IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

CIVIL APPEAL NO. 36 OF 2021

(C/F Civil Case No. 24 of 2016 at the Resident Magistrate's Court of Arusha at Arusha)

DR. GUISEPPE DI GIULIO .....APPELLANT

VERSUS

INTERNATIONAL LIVESTOCK
RESEARCH INSTITUTE .....1ST RESPONDENT
GLOBAL ALLIANCE FOR LIVESTOCK
VETERINARY MEDICINES.....2ND RESPONDENT

JUDGMENT

31/05/2022 & 17/08/2022

KAMUZORA, J.

This appeal arises from the Judgment and Decree of the Resident Magistrate Court of Arusha in Civil Case No. 24/2016 which was delivered on the 27th August 2021. Before the trial court, the Respondents successful sued the Appellant for defamation and were awarded Tshs. 100 million as general damages and Tshs. 20 million as punitive damages.

The brief facts of the matter albeit is that, the Appellant is the Director of the VETAGRO (T) Limited and he is registered as veterinary

practitioner in Tanzania dealing with research on the deceases affecting livestock in different parts here in Tanzania. The 1st Respondent is a non-profit livestock research organization commonly known as ILRI which works to improve food security and reduce poverty in developing countries through research for better and more sustainable use of livestock. The 2nd Respondent is a charity organization and a company limited by Guarantee in England and Wales commonly referred to as GALVmed which is dealing with product development and livestock value chain. In performing their activities, the Respondents are funded by different organizations including; Word Bank, FAO, UNICEF, Bill and Melinda Gates Foundation and other national and international stakeholders.

It was alleged by the Respondents that, the Appellant published defamatory statements against the Respondents by accusing the Respondents of illegal importation of vaccines and fraudulent vaccination. That, the contents of defamation is that, the Respondents are unreliable organizations as they illegally sold ILRI08 for purposes of promoting fraudulent vaccinations. That, the 1st Respondent allowed illegal importation of vaccination in Tanzania and supported the company that was importing the vaccine for fraudulent vaccination. That, the Appellant also defamed the Respondents by starting that the cattle were wrongly vaccinated and the 2nd Respondent was responsible for the death of

50,000 cattle since they did nothing to stop the vaccination. That, animals were being injected half dose (0.5cc or less than the right vaccine dose, 1cc) hence, the Maasai were being cheated. That, the vaccines were used outside the area with fake tags which resulted in distortion of market and unfair competition. That, the Respondents refused to meet with the Appellant and the Masai regarding the video clips that were posted. That, the Respondents have caused members of the Masai Community to lose their livelihoods on account of the death of the cattle.

It was further alleged by the Respondents that, the above statements were falsely made by the Appellant and circulated to the Respondents' sponsors and the general public through emails, worldwide web, internet media, official letters and Newspapers. That, the publication of defamatory statements damaged the Respondents' reputation and goodwill in its business and activities in Tanzania and globally. The Respondents claimed for orders restraining the Appellant from further publication of defamatory words against the Respondents and removal of the video clips which was uploaded in the internet. The Respondent also prayed for the award of general damage for loss of goodwill and reputation and an award of punitive damages and costs of the suit.

The Appellant did not deny publishing the said statements but insisted that, the published statements were true, fair and bonafidely

made by the Appellant on behalf of the Maasai Community in his capacity as an honorary leader of the Maasai community both in Tanzania and Kenya. The Appellant therefore pleaded the defense of Justification, fair comment and qualified privilege.

