

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
BUKOB A DISTRICT REGISTRY
AT BUKOBA**

CIVIL CASE NO. 04 OF 2021

LEONARD A. MUNGHOR.....PLAINTIFF

VERSUS

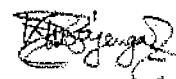
NOVART KAIJAGE ZEDEKIAH.....DEFENDANT

JUDGMENT

06th May & 13th May 2022

Kilekamajenga, J.

In this case, the defendant is the son of the plaintiff's sister and for that reason therefore, the plaintiff is the uncle of the defendant. The plaintiff filed the instant claim against the defendant claiming Tshs. 400,000,000/= being special damages and Tshs. 400,000,000/= being general damages suffered by the plaintiff as a result of false and malicious information against the plaintiff. It was alleged that, sometimes in December 2020, the defendant wrote a defamatory letter against the plaintiff and emailed it to the embassy of the United States of America in Dar es salaam. The same letter was later circulated to several departments in the United States of America where the plaintiff worked. As a result of that letter, the plaintiff was temporary suspended from employment leading to financial loss for hiring legal services in the United States of America and Tanzania to handle the dispute.



During the hearing of the case, the defendant did not appear despite service of the summons hence the court ordered the hearing to proceed in the absence of the defendant. In his oral testimony, the plaintiff (PW1) testified that his name is Leonard A. Munghor alias Albogast Leonard or Albogast Mungu Atosha or Leonard Mungu Atosha. He lived and worked in the United States of America as a Professor of mathematics and he also conducts research activities. He knew the defendant as his nephew.

He further testified that, the defendant defamed him leading to loss of employment. The defendant, while representing himself to be the head of the family, wrote a defamatory letter and sent it to the embassy of the United States of America in Tanzania by email. In the letter, the defendant alleged that, the plaintiff cut down bananas, destroyed a fence around the house and other properties which belonged to their family. The letter was later communicated to the plaintiff's employer called Sowela Technical Community College and finally reached the plaintiff via email. Before the court, the plaintiff tendered the letter which was admitted as exhibit P2.

In his evidence, the plaintiff stated that, the land that led to the dispute belonged to him; he bought it from his grandfather and that the destruction was done by the defendant's mother who was assisted by Leopord Leonard. The



incident of property destruction was reported to the police. He also filed a land case in 2021 which was still pending before the District Land and Housing Tribunal. He supported his evidence by tendering the application for the land case which was admitted as exhibit P3. PW1 further stated that, the defamatory letter was communicated to him by email; he tendered the print out of the said email which was admitted as exhibit P4. Immediately after receiving the email, he was suspended from work and therefore suffered consequential losses. His car insurance and medical insurance were also terminated, and his terminal benefits stopped. As a result, he was forced to hire legal services to handle the matter. Though he secured another employment, his reputation was already tarnished. As his former employer paid him 33 USD per hour, he therefore lost about 70,000 USD per year. He also lost some part-time opportunities as a result of the termination. In fortifying his testimony, PW1 tendered printout of his salary slip which was admitted as exhibit P5. He urged the court to order compensation of special damages at the tune of Tshs. 400,000,000/= and Tshs. 400,000,000/= as general damages plus interest.

Before the hearing of the case, the court framed thus:

1. Whether the defendant defamed the plaintiff;
2. Whether the plaintiff suffered any loss as the result of the defamation;
3. Any relief that the plaintiff is entitled.

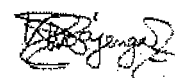


It is now apposite that I address the issues at hand. On the first issue, the major point of determination is whether the defendant defamed the plaintiff. Before proceeding further, it is pertinent to know the meaning of defamation. Winfield defines defamation as:

'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. It is libel if the statement be in permanent forma and slander if it consists in significant words of gestures.'

See, **PSA Pillai 'Law of Tort' 9th Edition, Eastern Book Company, Lucknow, 2009** at 41.

In the instant case, the plaintiff's claim for defamation is hinged on the letter allegedly written by the defendant and communicated to the Embassy of the United States of America in Tanzania. The same letter was circulated to several departments in America and finally reached the plaintiff's employer. As the result of that letter, the plaintiff was suspended from work and therefore suffered loss. The copy of the letter was tendered and admitted in court to prove the plaintiff's claim. However, the same letter contains a scanned and attached electronic signature of the defendant. In other words, the defendant did not directly sign the letter and scan it before sending to the Embassy. What is evident is, the signature which is alleged to be of the defendant was just fixed on the letter. It

A handwritten signature in black ink, appearing to be 'D. Byanga', located in the bottom right corner of the page.

is not clear, therefore, whether the same signature real belongs to the defendant. Under **section 75(1) of the Evidence Act, Cap. 6 RE 2019**, a signature of a person may be ascertained by comparing it with the signature of a person purported to sign. The section provides:

75.-(1) In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing or seal, admitted or proved to the satisfaction of the court to have been written or made by that person, may be compared with the one which is to be proved, although that signature, writing or seal has not been produced or proved for any other purpose.

