

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF KIGOMA

AT KIGOMA

(DC) CIVIL APPEAL NO. 10 OF 2021

(Arising from Civil Case No. 4/2020 Kigoma District Court, before Hon. E. B. Mushi-
RM)

KHATIBU SAID BONDOAPPELLANT

VERSUS

JUMA HAMISI MBOZWA1ST RESPONDENT

YADUNIA YOKILI NTALIKA2ND RESPONDENT

LOWASA EDWARD KAGIZO3RD RESPONDENT

JUDGMENT

5/8/2022 & 27/9/2022

L.M. Mlacha,J

This appeal originates from Civil Case No. 4/2020 of the District Court of Kigoma at Kigoma. The appellant, Khatibu Said Bondo was the defendant at the district court. The respondents, Juma Hamisi Mbozwa, Yadunia Yokili Ntalika and Lowasa Edward Kagizo (hereafter referred to as the 1st, 2nd and 3rd respondents respectively) were the plaintiffs. It was a case for defamation. The respondents sued the appellant for payment of general and punitive damages accruing from the tort of defamation, payment of interest and costs. It was stated that the 1st and 2nd respondents were members of

Kangwea village council which was under the appellant as its chairman on the material date. The 3rd respondent is the secretary of Masjid Ijumaa at Kangwea village. That the 1st and 2nd respondents had been in misunderstandings with the appellant due to their follow ups and challenges to the appellant on misuse of village funds. The 3rd respondent is related to the 1st and 2nd respondents on religious and social issues. That, acting under hatred and in revenge, the appellant published the following words on 20/4/2020 in a public meeting:

"Kuanzia mimi na familia yangu na wajukuu zangu wote na familia ya mtendaji kitakacho nitokea hawa watu, Juma Hamisi Mbozwa, Yadunia Yokoli Ntalika na Lowasa Edward Kagizo wakamatwe"

He called a second meeting on 20/6/2020 and uttered the following words:

"Watu hawa hawatufai nawaambieni wananchi tuwafukuze kwenye Kijiji hawatufai kwa sababu ni wabaya"

Based on these words, the respondents claimed to have been defamed and sued the appellant at the district court. They prayed for damages Tshs 20,000,000/= for each, total Tshs 60,000,000/= or any sum as the court can deem fit, punitive damages as may be assessed by the court, interests and costs. The appellant filed a defence and denied liability.

The district court (E.B. Mushi RM) awarded general damages Tshs 20,000,000/= to each respondent, total Tshs 60,000,000/=, punitive damages Tshs 2,000,000/= to each respondent total Tshs 6,000,000/= and the costs. Aggrieved by the decision, the appellant has come to this court by way of appeal.

The grounds upon which this appeal is based read as under:

1. That the trial court erred in law and in fact not considering the evidence adduced by the appellant in the trial court.
2. That the trial court erred in law and in fact for awarding the respondents the compensation of total sixty millions (Tshs. 60,000,000/=) each twenty millions (Tshs 20,000,000/=) without considering that the respondents were not defamed by the appellant or the status of the respondents.
3. That the trial court erred in law and in facts by ordering the appellant to pay compensation for defamation for the tune of sixty million (Tshs. 60,000,000/=) while the case was not proved in the standard required by law.
4. That the trial court erred in law and in facts by considering the weak evidence of the respondents against that of the appellant

that the words by itself is not defamatory by nature and no witnesses testified to the effect.

5. That the trial court erred in law and in facts by determining the matter while the suit did not disclose the cause of action against the appellant and by awarding the general damages not pleaded in the pleadings.

The appellant was represented by Mr. Thomas Msasa and Ms. Victoria Nyambea while the respondents were represented by Mr. Method Kabuguzi. Counsel made oral submissions for and against the grounds of appeal. Before going to examine the submissions and the grounds of appeal, this being a first appeal which amounts to a rehearing, I will reproduce a summary of the evidence adduced at the lower court to put us in a clear picture on what happened in court. Each of the parties had 7 witnesses.

