

IN THE HIGH COURT OF TANZANIA

(IN THE DISTRICT REGISTRY)

AT MWANZA

HC. CIVIL APPEAL NO.43 OF 2019

*(Arising from Civil case No. 2 of 2018. Originated from Nyamagana
District Court)*

1. GODFREY BENEDICTO }
2. SEME BENEDICTO } APPELLANTS

VERSUS

DOROTHEA BENEDICTO RESPONDENT

JUDGMENT

Date of last Order: 16.03.2020

Date of Judgment: 19.03.2020

A.Z.MGEYEKWA, J

The Appellants GODFREY BENEDICTO and SEME BENEDICTO are appealing against the decision of the District Court of Nyamagana vide the Civil Case No. 2 of 2018. After hearing the parties and their witnesses, the trial court decided in favour of the respondent. The appellants could not see

justice in the decision hence aggrieved and appealed to this court against the whole decision basing on the following grounds.

1. *That the trial court erred in law and fact for failure to analyses evidence properly which proved that the respondent defamed the appellants.*
2. *That, the trial Magistrate erred in law and facts for saying the letter was for reconciliation.*

In prosecuting this appeal, the appellants afforded the service of Mr. John, learned advocate, and Mr. Mwenyuni, learned advocate represented the Respondent.

Commencing his submission, the learned counsel for the appellants supported the appeal. On the first ground, he submitted that the trial court failed to analyse the evidence on record thus it wrongly decided that the respondent defamed the appellants. He claimed that the three framed issues were not well analysed as to whether the words were defamatory. The learned counsel for the appellant alleges that the respondent wrote a letter that reads; *"wamemwambia watamkata mapanga Agness Peter"*. He valiantly contended that the said letter bears defamatory words. Mr. John fortified his submission by referring this court to page 3 of the said letter which reads; *'bang wavute lakini sio kuvutia watu'*.

He claimed that the letter was addressed to Benedict Chanya and Elizabeth Chanya but the same was channeled through the Chairman of the Local Government and it was read by many people as confirmed by PW1. To support his submission he referred this court to page 8 of the typed trial court proceedings. He claimed that the matter was known to all local government officials and the public at large. He asserts that PW1 evidence was corroborated by Joseph Andrew (PW2) and PW3. PW1 claimed that the letter stated that the appellants were smoking weed (*bangi*) and they threatened to harm the respondent. He went on to state that, the respondent did not deny the allegations and that the appellants wrote a letter dated 09.10.2017 to the respondent to clear their reputation.

The learned counsel for the appellants asserts that the defamatory letter was circulated in the office and to the public, showing that the appellants wanted to assault the respondent with a bush knife and alleging that the appellants were smoking weed (*bangi*). He spiritedly submitted that the respondent failed to prove to the contrary if the said words were not defamatory and therefore the appellant's reputations were lowered.

With respect to the 2nd ground of appeal, the learned counsel submitted that the court erred in law and fact in determining that the letter aimed to reconcile the parties while there was no any request for conciliation rather

the letter was copied to the Government authority. He went on arguing that, the appellants have a good reputation and they had never smoked weed. Insisting, the learned counsel for the appellant contended that the words were defamatory and the third party was aware that the appellants were defamed.

On the strength of the above submission, the learned counsel for the appellant beckoned upon this court to allow the appeal.

Mr. Mwenyuni, the learned counsel for the respondent vehemently resisted the application. Submitting on the first ground, he contended stated that the letter was addressed to Benedicto Mcheya and Elizabeth Chenya through the Village Executive Officer who stamped the same and deliver it to the addressee.

He avers that, in order for defamation to stand, one must have opened the letter and reach the public. He contended that the letter did not reach the public. He went on to state that, the public was aware of the content of the letter after it was received by the addressees and therefore the respondent did not defame the appellants.

With respect to the second ground, he asserts that the purpose of the letter was to find a solution through the appellant's parents. The respondent

wanted to warn the appellants and restrain them to continue disturbing the administrator of the estate (respondent). The learned counsel for the respondent stressed that the appellant and respondents are relatives therefore they did not intend to cause any dispute.

In his rejoinder, the learned counsel for the appellants insisted that the information was channeled through the local government officials and therefore it was exposed to the public. He contended that the employees who read the letter and publication were affected. He further contended that the letter was not in the envelope as it was stamped before delivering it to the addressee. He further argued that the letter was meant to solve the matter which was not stated in the said letter. Insisting, he claimed that the respondent did not justify the wording appearing in the said letter thus appellant's reputation was injured. The respondent's Advocate urged this court to allow the appeal.

