IN THE HIGH COURT OF TANZANIA

(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR-ES-SALAAM

CIVIL APPEAL NO. 115 OF 2019

(Originating from the Decision of the District Court of Kinondoni in Civil Case No. 3 of 2017)

MANAGING DIRECTOR TANZANIA ..... 1ST APPELLANT

NEW HABARI 2006 LTD.....2ND APPELLANT

FLINT GRAPHICS LTD.....3RD APPELLANT

VERSUS

FADHILI JOSIAH MANONGI..... RESPONDENT

JUDGMENT

Date of Last Order: 22/6/2021
Date of Judgment: 7/9/2021

MASABO, J.:-

The kernel of this appeal is an article published by the appellants in Mtanzania Newspaper dated 12th May 2014.The article whose title '*Mwakyembe akata mzizi wa fitina* TCAA", appeared in the headline for that day reported that Fadhili Josiah Manongi, reported among other things that, respondent herein who was then serving as the Managing Director of the Tanzania Civil Aviation Authority (TCAA) had refused to vacate office after the expiry of his tenure of office, hid the keys to his office, refused to refund the salary wrongly paid to him after the expiry of his tenure, wrote three letters requesting extension of tenure and

offered/paid a bribe of Tshs 50 million, to the then Permanent Secretary for the Ministry of Infrastructure Development, Mr. Omar Chambo, so as to help him retain his position. The article reported further that during the respond's tenure as General Director of TCAA there has been staff segregations within the authority and its revenue collection profile has dwindled such that there was no sufficient revenue to pay workers' monthly emoluments. It was also reported that, the respondent was subject to investigation by the Prevention and Combating of Corruption Bureau (PCCB) and the Public Service Commission.

Believing that the article contains defamatory imputations against him, the respondent sued the appellants in Civil Case No. 3 of 2017 before the District Court of Kinondoni where he obtained a judgment in his favour for payment of general damages at a tune of Tshs 200,000,000/=. Displeased, the appellants have come to this court armed with the following grounds of appeal:

1. the trial magistrate erred in law and in fact in holding that the article published by the defendants was defamatory and in so doing he failed to note that at the time of publication, the appellant believed that the words were true; the information was aimed at disseminating information to the public and that there was no proof of malice on the part of the defendants.
2. the trial magistrate erred in law and facts for failure to hold that the apology was made on behalf of all the appellants and for his failure to uphold the defence of fair comment and in doing so,

he failed to note that the statements published were for the interest of the public.

3. the trial magistrate erred in law and fact in failure to hold that the apology was made on behalf of and for all the Defendants and for not according proper weight to the apology in assessing the general damage. In doing so the trial magistrate failed to note that:
4. the trial magistrate erred in law and fact by awarding an excessive amount of general damage without assessing the evidence tendered in court.

Hearing of the appeal proceeded in writing. Both counsels had representation. The appellants were represented by Mr. Gasper Nyika, learned counsel from IMMA Advocates whereas the respondent was represented by Mr. W.M. Mnzava, learned counsel from Mnzava and Company advocates.

Submitting in support of the first ground of appeal, Mr. Nyika cited the case of **New York Times Co, v Sullivan** 376 U.S 254, and proceeded to argue that, libel of a public official requires proof of actual malice which is defined as knowledge that the statement was false or there was reckless disregard of its falsity. He submitted that, the standard of measuring reckless disregard of truth is a subjective one measured by whether the defendant entertained serious doubts as to the truth of the publication and not by whether a reasonably prudent person would have published the

statement or would have investigated before publishing it (**Communications v. Connaughton** 491 U.S. 657 (1989). He argued that, this standard was disregarded as the trial magistrate failed to note that at the time of publication the appellants believed the facts to be true based on information received from a whistle- blower at the TCAA and he ignored the fact that immediately after finding out that the published information was false the appellants issued an apology to the respondent in a manner similar to how the article was published and in so doing, they restored the respondent's damaged reputation.

Further, it was argued that, the respondent being a public official failed to prove malice on the part of the appellants. The allegations on malice are self-defeated as per the testimony of DW1, one Denis Steven Lwambano, before issuing the publication, he contacted the respondent through a phone call to confirm the truth of the information but he told him that he had also heard the same information. Thus, the appellants cannot be condemned of malice whereas they demonstrated a good will to balance the story.

