IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

CIVIL CASE NUMBER 29 of 2008

BEDA JONATHAN AMULI.....PLAINTIFF

VS

KUBOJA NG'UNGU.....1ST DEFENDANT

THE EDITOR, MTANZANIA NEWSPAPER.....2ND DEFENDANT

HABARI CORPORATION.....3RD DEFENDANT

JUDGMENT

JUMA, J.:

The Plaintiff Beda Jonathan Amuli is a professional architect (*Msanifu Majengo* in Kiswahili). He studied at the Israel Institute of Technology where obtained a Bachelor Degree in Architecture in 1964. Plaintiff enjoys the distinction of being the first indigenous African from then Tanganyika to obtain a degree in Architecture. Upon completion of his undergraduate studies at the Israel Institute of Technology, the Plaintiff joined Zevet International Architect and Engineers of Tel Aviv. That company had just won a tender to design the Kilimanjaro Hotel in Dar es Salaam (now Kilimanjaro Hotel Kempinski). ZEVET sent the Plaintiff to work in Dar es Salaam both as its Associate Partner and also as its resident architect. The Plaintiff supervised the construction of the Kilimanjaro Hotel Building. All in all, the Plaintiff

worked with ZEVET for 5 years before moving on to practice architecture as a sole proprietor under the name of BJ AMULI Architects. As a sole proprietor, Plaintiff's major projects include the Kariakoo Market. Straddling along the Nyamwezi, Mkunguni, Swahili, Sikukuu and Tandamti streets, the Kariakoo Market building was built out of reinforced concrete between 1972 and 1974. The Plaintiff also designed the Institute of Finance Management (IFM) building and the NBC Training College Iringa (now housing the Ruaha University).

On 29th February 2008 the Plaintiff filed this suit against Kuboja Ng'ungu as the 1st Defendant, the Editor, Mtanzania Newspaper (2nd Defendant) and the Habari Corporation (3rd Defendant). Before his retirement in 2009 Kuboja Ng'ungu was the General Manager of the Kariakoo Market. The 3rd defendant is a limited liability company which publishes and prints Mtanzania Newspaper. In this suit the Plaintiff wants to recover general, exemplary and aggravated damages following an article that was carried by the Mtanzania Newspaper in its issue number 4214 of 23rd November 2007 suggesting that Kariakoo Market building was designed by a person who was not a qualified architect. The Plaintiff claims that words in this article in their natural and ordinary meaning are highly defamatory of him. The relevant words were presented on pages 13 and 17 of the newspaper under a Kiswahili heading *"Soko la Kariakoo lilichorwa na asiye na elimu ya usanifu,"* which was followed up in 2nd and 3rd paragraphs, by the words:

> *"soko kuu la Kariakoo lipo katikati ya eneo la Kariakoo jijini Dar es Salaam, Kitalu namba 32, limepakana katika maungano ya mitaa minne ya Nyamwezi, Mkunguni, Swahili, Sikukuu na Tandamti.*
>
> *Meneja Mkuu wa Soko, Kuboja Ng'ungu anasema mchoro wa jengo hili ulibuniwa na Mtanzania ambaye hakwenda shule kwa ajili ya usanifu wa majengo (Local Architect) anaishi maeneo ya Kigamboni, Dar es Salaam"*

These words are alleged to have been uttered by the Chief Executive Officer of the Kariakoo Market Corporation (1st defendant). In his amended written statement of defence which he filed on 3rd February 2010 the 1st Defendant averred that he was no longer the Chief Executive Officer of the Kariakoo Market Corporation. This follows his retirement from the corporation since 1st July 2009. The 1st defendant contends that he is not responsible for the publication of words which are claimed to be defamatory of the Plaintiff. Further, the 1st Defendant disputed that he was jointly and severally liable for any defamation which the 2nd and 3rd Defendants may have committed. In their joint defence, the 2nd and 3rd defendants by their statement of defence strongly denied any liability. The parties agreed the following four issues for my determination:

1) Whether the article published by the 2nd and 3rd defendants in MTANZANIA newspaper is defamatory of the Plaintiff;
2) Whether the words alleged by the Plaintiff to be defamatory of him was uttered by the 1st defendant;
3) Whether the plaintiff suffered any damage;
4) What relief parties to this suit are entitled to?

