

**IN THE HIGH COURT OF TANZANIA
DAR ES SALAAM DISTRICT REGISTRY
AT DAR ES SALAAM
(ORIGINAL JURISDICITON)**

CIVIL CASE NO. 40 OF 2015

ABDALLAH SHARIFA AMER	PLAINTIFF
	VERSUS	
HAWA DEUS KUNDAMI	1ST DEFENDANT
THE EAST AFRICA TELEVISION (E.A.TV	2ND DEFENDANT
JOYCE KIRIA	3RD DEFENDANT

Date of last Order: 8th July, 2015
Date of Ruling: 7th August, 2015

RULING

Feleshi, J.:

On 5th June, 2015 the counsel for the defendant filed along with his Written Statement of Defence a Preliminary Objection that the Court has no pecuniary jurisdiction to entertain the suit filed in this Court claiming for Tshs.500,000,000/= being general damage for defamation, interests, apology and costs. Paragraphs 4,5,6,7,8,9,10,12 of the Plaintiff partly read:

- “4. That, the Plaintiff claim against the Defendants jointly and severally for payment of a sum of Tshs.500, 000,000/= as general damages for defamation;
5. That on or about 9, 10 and 13 the Defendants jointly and severally on programme “Wanawake Live” caused to be broadcasted, Mbunge atelekeza mototo mlemavu bila matunzo;
- 6.That the Defendants knowing that the allegations are not true but yet went further to air libelous words to the public through E.A.TV and caused injury to the plaintiff and his fellows of Dimani Constituency;
7. That...were aired on the E.A.TV under the 3rd defendant supervisions were....;
8. That...the words aired on that programme....
9. That, since the said words are not true and were broad casted maliciously the plaintiff reputation has been greatly injured and the plaintiff has suffered

considerable stress and embarrassments as he has been brought to public odium and contempt;

10. That, the aforesaid libelous words....

12. That, the cause of action arose in Dar es Salaam this Court has jurisdiction to try the matter.”

The Plaintiff through Mr. Raphael Kiyungi, Advocate urged this Court to allow the parties to argue the Preliminary Objection by written submission. However, he himself subsequently decided not to file his submission and without any explanation or prayer to back up his defiance. Since it is a settled position that the practice of filing written submissions is tantamount to hearing and failure to file the submissions as ordered is equivalent to non-appearance at a hearing for want of prosecution, I will therefore consider the entire pleadings on record and the defendants’ submission (see: **P3525 Lt Col Idahya Maganga Gregory v. The Judge Advocage General**, Court Martial Cr. Appeal No.4 of 2002, **Petro Andrea v Mwishehe Abdallah**, HC. Civil Application No 58 of 2008 **David Redson Lyimo T/A Samaris General Traders Limited v. Nicholaus Richard Kazaura T/A Five N & K Entertainment HC., CIVIL CASE NO. 223 OF 2014**, Dar es Salaam Registry-unreported).

The defendants through the service of Mtogoconsult Attorneys submitted in the light of the decisions of the Court of Appeal in **Tanzania–China Friendship Textile Co. Ltd v. Our Lady of the Usambara Sisters** [2006] TLR 70 and **Tanzania Breweries Limited v. Anthony Nyingi**, Civ. Appeal No.119/2014, Mwanza Registry (unreported) that the law is settled that it is substantive claim and not general damages which determines the jurisdiction of the court.

As in the present case there is no special damages pleaded and claimed the defendants invited this court to consider sections 3,7 and 13 of the Civil Procedure Code, [Cap.33 R.E.2002] together with sections 18(1)(a), 40(2) and 41(1) of the Magistrate Act, [Cap.11 R.E.2002] and determine that the suit before it is misplaced as it is one to be dealt with by court of the lowest grade. Therefore, it should be struck out with costs.

Paragraph 18 of Halsbury's Laws of England, Volume 28 Hals PDF on Libel and Slander, provides that:

"every person is entitled to his good name and to the esteem in which he is held by others, and has a right to claim that his reputation should not be disparaged by defamatory statements made about him to a third person without lawful justification or excuse. If the defamation is made in writing or printing or some other permanent form the tort of libel is committed **and the law presume damage if the defamation is oral or in other transient form it constitutes the tort of slander which is not actionable at common law without proof of actual damage.**" [Emphasis supplied]

Whereas it is trite that the principles relating to damage in libel does not compel the plaintiff to plead special or specific damages, claims in defamation based on slander require the plaintiff mandatorily to plead for specific damages (see: **Rev. Christopher Mtikila v. Yusuph Manji & others**, Civil Case No. 86 of 2006, **Sauda Mfinanga v. Managing Editor Uwazi Newspaper and 3 others**, HC. Civil Case No. 15 of 2013, **Oscar Mbuza v. The Managing Director Simon Group Ltd and Robert Kisena**, HC Civil Case No. 263 Of 2014- Dar es Salaam Registry) and **Apollo Maruma T/A Maruma v. The Editor Of Mwanahalisi and 2 others**, HC Civil Case No 16 of 2008, Arusha Registry-unreported)

By the nature of the acts complained of by the plaintiff in the plaint it is crystal clear that his claims are not supposed to base on defamation on libel as he wanted this Court and the defendant to consider and act upon. Instead, as

pointed out by Paragraph 18 of Halsbury's Laws of England above, they belong to the **category of defamation based on oral or in other transient form** and be it as it may required the plaintiff to plead for the commensurate special damages/claims justifiably triable by the High Court. He was not supposed to come to this Court with that gambling expedition.

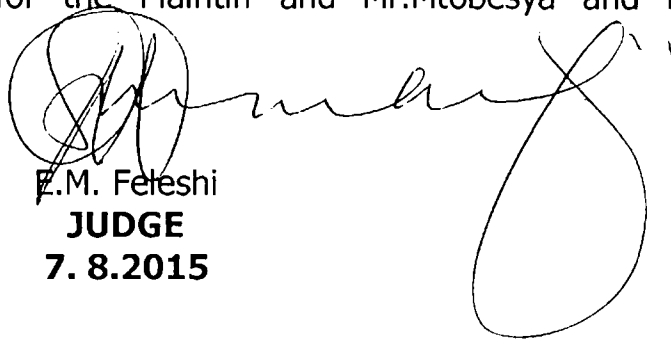
For that reason and given brief analysis, I uphold the preliminary objection. The suit is incompetent due to its failure to properly articulate the nature of defamation giving rise to the cause of action and also for lacking the requisite original pecuniary jurisdiction clothing this Court with jurisdiction to try the suit. The suit is thus truck out with costs. Ruled accordingly.

DATED at Dar es Salaam this 7th August, 2015




E.M. Feleshi
JUDGE

Ruling delivered on this 7th day of August, 2015 in the presence of Mr.Jophrey Martin Advocate for the Plaintiff and Mr.Mtobesya and Boka Advocates for the Defendants.


E.M. Feleshi
JUDGE
7. 8.2015