Upon hearing the evidence from both parties, the trial court made a finding that the statements published by the Appellant were false and unjustified thus constituting defamation. It proceeded on entering judgment and decree in favor of the Respondents by issuing the orders prayed for. The Appellant being dissatisfied with the said judgment and decree has appealed to this Honourable Court and raised 7 grounds of appeal in his Memorandum of Appeal as follows: -

1. *That, the Resident Magistrate's Court erred in fact and in law in failing to appreciate the evidence that all elements of defamation against the Respondents were never proved;*
2. *That, the Resident Magistrates' Court erred in fact and in law in awarding damages that were not proved and/or justified;*
3. *That, the Resident Magistrates' Court erred in fact and in law in awarding damages to a party who was never defamed;*
4. *That, the Resident Magistrate Court erred in fact and in law in awarding damages against a wrong person:*
5. *That, the Resident Magistrate's Court erred in fact and in law in failing to properly admit, consider and properly scrutinize both oral and documentary evidence tendered before it;*

6. *That, the Resident Magistrate's Court erred in law and in fact in failing to appreciate the evidence that the published and circulated information was for the public interest;*
7. *That, the Resident Magistrate's Court erred in law and in fact in admitting evidence of a person with conflict of interest and ignoring important evidence from the affected group.*

While submitting in support of appeal the Appellant decided to drop ground 7 to avoid repetition and proceeded to consolidate and argue together grounds 3 and 4 which were argued first followed by ground 2 separately and consolidated and argued together grounds 1, 5 and 6.

Starting with grounds 3 and 4, the matter in contention is whether the 2nd Respondent had cause of action for the claim of defamation against the Appellant. Submitting in support of grounds 3 and 4 of appeal the Appellant argued that, the trial Court erred in awarding damages to a wrong party who was never defamed. That, from the proceedings PW1 (Dr. Caroline Schumacher) confirmed that the 2nd Respondent, is a charity organization registered in the Northern Wales. That, DW1 (Dr. Giuseppe De Giulio), the Appellant testified that the 2nd Respondent is a different organization from the one he was dealing with as there are two charities all by the name Global Alliance for livestock veterinary medicine (GALVmed) whereby, one is registered in England and Wales and its Headquarter is in London and another one is registered in Scotland

Edinburg. It was the Appellant's claim that, the one which is registered in Scotland Edinburg is the one that was all this time working in Tanzania and for that matter with the Appellant.

The Appellant argued that, when an entity is registered, it acquires a legal personality and it is totally different from another registered entity even if the two have a common name, shareholders or trustees. (Solomon v. Solomon's case). That, if the Appellant was working with Global Alliance for Livestock Veterinary Medicines based in Scotland, then Global Alliance for Livestock Veterinary Medicines registered in the Wales (England) cannot sue on behalf of Global Alliance for Livestock Veterinary Medicines based in Scotland even if the two shares a name. The Appellant was of the view that, the 2nd Respondent had no *Casus Belli* (cause of action) against the Appellant as it had never worked with him. That, the Resident Magistrate erred in fact and in law in awarding damages to an entity which was never defamed.

Furthermore, the Appellant submitted that, the issue of having two charities with the same name arose in court and the Resident Magistrate ought to have addressed that issue first. That, leaving it hanging and later awarding damages to a party who was never defamed was an apparent error in fact and in law.

Responding to grounds 3 and 4 on the claim that the trial court erred in awarding damages to a wrong person who was never defamed, the Respondent submitted that, the trial Court was correct to award damages to the Respondents since the defamatory publication by the Appellant did refer to the Respondents including the 2nd Respondent. That, the award of general damages to the tune of TZS 100,000,000 and punitive damages of TZS 20,000,000 were given to both Respondents and not just the 2nd Respondent.

On the claim that the trial court did not determine the issue of there being two charities with common name the Respondent submitted that, this is a new issue as it was not among the issues framed and argued by the parties before the trial Court. That, all the issues framed at the trial Court are reflected in the judgement and the trial Court made its decision on the issues framed and argued by the parties. That, the Appellant cannot raise a new issue at this stage and allege that, the trial Court did not determine it while it was not among the issues for determination before it.

The Respondent further submitted that, the Appellant's arguments that the 2nd Respondent is registered in Northern Wales and England with its headquarters in London and there is another one registered in Edinburg Scotland is baseless and a misconception. That, as per the testimony of

PW1 (Dr Caroline Schumacher), the 2nd Respondent is registered in Northern Wales and it has offices and residence in Edinburg Scotland. That, the essence of this testimony is that the 2nd Respondent is one entity registered and having headquarters in Northern Wales & England, as well as having offices in Edinburg Scotland. That, if the Appellant believes that there are two different organisations, he was obligated to bring documentary evidence of registration of the two entities as claimed but he did not do so. That, Section 110 of the Law of Evidence Act is clear that whoever wants the Court to believe a set of facts as being true, he has a duty to bring evidence but the Appellant did not do so.