Parties to this suit were all represented by learned Advocates. Ms Chihoma represented the Plaintiff. 1st defendant was represented by Mr. Tasinga, whereas the 2nd and 3rd defendants were represented by Ms Margaret N. Ringo. Before the hearing begun I drew the attention of the parties to the amendment of the **Newspapers Act, Cap 229** by the **Written Laws (Miscellaneous Amendments) (No. 2) Act, 2010 Act Number 11 of 2010**. Following this amendment, it is no longer mandatory for this court to sit with

assessors when trying defamation cases. The relevant amended provision now reads,

> **57**.-(1) The Court may, where-
> (a) ends of justice so require; and
> (b) the matter before it is of the nature attracting the aid of assessors, on its own or upon application by either of the parties, sits with not less than three competent assessors and the case shall be tried in the manner prescribed in this section.

In light of the change made on the **Newspaper Act, Cap 229** parties hereto, through their respective learned counsel, unanimously agreed to dispense with the presence of assessors.

At the hearing of this suit the plaintiff testified on his own behalf and in addition called three witnesses to prove his claim. The 1st defendant testified on his own defence and elected not to call any other witness. In his evidence testifying as PW1, the plaintiff told this court that he felt humiliated by the article which suggested that the designer of the Kariakoo Market did not have basic qualification of an architect. He was saddened by the falsity of the article because he has a Bachelor Degree in Architecture which was awarded by the Israel Institute of Technology in 1965. He is also the first indigenous Tanzanian to be registered by the Board of Registration of Architects in 1966 rising to chairmanship of a national board established to regulate the conduct of architects, quantity surveyors and building contractors in Tanzania. The plaintiff wondered why the 2nd and 3rd defendants failed to verify the correctness of the defamatory article before publishing it.

Both Edward Nicolas Akwitende (PW2) and Kassim Kalenge (PW3) regarded the words complained of in their natural and ordinary meaning was defamatory of the plaintiff. PW2 attended the same primary school with the plaintiff in Masasi. The two later met in Israel where the Plaintiff was pursuing a Bachelor of Architecture degree while PW2 was training as a police paratrooper. PW3 was a member of the Masasi Education Trust under the chairmanship of the Plaintiff. Concerned that the plaintiff may not be a qualified architect, PW3 contacted other members of the education trust to draw their attention to the newspaper article.

Kuboja Arphaxad Ng'ungu testified on his own behalf as DW1. DW1 narrated how a journalist walked into his office and requested any pamphlet with information on Kariakoo Market. DW1 handed a pamphlet to this journalist. According to DW1 the pamphlet which was in English had stated that the Kariakoo Market was designed by a local architect and was built by MECCO, a local construction firm. He was shocked like the plaintiff was, when Mtanzania newspaper carried a story suggesting that DW1 had told the journalist that Kariakoo Market was designed by an uneducated person. Testifying as DW 2, Deodatus Balile was at the material time the editor of the Mtanzania newspaper, responsible for managing journalists and supervising the collection of news, editing and printing of the Mtanzania newspaper. Further, it was Mr. Balile's evidence that Mtanzania newspaper runs special feature column designed to promote indigenous entrepreneurs like the plaintiff was.

Submitting on the issue whether the article published by the 2nd and 3rd defendants in MTANZANIA newspaper is defamatory of the Plaintiff, Mr. Tasinga, learned counsel for the 1st defendant, stated that in their natural meaning the words complained of are not defamatory. He claimed that no evidence was tendered to show how the Plaintiff's reputation was lowered and also there was no evidence showing that the Plaintiff was shunned or avoided by the right thinking members of the society. According to Mr. Tasinga, the newspaper article referred to a person who lived in Kigamboni whereas the Plaintiff lived in Mbezi Luisi. In the understanding of the learned counsel, as long as the words complained of were not malicious, the words cannot be said to have been defamatory. On her part, Ms Margret Ringo, learned counsel who represented the 2nd and 3rd defendant submitted that the language used by the publisher of Mtanzania newspaper was not defamatory *per se* but was an error caused by mistranslation of the word "local architect." Like Mr. Tasinga, Ms Ringo believes that words complained of were not defamatory because they were not actuated with malice.

