

IN THE HIGH COURT OF TANZANIA

MWANZA DISTRICT REGISTRY

AT MWANZA

CIVIL CASE NO. 15 OF 2006

CELINA MICHAEL.....PLAINTIFF

versus

MTANZANIA NEWS PAPER LTD.....1ST DEFENDANT
MWANANCHI NEWS PAPER LTD.....2ND DEFENDANT
MWANASPOTI NEWS PAPER LTD.....3RD DEFENDANT
THE EDITOR ITV.....4TH DEFENDANT
THE EDITOR STAR TV.....5TH DEFENDANT
THE EDITOR CHANNEL TEN.....6TH DEFENDANT
RAI NEWS PAPER LTD.....7TH DEFENDANT

JUDGMENT

14th & 30th September, 2021

RUMANYIKA, J:.

In this case, perhaps the oldest in the court register, for reasons that would follow shortly, Celina Michael (the plaintiff) sued and claimed shs. 250,000,000/= (Two hundred thousand fifty) being general damages for the tort of libel from, as herein above shown the 1st, 2nd, 3rd, 4th, 5th 6th and 7th defendants) respectively.

The case having had been concluded by this court (my sister J.A. Demello, J), according to records on 28/05/2015 but the plaintiff appealed, and on 17/12/2020, only from the stage of framing issues the Court of Appeal of Tanzania quashed the proceedings and judgment therefore remitted the case file with a view to the court all over again framing the issues including one whether or not the plaintiff had consented to publication of her picture. Then case having had been so ordered and restored, herein between it was dismissed for want of prosecution but then vide order of the court once again the case took off on 24/08/2021 hence, as promised before the reasons for it being a back log case.

The issues, according to records this time around mutually proposed by the parties on 28/08/2021 and the court adopted and recorded them as such, they read thus:-

1. Whether the publication needed consent but the defendants published the plaintiff's photograph without her consent.
2. If the 1st issue is answered in the affirmative, whether the publication were defamatory.
3. Whether the plaintiff suffered damages and to what extent.

4. The reliefs that the parties were entitled to.

Messrs Hidaya Haruna and Dr. G. Mwaisondola learned counsel appeared for the plaintiff and the 2nd, 3rd, 4th, 5th, 6th and 7th defendants respectively much as, this time around also when the case was called on 24/08/2021 for hearing, though long ago duly served the first two defendants did not appear. The court dispensed with their appearance, hence, only with respect to the two, the ex-parte judgment.

Pw1 Celina Michael (49), according to her a petty business woman, mother of six and resident of Kangae area Ilemela district also she stated that as she was victim of HIV AIDS, without her consent the defendants published her picture such that she felt so much embarrassed and her reputation lowered therefore defamed by the defendants as consequently some members of the community including business customers laughed at her, they shun away from her, her children fell shy and they dropped out from schools (with respect to the 1st, 2nd, 3rd defendants certified copies of newspapers cuttings admitted as Exhibits "P1", "P2 and "P3") respectively. That she ran a local food restaurant at Buzuruga area, Ilemela district and earned shs. 60,000/= per day hence the claim for compensation.

Cross examined by Dr. G. Mwaiondola learned counsel, pw1 stated that in all cases the publication did not portray the message that she was at the time victim of HIV AIDS. She wound up her case.

Dw1 Steven Chua (5) editor of the 4th defendant stated that he did not know the plaintiff before. That with the lapse of time they could not have traced the respective video clip but the advertisement and newspaper (Exhibit "P2") it was in accordance with the law and policy duly vetted and aired as presented by customer such that if anything, say immorality or any kind of indecency customers were directed to suitably edit it first but in the present case and circumstances the 4th defendant needed no plaintiff's consent, but, if anything, the customers in this case MKUKUTA were to blame.

Cross examined by Ms. Hidayah Haruna learned counsel, Dw1 stated that the picture did not in any express terms concern the plaintiff nor was it intended to injure the apparently happily and healthy looking plaintiff of the day.

