

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

CIVIL CASE NO. 39 OF 2010

DEODATUS RWEKAZA.....PLAINTIFF

V.

TANZANIA ELECTRIC SUPPLY

COMPANY LIMITED.....DEFENDANT

JUDGMENT

Date of last Order 17/12/2015
Date of Judgment 18/2/2016

Shangwa, J.

The plaintiff Deodatus Rwekaza is claiming against the defendant TANESCO for payment of Tshs. 300,000,000/= as general damages for defamatory writings against his reputation. In his plaint, the plaintiff claims that in September, 2009

during Election campaigns, he was one of the contestants for chairmanship of Mwanalugali Street in Kibaha township through the ticket of Chama cha Mapinduzi (CCM). That during the said election campaigns, the defendant wrote a letter to CCM authorities in Kibaha District stating that he was once an employee of the defendant and that his employment was terminated due to dishonesty to the defendant. That the information contained in the said letter is false calculated to injure his character and integrity and that the contents of the said letter were spread in the entire township of Kibaha. That various copies of the said letter were reproduced and posted in various public places of Mwanalugali Street and Kibaha town during the campaign period

with negative comments such as “**Mwizi ni wangu na wako pia**”. In English a thief is a “thief to me and to you too”. That during that period, he was treasurer in the Roman Catholic church and that as a result of these negative comments people regarded him to be unfit for the job.

At the commencement of hearing this suit, two issues were framed for determination namely:-

- 1. Whether the defendant's letters to CCM offices were defamatory.*
- 2. What reliefs are the parties entitled to.*

I wish to comment here that this suit had been assigned to **Bongole, J.** He partly heard it by recording the testimony of P.W.1. For reasons not disclosed on the record, when he was appointed as acting judge in charge, he re-assigned it to me. I did not have time to ask him as to why he decided to re-assign it to me. I decided to hear P.W.1's testimony afresh and by the Grace of God, I proceeded to deal with the whole case by hearing witnesses from both sides and writing this judgment. The plaintiff's case was led by Mr. Kabakama, Advocate and the defence case was led by Mr. Kyarukuka, Advocate.

In his testimony the plaintiff told this court that in 2009, he contested for the post of street chairman

through CCM party ticket and that during campaigns, a day before election, the defendant wrote a letter to his CCM Branch Office at Mwanalugali Street alleging that he is a thief and a person who is untrustworthy to be elected for the post he was contesting at Mwanalugali. That about 500 copies of the said letter were posted all over the street buildings, TANESCO'S electricity posts and on tree trunks. He tendered the said letter in evidence and it was received and marked as exhibit P.1. That this letter tortured him psychologically as it lowered his reputation before his voters, parish priest and church members who read it and that as a result, he got lesser votes than he would have earned and that when time came for election of a Parish Accountant,

he lost election as his voters looked at him as a thief due to defamatory statements in exhibit P1. He prayed for general damages of not less than Tshs. 300,000,000/=. In his cross-examination, he stated that in 2007, electricity was unlawfully connected to his two houses at Kibaha after being transferred from TANESCO'S office at Kibaha to TANESCO'S office at Chalinze and that the one who did so is his wife and that when the matter was referred to CMA, he was cleared after finding that the one who stole the defendant's electricity is his wife. That exhibit P1 was not affixed on trees by the defendant. That the ones who did so are people from CCM Branch office. That the letter was a confidential one written by defendant to CCM office.

P.W.2. Sophia Shabani Mlao told the court that she works as secretary in the CCM District Office at Kibaha. That during election campaigns for local government in 2009, the District Party Office at Kibaha received a letter from TANESCO dated 19th November, 2009 informing the CCM office that the plaintiff is a thief and untrustworthy.

P.W.3 Abdalla Abusheikh Mdimu told this Court that he is a CCM District Party Secretary at Kibaha. That the plaintiff won the post he was contesting through CCM party ticket and that before then he was working with TANESCO. That during the 2009 Local Government elections, he contested for street

chairperson and that during his campaigns, TANESCO (defendant) wrote a letter addressed to the CCM Party Branch Secretary of Mwanalugali Branch in which it was alleged that the plaintiff is not trustworthy. That after receiving the said letter, his office wrote a reply and requested TANESCO to explain and that TANESCO replied that it has nothing to add. He tendered the said letter in evidence as exhibit P2 and said that this letter could have made their office and voters to refrain from electing him to the post of Street Chairman.

As already mentioned, the defence was led by Mr. Kyarukuka, Advocate. He called one witness to testify on behalf of the defendant namely Joseline

Emmanuel Anyandwile (D.W.1). This defence witness told this court that he is Administrative Manager Labour Relations. That she knows the plaintiff who was an employee of the defendant at Chalinze and that he was terminated from employment in 2007 because of being untrustworthy at work. That he unlawfully connected electricity from his house by using underground wiring system to his bar, rented houses and bandas. That when he was asked to explain, he admitted to have done so and that he was fined Tshs. 5 Million plus which he paid. That exhibit P1 is a confidential letter by the defendant and that it explains the reasons as to why TANESCO terminated him from employment. The reason being that he was untrustworthy at his place of work. That

exhibit P2 is a letter from TANESCO to CCM District Secretary at Kibaha and that the said letter insisted to CCM Party District Secretary that the contents of exhibit P1 are true.

During cross-examination D.W.1 told this court that the one who started to write a letter demanding to know about the Plaintiff's conduct is CCM who wrote to the defendant. That a confidential letter is not supposed to be circulated to any person who is not concerned and that the defendant does not know who circulated the defendant's letter to the Public.

On issue number one, the court is asked to determine as to whether or not the defendant's

letters to CCM Offices were defamatory. There are two letters which were written by the defendant to CCM Offices. The first letter is exhibit P1 dated 22nd September, 2009 with Ref RM/Coast/PF/D395 which is a letter replying to CCM letter with Ref. No. CC/15/24/concerning the plaintiff. It is a confidential letter. It was signed by the defendant's Branch Manager Coast Region called Lucas M. Busunge informing CCM that the plaintiff is employee of the defendant at Chalinze and that he was terminated from employment for being untrustworthy to his employer and for his failure to comply with the defendant's rules and legal procedures. The second letter is exhibit P2. It is also a confidential letter. It is dated 19th November, 2009

with ref. RM/Coast/F/D 395. It was signed by the same person as exhibit P1. It was addressed to the CCM Party District Secretary at Kibaha insisting that what was written in exhibit P1 is the defendant's stand in accordance with its office record.

I wish to state at once that in my opinion, I do not find anything defamatory in the defendant's letters i.e exhibit P1 & P2 to CCM who wanted to know as to whether or not the plaintiff who was contesting for the post of street chairman through CCM ticket was a man of integrity, trustworthy and honest to be voted into the office of Street Chairman of Mwanalugali through CCM ticket.

There is no where it is expressly mentioned in both letters that the plaintiff was or is a thief. In my view, the handwritten words in big letters below exhibit P1 reading **“N.B.TABIA HAINA DAWA: MWIZI NI MWIZI WANGU NA WAKO PIA”** were not written there by the defendant. They were ghosted by an unknown person.

As I have already mentioned, there is nothing defamatory against the Plaintiff in the defendant's letter to CCM District Secretary at Kibaha. Thus, I answer issue one in the negative. Having answered issue one in the negative, issue two has no legs to

stand. For these reasons, I dismiss this suit with costs.

A.Shangwa

JUDGE

18/2/2016

Delivered in the presence of Mr. Kyamani for defendant and in the presence of the plaintiff this 18th day of February, 2016.

A.Shangwa

JUDGE

18/2/2016