report to the police constitute malicious falsehood or whether it was made malafide?

Malice is defined in the Black law Dictionary thus; ***“Malice in the legal sense imports;***

1. The absence of all element of justification, excuse or recognized mitigation and

2. The presence of either

(a)An actual intent to cause the particular harm which is produces or harm of the same general nature or

(b)The wanton and willful doing of an act with awareness of a plan and strong likelihood that such harm may result”

It is further defined as; **“Malice means in law wrongful intention. It includes any intent which the law deems wrongful and which therefore serves as a ground of liability. Any act done with such an intent, in the language of the law, malicious and this legal usage has etymology in its favour.**

... .. when say that an act is done maliciously it means it is done intentionally or that it is done with some wrongful motive.”

Falsehood as it implies, means that the report was untrue. It is a lie or mischievous apparently made to cause harm or damage to the defendant especially his person or in his way of livelihood.

The report made to the police by the defendant against the clamant according to the PW3, the investigating police officer at Senior Magistrate court Kodape Nasarawa State was that the claimant was given a contract of aluminum roofing, and the claimant abandoned the job without completing it. That the contract was for N3.9 Million but the amount was varied to N3.5

Million, the sum of N3.5. Million was transferred to the claimant immediately by the defendant.

This was also the evidence of the PW1 and PW2 as contained in Exhibit A5, the certified true copy of the Judgment of the Senior Magistrate Court. Also in Exhibit A4, the statement of the complainant (defendant) to the police, he also alleged that the claimant did not complete the aluminum roofing job he gave to him. The claimant in his defence at the magistrate admitted that he was given an aluminum roofing job by the defendant. He gave a quotation of N3, 901,070(Three Million Nine Hundred and One thousand Seventy Naira.), he was mobilized with the sum of N3.5 Million with a balance of N401, 070 (Four Hundred and one Thousand Seventy naira) left unpaid. He did the job to 90% complete, he demanded for his balance according to him as stated in the quotation, but the defendant insisted on the job being completed before he paid him the balance. He was waiting for the balance when he got a call from his village that his brother lost his wife, and had to travel. It was while he was in the village that he got a call from the police that his attention was needed based on the report lodged by the one Engineer Afoyodion on behalf of the defendant. It is clear that the dispute between the claimant and the defendant is on the alleged amount remaining as balance claimed by the claimant from the defendant. The defendant insisted that he had paid the claimant all his professional charges of 100%, while the claimant stated that he still had a balance of N401, 070 (Four Hundred and One Thousand Seventy naira) to collect from the defendant. That the claimant abandoned the job is not in doubt and that he

travelled to his village without informing the defendant is also evident from the claimant's admission under cross examination. The question now is what was the allegation made to the police and at whose instance was it made. The learned counsel to the claimant at paragraph 6.9 of his address referred to Exhibit A4, line 1 to 14 thereof where the statement of the defendant to the police wherein it was stated thus:

"I have made a complaint against Gabriel Obiegbu of Pain Choice Nigeria Ltd. against work uncompleted for aluminum roofing totaling Five Million, Eight Hundred and Twenty One Thousand Seven Hundred and Twelve naira which remains uncompleted, all attempts to get him to complete was frustrated, he was introduced to me by one Chibuzor. Pressed upon him to do what is right but he refused, claimant that I had to give him additional Four Hundred Thousand naira, upon investigation by the Superior police officer, he changed his demand that Four Hundred Thousand would not be sufficient."

The learned counsel went further, he submitted thus:

"To further demonstrate to this Honorable Court, that the allegation made against the claimant by the defendant was done with malice e, the claimant in his paragraph 6 and 7 of his additional witness statement on Oath covers as follows:

6. That in response to paragraph 5 of the defendant's statement of defence, I am aware that the quotation referred therein dated 18/08/2016 was explicit

it is not a contract negotiation document but a final quotation in respect of the roofing at K-Bols International School Kodape.

7. That further to paragraph 4 above, I am aware that the only discount I personally gave the defendant was in respect of one of his previous roofing contract I had with the defendant as shown in the quotation dated 2/08/2016 in which I countersigned beside the agreed figure/sum."

The claimant's counsel further referred to the quotation tendered by the claimant and which is Exhibit A6. He submitted that under the heat of cross examination, when defendant was asked that he reported the matter to the police station, his answer was; *"no, I never said so but I was informed about it."* when he was confronted with the Certified True Copy of the record of proceedings at Magistrate Court Exhibit A9 at page 8 line 13, he then admitted that he lodged the complaint through one Engineer and not himself. The counsel submitted that the falsehood of the defendant's evidence in the face of obvious contradiction which was demonstrated during cross examination has made his testimonies worthy to be unreliable.

The learned counsel to the claimant in my opinion in his address dwells so much on whether the defendant was a reliable witness or not, when in fact that it is obvious and can be safely concluded from Exhibit A4, the statement of complaint that it was the defendant that made a formal complaint to the police about the transaction between him and the claimant. It is trite that it is not all contradiction in the evidence of a witness that the court would countenance particularly when they were not material

to the determination of the substance of the action before the court. What the claimant is expected to prove is whether the report made to the police by the defendant was false and borne out of malice, and also investigated the prosecution of the claimant in the instant suit.

