

IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF BUKOBA
AT BUKOBA

CIVIL APPEAL NO. 31/2016

(Arising from Civil Case No. 34/2014 of the Resident Magistrate's Court of Bukoba)

IGNATUS N. BASHEMELA ----- APPELLANT

VERSUS

MICHAEL PETER MPAMBAGOMBA ----- 1ST RESPONDENT

SUKAH SECURITY CO. LTD ----- 2ND RESPONDENT

JUDGMENT

23/5/2018 & 13/7/2018

Kairo,J.

Being aggrieved by the decision of the Resident Magistrate Court of Bukoba in Civil Case No. 34/2014 delivered on 21/7/2016, the Appellant decided to institute this appeal to challenge the same raising the following grounds of appeal:-

1. That, the trial court grossly erred in law and facts by pronouncing that the evidence tendered by the Appellant did not establish full element of tort of defamation;
2. That, the learned trial Magistrate erred in law and facts for failure to evaluate evidence by the Appellant which fully established that the Respondent defamed the Appellant;
3. That, the trial court grossly erred in law and facts by deciding that the Appellant failed to establish his claim against the Respondent;
4. That, the trial court failed to note that the evidence by the Appellant all established full element of tort of defamation;
5. That, the trial Magistrate erred in law and facts for failure to note that the Respondents admitted on the defamation words complained by the Appellant;
6. That, the trial Magistrate erred in law and facts to decide the case against the weight of evidence;

According to record, the memorandum of appeal has been drawn and filed by Nathan Alex of Haki Attorneys (Advocates). However the Appellant represented himself during the oral submission while both of the Respondents were represented by Mr. Michael Mpabagomba, the 1st Respondent who is also the Principal Officer of the 2nd Respondent.

Briefly the background to this dispute is that, the Appellant sued both Defendants claiming to be paid Tshs.80,000,000/= being damages for defamation and 9% interest of damages and cost. The Appellant alleged that

the 1st Respondent has referred to him as a corrupt person through the letter he wrote to the Chief Justice (CJ) and to the Executive Officer of PCCB Karagwe District. The trial court made a finding that the Plaintiff has failed to establish his claim and accordingly dismissed it.

The Appellant was not satisfied with the said decision, hence this appeal raising the above listed grounds of appeal.

When the matter was called for oral submission, the Appellant informed the court that he had nothing substantial to add to the grounds of appeal. He thus prayed the court to adopt the same and go through the evidence and allow the appeal.

As a reply, the Respondent submitted that the decision delivered by the RM's court was correct. He further contended that there was no defamation. He argued that legally for defamation to stand, the Defendant must have spoken a lie but he didn't. He further refuted the Appellant's contention that, he was dismissed as a result of the letter the 1st Respondent wrote to the CJ adding that the C.J is a reputable, noble and a person of high caliber thus can't just dismiss a person without cause.

The 1st Respondent went on that even the letter he has sent to the PCCB, no answer has been received so far from their end. He argued that the Appellant has failed to substantiate defamation as decided by the trial court. He further contended that the Appellant is the one who caused him to complain as he paid him Tshs. 800,000/= so that he can impound two

vehicles belonging to Chico Company but didn't despite following him several times requesting the Appellant to do so. The Respondent added that following his refusal, he decided to write the said letters complaining which letters were also copied to him. However he didn't respond to the complaints despite availing the copies to him. He further stated that it was after he wrote the letters that the Appellant impounded one vehicle which action showed that he had the intention to steal his money; submitted the 1st Respondent. He thus prayed the court rule out that the Appellant was not defamed and dismiss this appeal with cost.

The Appellant decided to make some rejoinder and submitted that, he didn't say that he was dismissed by the Chief Justice. However all what transpired can be seen in the proceedings. He reiterated his prayer to have this appeal allowed with cost.

Going through the grounds of appeal, I observed that they all centered on resolving the issue as to whether or not the Appellant has been defamed by the Respondents. In other words whether the Appellant has proved the tort of defamation against the Respondents.

Principally in defamation claims, the claimant who is the Appellant in the matter at hand has to prove two things:- first that the alleged defamatory statement concern him and that the same is false. Secondly; that there was publication of it to a third person with malice.

It is not in dispute that the 1st Respondent has written two letters which culminated to this dispute; one to the Chief Justice dated 21/11/2013 and another one to PCCB Executive Officer, Karagwe District dated 6/12/2013. In both letters, the Respondents among others complained that the Appellant on 17/10/2013 and 13/11/2013 was paid a total of Tshs. 800,000/= by the Respondent so as to execute the Karagwe District court order which ordered the Appellant to impound two vehicles of Chico Company as a security following a Civil Case No. 20/2012 between the Respondent and Chico Company.

