

**IN THE HIGH COURT OF TANZANIA**  
**(DAR ES SALAAM SUB DISTRICT REGISTRY)**  
**AT DAR ES SALAAM**  
**CIVIL CASE NO. 79 OF 2020**

**THE REGISTERED TRUSTEES OF**

**THE AFRICAN INLAND CHURCH TANZANIA.....PLAINTIFF**

**VERSUS**

**GROUP SIX INTERNATIONAL LIMITED.....DEFENDANT**

**JUDGMENT**

*Date of last order: 26/07/2022*

*Date of Judgment: 02/09/2022*

**E.E. KAKOLAKI J.**

The plaintiff herein, a corporate body duly incorporated under the Trustees Incorporation Act, [Cap. 318 R.E 2002], instituted this suit against the defendant, a company duly registered under Companies Act, [Cap. 212 R.E 2002] for tort of libel claiming for general damages to the tune of Tsh.1,000,000,000.00/= relying on the letter dated 12<sup>th</sup> August 2019, with defamatory contents duly written and signed by Marcas Debt Collectors and Auctioneers Limited, allegedly on behalf of the defendant as her agent. The material facts giving rise to this dispute are not difficult to comprehend. It is gleaned from the plaint that, sometimes early 2017 the plaintiff contracted

the defendant to carry out construction of a church building located at Chang'ombe Dar es salaam. It was agreed that, upon completion of the project defendant would be paid a contractual sum of Tsh. 676,981,291 which subsequently increased to Tshs. 758,692,461.53 as a result of a couple of variations. It is alleged the contractual work was performed fully by the defendant and by 16<sup>th</sup> January 2019, all invoices relating to the contract were paid timely in three instalments and in full as per the agreement.

Believing that she owed the defendant nothing, in mid-August 2019, the plaintiff received a letter from defendant's debt collection agent, one MARCAS Debt Collectors and Auctioneers Limited, acting on the defendant's instruction, dated 12<sup>th</sup> August 2019, demanding for payment of monetary debt to the tune of Tanzania shilling One Hundred Thirteen Million One Hundred Seventy-two Thousand Nine Hundred and Three only, (113,172,903.00). According to the plaintiff, the said letter which was copied to various institutions contained defamatory contents exposing her to public scandal, odium, ridicule and contempt was to the effect that:

- (i) That the plaintiff up to 12<sup>th</sup> August, 2019 had refused to pay its debt to the defendant amounting to Tzs.113,172,904.00 arising from their contract

- (ii) The defendant had made several demands upon the plaintiff for payment of the said debt and the plaintiff neglected to pay the same.
- (iii) That the plaintiff gave empty promises and failed to fulfil commitments to settle the debt.
- (iv) That the plaintiff never intended to settle the debt.
- (v) The plaintiff was guilty of breach of contract and breach of trust.
- (vi) That the plaintiff crippled defendant's business and operations.
- (vii) That the plaintiff denied the government of the United Republic of Tanzania dependable internal revenue collection.
- (viii) That the plaintiff was responsible for ruining of the Nation vis-à-vis the country's effort to attract investment from the private sector.
- (ix) That the plaintiff was responsible for risking the employment of several employees of the defendant it intended to terminate, and
- (x) That the plaintiff is a criminal and guilty of economic sabotage and corruption.

It is further averred that, the copied institutions included various Government departments and law enforcement authorities and agencies

