

IN THE HIGH COURT OF TANZANIA

DAR ES SALAAM REGISTRY

AT DAR ES SALAAM

CIVIL APPEAL NO. 231 OF 2019

DESDERY ISHENGOMA.....APPELLANT

VERSUS

SCHOLASTICA MSEKWA.....RESPONDENT

**[Appeal from the Judgment and decree of the District Court of Kinondoni
at Kinondoni.]**

(Hon. H.M. Hudi, RM.)

dated the 18th day of October, 2019

in

Civil Case No. 62 of 2018

RULING

9th June, 2020 & 27th October, 2021.

S.M. KULITA, J.

In the District Court of Kinondoni the Respondent partly successfully claimed for damages against the Appellant. This was following the allegations that; the Respondent's reputation was injured as a result of defamatory words uttered by the Appellant. As thus, the Appellant was ordered to pay the Respondent a compensation of Tshs. 3,000,000/=, costs of the suit and interest of the above sum at a court's rate of 7% per

annum from the date of the decree. Aggrieved with that decision, hence, this Appeal with the following grounds: -

- 1. That the learned trial Magistrate erred in law and fact when he failed to properly evaluate the evidence on record thereby arriving at a wrong decision that the respondent was defamed by the appellant.*
- 2. That the learned trial Magistrate erred in law and fact when he fatally disregarded the appellant's evidence that he was not at the Police station on the material date as a result arrived at a wrong decision that the respondent was defamed by the appellant.*
- 3. That the learned trial Magistrate erred in law and fact by giving a contradictory holding that respondent is entitled for general damages while he also held that the respondent failed to prove economic loss or damages caused by the defamation.*
- 4. That the Resident Magistrate entertained the matter without having jurisdiction.*

In this Appeal, Mr. Peter Leonard Kaozya, learned Advocate represented the Appellant, whereas Mr. Amon Rwiza, Advocate represented the Respondent. On 23th April, 2020, the matter was scheduled for hearing through written submissions. Both parties complied with.

Submitting in support of the appeal in respect of the first and second grounds of appeal Mr. Kaozya stated that, the Respondent failed to prove her case. He formed this opinion by reasoning that, the respondent failed to give concrete proof that the appellant was at the police station and defamed her on the material date. He went on insisting that, the only time and place where the respondent's witnesses recognized the appellant, was at the court, merely because he never missed all court sessions. According to Mr. Kaozya, in proving that the respondent met with the appellant at the Police Station on that date, the respondent was required to tender, firstly, a police summons calling him as a local government leader at the police station to solve the respondent's problem and secondly, a PF3 showing that she had something to do at the police station, on the material date.

On another move, Mr. Kaozya condemned the respondent's evidence to be contradictory in respect of the defamatory words and the

place where the event occurred. He was of the views that the same is fatal. He cited the case of **Murama Robinah v. Abigaba Tadeo, Civil Appeal No. 104 of 2014 High Court of Uganda** to bolster his assertion.

Mr. Kaozya was further of the views that, as the respondent's witnesses never testified on publication of the defamatory words and the respondent's reputation was lowered in the society, then he formed an opinion that the case was not proved.

Concerning the third ground of appeal, Mr. Kaozya condemned the trial magistrate to have issued contradictory holdings. He stated this to be in contravention of section 110(1), (2) and 111 of the Evidence Act, Cap 6 RE 2002. He was of further views that, as the respondent failed to prove economic loss caused by defamatory words, the trial magistrate was required to dismiss the suit but not to award damages in the form of a gift. The cases of **INSIGNIA LTD V. CMA GMG (T) LTD, COMMERCIAL CASE NO. 36 OF 2016, HIGH COURT – COMMERCIAL DIVISION AT DSM (unreported)** and **ASHRAF AKBER KHAN v. RAVJ GOVIND VARSAN, Civil Appeal No. 5 of 2017, CAT at Arusha (unreported)** were cited to concretize his assertion.