It appears until when the Respondent was writing the two letters, the Appellant hasn't impounded the said vehicles. The Respondent further claimed in the written two letters that according to their investigation and confidential information from Chico Co. offices, the Appellant was given Tshs. 2 million as corruption so that he doesn't impound or attach the two vehicles as ordered. The Respondents thus concluded that the Appellant's action suggests the presence of corruption transactions in the process.

Applying the two conditions or ingredients required to prove defamation to the facts as depicted in the two letters, I have no doubt that the alleged defamatory statement ie. That he was corrupt was addressed to the Appellant. However for the second condition, I have candid views that the C.J and the PCCB's office do not fall within the meaning of 3rd parties in the context of this case. The reason is not farfetched. The Appellant being an officer of the court is also answerable to the Chief Justice who is an overall

in charge of the Courts/Judiciary in Tanzania. Further the office of the PCCB is a public office where the suspicions of corrupt transactions are required to be reported to, for investigation. As such the letters were directed to proper authorities and not third parties, thus the act of sending the letters to proper authorities negate malice.

Another wanting question is the falsity of the contents of the letter; specifically on the alleged defamatory statement. Further whether the publication was with malice. It should be noted that in the tort of defamation, malice means publication without lawful excuse [Refer the Book of Ramaswamy Lyer's titled the Law of Torts: A. Lakshminath M. Sridhar, 10 Ed page 366].

I went through the letters at issue and reading them between the lines, I observed that the Respondents suspected circumstances which suggested an existence of corrupt transactions in favor of the Appellant. His suspicion was due to unexplainable failure by the Appellant to attach the vehicles as ordered having in mind that the order was given on 10/11/2013 and was paid for the last installment for the task on 13/11/2013 but up to the time when writing the letters (20/11/2013&6/12/2013) no vehicle was impounded. Further to that, the suspicion was also due to information received from the official of the Chico Co. according to the Respondent's testimony. Further reading between the lines on the letters, it is apparent that the Respondent wasn't sure on the veracity of the information as he wrote "*taarifa hizo zinaweza kuwa za kweli kwa sababu hakuna sababu*

halali kisheria inayomfanya asiyakamate hayo magari”. However I should hasten to add that the Respondent was justified in his suspicion in the circumstance of this case. But further to that, the Respondent after receiving the said information had a legal duty as well as moral and social duty to report the alleged corruption/malpractice to the PCCB offices which has been vested with the mandate to investigate such allegations.

But further reading the two letters, the Respondent has challenged the Appellant to refute the said complaints and allegations if they weren’t true, within 30 days. But according to record the Appellant never rebutted them. Responding to his failure to deny the same, he argued that the said letters were not addressed to him but copied to him. To say the least and with much respect to the Appellant I am not convinced with the said argument. I consider strange that he opted to remain silent while he ought to have spoken or reacted especially when the Respondent categorically challenged him to rebut if the complaints were false in the copies sent to him. But more so because the letters were addressed to his superior (CJ) and PCCB offices, having in mind that both authorities’ reaction to the letter could have adverse effect on his tasks. I am aware that the Appellant further argued that he decided to sue the Respondent in the court of law as a response, but responding to the letters wouldn’t have prevented him from suing. In fact, it would have strengthened his case to show that he denied to the allegations in the letters. It is the cardinal principle that if you disagree, the onus is on

you to say so. Failure to deny immediately may be construed that what has been explained in the letters was true.

All in all, it is the finding of this court that the issue as to whether the Appellant has proved the tort of defamation against the Respondents has been answered negatively as the persons to whom the communications were made to, do not fall in the ambit of the *third parties* legally. Besides there was no malice as the publication wasn't without lawful excuse. But on top of that, the Appellant didn't refute the said publication despite being challenged to do so if the same were not true.

All having done and said, the appeal is dismissed in it's entirely for want of merit with cost.

It is so ordered.



L.G. Kairo

Judge

At Bukoba

13/7/2018

Date: 13/07/2018

Coram: Hon. L.G. Kairo,J.

Appellant: Present in person

1st Respondent: }
2nd Respondent: } Mr. Gosbert Petro, Security Guard

B/C: R. Bamporiki

Court: The matter is for Judgment. The same is ready and is read over before the parties in open court today.



L.G. Kairo

Judge

13/07/2018