Regarding the issue whether the words complained of are defamatory and also refer to him, the Plaintiff testified that it is common knowledge to majority of Tanzanians that Kariakoo Market was built by none other than Beda Amuli. That even school kids when asked the name of a Tanzanian who designed Kariakoo Market they will invariably mention the name of the Plaintiff. Central to the Plaintiff's case is that the Kiswahili words- "*mchoro wa jengo hili ulibuniwa na Mtanzania ambaye hakwenda shule kwa ajill ya usanifu wa majengo (Local Architect) anaishi maeneo ya Kigamboni, Dar es Salaam*" - are defamatory of him, and would have been understood by any person,

including his professional colleagues, relatives and many Tanzanians, as referring to him.

I have heard the evidence and submissions on the on question whether the words complained of were defamatory of the Plaintiff. Evidence on record confirms that Jonathan Beda Amuli is highly trained and qualified architect. He successfully undertook, completed his course and was 20th May 1965 awarded the Degree of Bachelor of Architecture of the Israel Institute of Technology. Further, the Plaintiff made a huge professional advance on 10 March 1969 when he was registered as a Chartered Architect in accordance with the provisions of the **Business Names (Registration) Act**. Six years later on 30th December 1975 the Plaintiff extended his professional practice in Zambia when he was registered by the Architects and Quantity Surveyors Registration Board of Zambia. Finally on 22nd March 1999 the BJ AMULI Architects was registered as an Architectural firm under the **Architects and Quantity Surveyors Act No. 16 of 1997**.

Looking at the qualifications and professional credentials of the Plaintiff in light of the natural and ordinary meaning of the words complained of, I will agree with the Plaintiff the words falsely portray the Plaintiff to be unfit and without requisite qualification to practice as an architect. Assessed dispassionately, the words in their natural and ordinary meaning conveyed the message that the Plaintiff masqueraded himself as a qualified architect and designed the Kariakoo Market. In my opinion, the words portrayed the Plaintiff as a dishonest person and opened him to the ridicule from his professional peers both within and without Tanzania. It was within the Plaintiff's right to

feel aggrieved and humiliated by the words which portrayed him as liar who cheated his way into designing the Kariakoo Market.

Kariakoo Market is inextricably tied to the name Beda Jonathan Amuli. I do not for once agree with the suggestion that the person referred to as living in Kigamboni did not refer to the Plaintiff since the Plaintiff lives at Mbezi Luisi. Any ordinary and reasonable person who reads the heading of the 2nd defendant's newspaper article that *"Soko la Kariakoo lilichorwa na asiye na elimu ya usanifu"* followed up with the words *"mchoro wa jengo hili ulibuniwa na Mtanzania ambaye hakwenda shule kwa ajili ya usanifu wa majengo"*, would conclude that those words referred to Beda Jonathan Amuli. They would not even know where Beda Jonathan Amuli lives. I have no doubt that on a balance of probabilities the words complained of referred to the Plaintiff. And for this purpose, the place where the Plaintiff currently lives does not affect the fact that the words refer to him. I so hold.

I now turn to the second issue for determination raised by the 1st defendant's counsel: whether the words alleged by the Plaintiff to be defamatory of him were uttered by the 1st defendant. Like the plaintiff, the 1st defendant Kuboja Arphaxad Ng'ungu was also shocked by the story carried by the MTANZANIA newspaper on 23-11-2007 about the plaintiff. Testifying as DW1 the 1st defendant completely disassociated himself from the words which form the subject matter of this suit. The 1st defendant informed this court that he did not utter the words that the Kariakoo Market was prepared by un-educated person. According to the DW1 on 21-11-2007 a journalist had walked-into his office without any prior appointment. The journalist was looking for any

document or writing containing information on Kariakoo Market. The 1st defendant gave this journalist an old brochure written in English which had information on Kariakoo Market. The 1st defendant insisted that there was nothing written on that document he gave the journalist which suggests that Kariakoo Market was designed by an indigenous Tanzanian who was not a qualified architect.

To prove that he was not the source of the defamatory words, 1st defendant testified on how he took an early initiative to lodge his own complaint to the 2nd defendant. 1st defendant referred this court to a consequent apology which the 2nd defendant carried in the MTANZANIA newspaper on 5-12-2007 carrying a title: "MENEJA KARIAKOO: SIJAMCHAFUA BEDA." In the second column on page 2 of the same article of 5-12-2007 the 2nd defendant shifts the blame on an intern who allegedly mistranslated the words 'local architect' to mean an unqualified architect:-

> "..Mtanzania jana lilimuomba radhi Beda kwa kupotoshwa kimakosa na mwandishi aliyeandika makala hiyo kwa kutafsiri maneno 'local architect' kama mtu ambaye hakusoma, badala ya msanifu mzawa. Mwandishi aliyeandika makala hii Mtanzania imesitisha mahusiano naye. Tunaomba ifahamike kuwa maneno haya si ya Ng'ungu, bali yalipotoshwa."