On the fourth ground of appeal, that the trial court had no jurisdiction to try this matter, Mr. Kaozya stated the reason being that, the respondent claimed for general damages to the tune of Tshs. 31,000,000/= . He said, that is not substantive claims. He cited the case of **M/S Tanzania China Friendship Textile Co. Ltd v. Our Lady of Usambara Sisters [2006] TLR 70** to buttress his position.

Again, he said that the Respondent ought to have filed her suit at the primary court. He formed this opinion while taking into consideration sections 18(1)(a)(iii) of the Magistrates Courts Act as amended by section 20 of the written laws (Misc. Amendment) Act 2016 and section 40(2)(b) of the Magistrates Courts Act and section 13 of the Civil Procedure Code Cap, 33 RE 2002. Again, he cited the case of **Denja John Dotto and 2 Others v. Umoja wa Wafanya Biashara Ndogondogo Maili Moja, Civil Appeal No. 157 of 2018, High Court DSM District Registry (unreported)** to bolster his assertion.

Lastly, Mr. Kaozya was of views that, since it is the substantive claim and not general damages that determines pecuniary jurisdiction of the court, then the respondent ought to have filed her suit in the primary court, that is the court of the lowest grade competent to try it.

In response, Mr. Rwiza submitted in rebuttal that, the respondent's evidence at the trial court was water tight in proving the defamation act by the appellant. He urged this court to refer to the record, stating the same speaks by itself. Substantiating the same, he submitted that, at the trial court the appellant neither produced documentary evidence to exhibit his traveling to Bukoba, nor did he produce any document proving on handling of the government office he works in, as he was a street chairman. He thus, distinguished the cited case of **MURAMA ROBINAH** (supra).

On the issue of proving economic suffering as a result of defamation, Mr. Rwiza stated that, the respondent is a human being entitled to protection of her dignity and that the severity of the defamatory words by the appellant in one way must have injured the respondent socially or economically. He added that, the amount claimed was reduced only because the respondent failed to provide documentary evidence proving that she had a business.

As for the cited cases of **INSIGNIA LTD** (supra) and **M/S Tanzania China friendship Textile Co. Ltd** (supra) Mr. Rwiza stated the same to have no connection with tort of defamation. He urged me to

follow course in the case of **ESAJI v. SOLANKI (1968) E.A 218** at page 224, that each case to be decided basing on its own merit.

On the issue of jurisdiction, Mr. Rwiza was of the views that, as the suit is on tort, then a primary court has no jurisdiction to entertain it. To cement his position, he cited the case of **Seleman Ramadhan v. Ally Juma [1984] TLR 49 (HC)** and **Peter Keasi v. The Editor, Mawio Newspaper and Another, Civil Case No. 145 of 2014, High Court of Tanzania at Dar es Salaam** (Unreported).

In rejoinder Mr. Kiozya submitted that, the appellant was denied of his right to tender documentary evidence to prove that on the material date, 10/4/2018 he was out of Dar es Salaam. He then reiterated his submission in chief.

I have earnestly passed through the entire records and taken into consideration the parties' submissions as well. In composing this judgment, I see it proper to start with appeal ground number four. This is because, the same questions jurisdiction of the trial court. The reason is obvious that, if the same succeeds, then, there will be no need of entertaining other grounds of appeal which require determination of the merits of the case.

From the records, it is not in dispute that the respondent claimed against the appellant for payment of Tshs. 31,000,000/= as general damages. Payment that arose due to defamatory words alleged to have been uttered by the appellant and directed towards the respondent. It thus follows that; the respondent's claim is founded on tortious act. As per the cited case of **M/S Tanzania China friendship Textile Co. Ltd** (supra), I agree with the appellant's submission that, it is the substantive claim or specific damages that determine jurisdiction of the court. On that note, the issue is whether the primary court has jurisdiction to entertain suits on a common law tort. The answer is not far from fetching, the case of **Seleman Ramadhan v. Ally Juma [1984] TLR 49 (HC)** has said it all, that primary courts have no jurisdiction to entertain suits on a common law tort. With that finding, I find the fourth ground of appeal unmeritorious and I thus dismiss the same.

Failing of this fourth ground of appeal that called for determination of jurisdiction of the trial court, paves way for determination of the remaining grounds of appeal, that seek to determine the merits of the case.