which are the Prime Minister's Office responsible for promotion of investments and protection of business, Ministry of Home affairs which is the plaintiff's registrar and regulator, Tanzania Revenue Authority responsible for collection of Government Revenues and PCCB responsible for combustion and investigation of corruption practices, economic and sabotage crimes. All the allegations in the said letter it is claimed, are completely untrue and constitute grave libel for being naturally injurious to the plaintiff. Being aggrieved with the insinuations in the said letter coupled with the defendant's adamant conduct in dealing with the matter and having considered the same as bitter and unjustifiable attack, completely unfounded and damaging in character, the plaintiff set in motion these proceedings against the defendant for libel and injurious falsehood after the latter's failure to heed to her demand notice to write individual withdrawal and apology letters duly copied to all authorities served with the complained of letter, and payment of damages to the sum of Tanzanian shillings One Billion (Tshs. 1,000,000,000.00). The plaintiff says, the claimed amount is justifiable after being seriously injured in character, credit and reputation as well as its mission being a religious institution of worshipers congregated in

a church all over Tanzania for more than a century performing the objective of promulgating the gospel of Jesus Christ.

In this suit the plaintiff therefore is praying against the defendant for the following reliefs:

- (a) The defendant to give suitable withdraw and apology in the terms to be approved by the plaintiff.
- (b) The defendant to write individual letters of withdraw and apology with full details on terms to be approved by the plaintiff to the Minister of State responsible for investment, Prime Minister's office, the Minister for home affairs, the regional manager, Tanzania Revenue Authority Dar es Salaam Region, the Regional Manager, PCCB Dar es Salaam Region and pay the plaintiff by way of general damages the sum of Tanzania Shillings One Billion (Tshs. 1,000,000,000).
- (c) Cost of the suit.
- (d) Any other reliefs as the Court may deem appropriate.

On her part, the defendant through her written statement of defence had no issue with the plaintiff's claims on existence of the contract for carrying out the construction of a church building at Changombe Dar es Salaam and that,

on 17<sup>th</sup> July 2019 he contracted Marcus Debt Collectors for provision of debt collection services. What she logs horns with the plaintiff is on her assertion that, the said Marcus Debt Collectors and Auctioneer Ltd acted as defendant's agent as the defendant claims the same was an independent contractor, acting as a private contractor and not her agent. For that matter the defendant disassociated herself from the contents of the said written letter by the said Marcus Debt Collectors and further refuted all the reliefs claimed by the plaintiff calling her to strict proof thereof.

Further to her defence before the matter could be scheduled for 1<sup>st</sup> Pre-trial Conference, the defendant sought for leave of the court to file a third party notice, the prayer which was cordially granted. MARCAS Debt Collectors and Auctioneer was therefore summoned to appear in court and defend herself after the third party notice was filed by the defendant and served to her, but failed to either enter appearance or file her defence. Following that default, on 18/05/2021 a prayer was made by the defendant's counsel that, should the plaintiff's case be proved against the defendant, then judgment be entered against the 3<sup>rd</sup> party to the extent stated in the 3<sup>rd</sup> party's notice, the prayer which was granted pursuant to the provisions of Order I Rule 19 (1) (b) of the CPC.

Before hearing could take of the following issues were framed by this court for determination of the parties' dispute.

- (i) Whether the letter dated 12<sup>th</sup> August, 2019 by Marcas Debt Collectors and Auctioneers Ltd contained defamatory statements.
- (ii) If the answer to issue No. 1 is in affirmative, whether the said letter was published.
- (iii) If the answers to issues No. 1 and 2 are in affirmative, whether the defendant is liable for defamation.
- (iv) Whether the plaintiff suffered damages.
- (v) What reliefs are the parties entitled to.

In a bid to substantiate her claim, the plaintiff who in this case enjoyed legal services of Mr. Adronicus Byamungu, learned counsel procured three (3) witnesses who are Samwel Marco Charles Mhangwa, the church secretary at Changombe -Local church (PW1), James Mitayakingi Kilaba, the Project Committee chairman (PW2) and John Kanga, the church elder (PW3). She also relied on six (6) exhibits. In his testimony, PW1 testified that, he is the church secretary of three local churches within Changombe pastorate since 2006. He gave details of church's registration, leadership, its country set up