The 1st defendant's contention that he was not behind the words defamatory of the plaintiff is borne out by the evidence of Deodatus Balile (DW2) the only witness who testified on behalf of the 2nd and 3rd defendants. Mr. Balile reserved all the blame to an intern who mistakenly translated the word "local"

to mean "*hakusoma*" in Kiswahili i.e. "did not go to school." From evidence on record, it is crystal clear to me that the 1st defendant did not utter the libelous words which were published by the 2nd and 3rd defendants. It is very clear from evidence that the 1st defendant is not liable for the libel that was published by the 2nd and 3rd defendants and I hereby find and hold so.

There is a persuasive decision of the Court of Appeal of Kenya on the duty of publishers of newspapers to edit their articles before publication, and delete out libellous matter. I am of the opinion that the Kenyan guideline is as good in Kenya as it is good for Tanzania. The Court of Appeal of Kenya in the **Standard Limited vs Kagia t/a Kagia and Company Advocates, Civil Appeal Number 115 of 2003** reported in **[2010] e KLR**. In that persuasive case, the respondent was at the material time an advocate of the High Court of Kenya practicing law in the name and style of Kagia & Co. Advocates. He had been practicing for 30 years. The cause of action arose when the appellant proprietor of 'THE STANDARD' newspaper published a false and defamatory statement which by due diligence THE STANDARD newspaper editors could have noted the falsity of the report and rectify before its publication. I will in my judgment be persuaded by the following guidelines enunciated by the Court of Appeal of Kenya:

> 1. In situation where the author or publisher of a libel could have with due diligence verified the libellous story or in other words, where the author or publisher was reckless or negligent, these factors should be take into account in assessing the level of damages.

2. The level of damages awarded should be such as to act as deterrence and to instil a sense of responsibilities on the part of the authors and publishers of libel.

In the present day era of freedom of press and the power of the media, it is the duty of courts in occasions like this before me, to ensure that newspaper editors are diligent and responsive to the rights of others not to be libeled. Editors should ensure that their newspapers do not veer off course to libel the innocent. I agree with the 1st defendant that responsibility over the words complained of by the plaintiff begins and ends at the doorstep of the 2nd and 3rd defendants. The editors of the 2nd defendant newspaper clearly failed in their due diligence duty to ensure that story on Kariakoo Market which was collected from the field by their intern journalist is not libelous of the Plaintiff. The fact that the 2nd defendant employed an intern to collect stories on its behalf, the 2nd defendant had a higher duty of care to edit and delete all libellous matter. Had the editors of the 2nd defendant newspaper carried out the expected due diligence, libellous article would not have been published by Mtanzania Newspaper in its issue number 4214 of 23rd November 2007.

The third and fourth issues for my determination centre on the question whether the plaintiff suffered any damage and what reliefs parties to this suit are entitled to. Submitting on this issue, Mr. Tasinga (for 1st Defendant) contended that the Plaintiff did not bring proof that he suffered any damage. For the 2nd and 3rd defendants Ms Margaret N. Ringo also pointed out that the Plaintiff did not adduce any evidence to show the extent which his friends, business partners or associates shunned him so as to affect his professional

practice. According to Ms Ringo, in so far as the Plaintiff has failed to establish commensurable diminution in esteem and mental distress, this court should not award general damages.