Concerning the first and second grounds of appeal, that call for proper evaluation of evidence and whether the appellant's evidence on

his whereabouts on the material date was disregarded, both will be determined together, as once opted by the appellant himself.

In paragraph 1 at page 4 of the typed judgment of the trial court, it is vivid that the trial magistrate considered the appellant's defense that, on the material date he was out of Dar es salaam and never met with the respondent. What can be seen is, the trial magistrate, after consideration of such evidence did not believe that version of story. In my view, if the trial magistrate intended to disregard such piece of evidence, he wouldn't have even recognized its presence. However, this being the first appellate court reevaluation of evidence and thus total consideration of all witnesses' testimonies is allowed. See, **Future Century Limited v. Tanesco, Civil Appeal No. 5 Of 2009, CAT at Dar es Salaam** (unreported).

Going through the typed proceedings at page 14, PW1 told the court that, at Mbezi Police Station where Police Officers and other people were there, the Appellant directed towards the Respondent words to wit, she is a prostitute, a drug dealer and that her pub is a hooligan keeping place "(genge la wahuni)". The same testimonies were repeated by the respondent's witnesses, PW2 at page 21, PW3 who is a police officer at page 25 and PW4 who is a police officer at page 29.

However, the Appellant herein, who is a street officer testified to have not known the respondent and that on the material date (10/4/2018), he was at Bukoba attending a ceremony. In his defence he stated to have started a journey on 08/4/2018 and came back to Dar es Salaam on 16/4/2018. However, while cross examined the Appellant testified that on 09/4/2018 he was at the street office. It follows therefore, one should wonder as to how is it possible that a person who travelled to Bukoba on 08/4/2018 and came back to Dar es Salaam on 16/4/2018 but the same person appeared at Dar es Salaam at the Street office on 09/4/2018. This is unbelievable and actually totally lowers the appellant's credibility as a witness. Moreover, the appellant has provided us with improbable situation, as to how come that a person whom you don't know each other and without any grudges can institute a suit against you. With this observation, I find it simple to side with the respondent, as the trial Magistrate did. On that note, I am convinced that the first and second grounds of appeal have failed.

Concerning the third ground of appeal as to whether the trial Magistrate gave contradictory holdings, I have the following to say; at page 4 of the trial court's judgment, it is vivid that the trial Magistrate held that as the respondent has failed to tender documentary evidence

exhibiting her owning businesses, then she failed to establish economic loss suffered as a result of defamation. He thus awarded compensation for only psychological and mental sufferings on the respondent.

What the appellant's Counsel suggests by this ground of appeal is, defamation can cause economic loss alone and that courts are not entitled to award on psychological and mental sufferings caused by defamation when it is alone proved. Paraphrasing the same, one can say, the appellant's Counsel suggests that, even when defamation is proved, economic loss must also be proved for the victim to be awarded damages. To my understanding, that line of thinking is false and misleading as well. As per the case of **PAULO JOHN v. JAPHERY MISONG'OMBE, CIVIL APPEAL No. 46 OF 2017, HIGH COURT DSM DISTRICT REGISTRY (UNREPORTED)**, the following was stated; -

"Damages for defamation is to provide compensation to injury caused to one's reputation, to vindicate one's good name and for the wrong suffered, in order to compensate for the distress, hurt and humiliation"

On that account, the award the trial Magistrate gave conform with the quoted paragraph above. I am thus fortified that, the trial Magistrate

properly awarded for psychological and mental suffering the respondent uncounted by being defamed.

All said and done, as all grounds of appeal have failed, I thus proceed to dismiss the appellant's appeal for being unmeritorious in its entirety. Appellant to bear costs of the case.

It is so ordered.



A handwritten signature in black ink, appearing to be "S.M. Kulita".

**S.M. KULITA
JUDGE
27/10/2021**

DATED at Dar es Salaam this 27th day of October, 2021.



A handwritten signature in black ink, appearing to be "S.M. Kulita".

**S.M. KULITA
JUDGE
27/10/2021**