The Respondent added that, it is a misconception by the Appellant to apply the case of **Salomon Vs. Salomon [1897] AC 22** in these circumstances and misconstruing the rationale of the doctrine of separate legal personality. That, the correct rationale in **Solomon's case** (Supra) is that, an entity is separate from the shareholders/trustees of the company. That, it is incorrect to use the rule in **Solomon's case** in trying to justify the unfounded argument that there is another entity existing that uses the name of the 2nd Respondent. He insisted that, since the testimony of PW1 reveals that the 2nd Respondent is an entity registered in England and having offices in Scotland and it is the same entity that has been defamed by the Appellant, therefore, it has a cause of action

against the Appellant. That, it is on records that the Appellant admitted defaming the Respondents and at no point in time did the Appellant state that he was defaming an entity other than the two Respondents.

The Respondent also submitted that, the term *cause of action* was defined in the case of **John M. Byombalirwa Vs. Agency Maritime Internationale (T) Ltd [1983] TLR 1** to mean a legal right which the plaintiff will be entitled if he proves the same and it was further elaborated that the cause of action shall be reflected in the plaint which will entitle the plaintiff to have a legal right against the defendant. That, the plaint in Civil Case No. 24 of 2016 did reveal that both Plaintiffs (now Respondents) had cause of action against the Defendant (now the Appellant).

The Respondent further submitted that, one of the criteria of awarding damages in defamation cases is for the court to be satisfied that the party being awarded damages was actually the one that was defamed either by express mentioning or using words that would be construed to refer to the plaintiff as stated in the case of **Jones Vs. Skeleton [1963] 1 WLR 1362**. That, in the testimonies of PW1 and PW2, Exhibits P1, P2, P3, P4 and P5 the Appellant made and admitted to making the publications and these publications did refer to the Respondents. That, the Respondents established that the publications referred to them and

therefore the Resident Magistrate Court was correct in law and in fact to award damages to the Respondents as she did.

From the above analysis, I agree with the submission by the counsel for the Respondent that the evidence in record did not establish the existence of two different entities in the same name as so alleged by the counsel for the Appellant. It is in record at page 11 of the typed proceedings of the trial court that, the 2nd Respondent is an entity registered in Nothern Wales and England and having offices in Edinberg Scotland and therefore the 2nd Respondent has a cause of action against the Appellant. The claim by the Appellant that the 2nd Respondent is a different organization from the one he was dealing with and that, there are two charities all by the name Global Alliance for livestock veterinary medicine (GALVmed) and one is registered in England and Wales and its Headquarter is in London and another one is registered in Scotland Edinburg was not justified by evidence. In my view, although the principle in **Salomon Vs Salomon [1897] AC 22** on the doctrine of separate legal personality is a valid one but, I agree with the Respondent's counsel that it is inapplicable in the present matter as the 2nd Respondent is one entity with offices in different places.

It is my settled mind that, since the 2nd Respondent was mentioned in the alleged defamatory statement there was cause of action which the

2nd respondent was bound prove. In reading the plaint, it indicates the cause of action by the 2nd Respondent in compliance with the requirement of law as held in **John M. Byombalirwa Vs Agency Maritime Internationale(supra).** I therefore find that grounds 3 and 4 are meritless.

While scrutinising ground 2, I discovered that, the matter in contention is whether the damages that were awarded by the trial court was proved and or justified. In order to determine if the damages were justified, it is imperative to first determine whether there was proof of defamation and if so to what extent it affected the Respondent before determining the quantum of damages. That being the case, I considered necessary to first determine grounds 1, 5 and 6 which are centred on the analysis of evidence to see if all elements of defamation against the Respondents were proved before going back to analyze the quantum of damage proved.