I have already made a finding and held that the article published by the 2nd and 3rd defendants was defamatory of the Plaintiff. Having found so, the law is quite settled in Tanzania that the tort of libel is actionable *per se*, and the plaintiff only need to prove that defamatory words has infringed his legal rights. He needed not prove actual damage to his character and reputation. But in so far as the quantum of damages to be awarded to him is concerned, the Plaintiff has a legal duty to marshall evidence from which this court can assess the quantum of damage. The Plaintiff prayed for general damages for libel as may be assessed by the court. The law is settled that general damages are those which this court presumes to have arisen out of defendants' wrongful act. Quantification of general damages is a matter for the court to decide and calculation depends on the circumstances of individual cases. In my final assessment of general damages, I will seek the guidance of another decision of this court in the case of **P.M. Jonathan vs Athuman Khalfan [1980] TLR 175** at page 190 where Lugakingira, J. (as he then was) stated:

> *"The position as it therefore emerges to me is that general damages are compensatory in character. They are intended to take care of the plaintiffs loss of reputation, as well as to act as a solatium for mental pain and suffering....."*

Apart from the general damages, the Plaintiff also wants this court to award him an exemplary punitive and exaggerated damages amounting to TZS 5 billion; and also an aggravated damages amounting to TZS 1 billion. Let me

begin by establishing whether the Plaintiff is entitled to an exemplary or punitive damages he claimed in his plaint. Ms Ringo submitted that because the element of malice was lacking when the words complained of were published, the plaintiff cannot be awarded any aggravated damages he is claiming. Ms Ringo invited this court to hold that the apologies which the 2nd and 3rd defendants extended to the Plaintiff were sufficient enough to exempt the defendants from any liability.

There are two earlier decisions of this court which provide useful guidance to me on the question whether the Plaintiff should be awarded exemplary damages. Lugakingira, J. (as he then was) in the case of in the case of **P.M. Jonathan vs Athuman Khalfan (supra)** at page 90 states,

> ".....Exemplary damages, on the other hand, are a punishment to the defendant for misconduct which general and even aggravated damages cannot reach , and as a reminder that tort does not pay. They should be recoverable from any defendant whose outrage deserves punishment . It may be anomalous to use the civil court for criminal purposes but I do not desire to express myself on that issue. I would only add that where the defendant is a servant of the people and commits wrong under the guise of his power, or where the defendant is motivated by expctations of gain, that would be reason for the court to take an even more serious view and to award such exemplary damages as the occasion would require."

Similarly, Bahati, J. (as he then was) in the case of **Angela Mpanduji V Ancilla Kilinda 1985 TLR 16 (HC)** described exemplary or punitive or vindictive damages are damages given not merely as pecuniary compensation

for the loss actually sustained by the plaintiff, but also as a kind of punishment of the defendant with the view of discouraging similar wrongs in future. Justice Bahati in his judgment quoted **Jowitt's Dictionary of English Law Second Edition** which defines exemplary damages as follows:

> .... exemplary, or punitive or vindictive damages are damages given not merely as pecuniary compensation for the loss actually sustained by the plaintiff, but also as a kind of punishment of the defendant, with the view of discouraging similar wrongs in future, as in actions for defamation, malicious injuries, oppression, continuing nuisances, etc.

From the restatement of law articulated by this court in **P.M. Jonathan vs Athuman Khalfan (supra)** and **Angela Mpanduji V Ancilla Kilinda (supra)**, the issue for my determination is whether there is any conduct of the defendants which should attract an award of an exemplary or punitive damages. With respect, the failure of the editors of the 2nd defendant newspaper to diligently edit away libelous matter from story its intern journalist collected from the 1st defendant should in my opinion be regarded as a conduct which should attract an award of exemplary or punitive damages. It is difficult to accept that libelious matter could pass unnoticed through the elaborate editorial process which Deodatus Balile the editor of the Mtanzania newspaper narrated to this court when he testified as DW2. I do not agree with the attempt by Mr. Balile (DW2) to explain away the libellous matter as a mistake or even blame the libel on the intern journalist. My opinion in this regard is supported by a persuasive decision from the United States in **Montandon v. Triangle Publications, Inc. (1975) 45 Cal. App. 3d 938** where

defendant claimed unintended changes to the final draft of an article resulted in the inference that plaintiff was a prostitute. The court stated at page 949,

> "While this result [the unintended inference plaintiff was a call girl] was apparently not intentional, it was one which those responsible should have foreseen and one which showed a reckless disregard for the truth or falsity of the statement. The conduct of those responsible for the publication was more than negligence, it amounted to an indifference to the impression being given to the general public."

In my opinion, the mistake by an intern which Mr. Balile (DW2) alluded to; is not a defence to an action for defamation, even though it may mitigate the amount awarded as damages.