and coverage as well as his main duties as the secretary. This witness told the Court on how the plaintiff contracted the defendant for construction of the church for consideration of Tshs. 676,981,295.00, though the same was completed at the value of Tsh. 758,000,000/= the increase resulted from several variations at the request of the plaintiff. The parties' contract was received as exhibit PE 1. As the funding of the said project was sourced from church members' contributions and other good wishers, the defendant's consideration was paid in full vide eleven certificates, the 11<sup>th</sup> certificate being for Tsh. 113,172, 903.00 as exhibited in exhibit PE2, which was paid in three instalments until January 2019, this witness voiced. He said, as a church leader had a duty to account for the money spent and solicit for more contributions and funds from within and outside the church sphere before the 13/08/2019, when the church authority received a demand letter dated 12/08/2019 from the defendant's debt collection agent annexed with a tax invoice dated 01/02/2017 exhibit PE3, stating that the church was indebted to the defendant to the tune of Tsh.113,179,903.00 as indicated in certificate No. 11, which claims according to him were totally wrong.

According to PW1, the said letter was also accusing the church of crippling defendants' business operations and denying the Government of its internal



revenues from genuine foreign investors hence equated such plaintiff's act to international economic sabotage to the United Republic of Tanzania. And further that, the letter was accusing the plaintiff for refusing to honour the tax invoice dated 01/02/2021. It was PW1's evidence that, the defendant never approached the plaintiff before raising such accusation nor did she write any demand letter before as claimed. As church leader PW1 voiced, he was seriously affected by such accusations as is the one who announced in front of the church that, the church does not owe the defendant any amount. According to him, the letter was disseminated or copied to the Prime Minister's office in particular Minister of State responsible for Investment, Minister of Home affairs, Regional Manager for TRA Dar es Salaam Region, PCCB, Dar es Salaam Region and the defendant for notification if payment is not received. In his further testimony, PW1 told this court that, after receiving the said letter, the pastor called him demanding for explanation, of which PW1 disclaimed all what was stated therein confirming to be wrong and unfounded claims. According to him, he was thereafter instructed to call the church council members' meeting while requesting the members to maintain confidentiality of the matter though by then the information in exhibit PE3 had already spread to different offices mentioned above. He said,

the church council instructed him to write the letter denouncing the said accusations in exhibit PE3 and make sure that the matter is taken to court. In response to the council instructions, PW1 wrote a letter to MARCAS debt collection dated 02/09/2019 (exhibit PE4) clarifying on the payment of Tsh.113,172,903.00 and copied the same to the institutions which MARCAS had copied her letter before. And that, the plaintiff expected defendant would have admitted to have been paid her due amount to its fullest, but she never responded, the result of which a demand letter exhibit PE5 was issued to her before institution of this case so that the court could clear the tarnished church image inside and outside the country. It was his testimony that, as leaders of the church they lost church members' trust and contributors were no longer interested in contributing on the remained part of the project for fixing tiles and decorations. He added that, even the government is looking at them differently now unlike it used to be before. Out of that tainted reputation and exposure to ridicule, contempt and mistrust by church members and its good wishers resulted from the contests of exhibit PE3, PW1 said, the plaintiff is claiming for payment of Tshs. 1 billion as general damages from the defendant and further apology to the public that she wronged against the plaintiff.

When put under cross examination by Mr. Mzeru for the defendant, on whether there is a proof that exhibit PE3 was delivered to the intended institutions to be copied, PW1 conceded that, there was none nor did the plaintiff receive response from any Government institutions calling her to assign explanations on the alleged sabotage of economy of the country as claimed in exhibit PE3. When referred to exhibit PE1 and asked as to whether retention fees of 5% of the contractual amount was paid, PW1 admitted that, only Tshs. 16,000,000/=, was paid as Tsh.16,924,000/- was still due. When asked whether he has proof that the certificate No. 11 was agreed to be paid by instalments, PW1 replied he had none. And added further that, there is no prove that defendant received the letters in exhibits PE4 and PE5. When under re- examination, PW1 clarified that, retention fee is paid upon evaluation of the project and after 95% of the project amount is paid, but in the project subject of this case, the evaluation of the performance is yet to be conducted that is why 50% of the retention fee is yet to be claimed. He further explained that, the retention amount had no connection with the claimed amount of Tsh.131,172,903 and the defendant has never demanded from the plaintiff the claimed amount nor informed her that she has failed to pay any due amount. He concluded that, service of the letters written to

defendant was effected through dispatch book though he did not bring the same in court.