He proceeded to argue that, the finding that the appellant acted recklessly is misguided as there was nothing on record to show that the appellants maliciously intended to defame the respondent. Mr, Nyika argued that the failure to investigate before publishing does not suffice as proof of recklessness even where a reasonably prudent person would have done so. Moreover, he contended that, for a statement to be defamatory it must

be one which injures the reputation of another by exposing him to hatred, contempt, or ridicule, or which tends to lower him in the esteem of right – thinking members of society (**Sim v. Strech** (1936) All ER 1237, 1240) a criterion which in the present case was missing because, had the respondent's reputation been lowered he would not have been appointed a Member of the Fair Competition Tribunal after the publication.

On the ground that the trial magistrate erred in law and fact by failure to uphold the defence of fair comment, Mr. Nyika cited ***Richard Kidner (2008), Casebook on Torts,*** *10th Edition, New York: University Press Inc from pages 347 -397* and argued that the defence of fair comment can be pleaded where the statement made was a fair comment on a matter of public interest and, for these defence to stand, there must be an honest belief that the information published is true, the comment is fair and not maliciously published. Thus, in the instant case, the defence of fair comment is valid as the publication was done with an honest belief that the facts published were true and no malice perpetuated its publication because at the time the article was published, the respondent was working as the Director General TCAA which is a public entity. The public was therefore entitled to know what was happening in the said public entity.

Regarding the 3rd ground that the trial magistrate erred in law and fact in failing to hold that the apology was made on behalf of and for all Defendants and in not considering the apology, it was argued that, the

reasoning that the apology was not certain as to who between the three appellants apologised, is misconceived because the apology comes from the same source hence it is natural that it was made on behalf and for all the appellants. The trial magistrate did not accord proper weight to the apology in assessing general damages and in so doing awarded a quantum of TZS. 200,000,000 as general damages.

On the fourth ground, it was argued that a sum of TZS 200,000,000/= awarded by the court as general damages for distress, anguish and embarrassment caused to the plaintiff was excessive. Mr. Nyika drew the court's attention to the general principles applicable in assessing general damages in defamation cases as articulated in **Professor Ibrahim H. Lipumba v. Zuberi Juma Mzee,** Civil Appeal No. 92 of 1998 [2004] T.L.R 381 where the Court of Appeal held that the most important factor in assessing the appropriate damages for injury to reputation is the gravity of the libel; the more closely it touches the plaintiff's personal integrity; professional reputation, honour, courage, loyalty and the core attributes of his personality, the extent of publication and whether the defendant asserts the truth of the libel and refuses any retraction or apology. He argued further that the court materially erred as it did not take into account the evidence of DW1 who testified that the statement published was not aimed at exposing the respondent's professional reputation, personal integrity and honour and that, his reputation was not lowered thereafter as there is record that he was appointed as the commissioner for the Fair Competition Commission.

Lastly, he argued that the award of Tshs 200,000,000/= was excessive considering that the defendant agreed to the falsity of the publication, offered an pology and the extent of the circulation of Mtanzania News Paper was unknown. Relying on ***Professor Ibrahim H. Lipumba Case (supra)***, he argued that since there was no evidence on record as to the extent circulation of the Mtanzania Newspaper the award was excessive and materially erroneous.

For the respondent, Mr. W.M. Mnzava from Mnzava & Company Advocates, argued that, the publication was defamatory. The allegations that the respondent was a source of problems within TCAA, was in subordinating the superiors by refusing to vacate office, refused to refund the salary wrongly paid to him, hid office keys, wrote three letters requesting extension of tenure, was a poor manager, created segregations within TCCA, offered and paid a bribe of Tshs 50 million and was under investigation by the PCCB were neither based on true facts nor substantive truth. Contrary to the Provisions of Section 35(1) and 37 of the Medial Services Act, No. 12 of 2016, none of these facts was proved.

Since the defamatory imputations were not proved to be true, there is nothing to fault the trial court. He added that the appellants had serious doubts as to the truth of the imputations and had no basis to publish the article but proceeded to publish it notwithstanding. Under the premise, the publication was a reckless disregard of truth and clear evidence of malice

(**New York Times v Sullivan** 376 US 254(1964) and contrary to the Article 6.1 and 1.14 of the Code of Ethics of Media Professionals, 2016.

On the second ground of appeal, it was submitted that the defence of fair comment can only stand if it based on true facts. In the instant case, it cannot stand because the content was not true but they proceeded to publish it recklessly contrary to the principle in **Valentine M. Eyakuze v The Editor Sunday News & 2 others** (supra).