PW1 Hamisi Juma (50) told the court that the appellant uttered the following words in a public meeting on 20/4/2020:

"Wananchi mnasikiliza kuna kundi dogo ambapo njaa imetoka tumboni imeingia kichwani na hao watu nitawatamka majina yao Juma Hamisi, Dunia Yokoli, Rajabu Saikoti, Lowasa Edward, Hawa

watu kitakachonitokea mimi na familia yang una wajukuu zangu na familia ya Mtendaji hawa watu wakamatwe". (Emphasis added)

PW1 proceeded to say that a police officer who was in the meeting was directed to take note of it. He added that the appellant uttered the words because of their follow ups of his behavior of misappropriation of funds and other unbecoming behaviours at the village. They were uttered publicly in a huge crowd of villagers. He interpreted the words to mean that they had a plan to harm him criminally. He proceeded to say that people came to them after the meeting and said that they had a plan to kill or harm the appellant. He went on to say that he repeated the attack on 20/6/2020 in another public meeting where he said:

"Wananchi mnasikiliza? Hapa kuna watu wabaya Juma Hamisi, Yadunia Yokoli na Lowasa watu hawatujui katika Kijiji chetu tuwafukuze watoke ni wabaya hawatufai katika Kijiji chetu. Wanaoniunga mkono wazo langu hili wanyooshe mkono"
(Emphasis added)

He said that 4 people raised their hands to support. The appellant gave them 7 days to leave the village. People followed them and wanted them to leave the village. They left the village for a while and came to live at Kigoma town. They threatened to burn their properties including their houses. They came

to Kigoma on 3/7/2020 and returned back on 16/7/2020. On 19/7/2020 the kitchen of the 3rd respondent was set on fire by unknown people. They reported the matter to siguda police station on 6/5/2020. The appellant was asked to withdraw the statement but refused. They also reported that the 3rd appellant's Kitchen had been set on fire on 19/7/2020. He added that villagers proceed to disturb them due to the statements, a situation which caused them to live in disharmony, fear and anguish. He prayed to be paid Tshs 20,000,000/= damages for defamation.

PW2 Yadunia Yokoli Ntalika (47) supported the evidence of PW1 saying the appellant uttered the defamatory words because of their follow ups on misappropriation of village funds. He said that the statements caused him and his family to live in fear, mental anguish and disharmony. The villagers took it that they wanted to kill the appellant. He run and came to live in Kigoma town. He used money while in Kigoma. He prayed to be given Tshs 20,000,000/= as compensation and other prayers as per the plaint.

PW3 Lowasa Edward Kagizo (43) is the secretary Kangwea Mosque. He told the court that PW1 and PW2 are Muslim and worship in the mosque where he prays. He is close to them. He supported the evidence of PW1 and PW2 saying the defamatory words were uttered to cover all of them. He added

that in the meeting of 20/6/2020 the appellant told the villagers that the respondents had sued the village. Went on to say that villagers' anger increased after this statement and chased them away from the village. He wondered the reason as to why he was sued because he is a normal villager, not a village leader. He was defamed because of his friendship with PW1 and PW2. He proceeded to say that villagers saw him as a bad religious leader after the accusation. He felt bad because he had never had a plan to kill the appellant. The Mosque suspended him from being a secretary of the mosque on 3/7/2020. His house was set on fire on 19/7/2020 by unknown people. He believed that it was due to the plaintiff's statement who said: "Hawa kama hawatatoka ndani ya Kijiji chetu tuwaunguzie mali zao na nyumba zao". He added that they decided to run away from the village and came to Kigoma town due to the criminal allegations. Like others, he prayed to be paid Tshs 20,000,000/= as compensation.

PW4 Sinaraha Rashid (52) told the court that, on 20/4/2020 on Monday, while at a public meeting, he heard the appellant uttering the following words:

"Ndugu wananchi, mtakapona nimetokewa na tatizo lolote mimi na familia yangu na familia ya mtendaji muwashike watu wafuatao Juma Hamisi, Yadunia Yokoli na LowasaKagizo"

He understood that they were bad people, criminals. He thought that the respondents had a plan to harm the appellant. He took them as criminals. He added that the words were uttered before a huge crowd of people. PW5 Azam Rashid (30) who was in the same meeting heard the appellant saying:

"Kuna watu watatu nawashakia katika maisha yangu, mimi na mtendaji wangu wa Kijiji kitakachonitokea hawa watu, Juma Hamisi Mbozwa, Yadunia Yoko na Lowasa Kagizo wakamatwe"

He understood that the respondents are bad people who had a plan to harm the appellant and the village executive secretary (VEO). Like others, he said that the words were uttered before the village assembly. PW6 Bertha Edward (27) said that she attended the meeting of 20/6/2020 where she heard the appellant saying.

