

**IN THE HIGH COURT OF TANZANIA
AT MTWARA**

MISC. CIVIL APPLICATION NO. 11 OF 2004

MAINGU KAROGOJE BUREMO ----- APPLICANT

VERSUS

UNTO AIKAS -----RESPONDENT

Date of Last Order: 9/11/2006

Date of Ruling: 23/11/2006

RULING

SHANGALI, J.

This is an application for leave to appeal to the Court of Appeal of Tanzania filed by the applicant MAINGU KAROGOJE BUREMO. The applicant is intending to appeal against the decision of this Court (Hon. Madam Kaganda, J.) in the Civil Appeal No. 4 of 2003 (Original Civil Case No. 41 of 2001) in which the present respondent UNTO AIKAS won his appeal.

The application has been made by Chamber Summons under Section 4 (1)(c) of the Appellate Jurisdiction Act, 1979: Rule 43 of the Tanzania Court of Appeal Rules, 1979 and any other enabling provision of the laws. The application is duly supported with the affidavit deposed by the Applicant in person.

The applicant was represented by Mr. Mgare, learned advocate of Dar-es-salaam while the respondent enjoyed the legal services of Mr. Nyange, learned advocate also of Dar es salaam.

In his affidavit the applicant avers that in the intended appeal there are very serious mixed issue of facts and law to be determined by the Court of Appeal, namely:

- (a) Whether the opinion of witnesses as to the way they continued to see the applicant physically was a fundamental factor in defamation to be considered for purposes of assessing injuries sustained by the applicant.
- (b) Whether the defamatory words uttered by the respondent falls within the defence of qualified privileges
- (c) Whether the respondent was justified to utter defamatory words to his subordinate (applicant) as a reaction of the alleged unsatisfactory report presented by the applicant.

On those issues the applicant believes that his appeal has wide chances of success.

In his counter affidavit the respondent contested the applications and deponed that there is no legal issue in the whole case to be determined by the Court of Appeal. In particular he stated as follows:

- (i) The test for deformation is not what the person allegedly defamed feels but what third parties feel about him.
- (ii) The defences of justification and qualified privilege are applicable to the facts and circumstances under which the statements were made.

Before the application was fixed for hearing both counsels requested the court to proceed and determine the application on the basis of the affidavits filed by their clients. In his letter dated 19th June 2006 Mr. Nyange, learned advocate for the respondent went further and hinted to the court that he had no objection to the application.

On my side, I have keenly gone through the judgement of the Court and labouriously considered the affidavit of the applicant and the counter affidavit of respondent. In the foremost the applications has been filed under a wrong provision of the law. It was filed under

section 4(1)(c) of the Appellate Jurisdiction Act, 1979, a provision which I was not lucky enough to trace in the Act.

Secondly, I have failed to scan any point of law in the whole case to warrant this matter to be forwarded to the highest Court of the land. The main issues were whether the words uttered were defamatory and secondly if so, whether the utterer had qualified privilege. These were questions of facts which were adequately resolved by the court.

There is no dispute that the applicant was negligent in performing his duties and eventually submitted an unsatisfactory report before the project member meeting. That conduct infuriated his boss, (the respondent) who expected a satisfactory if not excellent report. By all stretch of imagination the applicant did not expect to be congratulated for performing below the project standards. Although bona fide statements aimed at pointing out the subordinates shortcomings are not supposed to be couched in a provocative language it must be remembered that the incident was preceded by a warning letter to the applicant for such conducts.

All in all, basing on the available evidence and circumstances in which the utterances were made including the nature of the words used, the court find that there was no defamation, and if there was, the respondent had a defence of qualified privilege because the words were used and uttered honestly in the cause of performing his duties. Therefore I concur with the respondent that the defences of justification and qualified privileges are applicable to the facts and circumstances under which the statement were made and also the test for defamation is not what the person allegedly defamed feels but what the third parties feel about him: and for that matter among the third parties were the applicant's own witnesses PW2 and PW3 who testified that the uttered words did not lower or injure the applicant's reputation.

I do consider all the authorities cited in the High Court decision to be the position of the law and I have no hesitation in adopting them fully in this application.


In the final conclusion, and with due respect to both counsels this is not a qualified case to be referred to our supreme court because there is no point of law or mixed law and fact to be deliberated upon by that noble court. The application is dismissed. Each party to bear its costs.

It is ordered.


M.S. Shangali
JUDGE
23/11/2006

Ruling delivered to date 23/11/2006 in the absence of both parties who elected to be no show persons twice. They are both to be notified and served with a copy of this ruling.




M.S. Shangali
JUDGE
23/11/2006.