Regarding the apology, Mr. Mnzava argued that the apology was only made by the 1st Defendant on 13/10/2014 who after he was s served with a demand for apology on 17/4/2015. This apology was published well before the 2nd and 3rd defendants were served with demands of apology in December 2014 and 17/4/2017, respectively. These two appellants did not apologise at all whereas the 1st appellant offered a mere partial apology. The trial court cannot be condemned as it took the apology into account and for that reason it awarded only 10% of the total amount claimed.

Regarding the quantum of damages, Mr. Mnzava ardently argued that the same is not excessive owing to the following facts: the partial apology by the 1st appellant was issued 5 months after the publication and throughout this time the respondent was suffering; the partial apology was issued after the intervention of the Media Council of Tanzania (MCT); while publishing the article the appellant knew its falsity; Mtanzania newspaper

is widely circulated in Tanzania mainland and Zanzibar; the partial apology by the 1st appellant did not abide to the rules of ethics for media profession; and lastly, it considered that the plaintiff has earned himself a distinguished rank in public service, honour and status. Thus, the principle in ***Professor Ibrahim H. Lipumba Case (supra)*** was fully observed. On this basis, the respondent prayed that the appeal be dismissed with costs. This marked the end of submissions.

Upon consideration of the submission for and against the appeal and a thorough examination of the trial court record placed before me, I am now ready to determine the four grounds marshaled by the appellant. As the first ground is premised on the nature of the imputations ie. *whether or not they are defamatory*, I find it proper to start with the definition of term 'defamation'. J.A Jolowicz and T Ellis Lewis, **Winfield on Tort** 8th Edition p 254 defines defamation in the following terms:

> "Defamation is the publication of a statement which tends to lower a person in the estimation of right thinking members of society generally, or which tends to make them shun or avoid that person."

Similarly, The **Halsbury's Laws of England** Vol. 28 4th edition para 10 p7 defines a defamatory statement as:

> "a statement which tends to lower a person in the estimation of right thinking members of society generally or to cause him to be shunned or avoided or to expose him to hatred, contempt or ridicule or to

> convey an imputation on him disparaging or injurious to him in his office, profession, calling, trade or business.”

Emulating the two definitions above, section 35 (1) of the Media Services Act No. 12 of 2016, defines defamation as:

> “any matter which, if published, is likely to injure the reputation of any person by exposing him to hatred, contempt or ridicule, or likely to damage any person in his profession or trade by an injury to his reputation, is a defamatory matter.”

In a defamatory suit, the court’s main concern is not what the defendant thinks but whether the alleged defamatory imputation injures the reputation of the person to whom it refers or lowers his estimation in the right thinking members of society and is capable of exposing him to hatred, contempt or ridicule. The plaintiff would succeed if he establishes that the statement is defamatory, it refers to him, it was published by the defendant, and lastly, it is false (see **Kudwoli vs Eureka Educational and Training Consultant & 2 Others** Civil case 126 & 135 of 1990 and **Wycliffe A. Swanya v Toyota East Africa Ltd & another** [2009] eKLR) In the case at hand, the parties are at common regarding to the second, third and fourth criteria. Their main contestation in on the first criterion and on that basis, the appellants have entreated this court to hold that the article was not defamatory and if it was, it did not lower the reputation of the respondent, who was appointed a member of the Fair Competition Tribunal. It was argued that, had the publication injured his reputation, he

would not have been appointed to the said post. On the other hand, the respondent has maintained that the imputations are defamatory.

I will, respectfully, outright reject the appellant's argument because, much as the respondent's appointment to a public post after the publication is relevant in assessment of the actual damages occasioned to the respondent, the appointment cannot be employed as a cure for a publication which is otherwise defamatory. As per the definitions above and the case **Sim v. Strech** (1936) All ER 1237 cited by Mr. Nyika, the subsequent appointment to a public office is not a criterion upon which to decide whether the publication is defamatory or not. It suffices if the publication injures the reputation of another by exposing him to hatred, contempt, or ridicule, or tends to lower him in the esteem of right thinking members of society. All what the court is to answer is "(1) *would the imputation tend to 'lower the plaintiff in the estimation of right-thinking members of society generally*? (2) *would the imputation tend to cause others to shun or avoid the claimant*? (3) *would the words tend to expose the claimant to 'hatred' contempt or ridicule*?" (see **Gatley on Libel and Slander** 10th Edition at page 8)