"Jamani Kijiji kimeshitakiwa. Hawa watu tuwafanyeje? Baadhi ya watu wakasema wachomewe makazi, wapewe masaa 24 hawa wametoka".

She proceeded to say that Lowasa and Juma Mbozwa run away. She wondered why the respondents sued the village. PW7 Rashid Hamisi (63)

told the court that he attended the meeting of 20/6/2020. He heard the appellant saying:

"Hii ni barua ya kunishitaki mimi na ninyi wanakijiji cha kangwena na waliotushitaki nitawataja tena kwa mara nyingine ni Juma Mbozwa, Yadunia Yokoli na Lowasa Edward, hawa watu n watu wabaya sana na kwa kitendo hicho naona waondoke katika eneo la Kijiji maana ni watu wabaya na ninyi mnasemaje?"

PW7 proceeded to say that villagers gave their opinion. Some said that they have to leave the village. He understood that they were criminals so he hated them. He added that the words were spoken before a huge crowd of people.

The appellant (50) appeared as DW1. He told the court that he had a village meeting on 20/4/2020 which started at 4:00PM. It had three agendas namely; i) open the meeting, ii) village development, building a primary school and construction of a military house and iii) to close the meeting. He told the court that he opened the meeting and told the villagers about building a school and repair of the military house. He then invited the VEO who gave the details. People supported him. He closed the meeting. His evidence was short. He spoke more during cross examination. He denied defaming the respondents. He denied convening the second meeting which is alleged to have taken place on 20/6/2020. He denied defaming them on

the date. He denied uttering the words. He said that the respondents are good villagers. He does not know why they are accusing him. He denied to have been requested by the OCS to apologize. He only saw a court summons. He said that the witnesses from the respondent's side spoke lies. He said that Mr. Rashid was his follow competitor in the elections that is why he decided to bring false evidence against him. He said that it is not true that the respondents run away from the village. They are still there to date.

DW2 Isaya Ndamichunguka Yanda (63) told the court that he attended the meeting of 20/4/2020. It was about village development. The appellant spoke about building a school. He denied to attend the second meeting which was held on 20/6/2022. He said that the meeting was conducted peacefully and ended peacefully. DW3 Saidi Ally (55) said that he attended the meeting of 20/4/2020. It was on building Kangwena Primary School. That was also the evidence of DW4 Dogo Athumani (43), DW5 Ayubu Hussein (42), DW6 Petro Gemiros (33) and DW7 Said Mashaka Said (47). They all spoke of the meeting of 20/4/2020 and denied to hear the words which are alleged to be defamatory of the respondents.

Counsel for the appellant started with ground 5. Counsel submitted that the suit did not have a cause of action because the appellant was alleged to utter

defamatory words before the filing of the case. He said that the words are alleged to have been uttered on 20/4/2020 and 20/6/2020 while the suit was filed on 5/6/2020. Counsel submitted that there was no cause of action because the case was filed before the words were uttered.

Submitting on ground 4 counsel told the court that the words were not defamatory in nature. They were not defamatory because they were uttered by the appellant who was the village chairman in a village meeting. He went on to say that the chairman was responding to accusation that he was misusing village funds. He went on to say that it is possible that those words were spoken but they were not defamatory of the respondents. He referred the court to **Meneja Mkuu Zanzibar Resort Hotel v. Ali Saidi Paramana** (CAT) Civil Appeal No. 296/2019 page 15 on what amounts to defamatory words. Counsel submitted that the plaintiff must suffer injury out of the defamatory words. He must suffer personal integrity and professional reputation. He went on to say that he expected the people to at the meeting to stand against the respondents but there was no such a thing. None of them was injured by the words, he submitted. People took the words as political words, public opinion, not defamatory. He added that the magistrate used words which are not in the proceedings.

Submitting on grounds two and three, Counsel told the court that the award for damages was made without proof. The respondent did not establish their integrity in the society and the way it was affected. They never deserved the award for general damages, he said. He added that the award of Tshs 6,000,000/= was not prayed for. He proceeded to say that the court did not take into account the evidence from the appellant who said that the words were not uttered. He concluded by saying that if the court was careful and took into account the evidence from the appellant it could not reach at the decision. He asked this court to vacate the decision of the district court with costs.