The evidence of the second witness PW2, as the then chairman of church project committee, was a replica of PW1's testimony. He also tendered Exhibit PE 6 as the project report of the church construction project. Concerning damages caused by exhibit PE3 to the plaintiff, PW2 said that, the same affected contributions related to other church projects as that effect is manifested by poor payments of the pledges by the church members after issue of the said letter. PW2 claimed also to have been personally affected as father of the family and retired director of TCRA since his status was subjected to disrepute and he could no longer be trusted that is why he was not re-elected in the chairmanship of the project committee.

When subjected to cross examination by Mr. Mzeru and referred to exhibit PE 3, PW2 admitted that, he does not remember the date when the church leaders meeting was held and that, he is not sure whether the said letter was received by the institutions purported to be copied, though he believes it was communicated to them being a document from the reputable company. When asked as to whether MARCAS was instructed by to copy the said letter to those institutions, he also confessed to have not been sure but

he was quick to counter that, since she was instructed by the defendant, he believes that she was so instructed. According to PW2, trust to the project committee members and church leadership was subjected to disrepute or injury by the contents of the said letter, because **one**, church members were no longer passing the holy greetings to them (Bwana Yesu asifiwe) as it used to be before, **secondly**, there was decrease of contributions and fulfilment of pledges made by the church members and other contributors and finally, attendance of members and other contributors to the project fund raising had gone very low. When asked on the unpaid amount of the pledges PW2 told the court that, the unpaid up pledges were Tsh.73 million by 2020, though there was no data presented in court to substantiate the same. Concerning the relief sought, PW2 contended that, the claimed one billion can remedy the church members and church leaders as well. He added that, both compensation of one billion and apology are very important remedies to the plaintiff.

The last witness for the plaintiff was PW3, a church elder since 2014 to April 2022 whose evidence in essence is a replica of PW1 and PW2's evidence basing on the contents of exhibit PE 3 and how it affected the church as an institution and the entire congregants. It was his evidence that, this case will

assist to cleanse or clear the church from the defamation and restore church members' trust to their leaders by proving to them that the claims levelled against the church and its leaders were unfounded. When called to cross examination by Mr. Mzeru for the defendant, PW3 clarified that, he never saw the letter before 20/01/2020 when they conducted the church elders meeting, and that he is not sure whether the church was summoned by any of the institutions copied with the letter. According to him, if the apology is issued by the defendant, members of the church will certainly appreciate that, what was stated was false. Regarding the resolution to sue the defendant only testified that, he was part of the decision to sue the defendant and that they could not sue MARCAS as the same was instructed by the defendant to do what she did. That marked the end of the prosecution evidence.

On the other hand as alluded to above, the defendant procured only one witness Omary Hussein Mweta, human resource officer and corporate lawyer (DW1), dully employed by the defendant under that position for six years. This witness introduced the court on the registration of the defendant's company and its objectives before he admitted to have been contracted for church construction by the plaintiff in the year 2014, in which 2016 they

