

3 February 2023



## District Commissioner Ordered to Pay Compensation for False Imprisonment

- Court declares arrest and detention unlawful
- Victim awarded TZS 100M compensation
- District Commissioner held personally liable
- Employer ordered to pay 90% of compensation and costs
- OCD exonerated from liability

On 25 January 2023, the High Court of Tanzania Moshi District Registry (the Court) delivered a judgment in Civil Case No. 4 of 2020. In the said judgment, the Court awarded compensation of TZS 100M to the plaintiff/victim for false imprisonment by the Hai District Commissioner (DC). The Defendants in this case were three, namely the DC, the Hai Officer Commanding District (OCD) and the Attorney General (AG).

### Background

The plaintiff in the above-mentioned case is the Managing Director of Otaru Manufacturing and Trading Company Ltd (Otaru) which had a Lease Agreement with Kilimanjaro Native Cooperative Union (1984) Limited (KNCU) in respect of a farm. Otaru had a land case at the High Court which was decided in favour of KNCU. Being aggrieved with the decision, Otaru lodged an appeal to the Court of Appeal.

While the land matter was pending at the Court of Appeal, on 23 November 2019, the DC convened a meeting at his office to discuss issues relating to the leased farm and non-payment of rent by Otaru. The said meeting was attended by the plaintiff, KNCU officials, an officer from the Office of the Registrar of Cooperatives, and the OCD. In the said meeting, the plaintiff refused to discuss anything about the farm because the subject matter of the intended discussion related to a matter which was pending at the Court of Appeal. As a result, the DC ordered the OCD to arrest and detain the plaintiff for refusing to talk and for allegedly being disrespectful. The plaintiff was released on the following day but was re-arrested and detained again from 27 November 2020 until 30 November 2020.

Based on the foregoing, the plaintiff filed a case at the Court seeking damages for unlawful arrest and detention. In the course of the hearing, two issues were framed, namely whether there was a false imprisonment of the plaintiff caused by the order of the DC and OCD jointly and severally; and what remedies were the parties entitled to.

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## The Decision

In considering whether the arrest and detention was lawful, the Court referred to sections 14 and 15 of the Regional Administration Act, Cap 197 [R.E. 2002] (the Act) which provides for functions and powers of the DC. Section 15 of the Act vests powers to the DC to order or cause an arrest of a person who commits an offence in his presence or is likely to commit a breach of the peace or disturb the public tranquility or has done any act which may probably occasion a breach of peace or disturb public tranquility and the said breach cannot be prevented in any way other than arresting that person. Further, the said provision requires the person arrested not to be under restraint for a period exceeding 48 hours without being sent to a Magistrate.

The Court emphasized that, the powers of arrest are exercisable on two conditions, namely the person so arrested must be in a position of causing breach of peace or public tranquility; and there must not be any other way of preventing the breach other than arresting that person. The Court observed that both conditions were not present in the case at hand.

Further to the above, the Court held that the DC acted fundamentally inconsistent with section 15 of the Act, section 23 of the Criminal Procedure Act and Article 15 of the Constitution. His actions were against the laws of the land which guarantee and safeguard freedom of movement of citizens. Moreover, the Court observed the DC's actions to be against the principles of good governance, including in particular, the principles of adherence to the rule of law and promotion and protection of human rights to which the nation is committed to safeguard.

In assessment of damages, the Court referred to a number of cases and stated that punitive or exemplary damages may only be awarded in two cases (apart from where it is authorized by statute): first, where there is oppressive, arbitrary or unconstitutional action by the servant of the Government (GoT); and secondly, where the defendant's conduct was calculated to produce him some benefit, not necessarily financial, at the expense of the plaintiff. On top of that, common law recognizes the award of exemplary damages to punish the defendant and deter the occurrence of a certain behavior which is contrary to the law or public policy. It is mainly directed to an individual or a body corporate.

Lastly, the Court awarded TZS 90M as general damages which is to be paid by the GoT and TZS 10M as punitive damages to be paid personally by the DC. Also, the DC was ordered to pay 10% of the costs of the case and the remaining to be paid by the GoT. The Court did not award damages against the OCD because she was merely implementing orders of the DC.

To read the judgment [click here](#)

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