The above provision of the law was expounded in the case of **DPP v. Shida Manyama@ Selemani Mabuba, Criminal Appeal No. 285 of 2002 (CA-M2)** (unreported) which was quoted in the case of **Thabitha Muhondwa v. Mwango Ramadhani Maindo and Rehema Abdallah Mussa, Civil Appeal No. 28 of 2012**, CAT at Dar es salaam, where the court stated that:

'Generally handwriting or signature may be proved on admission by the writer or by the evidence of a witness or witnesses in whose presence the document was written or signed. This is what can be conveniently called direct evidence which offers the best means of proof...More often than not, such direct evidence has not always been readily available.'



In this case, there was no any other document to assist the court in ascertaining the signature of the defendant because the case was heard in his absence. On the other hand, the plaintiff failed to avail the court with proof that the signature attached to the letter belonged to the defendant.

Furthermore, the alleged letter and other documents used to support the plaintiff's case were downloaded from different electronic sources such as email. In other words, the documents were the result of data messages. Under **section 18 of the Electronic Transactions Act of 2015**, such documents were supposed to be accompanied with a certificate of authenticity before being tendered in court. The above section provides:

18.-(1) In any legal proceedings, nothing in the rules of evidence shall apply so as to deny the admissibility of data message on ground that it is a data message.

(2) In determining admissibility and evidential weight of a data message, the following shall be considered-

(a) the reliability of the manner in which the data message was generated, stored or communicated;

(b) the reliability of the manner in which the integrity of the data message was maintained;

(c) the manner in which its originator was identified; and

(d) any other factor that may be relevant in assessing the weight of evidence.



(3) The authenticity of an electronic records system in which an electronic record is recorded or stored shall, in the absence of evidence to the contrary, be presumed where-

(a) there is evidence that supports a finding that at all material times the computer system or other similar device was operating properly or, if it was not, the fact of its not operating properly did not affect the integrity of an electronic record and there are no other reasonable grounds on which to doubt the authenticity of the electronic records system;

(b) it is established that the electronic record was recorded or stored by a party to the proceedings who is adverse in interest to the party seeking to introduce it; or

(c) it is established that an electronic record was recorded or stored in the usual and ordinary course of business by a person who is not a party to the proceedings and who did not record or store it under the control of the party seeking to introduce the record.

(4) For purposes of determining whether an electronic record is admissible under this section, an evidence may be presented in respect of any set standard, procedure, usage or practice on how electronic records are to be recorded or stored, with regard to the type of business or endeavours that used, recorded or stored the electronic record and the nature and purpose of the electronic record. (Emphasis added).

The above provision of the law must be read together with section 20 of the same Act which provides that:

20.-(1) Where a written law requires a person to produce a document or information, that requirement is met if –

(a) the person produces, by means of an electronic communication, an electronic form of that document or information;

(b) considering all the relevant circumstances, at the time that an electronic communication was sent, the method of generating the electronic form of the document provided a reliable means of assuring the maintenance of integrity of the information contained in the document; and

(c) at the time that an electronic communication is sent, it is reasonable to expect that an information contained in the document or information would be readily accessible so as to be usable for subsequent reference.

(2) For the purposes of subsection (1), the integrity of the information contained in a document is maintained if the information has remained complete and unaltered, except for-

(a) the addition of any endorsement; or

(b) any immaterial change, which arises in the normal course of communication, storage or display.

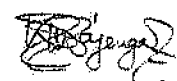
In the case of **Exim Bank v. Trulite Investment LTD and 3 others, Commercial Case No. 47 of 2019**, the High Court Commercial Division at Dar es salaam was confronted with evidence similar this case and it had the following to say:

!...such printouts must be accompanied by a certificate of authenticity from the accountant or branch manager of that bank as well as the person incharge of the system where the documents was printed from. In the authentication the person who manages the system should state as the

best of his/her knowledge and beliefs, the system in place from which the printout was made from a properly operated system. To authenticate this information, an affidavit of certification by the officer who printed the documents, will be required.'

According to section 20(1) of the Electronic Transaction Act cited above, in order to maintain the integrity of the information contained in the print out of the letter and other electronic document supporting the plaintiff's claim, the plaintiff was supposed to support such documents with the certificate of authenticity. In absence of the certificate of authenticity, the integrity of such documents is unreliable. As electronic documents are volatile, one may alter them in fraction of minutes before printing. Therefore, there must be an affidavit to authenticate them; this is a certificate of authenticity. In this case, there was dearth of such a certificate and this court failed to afford weight on them. In conclusion, I find the first issue not proved. There is no reason to discuss the second and third issue because they depend on the affirmative answer to the first issue. I hereby dismiss the claim and award no costs as the case was heard in absence of the defendant. It is so ordered.

Dated at Bukoba this 13th Day of May 2022.







Ntemi N. Kilekamajenga
JUDGE
13/05/2022

Court:

Judgment delivered this 13th May 2022 in the presence of the counsel for the plaintiff. Right of appeal explained.




Ntemi N. Kilekamajenga
JUDGE
13/05/2022