handed back the completed project to the plaintiff. He also gave a detailed account on the procedures of effecting payments and that retention fee of 5% is paid to the contractor within 21 days of last date of submission of final certificate which in their case was already submitted to the plaintiff. According to him, one year had passed without the plaintiff effecting the said payment of retention fee which prompted the defendant to seek assistance of the debt collectors' company who was handed with a list of debtors. He testified further that, the hired company for that function was MARCAS Debt Collectors and Auctioneer. And added that, after handing the debts and list of debtors to the said company since 2017, they never heard from her until when they received the summons from the court that the defendant is sued by the plaintiff for defamatory statements. DW1 further testified that, after receipt of the said summons the company board held a meeting as a result it was agreed that, the matter be forwarded to their lawyer for defence actions. He said, the defendant disassociates herself from what MARCAS debt collectors communicated against the plaintiff, and that MARCAS should be summoned to explain as to whether he was instructed to communicate what she communicated to the plaintiff. He then prayed the suit against the defendant to be dismissed.

When cross examined by advocate Byamungu on the contents of exhibit PE3, DW1 confessed to have not read it thus, unaware of what was communicated to the plaintiff so unable to tell whether its contents affected the plaintiff. He also admitted that, MARCAS was employed as their agent in debt collection to collect 113 million as indicated in the final certificate, of which he is not sure whether the same was paid or not. He said, they did not instruct MARCAS to write in that way though have not yet withdrawn the instruction from her. When subjected to re-examination by Mr. Mzeru and asked on their relationship with MARCAS debt collection DW1 replied that, MARCAS acted as independent contractor who would perform her functions independently and not as agent of the defendant as stated earlier on. That marked the end of defence case.

At the end of the hearing, parties prayed for the leave to file their final submissions, the prayer which was granted and the subsequent court's orders for filing them complied with. In his submission, Plaintiff's counsel tried to convince the court that, the witnesses proved the case to the standard required while, defendants counsel on the other hand insisted that, plaintiff had to sue MARCAS as he is the one responsible for the defamatory statements. In fact, I am not intending to reproduce the said submissions as



a whole in this judgment, but rather refer the same in the course of determination of the framed issues.

Having narrated the evidence by the parties herein in extensor, and having gone through the final submission from both parties, I now advance to consider the issues as framed by the court. But before doing that, I wish to point out from the outset that, there are some issues in which parties are at one. It is a common ground between parties that, on 2017 they entered in construction contract for the defendant to construct the church building for the plaintiff. It is also undisputed fact that, defendant hired MARCAS Debt Collection and Auctioneer to collect its debts from the plaintiff. What is in controversy is whether the letter written by Marcas Debt Collection to the plaintiff contains defamatory statement and whether Marcas was acting as an agent of defendant or independent contractor. It is also worth noting that, for the plaintiff to succeed in an action for defamation, he has to prove that, **One**, that the defamatory statement exists, **second**, that the statement referred to him/her, **third**, that the statement was published meaning was communicated to the third party, and **fourth** that, he suffered damages. Having proved so, the onus will then shift to the defendant to prove that the words were true or that, he had justification, and/or that, it

was a fair comment referring to matters of public interest; that the same was made on the matters of privileged occasion; that it was unintentional defamation; and that there was consent from the plaintiff. See the cases of **Meneja Mkuu Zanzi Resort Hotel Vs. Ali Said Paramana**, Civil Appeal No. 296 Of 2019 and **The Public Service Social Security Fund (Successor of the Parastatal Pension Fund) Vs. Siriel Mchembe**, Civil Appeal No. 126 of 2018 (Both CAT- Unreported). Further to that, the principle of law under sections 110 and 111 of the Evidence Act, [Cap. 6 R.E 2022] will also be applicable in this matter where the law dictates that, he who alleges existence of any fact or claim of right must prove existence of such fact and the onus of so proving lies on the party who would lose if no evidence in adduced at all on that particular fact or claim. As to what standard to be applicable in the proof of civil nature the provisions of section 2(3) of the Evidence Act, provides an answer that, it is on the balance of probabilities. There is a litany of authorities to the above principle of law such as the cases of **Paulina Samson Ndawavya Vs. Theresia Thomasi Madaha**, Civil Appeal No. 53 of 2017 and **Berelia Karangirangi Vs. Asteria Nyalwambwa**, Civil Appeal No. 237 of 2017 (All CAT- Unreported).