Submitting in reply to ground 5, Counsel for the respondents said that the defamatory words were spoken in public on 20/4/2022 and 20/6/2020. He said that the appellant spoke the defamatory words on 20/4/2022 which caused the case to be filed on 5/6/2020. But the appellant spoke the defamatory words again on 20/6/2020 after receiving the summons. They thus prayed to amend the plaint to add what had happened at a later stage. The court allowed them to amend. Counsel did not see any problem with the amendments.

Submitting in reply to ground 4 Mr. Kabuguzi told the court that the words are defamatory in nature. He referred the court to page 11-14 of the judgment of the district court saying the court said clearly that the words are defamatory. He referred the court to the evidence of PW1 (page 17), PW2 (page 22) PW5 (page 23) and PW6 (page 24). He said that the words are in the proceedings and defamatory.

Submitting in reply to grounds 2 and 3 he said that the words are in the pleadings. He proceeded to say that what was awarded was prayed in the pleadings. He proceeded to say that the evidence of the appellant was examined and found to be weak. He argued the court to dismiss the appeal.

Submitting in rejoinder, Ms. Victoria Nyambea proceeded to support the decision of the district court. She said that the amendments were not meant to add a new cause of action. She insisted that the words were not defamatory in nature. They were just words explaining what could happen to him. She went on to say what was quoted in the judgment is not what was spoken. The judgment has new words other than those in the pleadings, she said. She stressed that the respondent could not establish their status in the society.

I will start with an examination of the tort of defamation. It has been defined by various scholars and case law. There is a lot of literature on it. In **Hamza Byarushengo vs Fulgencia Manya & 3 others**, (CAT), Civil Appeal No. 246 of 2018 pages 15-16 had this to say:

*"The two learned scholars, **Winfield** and **Jolowicz** in their Book titled **TORT, nineteenth edition, 2015, W.E Peel, & J Goudkamp, Sweet and Maxwell, at page 360, define a defamatory statement in the following manner:***

***One**, a statement which tends to bring a person into hatred contempt or ridicule; **two**, words must tend to lower the claimant in the estimation of the right-thinking members of society in general; **three**, if words tend to cause the claimant to be shunned or avoided.*

See also the **Halsbury's Laws of England Vol. 4th edition** at page 7, where defamation is defined as follows:

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

In **Peter Ngomango v. Gerson M.K. and another**, Civil Appeal No. 10 of 1998 (CAT – unreported) it was said thus:

*".....the fort of defamation essentially lies in **the publication of a statement which tends to lower a person, in the estimation of right-thinking members of the society generally**, hence to amount to defamation there has to be publication to **a third party** of a matter containing **untrue imputation** against the reputation of another" (Emphasis added).*

In the **Public Service Social Security Fund (Successor of the Parastatal Pensions Fund) v. Siriel Mchembe** (CAT), Civil Appeal No. 126/2018 page 24 it was said thus:

*"Defamation can therefore take the form; a **libel which is mostly in permanent form as it is usually written and must be visible; or slander which is expressed in oral form**. The fundamental distinctions of the two forms of defamation respectively, therefore, is the medium in which they are expressed, that is, one is expressed in written form while the other is in oral form") (Emphasis added).*

The court went on to say the following at page 25;

*"Thus, in order to succeed in an action for defamation, the plaintiff has to prove the following elements: **that the defamatory statement exists; that the statement referred to him/her; that the***

statement was published and that the plaintiff suffered damages" (Emphasis added)

The court went on to say the following.

"... the issue is not how the defamatory statement makes a person referred to feel, but the impression it is likely to make on those reading or hearing it ... a defamatory statement must be published. A statement is thus considered to have been published when the defendant communicates to any one other than the plaintiff. There has to be a third party receiving the defamatory statement for there to be a publication. Thus, publication of defamatory statement is a pre-requisite to establish defamation." (Emphasis added).

In **valentine M. Eyakuze v. Editor of Sunday News and two others**

[1974] LRT 49 this court (Mfalila J, as he then was) said as under:-

"The fort of defamation cannot be divorced from **the social context** in which it is operating and there are as many social contexts as there are legal jurisdictions" (Emphasis added).