In his plaint, the Plaintiff demands aggravated damages amounting to TZS 1,000, 000,000/=. The issue arising from this claim is whether there is any legal basis for claim for aggravated damages. Ms Ringo cited the words of Lord Devlin in the case of **Rookes vs. Bernard [1964] 2 WLR 269** to support her contention that the Plaintiff does not deserve an award of aggravated damages because the conduct of the defendants did not aggravate the injury done to the plaintiff. Lord Devlin had on page 324 stated,

> "...it is very well established that in cases where the damages are at large the jury (or the judge if the award is left to him) can take into account the motives and conduct of the defendant where they aggravate the injury done to the Plaintiff. There may be malevolence or spate or the manner of committing the wrong may be such as to injure the Plaintiff's proper feelings of dignity and pride."

In my opinion, Onyancha, J. of the High Court of Kenya in the **Francis Xavier Ole Kaparo V Standard Limited & 3 others [2010] e KLR** is one of the most recent persuasive decisions correctly restating the circumstances wherein this court can similarly emulate to find a basis for awarding aggravated damages:

> The aggravated damages (***distinguished from exemplary damages***) are meant to compensate the Plaintiff for the additional injury going beyond that which would have flowed from the defamatory words or statements above, caused by the presence of the aggravating factors. The Plaintiff, who behaves badly, as for example by provoking the defendant or defaming him in retaliation, will be viewed less favourably; a defendant who behaved well e.g. by properly apologizing, will be treated with favour. Damages will be aggravated by Defendant's improper motive i.e. where it is actuated by malice. Repetition of the libel; failure to contradict it; insistence on a flimsy defence of justification; and a non-apologetic cross-examination are matters that will aggravate damages (see **Mc Carey V Associated Newspapers Ltd**, (1964) 3 All ER 947; 2 QB 86).

With due respect, the Plaintiff did not offer any evidence to bring his claim within the purview of principles of law governing the award of aggravated damages as restated in the persuasive cases of **Rookes vs. Bernard [1964] (supra)** and that of **Francis Xavier Ole Kaparo V Standard Limited & 3 others [2010] e KLR**. In my opinion, the article complained of had the underlying good intention of promoting indigenous enterprenurs and entrepreneurship. The conduct of the 1st Defendant, Kuboja Arphaxad Ng'ungu (DW1) and also the conduct of Deodatus Balile (DW2) who testified on behalf of the 2nd and 3rd defendants- were respectively very apologetic and did not disclose any aggravating circumstances during their respective

testimonies. It is very clear and I hereby find and hold that aggravated award is not open to the Plaintiff.

It is opportune now to determine the availability of the defences which the 2nd and 3rd defendants raised up in their defence. Though admitting in their joint written defence that they indeed printed and published the words complained of, the 2nd and 3rd defendants hasten to point out that they did this in the normal course of discharging their duty of disseminating information to the public. Further, they contend that they published the statement in good faith without any malice to the plaintiff giving a true presentation of words actually uttered by the 1st defendant. All in whole, the 2nd and 3rd defendants contend that the plaintiff is not entitled to any damage because the publication was not only justified in public interest but it was in addition made in a privileged occasion.

The case of **Valentine M. Eyakuze vs The Editor of Sunday News and 2 Others 1974 LRT n. 49 at page 198**-in my opinion restates the correct position of law as to when defendants in libel suits; can rely on defences of fair comment, justification and occasion of qualified privilege:

> "...The position in law is that it is a complete defence to an action of libel, or slander if the defamatory imputation is proved true. The truth of the imputation then becomes an answer to the action because in that event the plaintiff is said to have no right to a character free from that imputation and if he does not possess such a right he cannot in justice recover damages for the loss of something he did not possess in the first place. But in order to establish a plea of justification, the defendant(s) must prove that the defamatory imputation is true and for this purpose it is not

> enough to prove that that he believed that the imputation was true or that, he merely repeated or reported what other people said ... hence the defamatory imputation must be proved true in fact....."

With respect, the 2nd and 3rd defendants have not brought their defence within the restatement of the law enunciated in the case of **Valentine M. Eyakuze vs The Editor of Sunday News and 2 Others (supra)**. Further, the defendants have not shown how the words complained of by the plaintiff were based on true facts to constitute a fair comment on a matter of public interest. Defendants have all conceded as false, the words that the Tanzanian who designed Kariakoo Market is not a qualified architect. Furthermore, it is not in the public interest for newspapers to publish false statements without conducting a prior due diligence.