The evidence on record entertains affirmative answers to all the three questions. As correctly argued by the respondent's counsel, the publication which was admitted in court as **exhibit PE3,** imputes the respondent as a poor manager as he failed to lead the TCAA to the expected standards. The dwindling of revenue collection to the extent of failure to pay workers'

emoluments and segregation of the staff within the institution reflects negatively on the respondent as they are certainly not qualities of a good leader/manager. Similarly, allegations as to corruptions and hiding of keys have a serious damage to the respondent's reputation. I entirely subscribe to the respondent's counsel submission that such allegations portray the respondent as a corrupt and unscrupulous person who would do anything, such as hiding keys to the office and bribing his superiors so as to retain a public office even after the expiry of his tenure.

The potential harm of such imputations on the individual's reputation cannot be underrated. Whether considered in isolation or in totality, the imputations above can potentially lower the respondent in the estimation of right-thinking members of society generally; cause others to shun or avoid him and expose him to ridicule. I say so mindful of the fact that, some of the imputations, such corruption are not only morally wrong but also impute delinquency on the part of the respondent. In our jurisdiction, corruption is regarded a serious offence to which there is not only a specific law but a separate government entity specifically mandated to combat it. Portraying a public servant of the rank of director as a corrupt person is certainly defamatory. To that end, I find no reason to fault the trial court's finding that the publication is defamatory as it meets the threshold above.

I have noted the alternative submission fronted by Mr. Nyika that, even if the publication may by itself appear to be defamatory, as I have just hold,

in the instant case, it cannot be held so as the proof of actual malice which is required in defamations involving public official was missing (**New York Times Co, v Sullivan** (supra). While citing **Communications v. Connaughton** (supra), he has ardently argued that, in establishing malice, a subjective test is applied in determining whether there was a *reckless disregard* for the truth and of particular interest in this test is *whether the defendant entertained serious doubts as to the truth of the publication* and not whether a reasonably prudent person would have published the statement or would have investigated before publishing. On the respondent's side, it has been argued that, the appellant had a duty to comply with the provisions of the section 37 of the Media Services Act, No 12 of 2016 and the Code of Ethics Media Professionals, 2016.

Having considered both arguments, I am fortified that the principles stated in the persuasive authorities cited by Mr. Nyika are relevant. However, the application of the subjective test developed in **York Times Co, v Sullivan** (supra) should not proceed oblivious of the need to strike a fair balance between public interest and protection of reputation. Whereas newspapers and media houses deserve legal protection when discharging their important function of reporting matters of public importance, the protection of reputation which is an integral and important part of the dignity of the individual, cannot be underrated. As stated by Lord Nicholls in **Reynolds v Times Newspapers Ltd and Others** (supra), reputation of an individual including that of public figures, is very crucial and fundamental not only to the individual's wellbeing but to the society at

large as it forms the basis of many decisions such as the choice of whom to employ or work for, whom to promote, whom to do business with. Thus, it cannot be let to be besmirched by unfounded allegations in a newspaper. Whereas the balancing of these two competing interests is certainly complex and delicate, there appear to be consensus that, journalists should adhere to the principles of responsible journalism (see **Reynolds v Times Newspapers Ltd and Others** (supa); **Bonnick *v* *Morris*** [2003] 1 AC 300, and **Jameel & Another v Wall Street Journal Europe** [2006] UKHL 44; [2007] 1 AC 359; [2006] 3 WLR 642; [2006] 4 All ER 1279). Lord Nicholls had this to say in **Reynolds v Times Newspapers Ltd and Others** (supa):

> Responsible journalism is the point at which a fair balance is held between freedom of expression on matters of public concern and the reputations of individuals. Maintenance of this standard is in the public interest and in the interests of those whose reputations are involved. It can be regarded as the price journalists pay in return for the privilege."

Adherence to these standards is of outmost importance. As held in **Jameel & Another v Wall Street Journal Europe** (supra), *"there is no duty to publish lies and the public have no interest to read material which the publisher has not taken reasonable steps to verify as no public interest is served by publishing or communicating misinformation".* Similarly in our jurisdiction, section 37(a) of the Medial Services Act underscores that, a

defamatory statement can only benefit from the protection of media if is it is true and of public interest.