The fort of defamation has its genesis in the Common Law of England. It was received in this country through article 17 of the Tanganyika Order in Council 1920 which reads in part as under:

" 17. (1) There shall be a Court of Record styled " His Majesty's High Court of Tanganyika" (in this Order referred to as the High Court). Save as hereinafter expressed the High Court shall have

full jurisdiction, civil and criminal, over all persons and over all matters in the territory.

(2) Subject to the other provisions of this Order, **such civil and criminal jurisdiction shall, so far as circumstances admit,** be exercised in conformity with the Civil Procedure, Criminal Procedure and Penal Codes of India and the other Indian Acts and other laws which are in force in the territory at the date of the commencement of this Order or may hereafter be applied or enacted, and subject thereto and so far as the same shall not extend or apply **shall be exercised in conformity with the substance of the common law, the doctrines of equity and the statutes of general application in force in England at the date of this Order,...** save in so far as the said Civil Procedure, Criminal Procedure and Penal Codes of India and other Indian Acts and other laws in force as afore-said and the said common law, doctrines of equity and statutes of general application and the said powers, procedure and practice may, at any time before the commencement of this Order, **have been or may hereafter be modified, amended or replaced by other provision in lieu thereof ...:**

Provided always, that **the said common law, doctrines of equity and statutes of general application shall be in force in the territory so far only as the circumstances of the territory and its inhabitants** and the limits of His Majesty's

jurisdiction permit, and subject to such qualifications as local circumstances may render necessary."

This is also reflected in section 2 (3) of our Judicature and Application of Laws Act cap 358 R.E. 2019 (the JALA) which gives this court power to apply principles of common law, doctrines of equity and statutes of general application in force in England on the 22nd day of July 1920. The proviso to subsection 3 provides as under:

*"Provided always that, **the said common law, doctrines of equity and statutes of general application shall be in force in Tanzania so far as the circumstances of Tanzania and its inhabitants permits and subject to such qualifications as local circumstances may render necessary.**"(Emphasis added)*

So common law was not received to be applied in Tanzania as it is and for all the time. There is a starting point (the date when we received it), what we received and the circumstances under which it should apply. Both the Tanganyika Order in Council and the JALA say that it shall apply so far as the circumstances of Tanzania and its inhabitants permits and subject to such qualifications as local circumstances may render necessary.

What then should we do on the tort of defamation? We start to look at the pleadings and see the *set of words*, written or spoken. The words must be pleaded clearly in the complaint and proved to exist later during trial. We examine the words in the social context and say if they are capable of conveying a message of lowering the reputation of the plaintiff on the eyes of the right thinking members of the particular group of people or society. If yes, we proceed to see if they were published to a third party. The measure is not how the plaintiff felt after reading the words or hearing them. The measure is on eyes of the third party. And this third party must belong to the group of right thinking members of the society. One society may differ from another, we look into the particular society or group of people. We examine the feelings of the society in relation to what had been written or said of the plaintiff. The plaintiff must belong to a certain class or group of people with a certain status. We look at the status and the way the third party has ranked him after the publication of the words. He must see him differently, a person with a status lower than what he expected him to be.

We look at the reaction of people after the publication. The reaction will tell us if they were really moved by the words. We thereafter look at the plaintiff,

the hardships and mental anguish he suffered following the reaction of the society on his newly acquired status.

It is important to look at the status of the plaintiff before and after the publication. It is also important to look at the words in the context of the society for some words may be defamatory in one society and jokes in another. The word "msenge" for instance, may be very defamatory when referring to man in some parts of this country, but in other parts of this same country may be a joke. People may say "msenge", "msenge na wewe" and it ends there. Politicians have their jokes and jasons which may not be exchangeable to doctors. Lawyers have their languages, sometimes they use latin phrases like *pari pasu*, *suo mottu* and the like, they call themselves "*learned brothers*" but this does not mean that engineers and doctors who may have stayed longer in class are not learned. That is their language, the way they talk. Doctors may have their language as well. We must look at the circumstances under which the words were uttered and the particular class of people to know if they were defamatory or not. We must also look at what provoked the defendant to speak those words. He might have been in defence of what was said of him. He might have been speaking the truth of the character of the plaintiff or have been making a fair comment. All these

things have to be examined carefully before arriving to a conclusion that the words written or spoken by the defendant are defamatory and have defamed the plaintiff. It is not a mechanical process. It is something which has to be done carefully.