I may conclude, from the foregoing that the Plaintiff is entitled to only two heads of damages. The Plaintiff is entitled to the general damages for libel as may be assessed by this court. He is also entitled to receive exemplary damages. Although the latitude of this court in awarding these two sets of damages in an action for libel is very wide, this court takes into account a number of factors to arrive at figures which serve justice to all the parties concerned. Hirst L.J. of the Court of Appeal of UK has listed down some of these persuasive factors in the case of **Barry John Jones v. Eve Pollard; Mirror Group Newspapers; Ltd and Steve Bailey. 1996 EWCA Civ 1186**,

> "...in arriving at the correct figures for damages, there are a number of factors which it is appropriate to take into account, and which were helpfully listed by Mr. Andrew Caldecott Q.C. on behalf of the plaintiff as follows:-

1. The objective features of the libel itself, such as its gravity, its prominence, the circulation of the medium in which it was published, and any repetition.
2. The subjective effect on the plaintiff's feelings (usually categorized as aggravating features) not only from the publication itself, but also from the defendant's conduct thereafter both up to and including the trial itself.
3. Matters tending to mitigate damages, such as the publication of an apology.
4. Matters tending to reduce damages, e.g. evidence of the plaintiff's bad reputation, or evidence given at the trial.....
5. Special damages.
6. Vindication of the plaintiff's reputation past and future."

In arriving at the correct figures for general and exemplary damages, I have taken into account the fact that it was the Plaintiff who designed the Kariakoo Market. The Plaintiff is a well qualified architect with excellent credentials and certificates. Kariakoo Market is a hub of commercial activities in Dar es Salaam and is well known to Tanzanians of various walks of life. Apart from the iconic Kariakoo Market, the plaintiff's architectural work is visible not only in Tanzania but also in Kenya where he opened a professional office in 1973 and designed the MWALIMU HOUSE in Kisii Kenya.

I have also taken into account the policy of the 2nd defendant to promote indigenous enterprise like the one of the Plaintiff through its special weekly features column. After the publication of libelous words, the 2nd defendant carried an extensive apology covering pages 16 and 17 of issue Number 4225 which was published in the edition of the MTANZANIA newspaper on 4th December 2007. This apology is significantly titled "AMULI IS A QUALIFIED ARCHITECT" (AMULI NI MSOMI)." I have also taken into account the fact that MTANZANIA newspaper is circulated throughout the United Republic of

Tanzania creating a spectre of libellous information spreading afar reaching out to many readers. All these factors considered, I am of the opinion that the plaintiff is entitled to general compensatory damages to vindicate his reputation, his respect in his profession and to assuage him for the distress, hurt and humiliation caused by the libellous words. He is also entitled to a reasonable award of exemplary damages.

Ms Chihoma, Mr. Tasinga and Ms Margaret N. Ringo- the three learned counsel who represented the parties did not draw my attention to any previous decisions of this court or the Court of Appeal to shed some light on how courts in Tanzania have in the recent past, awarded damages in circumstances similar to one arising from this present case. However, I am of the considered opinion that damages in defamation cases are not designed to enrich the plaintiffs. Awardable damages must be kept at reasonable levels lest they drive newspapers out of business and as a result impinge upon the equally important freedom of expression and the citizens' right to information through reputable newspapers. The plaintiff's demand for a TZS 5 billion as exemplary damages is on a very high scale.

In the upshot, I hereby award the Plaintiff the sum of TZS. 40,000,000/= (forty million shillings) as general compensatory damages and TZS 5,000,000/= (five million shillings) as exemplary damages. This total sum of TZS. 45,000,000/= (forty-five million shillings) shall be subjected to the interest at court rates from the date of judgment until payment in full. The 2nd and 3rd defendants shall also pay the Plaintiff and 1st Defendant their respective costs of this suit plus interest thereon at court rates from the date of suit until payment in full.

It is so ordered.

I.H. Juma
JUDGE
02-05-2011

Delivered in presence of: Ms Chihoma Adv. (for the Plaintiff), Ms Margret Ringo (holding Mr. Tasinga's brief) for the 1st defendant and Ms Margret Ringo (for the 2nd and 3rd defendant).

I.H. Juma
JUDGE
02-05-2011