

THE DEFENCES TO FALSE IMPRISONMENT

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Why are There Defences to False Imprisonment?

The tort of false imprisonment is one that is heavily frowned upon by the law. However the common maxim, "every general rule there is an exception", is also effective in the case of false imprisonment. It is due to this fact that the law provides for some instances in which an act of imprisonment would not be regarded as false and tortious liability. The following are some of such instances:

1. Lawful Arrest and Detention:

Any arrest made in accordance with the provisions of the law cannot amount to false imprisonment. A police officer is still protected even if the arrest was made in error, provided it was reasonable.

In the case of *Kariuki vs East African Industries Ltd & anor Civil case no 1414 (1990)* the plaintiff, an employee of the defendant company was arrested and charged on the ground of theft. His arrest was occasioned by investigations conducted by two fellow employees. He was remanded for three months following an order of the court. After the trial, he was acquitted of the charge.

The plaintiff subsequently instituted an action in court for wrongful arrest, malicious prosecution and false imprisonment. The court held that a person who brings legal proceedings against another is not liable for false imprisonment where the imprisonment was through the order of a court. However, the plaintiff was awarded general damages of 1000 shillings.

It should be noted that the arrest of a person should however be reasonable and justified. If not, liability could arise for false imprisonment.

In the case of *Gitau vs AG Kenya (1990) KLR 13*, the plaintiff instituted an action against the AG, as the legal representative of the Police Department, for assault, battery, malicious prosecution and false imprisonment. He had been arrested and charged for the offence of being drunk and disorderly for which he was admitted to bail.

The plaintiff complained that while he was in detention, he was denied the chance of speaking to his wife, held incommunicado for 30 hours, no change of cloths, a mug of tea and a piece of loaf was his only meal for the day and a mat was his bedding.

The court held that the plaintiff's arrest was wrong since he was collecting cigarettes from his car and not drunk. For wrongful arrest, subjection to humiliation and fright ordeal, he was awarded a sum of 250,000 Ksh, damages for false imprisonment. He was also awarded 10,000 ksh for exemplary damages.

2. Detention For Mental Purposes:

The detention of persons suffering from mental disorders is legalized by the Mental Health Laws of various countries. However, such detention must be in accordance with the law or it would amount to false imprisonment.

SOURCE

1. A Lecture Delivered by Dr Bashir Omipidan on the Law of Torts at the faculty of law University of Ilorin