With that background, my discussion on the grounds of appeal will be easy. Grounds one, four and five go to the substance, whether there was defamation in this case. Grounds two and three go to the assessment of damages. I will start with a discussion on the amendment of pleadings and pleadings generally.

The record shows that the respondents filed their case on 5/6/2020 basing on statements made on 20/4/2020. It also shows that the appellant on being served with the plaint uttered some other words on 20/6/2020. The respondents prayed to amend to include the second event and they were allowed. They then filed the amended plaint on 6/7/2020 which is the current plaint. Counsel have had an argument on this aspect. The issue is whether it was proper to amend and include the second event. I have tried to make a search and came across a comment by **Richard Owen, in his book Essential Tort Law, 3rd Edition Covendish Publishing Limited, London, Sydney (200)** available online at

<https://www.cavendishpublishing.com> page 137, where it is written as under:

"Noteworthy, repetition of a defamatory statement is a fresh publication and creates a cause of action. Furthermore, where a libel is contained in television program or newspaper article there is a separate publication to every person who read the newspaper or saw the program, though in practice the plaintiff will normally sue in respect of the addition or broadcast."

See also **The Public service social Security Fund (Successor of the Parastals Pensions Fund v. Siriel Mchembe** (CAT) Civil Appeal No. 126/2018 and **Mw Rice, Millers Ltd v. Mwasia Security Ltd** (High Court) Civil Appeal No. 10/2022 (Ngwembe J)

With respect the trial magistrate and Mr. Kabuguzi, I think that it was wrong to amend the plaint to include events which happened after filing the suit. I think that, if the appellant called another meeting and uttered words which were defamatory of the appellant, the remedy was not to amend the plaint but to file a second suit for the uttering and publication were done differently. It did not matter if the subject matter was the same. What matters is what was said in the second meeting, the time involved and the publication. If the words were different, as was in this case, and the date

and publication was different, that could constitute a second cause of action. This is more so when there is already a case in court. It follows that the second event was improperly pleaded and has no legal effect. I will however proceed to discuss it as if the amendment was properly done for purposes of putting the whole picture clearly.

Speaking of pleadings, the Supreme Court of Liberia quoted with approval a quotation from **Houston v. Fischer & Lemcke**, 1 LLR 434, 43 6 (1904), in **Brown Boveri & Cie Ag. v. Thomas Morris** (1978) LRSC 4; 26 LLR 397 (1978) pages 401-403 that where it was said thus:

*"a fundamental rule of pleadings and practice is that evidence must support the allegations or averments ... In every such case the **defamatory words must be stated in the complaint, and they must be substantially proved at the trial**".*

This is also the position in this country. See **Hamza Byarushengo v. Fulgencia Many and 4 others** (CAT) Civil Appeal No. 246 of 2018 and **Happy Kaitra Bruno T/A Irene Stationary and another v. International Comercial bank (T) Ltd** (CAT) Civil appeal No. 115 of 2016 to mention a few. The rule is that there must be a set of words in the

pleadings and the plaintiff must lead evidence to prove them during trial. He is not expected to travel outside the pleadings or bring a new set of words.

As was apparent from the above, the respondents brought evidence with new set of words or added words in the course of giving evidence. See for example, PW1 said *Njaa imetoka tumboni imepanda kichwani...* PW6 was also quoted saying *Kijiji kimeshitatakiwa, tufanyeje? wachomewe makazi, wapewe maagizo watoke.* These words were not pleaded. They are additions. Adding words may mean that the witness is not sure of what is saying or was coached. I think it was important to lead the witness to say the exact set of words without additions.

I will now move to the crux of the matter. I agree with the findings of the trial magistrate that the appellant uttered the words. It don't accept the defence that he did not say the words. I think he said the words. In the first day it is pleaded that he said: "Kuanzia mimi na familia yangu na wajukuu zangu wote na familia ya mtendaji kitakachonitokea hawa watu Juma Hamisi Mbozwa, Yadunia Yokoli na Lowasa Edward Kagizo wakamatwe". In the second day he said; "Watu hawa hawatufai nawaambieni wananchi tuwafukuze kwenye Kijiji hawatufai kwa sababu ni wabaya" The issue is

whether these words examined in the context in which they were said and the society, amounted to defamatory words.

