

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY**

AT MWANZA

HIGH COURT CIVIL CASE NO. 07 OF 2004

(ADR NO. 07/2004)

KIRIGITI SASIPLAINTIFF

Versus

**1. MUHERE MWITA MALICHA
2. THE VILLAGE CHAIRMAN**

}DEFENDANTS

RULING

2/10 & 30/11/2007

Sumari, J.

The plaintiff Kirigiti Sasi, through his advocate, Mr. Magongo, advocate instituted a defamation suit against the defendants claiming among other reliefs Tsh. 140,000,000/= as general damages for libel and false imprisonment.

The defendants who are represented by Mr. Byabusha, learned advocate in their joint Written Statement of Defence raised two preliminary points of objections (P.Os) and thereafter proceeded "without prejudice" to give their defence.

On 2/10/2007 by consent the parties agreed to argue the P.Os by way of written submissions.

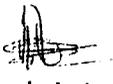
In his written submission, Mr. Byabusha submitted that amended plaint is defective for failure to attach a literal translation of the words

alleged to be defamatory of the plaintiff. Instead of attaching a translated version, the plaintiff has, in paragraph 6 of the amended complaint, provided what he thinks is the meaning of the words quoted in Kiswahili in paragraph 5 of the amended complaint.

According to Mr. Byabusha, in law, the plaintiff was required to provide a translation of the words which correspond as nearly as possible to the words written in the said letter. That plaintiff has failed to do so. He has referred the court to a case of **CHRIS WABUKUNDI V. THE CHAIRMAN/EXECUTIVE SECRETARY, TARIME RURAL DEVELOPMENT TRUST FUND (HIGH COURT CIVIL CASE NO.40/1999 – MWANZA –UNREPORTED)**. In this case Mroso, J; as he then was, referring to authorities in East Africa and England stated:

"But would wish to add that if the actual words alleged to be defamatory are not set out in the complaint even the court itself will not be able to come to a decision if, in fact and in law, there was defamation of character. It would have to depend on the opinion of the plaintiff that he was defamed by the defendant. That would not lead to justice. It is obvious, therefore, that the omission by the plaintiff to set out in the complaint the exact words alleged to be defamatory of him is a grave one and has rendered the complaint seriously defective."

It is the contention of Mr. Byabusha that in our case at hand, the complaint is seriously defective. The plaintiff expects the court to rely on his opinion given in the paragraph 6 of the amended complaint that the alleged



letter was defamatory of the plaintiff. Thus, prayed the amended plaint to be struck out with costs.

Mr. Magongo, learned advocate for plaintiff, in response to this point, submitted that, Mr. Byabusha's point would have been valid if the language used by the plaintiff was a foreign language. That in the instance case the language used is Kiswahili which is the national language. He stressed that, the language which indeed is the constitutional language, Cap. 2 of the Laws (R.E. 2002).

For Mr. Magongo, there is no rule of law or practice that in Tanzania where the words complained of are in Kiswahili they must be translated into English. Further to that he is saying that Kiswahili being the original language and not foreign language of the parties and in Tanzania the cited cases by the defendants are not applicable in the instance case. What plaintiff did is to reproduce the defamatory passage in paragraph 5 of the amended plaint as required under the rules of pleadings. He cited to this court a case of **MSA PHARMACEUTICALS LTD V TIMES NEWSPAPER LTD AND ANOTHER (1972) 3 ALL E.R. 417**. For him though the whole letter was annexed to the plaint, the particular defaming statements were set out in paragraph 5 and 6, which paragraphs contains all necessary allegations ought to be in the pleadings. He wonders whether it would be in the interest of justice or the benefit of parties to use the foreign language i.e. English instead of Kiswahili, the language of the parties.

I have given Mr. Byabusha's complaint great consideration; that the plaint is seriously defective for want of attachment of a literal



translation of the words alleged to be defamatory of the plaintiff. However, his cited case of **Chris Wabukundi** (Supra) has been very vital and helpful to me in reaching decision. The quoted passage stated by His Lordship, Mroso J; as he then was, if well understood, requires that the actual words alleged to be defamatory must be set out in the plaint to enable the court to come to a decision, in so doing, that would lead to justice. What the plaintiff did, as well put by Mr. Magongo, is to reproduce the actual words which the plaintiff is alleging to be defamatory, from the letter annexed to the plaint to paragraph 5 of the plaint. (Emphasis added). That the actual words were extracted from the said letter annexure 'A', to read as a passage in paragraph 5 of the amended plaint and this is one of the rules of pleadings as well guided in the case of **MSA Pharmaceuticals Ltd** (Supra).

As well put by Mr. Magongo, which I fully subscribe, there is no rule of law or practice in Tanzania that requires the words complained of, if are in Kiswahili should be translated into English. What is strictly required in law and particularly in the cited authorities by Mr. Byabusha, is that the words alleged to be defamatory must be set out in the plaint into a language exactly known by the parties. The objective behind is because justice can only be done if the defendant knows exactly what words are complained of; so that he can prepare his defence.

As far as the question of language used is concerned, in our case at hand, the cited cases by Mr. Byabusha are very distinguishable. They centred on a situation where the language used like in the case of **NKALUBO V KIBIGIRE (1973) E.A. 102** is different to English as it was in the Luganda language, and not in the official language, which was

English. Our position in Tanzania is quite different. The language written in the letter is Kiswahili, the official and fortunately National language. It is therefore unfounded to say that since it was not translated in English, the same is defective. The 1st preliminary point of law is not sustainable.

As for the second point of preliminary objection, Mr. Byabusha, submitted that malicious process or arrest alleged by plaintiff is not actionable and the court lacks jurisdiction to entertain the suit. His basis of argument relied on the provisions of Section 7 of Criminal Procedure Code, Cap.20 of the Laws (R.E.2002).

That this provision imposes a duty on every citizen to volunteer information on commission of crimes and it protects such informer against criminal cases or civil proceedings for damages irrespective of whether the information was given in good faith or with malice. He referred this court to a case of **MAJUMBA JIWAJI V BUDU MNYAGOLYA (1992) TLR 310**. Further to that Mr. Byabusha is saying that the complaints contained in the annexure "A" to the amended plaint, is the information which caused the arrest of the plaintiff, then the two causes of action are inseparable. And that the information reveals no connotation of malice on the part of the first defendant to enable court hold the second defendant vicariously liable. To him this court cannot go further to inquire whether or not the defendants did so with malice. He prays the entire suit to be dismissed with costs.

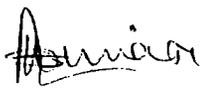
Mr. Magongo, vehemently submitted that the 1st defendant who wrote the said letter annexure A is a person in the authority in the

locality to the District Commissioner. 'The cited S.7 (supra) requires that a person in authority in the locality should report to the nearest police station but instead the defendant, a person in the authority has authored a letter to the D.C., 2nd defendant. That the letter is concerned with a lot of informations not relevant to any crime such as plaintiff filing a civil suit against the villages, therefore, it is not information concerning commission of or intention to commit any offence. Mr. Magongo, submitted more than these points but suffice to have those few which I subscribe.

That I am satisfied that the said letter annexure "A" does not fall in the ambit of the provisions of section 7 of Criminal Procedure Code, as submitted by Mr. Byabusha, for defendant. As such the 2nd point of preliminary objection also fails.

Accordingly the preliminary points of objection are overruled with costs. Costs to follow events.




A.N.M. Sumari
JUDGE

Delivered in presence of defendants only.