Furthermore, in my view I do not see any material contradiction in the evidence of the defendant before this court and that contained in his testimony at the Magistrate court, the learned counsel trying to make a mountain out of a mole hill, asked the witness to read the paragraph 8 of the record of proceedings in the Magistrate court, failed to ask the defendant to read the paragraph to the end, in it, the complainant stated to the court; *"I lodged a complaint through my Engineer at Goshen Police Division, the accused was invited by the police and he claim that he was not in Abuja. However Chibuzor who introduced the accused to me went to his house and find the accused person at home. Soon after that the accused person turned up at the police station. I was invited by the DPO and we made statement to the police."* Obviously, one person the Engineer reported to the police while the defendant made a statement to the police vide Exhibit A4. The pertinent question which the learned Counsel to the claimant failed to address in his submission and in tandem with the laid principles is whether the claimant have buy his evidence proved satisfactorily the elements of the offence of tort of malicious prosecution. From the testimonies of the claimant, I could not see any way through that there was any falsehood in the report made to the police by the defendant. The claimant in his own words admitted abandoning the job, travelled to his

village without informing the defendant which he got a message that his brother's wife died. He was disgruntled because the defendant did not pay his balance according to him as agreed. The defendant in his statement to the police did not allege that the claimant collected his money and diverted it to his personal use. He was consistent both in his report to the police and in his evidence before the Magistrate court.

In my view, I gave and expect trumped up and baseless allegation any person who made a report to the police must be borne out of discontentment or grievances. It is the right of every citizen to report the commission of an offence to the law enforcement agencies instead of taking laws into their hands. The way and manner the police or the law enforcement agency handle the investigation of the report made to them is not within the purview of a citizen to determine unless an aggrieved party is able to establish that the police was procured by another person to perform an illicit act on him, then he may succeed in his allegation of malicious prosecution. It must be proved that the defendant was actually involved in engineering the police to prosecute him apart from the fact of establishing that the report itself was false. See the case of **OGBONNA VS.OGBONNA(2014) LPELR 22308 CA**, where the court held that for liability to be in malicious prosecution, the defendant must have done more than merely reporting the matter to the police to spearheading the prosecution even when there is no basis for it. See further the case of **EROMOSILE VS. WERMER & ORS(2014) LPELR 22183 CA** where the court held:

“A malicious prosecution enures where it shows that a person who after carrying the arrest and detention of a suspect further instigates the police to prosecute the suspect in a court of law. Hence it is the instigation by the police informant to the effect that the suspect must be prosecuted that shows the police informant as having over stepped his boundary, and he will be liable at the action of the suspect who was tried, discharged and acquitted of the said criminal offence by a court of competent jurisdiction to try that offence, in the tort of malicious prosecution.” MANDILA VS. KASSBESSA LTD. VS. AKPENNA (1959) 1 NWLR 199 SC.

Therefore the person who actively instigates or is instrumental to the tort of malicious prosecution of another person becomes liable to the action of the person. **ONYEDIMA VS. TINITE (1997) NWLR (PT. 493) 33 @ 3346. ABDULKADIR VS. RAJI (1998) 1 NWLR (PT. 534) 481 @ 48. IWUNWAH VS. IWUNWAH(1999) 3 NWLR (PT. 637) 425.** Therefore just as it is in the tort of unlawful or false imprisonment, so also it is in the tort of malicious prosecution that malice is not considered in the sense of hatred or spite against the suspect by the police informant, but in the false of latter being an instigator that the suspect must be prosecuted, was activated by improper motive or animus malice or the sense of a wrongful act which intentionally done by the said police informant/information of the malicious prosecution. **PAJU VS. AHUAH (1953) 14 WACA 267, OKONKWO VS. OGBOJU(1996) 6 NWLRS PT. 449, 420 @ 433. SC 1997, 37 LRCN 580@ 600 PER HALIDU JCA.**

A citizen cannot and should not be crucified for reporting an alleged offence to the police, it is now left for the prosecuting agency to carrying out investigation and based on its report of its investigation decide whether or not to prosecute. And where the investigation is shoddy, and a suspect is charged to court, the court have the mandatory responsibility to serve as a clearing house to discharge the person accused, if the facts before the court do not disclose an offence under the penal or criminal code. It is therefore not uncommon to see an aggrieved person reporting an allegation borne out of civil transaction to the police for alleged breach of contract. The police is under a duty to investigate if there is any element of crime in the said breach of contract, and either charge the suspect to a court of competent jurisdiction or allow the person complaint against freed without being charged to court. Although the discretion of the police in this regard has been subject of abuse by the citizens who now use the police as agent to recover debts or settle score on breach of contract. The excessive and arbitrary use of power by the police in arresting a suspect and investigating reports or petition can be adequately redressed and as provided for in the Enforcement of Fundamental Rights Rules.

I am therefore in complete agreement with the position of the learned counsel to the defendant that the defendant whereby lodged a complaint to the police for failure of the claimant to deliver the job given to him by the defendant, and that the claimant failed to prove any of the ingredients of the offence of tort of malicious prosecution. I agree that the claimant has failed to furnish the court with the particulars of instigation of the

prosecution by the defendant as alleged. As rightly submitted by the defendant's counsel, lodging a report or petition is not and should not be a basis for malicious prosecution in the absence of any evidence by the claimant that the defendant instigated or influenced the decision of the police to charge him to court.

Consequently, I therefore hold that the claim of the plaintiff for malicious prosecution fails, and by extension all his other claims falls with it like a pack of cards. I hereby dismiss the claim in its entirety.

Signed

**Hon. Judge
30/06/2022.**