

**IN THE UNITED REPUBLIC OF TANZANIA
THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM
CIVIL CASE No. 52 OF 2016**

PREMJI DEWJI PATEL.....PLAINTIFF

Versus

JETHALAL MANJI PATEL.....1st DEFENDANT

RATAN JETHALAL PATEL.....2nd DEFENDANT

ANIL JETHALAL PATEL.....3rd DEFENDANT

JUDGMENT

27th August, - 17th September, 22nd September 2020

J. A. DE - MELLO J;

The Plaintiff herein prays for Judgment and, Decree against the Defendant as follows;

- 1. An order for retraction of the false and malicious allegation made by Defendants against the Plaintiff.**
- 2. An order that, the Defendant give and make at their own costs, unqualified and unconditional apology for their defamatory allegations they made against the Plaintiff.**
- 3. An order that the Defendants to pay the Plaintiff the sum of TShs. 156,591,000/= as Special Damages.**

- 4. An order that, the Defendants to pay the Plaintiff general and aggravated damages to be assessed by this Honourable Court.**
- 5. Declaration that, the Defendants conduct of maliciously reporting to the police that the Plaintiff is criminal involving in raping and kidnapping children while knowing the same to be false, is wrongful, oppressive and unlawful hence calls for condemnation for payment of punitive and exemplary damages to be assessed by this Court.**
- 6. That, the Defendant pays interest on decretal amount at the court rate of 12% per annum from the date of judgment till when the decretal is satisfied in full.**
- 7. The Defendants been ordered to pay the cost of the suit and any relief this Court deem fit and proper to award.**

Written Statement of Defence resisting all the Plaintiff prayers, is in place, in which this Court ordered for hearing following satisfaction that, all the stages had been complied to, with mediation to have failed. Parties enjoyed legal representation to wit; **Fikiri Liganga** and, **Mashaka Mfala** for Plaintiff and, Defendants, respectively. To be able to understand the gist of this suit, it all commenced in **2013**, when the Plaintiff allegedly was in intimate relationship with the defendants daughter one **Dinaben Jethal Patel**. That, in course of their relationship, sometimes in **2013** to be precise on the **17th to 19th of August, 2013**, the two went to spend their days in **Morogoro** but found accused of kidnapping and raping the daughter.

The Plaintiff's side, summoned the Plaintiff alone as its key witness recognized as **PW1 Premji Dewji Patel** who gave his evidence on affirmation, narrating the entire episode while stressing that, the allegations for kidnaping and rape are malicious, hence defaming him in the temple thus tarnishing his repute within and outside the Hindu community. The relationship which was blessed by his wife went far of opening a joint account with Exim Bank, had no hi-cups at all, considering the girl an adult and free to decide what suits her future. That, on his return from Morogoro he was arrested kept in custody for one night facing restrictive conditions not to leave the country to UK, leading to confiscation of his passport for eight months. All these injured him as he demands for apology, special and general damages, let alone costs for this suit. On cross examination, he stated **Anil, Dinaben's** brother, is the one who escorted police for arrest at his residence, while he witnessed the presence of the defendant at Police on that day. He even stressed to have plans to marry **Dinaben** as a second wife observing no complaints from his wife. The utterances, he states, were loudly done in the Temple by **Dinaben's** mother in the crowd of family and friends. No further witnesses were summoned to adduce or corroborate the **PW1's** evidence and the defence took its turn summoning **DW1**, one **Jethalal Patel**, 53 years, a Hindu and biological father of the daughter, **Dinaben**. It is his further testimony that, on those fateful days, **17th – 19th of 2013**, that, they realized absence of their daughter after being sent to buy milk in a nearby shop from home. The matter was reported at **Msimbazi Police** after receiving a call from the Plaintiff's brother that, they girl is safe in

Morogoro with the Plaintiff. **Anil, Dinaben's** brother and, the caller drove to **Morogoro** only to find the two in a hotel. **Anil** then called his sister who together fetched a bus back to Dar es Salaam, leaving the two brothers behind. Upon their arrival, the family went together at **Police Msimbazi** where she recorded a statement of rape by the Plaintiff. The Plaintiff used to be his boss at his company called **Varsan Dewji Ramji & Company Ltd.** but, no longer is, as a result of this dispute. He currently works with **Esteem Construction Company Ltd.** He finds the allegations baseless and, neither utterance nor suffering has been occasioned to the Plaintiff as alleged to sustain his claim. Then emerged **DW2, Anil Patel**, twenty seven years old, (27) Hindu, stating to be **DW1's son** and a brother to **Dinaben**. He is the one who received a call from the Plaintiff himself confirming to be with his sister in Morogoro, information which he shared with his parents. They went to fetch her and returned with her in a bus leaving the Plaintiff behind. **Dinaben** recorded a statement at Police over the rape by the Plaintiff. He too acknowledged the embarrassment the family experienced considering that, shameful adultery act by an old man to a young girl. None of the family spoke of it following this. **DW3, Ratan Jethalal Patel, forty nine (49) years**, a Hindu by religion and a mother to both **DW3** and, **Dinaben** narrated how her daughter disappeared after she sent her to collect milk at a nearby grocery store. Failure to turn up raised alarm as the matter ended up being reported to **Police at Msimbazi**. Being limited in both Swahili and English nothing credible was gathered other than the point that her daughter was abducted and raped by her husband boss, the Plaintiff himself. This brought the

hearing to an end in which both Counsel prayed to file final closing submissions and record reflects so.