The above principles were lucidly summarised by Court of Appeal in the case of **Paulina Samson Ndawavya** (supra) when the Court observed that:

*"It is trite law and indeed elementary that he who alleges has a burden of proof as per section 110 of the Evidence act, Cap. 6 [R.E 2002]. It is equally elementary that since the dispute was in civil case, the standard of proof was on a balance of probabilities which simply means that the Court will sustain such evidence which is more credible than the other..."*

Similarly in **Berelia Karangirangi** (supra) on burden and standard of proof in civil proceeding the Court of Appeal had this to say:

*"We think it is pertinent to state the principle governing proof of cases in civil suits. The general rule is that, he who alleges must prove....it is similar that in civil proceedings, the party with legal burden also bears the evidential burden and the standard in each case is on the balance of probabilities."*

On that note, I will now turn to determine the merit and demerit of this suit, starting with the first issue as to whether the letter dated 12/08/2019 by MARCAS Debt Collectors & Auctioneers Ltd contains defamatory statement. In his submission Mr. Byamungu cited a plethora of authorities explaining the meaning of defamatory statement. Reproducing the contents of exhibit PE3 Mr. Byamungu submitted that, the plaintiff through evidence of PW1

managed to disprove the claims in the said letter and prove that its contents in nature contain defamatory statement. And further that, the defendant controverted nothing on its contents. On the other hand, Mr. Mzeru kept on insisting that, the plaintiff had to sue MARCAS who could explain why she wrote the letter containing such statements.

In my profound view, the issue is very straight and need not detain this court. According to Black's law dictionary 8<sup>th</sup> Edition at page 1261 defamatory statement is defined to mean:

*"...a statement tending to harm a person's reputation by subjecting the person to public contempt, disgrace ridicule or by adverse affecting the persons business."*

It is further explained that,

*"...a communication is defamatory if it tends so to harm the reputation of another as to lower him in the estimation of the community or to deter third person from associating or dealing with him."*

Further in the case of **Meneja Mkuu Zanzi Resort Hotel vs Ali Said Paramana** (supra) the Court of Appeal defined defamatory statement as hereunder quoted:

*"Defamatory statement is one which tends to lower a person in the estimation of right-thinking members of the society or which tends to shun or avoid that person."*

Similarly in the case of **The Public Service Social Security Fund (Successor of the Parastatal Pension Fund) vs Siriel Mchembe**, (supra) when the Court of Appeal was explaining the meaning of defamatory statement quoted with approval the book of Mc Bride and Bagshaw, titled **Tort Law**, 5th Edition, Longman Law Series, 2015, that defined defamatory statement to mean:

*"a statement will be defamatory if reading or hearing it would make an ordinary reasonable person tend to: - "think less well as a person of the individual referred to; think that the person referred to lacked the ability to do their job effectively; shun or avoid the person referred to as a figure of fun or an object of ridicule."*

In the above cited case the Court added that, the issue is not how the defamatory statement makes the person referred to feel, but the impression likely to be made on those reading or hearing it.

In the present case the statement alleged to be defamatory statement goes as follows;

***TAKE NOTE THAT,***

*Our clients patience totally vanished because of your default and refusal to pay the above monetary debt an act which is breach of contract as well as trust most significantly the result of your actions are now crippling our clients business operations and therefore denying the United Republic of Tanzania dependable internal revenue collection significant from genuine investors such as our client who as part of the private sector has also created a significant number of job which within the country which are now in danger of being lost due to acts by **individuals like you who aim to take to the ground genuine foreign** investors and what you have done **is equivalent to intentional sabotage of the economy of the Republic.** (Emphasis is mine)*

Imploring the meaning of defamatory statement as explained by different authorities above, it is apparent to me that, the statements made in exhibit PE3 if heard by a reasonable listener or reader in the society would tend to cause the plaintiff be exposed to hatred, contempt or ridicule by not only members of the church but also members of the public as they tend to be injurious to her business of investing in the lives of its congregants and humanity at large or lower plaintiffs' reputation before the government institutions alleged copied with the said letter. Thus, the issue is answered in affirmative.