Submitting for grounds 1, 5 & 6 of appeal the Appellant argued that, the Resident Magistrates' Court erred in failing to appreciate the evidence that all elements of defamation against the Respondents were never proved. That, the Court failed to properly admit, consider and scrutinize both oral and documentary evidence tendered before it and failed to

appreciate the evidence that the published and circulated information was for public interest.

In the outset I would like to point out that there is no dispute that the Appellant published and shared information concerning death of cattle in the Maasai community caused by ECF which resulted from fraudulent vaccination and illegal importation of ECF by the Respondents. The Appellant's counsel explained that, from the evidence given in court, the Appellant does not dispute publishing the following statements against the Respondents: -

a) *That, there was Respondents' illegal importation of vaccines and fraudulent vaccination and that the 2nd Respondent did nothing to stop the above.*
b) *That, the cattle were wrongly vaccinated and the 2nd Respondent was responsible for the death of 50,000 cattle since they did nothing to stop.*
c) *That, animals were being injected half dose (0.5cc or less than the right vaccine dose, 1cc hence the Masai were being cheated.*
d) *That, the vaccines were used outside the area with fake tags which resulted in distortion of market and unfair competition.*
e) *That, the Respondents refused to meet with the Appellant and the Masai regarding the video clips that were posted.*
f) *That, the Respondents have caused members of the Masai Community to lose their livelihoods on account of the death of the cattle.*

g) *That, the Respondents illegally sold ILRI08 for purposes of promoting fraudulent vaccinations.*

h) *That, the 1st Respondent allowed illegal importation of vaccination in Tanzania.*

i) *That, the 1st Respondent supported the company that was importing the vaccine for fraudulent vaccination.*

j) *That, the Respondents are unreliable organizations.*

What the Appellant claims however is that, the published statements were true, fair and bonafidely made by the Appellant on behalf of the Maasai Community in his capacity as an honorary leader both in Tanzania and Kenya. The Appellant pleaded the defense of **Justification, fair comment and qualified privilege**. What need to be established here is whether the Appellant was able to justify the truthfulness of the statements he made against the Respondent or if the statements were fairly made by the Appellant or if there was established qualified privilege in the statements made by the Appellant for the same to stand as defence against defamation.

I understand that, there are different authors and case laws on what amount to defamation. The Appellant referred the definition of defamation as put in the case of **Professor Ibrahim H. Lipumba Vs Zuberi Juma Mzee** [2004] TLR 381). (Emphasis Mine) and the case of **Meneja Mkuu**

Zanzi Resort Hotel Vs Aly Said Paramana, Civil Appeal No. 296, of 2019, (unreported) the Court of Appeal which I also adopt.

The Respondent referred the meaning of defamation by **J.A. Jolowicz and T Ellis Lewis, Winfield on Tort, 18th ed., at page 570** and in the cases of **Sim Vs Stretch, [1936] 2 All ER 1237** and in **Youssoupoff Vs Metro-Goldwyn-Mayer, [1934] 50 TLR 581, CA** and in **Halsbury Laws of England, Vol. 28, 4 ed.,** at p.7. He added that, the elements of defamation must be proved by the plaintiff as held in the case of **Hamza Byarushengo Vs. Fulgencia Mnya & Others, Civil Appeal No. 246/2018, CAT at page 16 and 17.** I also understand that the statement can be defamatory but if there is evidence justifying its truthfulness the same can stand as defence against defamation. This is also seen in the case of **Meneja Mkuu Zanzi Resort Hotel** (Supra) as cited by the Appellant's counsel.

In the present matter, the Appellant raised the **defence of Justification**. Referring the definition of defence of justification in **Halsbury's Laws of England** Vol. 28, 4th Edition, Paragraph 82 which defines the defense of Justification requiring the words complained of to be true in substance and in fact, the Appellant's counsel submitted that, the statement made by the Appellant were true in substance and in fact.