That said, I will sum up that, when determining whether actual malice has been established, the principles in **New York Times Co, v Sullivan** (supra) and **Communications v. Connaughton** (supra) should not be solely applied to the exclusion of other relevant factors. It is crucial in my view for the court to consider some other relevant factors, and this may include, the **Reynolds test** which provides an open list of some pointers which courts may apply in determining whether the publisher adhered to the principles of responsible journalism. The pointers entail among others, measuring the seriousness of the allegation and its potential harm to the individual and the society as *the more serious the charge, the more the public is misinformed and the more the individual harmed, if the allegation is not true (***Reynolds v Times Newspapers Ltd and Others** (supa):

Thus guided, I find no justification to fault the trial court as the materials on record demonstrates vividly the failure by the appellants to adhere to the fundamental principles of responsible journalism. The appelants knew very well the seriousness of the imputation but ignored the need to verify the truth even after respondent told DW1 that the information was false. DW1 casually told the court that, after he had reached out the respondent, the respondent told him to look for Dr. Mwakyembe who was then the Minister responsible for Infrastructure Development. He managed to contact Dr. Mwakyembe through a phone call and he answered briefly that

"the position has been taken by someone else" Having received this brief answer, he proceeded to publish the article.

Under the premises, the appelants can hardly escape the blame as the brief answer from the minister did not confirm the fleet of the defamatory imputations published against the respondent. The circumstances of the case suggest that the appellants entertained doubts as to the truth of the information but in total disregard of the truth and the potential harm of the publication, they proceeded to publish the article. In this view, I not help but uphold the trial court's finding as to the existence of malice derived from the appelants reckless disregard of the truth of the publication

The next point for determination is the second ground of appeal in which the appellant has lamented that the trial magistrate erred in law and facts as he failed to note that the statements published were fair comment and for the interest of the public. This ground will not detain me as I have exhaustively dealt with the issue of public interest. As for the defence of fair comment, the position of the law is as clearly stated in **Valentine M Eyakuze v Editor Sunday News and Others** (supra), that for the defence of fair comment to stand, the defendant must not only prove that the publication is of public interest. He must prove that it is true. As a rule, the defence of fair comment must be confined to comments as opposed to mere allegations of fact. Where, the imputation is not true, the defence

of fair comment can not stand. As observed by **Peter Carter – Rucks** *Treatise on Libel and Slander*:

> "For the defence of fair comment to succeed it must be proved that the subject matter of the comment is a matter of legitimate public interest; that the facts upon which the comment is based are true and that the comment is fair in the sense that it is relevant to the facts and in the sense that it is expressed of the honest opinion of the writer. A write is not entitled to overstep those limits and impute sordid motives not warranted by the facts."

Therefore, since none of the imputations in the present case was proved to be true, this ground of appeal has lost the limbs upon which to stand as the defence of fair comment cannot be used to shield unsubstantiated allegations of facts. The argument by Mr. Nyika that the respondent was still serving as the Director General of Tanzania Civil Aviation Authority (TCAA) at the material time of publication is self-defeating as it does not prove any of the defamatory imputations.

Regarding the third ground of appeal, the appellants have complained that, the trial magistrate erred in law and fact in failure to hold that the apology was made for and on behalf of all the Defendants and for not according proper weight to the apology in assessing the general damage. Much as I agree with Mr. Mnzava that the apology was rendered before the respondent issued the demand for apology from the 2nd and 3rd appellant, I do not hold the view that each of the appellants ought to have

issued an apology. To the contrary, I find logic in the argument fronted by Mr. Nyika that, since the imputations were published in one media outlet and the apology was issued in the same outlet, the apology rendered by the first appellant sufficiently covered the other two defendants. Publication of a subsequent apology would have been superfluous. The third ground of appeal succeeds.

Regarding the last ground of appeal, it is a cardinal principle that, since the assessment of general damages falls under the purview of judicial discretion, the figure arrived at by the trial court is not disturbed on appeal unless it is based on erroneous principle or it is so low or so excessive that it must have been based on some incorrect reasoning **(see Obongo and another v. Municipal Council of Kisutu, (**1971) EA 91). The trial court awarded general damages of Tsh 200,000,000/= which is disputed by the applicants. The, question to be answered therefore, is whether this amount was awarded based on erroneous principle, or was it too excessive that it must have been based on some incorrect reasoning?