Next for determination is the issue as to whether the letter by Marcas was published. It is a settled principle of law that, a defamatory statement must be published and the same is considered to have been published when the defendant communicates it to anyone other than the plaintiff. In other words, publication means communication of defamatory utterance to a third person. Thus, publication of a defamatory statement is a pre-requisite condition towards establishment of the tort of defamation.

In the instant case, it is not disputed that, the letter Exhibit PE3 indicates to have been copied to different institutions including the Prime Minister's office in particular Minister of State responsible for investment, Minister of Home affairs, Regional Manager for TRA Dar es Salaam Region, PCCB, Dar es Salaam Region and the defendant for notification. In his submission Mr. Byamungu argued that, the fact that the letter was copied for circulation to the named individuals and institutions, is a prima facie evidence that, it was published to those named and copied institutions. Mr. Mzeru on the other hand is of the contrary view that, the plaintiff had a duty to prove that the letter was received by those institutions, but she failed to discharge it, thus no proof of publication. I entirely agree with Mr. Mzeru that, he who alleges has the duty to prove the allegations as rightly stated in **Paulina Samson**

**Ndawavya** (supra) and that duty in this matter rested on the plaintiff. I further shoulder up with him on his proposition that, the plaintiff failed to prove publication by establishing that the letter exhibit PE3 was in fact communicated or delivered to the persons or institutions alleged to have been copied with as one of the perquisite condition in proving the tort of defamation and it was rightly stated in the case of **Meneja Mkuu Zanzi Resort Hotel** (supra) and **The Public Service Social Security Fund** (supra). I so conclude as PW1 and PW2 when cross examined on that fact were quick to concede that, there was no evidence tendered by them proving that, indeed the said exhibit PE3 was delivered to the respective institutions alleged to have been copied by Marcas Debt Collector and Auctioneer. Further to that the two witnesses are on record exhibiting that, the alleged copied persons or institutions have never called or summoned the plaintiff to explain anything over the assertions imputed to her, thus a proof that the said letter was never published to the third party. It was expected if the same was received by the said persons or institutions response would have been made to the author and copied to the plaintiff and other addressees of the copies. In absence of such evidence this Court remains with no viable evidence to bank on believing that the letter was published.



I have again considered the evidence by PW1 that after receipt of the said letter exhibit PE3, the pastor of the pastorate called him and upon satisfying him that the allegations therein were unfounded, an order for calling church council and later on church elders meetings was issued to him the said meetings conducted. According to PW1 whose evidence was corroborated by PW2 and PW3, the contents of the said letter was disclosed to the participants of the two meetings and later on the information conveyed to the congregants, who alleged upon receiving such information were discouraged and started shunning away the church leaders with continued mistrust on them. It is the settled law that, where the letter or writing is sent direct to its addressee, there is no publication out of it. In the case of **The Public Service Social Security Fund (Successor of the Parastatal Pension Fund) Vs. Siriel Mchembe (supra)** the Court of Appeal while deliberating on what amounts to publication quoted with approval the case of **Pullman Vs. Walter Hill & Company** (1891) 1QB 524 where it was stated that:

*"Publication is the making known, the defamatory matter after it has been written to some person other than the person to whom it is written. If the statement is sent straight to the*

*person of whom it is written there is no publication of it; for you cannot publish a libel of a man against himself".*

In this case no doubt the letter in exhibit PE3 was written by the Marcas Debt Collectors and Auctioneer Ltd directed and delivered to the plaintiff.