Dw2 Josephat Joseph Kesagelo (36) Legal and Administration Manager of the 2nd defendant stated that they ran Mwananchi, the Citizen

and Mwanaspoti local newspapers. That with regard to Exhibits P2 and P3 therefore in the case at hand, but subject to policy upon duly examined/vetted they published the picture as presented by MKUKUTA their customers much as they published only decent pictures and or advertisements.

Dw3 Doto Shashi (51) stated that he as chief editor of the 5th defendant he did not know the plaintiff before but in any case having had been presented to them by MKUKUTA their client, they found Exhibit "P2" fit for public consumption much as the respective video clips expired only after three months of production.

Cross examined by Ms. Hidaya Haruna learned counsel Dw3 further stated that how customers in this case MKUKUTA obtained the picture it was none of their business only decency of the pictures counted that if anything, it was incumbent upon the plaintiff also to sue MKUKUTA as authors of the picture/video clip. That is it.

With regard to the central issue no. 1 from the outset paused, at least looking at the evidence (Exhibits "p1", "p2" and "p3") the parties are one. That it was, be it expressly or by implication a caption-free picture of

the plaintiff. In other words, like in her testimony the plaintiff admitted and she cut the long story short that the producers and the publishers in this case the defendants did not on the picture(s) portray any message to show the public that at the time the plaintiff was victim of HIV AIDS. If anything, only the plaintiff disclosed it in her testimonies. The plaintiff may have had volunteered it therefore she made the public aware of the disease if at all was ever infected with therefore subjected herself to public opium, her reputation lowered, stigmatized and a cross section of community members shun a way yes, but, as said not only with all intents and purposes the pictures (Exhibits "P1", "P2" and "P3") were, by any stretch of the imagination defamatory, but also if anything only the plaintiff was responsible therefore no one of the 7th defendants were to blame. After all for reasons known to the plaintiff no single member of the alleged community appeared in court at least to tell how the publications, if anything had, in any way whatsoever influenced the alleged defamation.

I think categories of ingredients of defamation in unbroken chain of authorities set forth (case of **Sim v. Stretchy** (1936) 2 ALL E.R. 1237 were not closed. If I was to add, the injuries should neither be inflicted by one self nor built on mere suspicion/fears of the plaintiff.

For avoidance of doubts the respective/alleged caption on the picture reads:-

LENGO: VIFO VYA UZAZI VISIZIDI 265 100,000 ILIVYO SASA WANAWAKE 529
KWA ... KILA 100,000 HUFA RAIS, MBUNGE WAFANYA NINI? NA WEWE
MWANANCHI JE?

Meaning that through the publishers the producer (MKUKUTA) only call upon the executives, members of the parliament and individual Tanzanians to play a part in reducing both maternal and child mortality rates. In other words even by use of a microscopic eye the issue of the plaintiff being finger pointed HIV AIDS infected it was neither here nor there given the definition and standards (see the case of **Haji Associates Company Ltd & Another v. John Mlundwa** (1986) TLR 107 (Mwalusanya, J) as he then was, **Halsbury Laws of England 3rd Edition** and the rule in the case of **Odongkara v. Astle** (1970) E.A 374.

Now that I am of the settled view that with respect to the plaintiff's picture the publications were, by any stretch of the imagination in the minds of any reasonable man neither defamatory nor intended to defame one, with greatest respect the issues of damages and the plaintiff's consent to the publications they should not have raised (see the case of **Premji**

Dewji Patel v. Jethala Manji Pater & 2 Others, Civil case No. 52/2016 (HC) at DSM unreported. The 1st issue therefore is answered in the negative suffices it to dispose of the entire case.

Perhaps, quietly though the plaintiff was of the view that out of the picture published the defendants gained complimentary and some monetary profits but the latter denied her share yes, but that one constituted a different cause of action, new case and claims which I would, in this judgment inclined to speculate the evidence and assume proof.

When all is attempted and said, the devoid of merits suit is dismissed with costs. It is so ordered.

Right of appeal is explained.


S.M. RUMANYIKA
JUDGE
26/09/2021

The judgment delivered under my hand and seal of the court in chambers this 30/09/2021 in the absence of the parties.


S.M. RUMANYIKA
JUDGE
30/09/2021