The appellant did not say what was between him and the respondents prior to that. The respondents said that there was an argument between them on the way he was spending village funds. The appellant and the first and second respondents were members of the village council and must have had divergence opinion in the council on expenditure of village funds. It is apparent that they could not solve the issue inside the village council. The appellant decided to take it to the village assembly for solution. He wanted it vote on his favour. He then told the assembly that the 3 people are against him and were threatening his life and that of the VEO. Their families were at stake. He sought the support of the village assembly. He proposed that they should get out of the village. The village assembly did not endorse the proposal. We are told that only 4 people raised their hands. The respondents say that they left the village temporarily but are still in the village to date.

The respondents say that the words were defamatory and made people to see them as bad people. They also said that the kitchen of the third respondent was burned and that they had to shift to the village temporarily but could not establish their status at the village before uttering the words

and their new acquired status after the uttering of the words. Even the burning of the kitchen is confused because the 3rd respondent call it his house. Looking at the words and the place where they were spoken and the reaction of the people, and given the evidence that there was an argument between the parties over the way village funds were being used, I don't find any defamation in the matter. The words were spoken in the political meeting in defence of what had been said of the appellant at the village council and aimed at discrediting the respondents politically. I think the aim was not to defame the respondents but to weaken their agenda. No wonder there was no immediate reaction after the words. The respondents went home peacefully. In fact, apart from the 3rd respondent's kitchen whose burning is still confused, there was nothing serious which happened to the respondents. The evidence that they shifted temporarily to the town is weak for lack of supporting evidence from the town. I expected to see people who received and gave them shelter, but could see none. And if they lived in guest houses, there was need of bringing the guest house register or at least receipts of payment. I could see none of them. It was not enough to say that they shifted to the town temporarily. There was need, in my view, to bring a person who received and hosted them or particulars from the guest

house. In the absence of such evidence, the court cannot believe that they were forced to leave the village. Further, what made them run away and what has made them to stay at the village now was not explained. In other words, why are they not attacked today? Why is it that they are now living peacefully at the village? These questions lack answers from the evidence on record. It follows that there was no evidence showing that the words were interpreted by the people in the way the respondents want me to believe. I think the words were said with a political purpose and received that way. They aimed at suppressing the views of the respondents in a political context at the village not defamation as such.

Further, much as I agree that the words were spoken in a public meeting and heard by the village assembly, I could not get evidence that they were published to some other people other than those who attended the meeting. In other words, publication was limited to those who attended the meeting. It had no effect of spreading to the rest of the villagers. Failure to circulate in the village means that the words had no serious impact in the community, not defamatory as alleged. They were mere political jangons which were designed for a purpose at the public meeting. They lacked the quality of being defamatory statements. And if all politicians will be put to task in what

they say in meetings, against their opponents, and be required to pay damages heavily as was done in this case, none of us will accept to be a politician. Defamation must be interpreted in the social, Economic and political context, not mechanically. Neither is the situation in England, Kenya, Uganda etc equal to the situation in Tanzania.

That discussion disposes grounds 1,4 and 5. It also closes the road to grounds 2 and 4 for if there was no defamation, there cannot be an assessment of damages. But for what it worthy, I will say something more for future guidance. Political statements must be interpreted in the context of politicians. They must be measured in the political context for they may carry a message other than what they look like. For them to be defamatory, they must be of a degrading nature and must affect the plaintiff directly and measurably. Short of which they remain as political jasons or tools of work which may not be the basis of any defamation. With respect the decision of the district court lack legal base on the reasons given and is vacated.

That said, the appeal is allowed. Costs to follow the event.

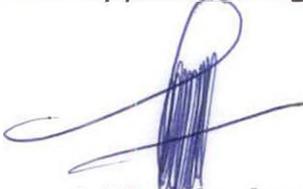



L.M. Mlacha

Judge

27/9/2022

Court: Judgment delivered in the presence of Mr. Method Kabuguzi for the respondent and absence of the appellant. Right of Appeal Explained.


L.M. Mlacha

Judge

27/9/2022