As correctly submitted by the parties, in defamation trials, the principle for award of general damages is as articulated by the Court of Appeal of Tanzania in Professor **Ibrahim H. Lipumba v. Zuberi Juma Mzee,** Civil Appeal No. 92 of 1998 [2004] T.L.R 381 where it was held that:

> "The successful plaintiff in a defamation action is entitled to recover as general compensatory damages, such sum as will compensate him for the damage to his reputation; vindicate for the wrong he has suffered. That sum must

compensate him for the damage of his reputation; vindicate his good name; and take account of the distress; hurt and humiliation which the defamatory publication has caused. **In assessing the appropriate damages for injury to reputation the most important factor is the gravity of the libel; the more closely it touches the plaintiff's personal integrity, professional reputation, honour, courage, loyalty and the core attributes of his personality, the more serious it is likely to be. The extent of publication is also very relevant**.; a libel published to millions has a greater potential to cause damage than a libel published to handful of people. A successful litigant may properly look to an award of damages to vindicate his reputation; but **the significance of this is much greater in a case where the defendant asserts the truth of the libel and refuses any retraction or apology than in a case where the defendant acknowledges the falsity of what was published and publicly expresses regret that the libelous publication took place**". (Emphasis supplied).

The appellants' argument is that the court ignored the fact that the injury occasioned to the respondent's reputation was not severe as even after the publication he was appointed to a public office. Thus, in the appellants' view, no injury was done to his professional reputation and personal integrity. Second, there was no proof of circulation of the newspaper. On the other hand, it was argued for the respondent that the trial court adhered to the above principles and made a correct assessment as the partial apology by the 1st appellant was issued 5 months after the publication and throughout this time the respondent was suffering; the

partial apology was issued after the intervention of the Media Council of Tanzania; at the time of publication the appellants knew the falsity of the publication, and lastly, Mtanzania newspaper is widely circulated in Tanzania mainland and Zanzibar

Having weighed these arguments against the evidence on record, I have observed that the trial court adhered to the principles above. Not only did it cite the authority above but, before arriving at the quantum, it considered the respondent's professional reputation, the seriousness of the imputations, the nature and size of the apology. Regarding the apology, I would add that, although it does not entirely cure the damage wrought by defamatory imputations, it has been held to have a potential for mitigating the damage done as it provides the society with correct information about the. When honestly made, apology signifies good faith and regret on the part of the defendant hence a good mitigation of the recoverable damages.

The extent of mitigation tends differ depending on the circumstances of each case. A coerced apology would certainly benefit less compared to a voluntarily made apology. Similarly, an appearing substantially as prominent as the defamatory statement would certainly not compare with an apology placed at an obscure part of the newspaper. It also matters whether the retraction represent an unequivocal withdrawal of the defamatory imputation and whether it was timely made.

As the impugned judgment would show, the trial court did not ignore the apology as lamented by the appellants. It considered the same and correctly observed that the apology took five months to be issued and it only came after the intervention of the Media Council of Tanzania a finding which is credibly supported by evidence. The testimony of DW1 shows clearly that the apology was a coerced one. The appellants reluctantly published the apology after being ordered by MCT, otherwise, they would not have issued the apology. As it could be seen in the hand written proceedings availed to me, DW1 told the court that *"it was the decision of the MCT. MCT saw the problem in that news. Not us".* When the evidence is considered as a whole, it reveals that, as correctly argued by the respondent's counsel, although the appellants published an apology, the same is merely a paper and pen apology with no iota of regret which could have mitigated the recoverable damages further. This notwithstanding, and as correctly observed by the trial magistrate, since the apology was published and circulated in same newspaper and those reading the apology might have believed to be a sincere apology, the apology was relevant in assessing the quantum.

In my further scrutiny, I have observed that, the court did not take into account the fact that the respondent was appointed to a public office after the publication. Although no concrete evidence was rendered by the appellants in proof, the fact that it was not disputed by the respondent warrants consideration in assessing the actual damage occasioned to the respondent's reputation. Similarly relevant was the rate of circulation of

the newspaper to which no concrete evidence was rendered by the plaintiff. These two are sufficient justification upon which to interfere with the damages awarded by the trial court which I forthwith vary to Tshs 150,000,000/=.

In the upshot, the appeal is partially allowed to the extent above demonstrated. Sequel to the partial success, the parties shall share the costs by each of them bearing its respective costs.

DATED at DAR ES SALAAM this 7th day of September 2021.

21/09/2021

X _____

Signed by: J.L.MASABO

J.L. MASABO

JUDGE