Before I commence with my findings I find it worth to capture what issues framed that will guide and lead into judgment.

The following are the said issues that were framed on the **5th of September 2017**.

- 1) Whether the Defendants uttered any words against the Plaintiff as alleged?.**
- 2) If the answer to issue No.1 is in affirmative, whether those utterances were defamatory to the Plaintiff?**
- 3) Whether the Plaintiff was detained at Mnazi Mmoja Police Station?**
- 4) If the answer to issue No. 3 is affirmative, whether that detention was a result of reports made by the Defendants?**
- 5) Whether the detention was lawful?**
- 6) Whether the Plaintiff suffered any damages as a result of the defamation?**
- 7) To what Reliefs are the Parties entitled?**

Worth noting here is that, no exhibits whatsoever were tendered and, admitted in course of hearing this suit by both, which brings the matter solely to depend on oral evidence. As such and, in answering the first issue, as to whether the defamatory words were uttered by the Defendants as alleged by the Plaintiff, I will draw my line of argument from defining what defamatory statement, means as observed by **Lord Atkin** in the case

of **Sim vs. Stretch (1936)**, to mean; **"A statement which tends to lower the claimant in the estimation of right thinking members of society generally, and in particular to cause him to be regarded with feelings of hatred, contempt, ridicule, fear and disesteem"**. This is also seen from the book authored by **Vivienne Harpwood, 'Principles of Tort Law', Fourth Edition, Cavendish Publishing Limited, London pg. 372**), which defines simple vulgar abuse, not defamatory, while other statements which are humorous or satire, could be actionable. Statements which reflect on a person's moral character or professional competence clearly will be defamatory. What is defamatory in one age will not necessarily be so in another. Borrowing from the above, in our jurisdiction the definition of defamation can be traced as stated in the case of **Hamisi vs. Akilimali (1971) HCD 111**, which many decisions have adopted that; **"Defamation is communicating to the mind of another, matters which are untrue and likely in the natural cause of things substantially to disparage the reputation of the third person"**.

Five (5) tests have been formulated to prove defamation, first, such statement must be defamatory; second, the defamatory statement must refer to the Plaintiff. Thirdly, defamatory statement must be published to a third party and fourthly, the victim must be damaged by the statement, which statement must cause serious harm to the claimant. The allegations serious as one could think of were supposed to be proved by the claimant which neither in his oral nor documentary or corroborated had been so. Would have been different if this was the case. Neither is the audience

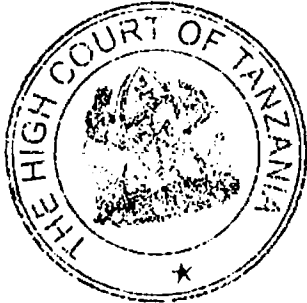
from the Temple as alleged or else. In such absence, the vacuum finds the first and the second issues to be baseless as the test were not met. Similarly, is the illegal arrest and detention that the Plaintiff claims to have been effected on him. In absence of proof again, the claim leaves much to be desired. Expectedly one would expect at least a documentary proof or Police officer to testify on this but none. Not even case file rather Police Report in that regard. This too, renders the remaining issues under third, fourth and fifth issue to be baseless. This is notwithstanding the fact that, all sides conceded to the fact that, the matter attracted a Police case.


From the above neither specific nor general damages is justified as the main contention for Defamation goes unattended. The law is very clear that, special damages must specifically pleaded and be proved, while general damages are discretionary by the Court. A glance from the Plaintiff has **annexture A1**, purportedly a resignation letter following this episode. However nothing is available to link this with this claim. Worse even nothing in the testimony was cogent towards this to prove suffering and injuries as a result thereof. This brings the sixth and seventh issue to rest, them being baseless too.

With all due respect to the Plaintiff and his Counsel the suit finds no merit before this Court for awarding the Reliefs as defamation in its meaning has been quite wanting. It reminds us of the cardinal principles of law as provided by **sections 110 & 111 of the Evidence Act Cap. 6** that of

one who alleges must prove. The Plaintiff has failed on that. I therefore dismiss this suit with costs.

I order.



 Recoverable Signature

X *J. A. De Mello*

Signed by: J.A. DE-MELLO

JUDGE

22nd September, 2020