The Respondent's counsel on the other hand submitted that, the Appellant failed to discharge the onus and prove the defence of justification as he failed to prove that the published statements were true in substance. He referred Winfield and Jolowicz **in Tort at page 602** (Supra) and the case of **Hamza Byarushengo** (Supra). He insisted that, the Appellant never produced any watertight evidence to prove the fact he alleged or justify the truthfulness of any of the statements he made. The Respondent was of the view that the publications were made maliciously and recklessly in disregard of the truth as discussed in **New York Times Vs Sullivan 376 US 254 (1964)**.

The Appellant counsel insisted that the statements were true both in substance and in fact. She referred the evidence by PW1 (Dr. Caroline Schumacher), DW1 (Dr. Guiseppe Di Giulio) and Exhibit D10 as proof that the vaccines were used outside the area with fake tags which resulted in distortion of market and unfair competition and that, there was illegal importation of vaccines and fraudulent vaccination and that the 2nd Respondent did nothing to stop the above.

Going through the said evidence, page 7 to 14 of the proceedings reveals that, the second Respondent was responsible to oversee the distribution of the vaccines and in appointing the distributors. Among the

appointed distributors was VetAgro owned by the Appellant and Ronheam International owned by one Dr. Mbwile. It is true that, PW1 confirmed that there was an incident whereby Ronheam vaccinated on areas that were allocated to Vetagro (Appellant). PW1 confirmed also that the vaccines were okay but the areas that their agent companies went to vaccinate were not the one allocated to them. The evidence of DW1 (Dr. Guiseppe Di Giulio) and Exhibit D10 which is a report given to the Defendant by PW3 at Dar es salaam on 2017 all confirmed that the Veterinary Council of Tanzania officially acknowledged the ECF fraudulent vaccination in Tanzania, the use of questionable ear Tags and failure of the District Veterinary officer to supervise the ECF vaccination program as required by the law. I therefore agree with the counsel for the Appellant that, there was fraudulent vaccination and vaccines were used outside the area with fake tags which resulted in distortion of market and unfair competition.

There is also evidence on the death of cattle and PW1 (Dr. Caroline Schumacher) in her evidence confirmed to have received information about the death of some cattle. She also confirmed that through their investigation they discovered that there was malpractice by the vaccinators. PW3 (Dr. Bedan Masuruli) confirmed in his testimony that, during their meeting with the Maasai and other stake holders their report

revealed that there were non-trained vaccinators and there were young Maasai who were said to have come from Nairobi and that the said Maasai used Ivermectin to cheat the farmers that they are vaccinating against East Cost Fever, while in actual fact ivermectin was a de-wormer (drugs against worms). The Appellant was of the view that, the above evidence justified statements under paragraphs (a), (b) (c) and (d);

a) *That, there was Respondents' illegal importation of vaccines and fraudulent vaccination and that the 2nd Respondent did nothing to stop the above.*
b) *That, the cattle were wrongly vaccinated and the 2nd Respondent was responsible for the death of 50,000 cattle since they did nothing to stop.*
c) *That, animals were being injected half dose (0.5cc or less than the right vaccine dose, 1cc hence the Masai were being cheated.*
d) *That, the vaccines were used outside the area with fake tags which resulted in distortion of market and unfair competition.*

Although there is evidence showing illegal vaccination and death of some cattle, there is no evidence proving illegal importation of vaccine and especially by the Respondents. There is no evidence showing how those non-trained vaccinators or young Maasai vaccinators were connected to Ronheam International or the Respondents. There is also no evidence proving the number of death of cattle except for the oral testimony without justifying data. It is in evidence that the 2nd Respondent

was responsible to oversee the vaccination process, but that responsibility does not extend to the illegal distributors not under their supervision. But, there is evidence by DW1 and exhibit D12 which was a PowerPoint given by PW3 in a meeting called by the minister of livestock Permanent Secretary revealing that, Mr. George Mshana, a livestock field officer of Monduli was using vaccination ordered from IRLI (the 1st Respondent) by Ronheam International. That vaccination resulted into the death of a number of cattle in that area. I therefore agree with the counsel for the Appellant that with such evidence, the Respondents were linked to the illegal vaccination that resulted into the death of cattle.