Applying the principle in **The Public Service Social Security Fund** (supra), I am of the firm opinion that, the divergence or publication of the contents of exhibit PE3 to members of the two meetings and later on to the congregants was neither made by Marcas Debt Collections and Auctioneer nor the defendant, but rather the plaintiff's authority. In view of that uncontroverted fact, I hold the plaintiff cannot under any stretch of imagination be held responsible for such publication if any to church council and church elders meetings as well as to the congregants. That said this issue is answered in negative.

The other aspect to be considered which must be proved is the issue as to whether the defendant is liable for defamation. As per the evidence and the final submission made by Mr. Byamungu, the plaintiff alleges that Marcas Debt Collectors and Auctioneer was the defendant's agent and cited a plethora of authorities supporting that stance in that, a principal becomes liable for the acts done by his agent. On the other hand, defendant disassociated himself from that relationship. According to the defendant,

Marcas Debt Collectors and Auctioneer was acting as an independent contractor. I think this issue need not detain this Court. Having determine the 2<sup>nd</sup> issue in negative, this issue is rendered irrelevant as there cannot be defamation if there is no publication of the alleged libel or slander. It follows therefore that, the assertions by the plaintiff through PW1, PW2 and PW3 that reputation of the church and individuals as church leadership was injured for being faced with hard time due to mistrust from the church members remain to be an afterthought for want of publication as it is the church authority that divulged the contents of exhibit PE3 has a large share of blame. The Court of Appeal in the case of **Berelia Karangirangi** (supra) on the principle governing proof of civil case cited with approval the case of **In Re B** [2008] UKHL 35, where Lord Hoffman stated as thus:

*“If the tribunal is left in doubt, the doubt is resolved by a rule that one party or the other carries the burden of proof. If the party who bears the burden of proof fails to discharge it, a value of 0 is returned and the fact is treated as not having happened.”*

In this case since the plaintiff failed to exhibit to the Court’s satisfaction that, there was publication of the alleged defamatory statement hence no proof of defamation, I hold the third issue is as well answered in negative.

The fourth issue is whether the defendant suffered any damages. The claimed suffered damages in this matter are based on the alleged defamatory statement where the plaintiff through PW1, PW2 and PW3 claimed that, the church together with individuals as members of the church council, church elders and church project committee members' reputation was lowered in the estimation of the right thinking members of the society generally and cause them to be exposed to hatred, contempt and ridicule as well as injury of the plaintiff's business of nurturing human souls. Since it is already held in the 2<sup>nd</sup> and 3<sup>rd</sup> issues that there was no publication and therefore no proof of defamation on the plaintiff's part, this court is satisfied that, the plaintiff suffered no damages at all, and if any was suffered I hold was self-caused. I so view as the alleged defamatory statement was published by the plaintiff herself to the congregants. Hence the issue is answered in negative too.

The last issue for consideration is to what reliefs are the parties entitled to. Basing on the findings of the Court above, this Court is satisfied that the plaintiff has failed to prove her claims against the defendant to the standard required by the law which is the balance of probabilities as stated in the case of **Anthoni M. Masanga Vs. Penina (Mama Ngesi and Another**, Civil

Appeal No 118 of 2014 CAT (unreported). The resultant consequence is to dismiss the suit in its entirety, which order I do hereby enter.

Given the nature of the case, I order each party to bear its own costs.

It is so ordered

Dated at Dar es Salaam this 2<sup>nd</sup> day September 2022.



E. E. KAKOLAKI

**JUDGE**

26/08/2022.

The Judgment has been delivered at Dar es Salaam today 02<sup>nd</sup> day of August, 2022 in the presence of MS. Shiza Ahmed John, advocate for the Plaintiff, Mr. Rico Adolf Mzeru, advocate for the Defendant and Mr. Asha Livanga, Court clerk.

Right of Appeal explained.



E. E. KAKOLAKI

**JUDGE**

02/09/2022.