I have considered the submissions for and against the appeal, and I now proceed to make my determination thereof. Before I determine the merits or otherwise of this appeal, I find it apposite to go through the trial court records before the determination of the grounds of appeal as advanced by the appellants, thus, I find it fit to venture on the tort of defamation, quoting with

complained of are natural and ordinary meaning capable of being held to be defamatory, no innuendo is necessary and what the ordinary man will infer from those words is to be regarded as part of their natural and ordinary meaning and does not require the addition of an innuendo. In other words, the plaintiff must set out in his or her statement of claim the specific defamatory meaning which they conveyed to the person to whom they were published/ written.

In the instant case, it is my findings that the word '*bage*' by itself is not defamatory but the word '*bange*' weed. On page 22 of the typed trial court proceedings, DW1 explained the word '*bage*' to mean a traditional medicine smoked/sniffed in the nose to cure and she did not mean otherwise. It was the trial court Magistrate and PW3 assumption that DW1 meant *bange* and not *bage* as written in the letter. It was also the learned counsel for the appellants' submission that the respondent defamed the appellants by saying that they were smoking '*bange*' and went further referring this court to (Exh. P1) quoting the words he claimed to be defamatory as '*bage wavute lakini sio wavutie watu*' the words and allegations which are unfounded on Ehx P1..

In my considered view, the words '*bage wavute vizuri lakini sio kuwavutia watu*' are of veiled detraction whose offense is apparent only when the

authority from the **Black Law Dictionary 2004**, 8th Edition at page 1260, defamation is defined to mean:-

“The act of harming the reputation of another by making a false statement to a third person”.

In order to prove defamation, a plaintiff must show a false statement purporting to be fact, publication, or communication of that statement to a third person, fault amounting to negligence, and damages, or some harm caused to the person who is the subject of the statement.

On the first ground of appeal, the appellants alleged that the trial court erred in law and facts for failure to analyse evidence properly and to prove that the respondent defamed the appellants. Having gone through the lower court records and specifically, the letter dated 2nd February, 2017 (Exh. P1) that the appellants claimed to have been defamed, which is the foundation of this appeal reads:-

“bage wavute vizuri na sio kuwavutia watu”.

The above words were properly quoted on page 3 of the trial court judgment. In their submissions, the learned counsel for the appellants claims that the appellants were defamed by the respondent who claimed that the appellant was smoking *bange*. It is worth noting that where the words

context and circumstances are revealed to be properly pleaded, and must have an accompanying explanation. For the defamation to stand the words must be strictly interpreted and must be within their meaning. The tort of defamation in the book of Charles T. McCormick, Handbook on the Law of Damages, at 417 (1935) reads:-

*“ In cases of defamation, whether slander or libel, words **must be explained to reveal its defamatory meaning...**” [Emphasis added.]*

From the above excerpt, defamation can be actionable per se if it is explained to reveal its defamatory meaning. To this end, I find that it was not proper for the trial court to assume the word ‘bage’ to mean ‘bangi’. In fact, when the false statement is not proved to exist or rather be defamatory, the allegation against the respondent affords no legs to stand on and falls entirely. Thus, even the allegation that the letter was circulated to the members of the committee and the public and the claim that their reputation was lowered the same cannot hold water as long as defamation is not proved.

Additionally, the words “*wamemwambia watamkata mapanga Agnes Peter*” are not defamatory since the appellants reported the matter to the Police station. Therefore, I find no merit in this ground.

On the second ground of appeal, I see no reason to fault the holding of the trial court. I am in accord with the respondent's learned counsel that the letter was written in good faith by the respondent aiming to resolve the disputes that encompass the family of the appellants and the respondent over the estate to which is administered by the respondent.

For the aforesaid findings, I am satisfied that the two grounds of appeal dispose of the appeal. I find no merit in the entire appeal. Therefore, I proceed to dismiss the appeal without costs.

Order accordingly.

Dated at Mwanza this 19th March, 2020.




A.Z.MGEYEKWA

JUDGE

19.03.2020

Judgment delivered in 19th March, 2020 in the presence of Mr. Muhozi, learned counsel for the appellants and Mr. Malik, learned counsel for the respondent.


A.Z.MGEYEKWA

JUDGE

19.03.2020

Right to appeal full explained.