PW1 at page 12 to 13 of the proceedings confirmed that as soon as the 2nd Respondent was made aware of illegal vaccinations, they suspended their contract with Ronheam of the ECF Vaccine and sent an auditor to Ronheam. The Audit Report that was done revealed a number of anomalies which were related to vaccination but such anomalies were never revealed on the spirit of confidentiality. If such discovered anomalies had nothing to do with illegal vaccination, the same could have been revealed to the responsible community or before the court. In my view, the said allegation was well linked to the Respondents and the Respondent did nothing to rebut the same it thus, justifies its truthfulness.

The Appellant also submitted that, PW1 confirmed in her evidence that the 2nd Respondent was unable to meet the Masai Community for the purpose of constructive dialogue. I agree with such submission as there is evidence by PW2 and DW1 that the Respondents did not meet the Maasai Community even after the request by the Appellant. That justifies the statement that the Respondents refused to meet with the Appellant and the Masai regarding the video clips that were posted.

The Appellant further contended that, ILRI is a non-profit organization and it was paid 300,000 USD by the food and Agriculture organization to produce 300,000 doses of ECF vaccine. That, according to IRLI publication 1992 the vaccine cost ILRI from 0.4 to 0.6 USD and ILRI produced 600,000 doses. That, there was surplus of 300,000 doses which ILRI sold for 1 USD each on full commercial basis. The Appellant was of the view that, the above evidence proved the statement that;

> *The Respondents illegally sold ILRI08 for purposes of promoting fraudulent vaccinations and the 1st Respondent allowed illegal importation of vaccination in Tanzania.*

However, in my view, the Appellant produced no evidence to support such allegation. As it was discussed above, there was no evidence of illegal importation of vaccine by the Respondents. Similarly, there is no evidence that was tendered before the trial court proving that the

Respondents illegally sold *ILRI08* for purposes of promoting fraudulent vaccinations and the 1st Respondent allowed illegal importation of vaccination in Tanzania. In that regard, there was no justification for the above statement.

It is true as submitted by the Appellant that, PW1 at page 8 and 11 confirmed that the 2nd Respondent purchased 55,000 doses from VETAGRO and donated them to Ronheam and allowed them to sell the vaccine for commercial purposes PW1 admitted to the fact that, the 2nd Respondent is a charity organization while Ronheam is a full commercial company. It is also not a disputable issue that the 2nd Respondent's source of income comes from funders such as, Bill & Melinda Gate Foundation and that, the said money was to be directed to the intended projects. Therefore, I agree with the submission by the counsel for the Appellant that giving vaccines for free to a commercial company that sells them commercially is a clear illegal and misuse of project funds because, the people who were to benefit from the 2nd Respondent's project have now to buy the same from Ronheam, a commercial company. The one who benefited was Ronheam and not the Masai community since Ronheam was getting free capital in the form of goods from the 2nd Respondent. By knowing that Rohmeam was a commercial company and allowed the

donated vaccine to be sold by them, it justifies the claim that the Respondents illegally sold vaccine.

Having pointed out the above, it goes without say that most of the statements made by the Appellant was justified and proved to be true. Although there is no proof that all vaccines were done under the supervision of the Respondent, there is evidence that the Respondent were part of the vaccine that resulted into death of cattle in different area including Monduli. The fact that there was no document of importation tendered does not exonerate them from the responsibility of the vaccine done by Mr. George Mshana, a livestock field officer of Monduli who was using vaccination ordered from IRLI (the 1st Respondent) by Ronheam International. As there was truthfulness of part of the statement made, it cannot be said that the Appellant intended to defame the Respondents.

It must be noted that, the truth of defamatory words is a complete defense against an action of libel or slander. If the matter is true, the purpose or motive with which it was published is irrelevant. In the book cited by the counsel for the Appellant's counsel, **The Essential Tort Law**, 3rd Edition, at page 141, Richard Owen, it was well interpreted that substantial proof suffices as defence against defamation and minor inaccuracy will not vitiate the defence. I therefore find that the defence was justification was well proved by the Appellant.

On the defense of **Fair Comment**, the Appellant submitted that, once a plea of justification is established, an alternative plea of fair comment need not be investigated. The Respondent submitted that, the same can only stand if a defendant substantiate the truthfulness of the comments he made. He maintained that, the Appellant and his witnesses never proved any truthfulness of the comments made by the Appellant leading to the Respondents' injured reputation.

As pointed out during the discussion of the defence of justification, the Appellant was able to justify that some of the statements made were true in fact and substance. That being that case I agree with the counsel for the Appellant that, the rest of the statements which were made as comment were based on what was substantially correct. As well submitted by the counsel for the Appellant, the comments such as, "the Respondents have caused members of the Masai community to lose their livelihoods on account of the death of the cattle or that, "the 1st Respondent allowed illegal importation of vaccination in Tanzania" or that, the 1st Respondent supported the company that was importing the vaccine for fraudulent vaccination" all amounted to justified fair comments legitimate criticism by the Appellant as the Appellant established that the allegations claimed were true.

On the defense of **Qualified Privilege**, the Appellant submitted that, for the same to stand it must be proved that, the statement was made in pursuance of a legal, moral or social duty, the statement was made in protection of an interest and the statement was made in good faith. The Appellant's counsel submitted that, the Appellant was an honorary leader of the Maasai and he made the statement on behalf of the community he was leading and to protect the interest of that community. The Respondent referring the Court of Appeal decision in **I.S. Msangi Vs Jumuiya ya Wafanyakazi and Workers Development Corporation [1992] TLR 258,** submitted that, the Appellant has no qualified privilege to make the defamatory statements because there was no good faith made in it.

From the analysis of evidence, it is clear that the complaint over death of cattle was not of a single person to mean the Appellant. It was a complaint by majority pastoralists and that is why there were meetings by the ministry responsible and resolutions there from. The evidence also reveals that at first the Appellant was trying to seek for information from the Respondents and the way to solve the problems but in vain. As there was no positive response and the cattle were dying the complaint was made publicly. As the Appellant was directly involved in ECT vaccination and honorary leader of the Masai community, fact which is undisputed, it

becomes obvious that his intention was to protect the pastoralist from suffering from illegal vaccination. It cannot therefore be said that the statement was made out of malice.

Having said so I see no reason to discuss if the principle of qualified privilege is enshrined under the Whistleblowers Act, No. 20 of 2015, as pointed out the Appellant. Much as there was evidence that there was illegal vaccination to which the Respondents were connected, the Appellant's publication and comments of the ongoing illegalities about ECF vaccines was within the ambits of a qualified privilege. That information was subject to public disclosure to protect those who were affected or were to be affected by illegal vaccination.

It was contended that the Appellant was de-registered because of the defamation he made against the Respondents. But apart from cease-and-desist letters sent to the Appellant by the Respondents (Exhibit P6), no evidence that the Appellant's de-registration was connected to the statements he made specifically against the Respondents. The records contain a letter by the Government warning the Appellant of misconduct which in fact did not mention if the misconduct involved defaming the Respondents. I therefore find that this cannot stand as evidence for defamation.

On the argument by the Respondent that all the required elements of defamation were proved based on the admission of the Appellant in publishing the statements, it is my view that, much as the statements were proved to be true, the publication becomes immaterial. Had, the magistrate scrutinized all evidence given during trial and assessed all elements of defamation, she would not have arrived at the decision that there was no defamation committed by the Appellant. Most of the information given was true, fair and for public interest. I therefore find merit in grounds 1, 5 and 6 of appeal.

On the issue regarding damages as brought under ground 2, I find the same to be consequential. As there is no proof of defamation, there cannot be proof of damage against the Appellant.

In the final analysis, I find that the appeal meritorious and the same is hereby allowed with costs. The judgment of the trial court, decree or any order arising therefrom are hereby quashed and set aside.

DATED at **ARUSHA** this 17th Day of August, 2022.

D.C. KAMUZORA

JUDGE