IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SONGEA DISTRICT REGISTRY)

AT SONGEA.

CIVIL APPEAL NO. 6 OF 2022

(Originating from Songea District Court in Civil Case No. 08 of 2020)

RAMESH BABU NIMMAGUDA ..... 1ST APPELLANT

AL – AZIZIA (T) LIMITED..... 2ND APPELLANT

VERSUS

NARENDER REDDY KOLAMPALLY..... RESPONDENT

JUDGMENT

04/10/2022 & 18/10/2022

U.E Madeha, J.

The Appellants, Rameshi Babu Nimmaguda and Al – Azizia (T) Limited were the Defendants in the District Court of Songea. They were sued by the Respondent (the plaintiff), one Nerender Reddy Kolampally, who instituted a suit of defamation against them praying for various reliefs as set forth in the plaint. The reliefs sought were for false imprisonment, malicious prosecution and defamation.

On the same note, the Respondent prayed the Court to award general damages amounting to Tanzanian shillings one billion (1,000,000,000), an

order of the Court that the Appellants should pay the Respondent (plaintiff) special damages to the tune of Tanzanian shillings two million (2,000,000/=), punitive damage as the Court may deem fit and just to grant, interest on the decretal amount at the Court rate, costs of the suit and any relief the Court deems fit and just to grant.

In fact, the record tells that in the year 2015, the Respondent was employed by the second Appellant (Al-Azizia (T) Ltd Company) as the branch manager at Songea. As a matter of fact, the company (second appellant) deals with the distribution of different products whereby the first Appellant was the director of the company. The Respondent had an agreement that his duty is to receive cargo from the headquarters in Dar-es-Saalam and look for customers in order to distribute the received products. In that regard, the company managed to sell the products to the tune of 1.2 billion Tanzanian Shillings. Surprisingly, the first Appellant arrived in Ruvuma without any prior notification whereby he told the Respondent the following words, which I hereby quote: *"Huyu Narender Reddy Kalompally Branch Manager of Songea. Hayupo kazini toka leo kwa kuwa siyo mwaminifu na mwadilifu ni mwizi anaiba pesa za kampuni."* To add to it, the Appellant filed a criminal case at Songea Police Station claiming that the Respondent had

stolen a total amount of Tanzanian shillings one hundred and sixty-six million, six hundred and sixty-six thousand (166,666,000) from the second appellant.

It is important to note that, the Respondent was arrested and detained at Songea Police Station. Additionally, the police released the Respondent in the evening on the same day. On the foregoing, the Regional Crimes Officer (RCO) of Temeke communicated with the Regional Crime Officer (RCO) of Songea that the Respondent should report at Temeke Police Station in the city of Dar-es-Saalam based on the claim for theft of one hundred and sixty million (160,000,000) Tanzanian shillings stolen in Songea.

The Respondent arrived in Dar-es-Saalam and engaged an advocate, and paid him one million and five hundred (1,500,000) Tanzanian shillings. Moreover, the Respondent alleged that he traveled from Songea to Dar-es-salaam with Mr. Abdallah an advocate by using his private jet. In that regard, they used different expenses for which he was arrested by the police. However, the police case was dismissed and not considered as a result the Respondent claimed to be defamed and his reputation was lowered therefore, he was praying for the above compensation, the expenses of engaging an advocate and traveling expenses. To crown it all, the evidence

of PW2 and PW3 corroborated the evidence of the Respondent and actually the evidence is similar and there is no need to put it on records. Following the trucking out of the police case, the Respondent filed Civil Case No. 8 of 2020 in the District Court of Songea and prayed to be granted the following relief:

i. *An order of the Court that the Appellants (defendants) pay the Respondent (plaintiff) general damages to the tune of Tanzanian shillings one billion only (1,000,000,000).*
ii. *An order of the Court that the Appellants (defendants) pay the Respondent (plaintiff) special damages to the tune of Tanzanian shillings two million (2,000,000/=).*
iii. *The punitive damages as the Court may deem fit and just to grant.*
iv. *Interest on the decretal amount at the Court rate.*
v. *Costs of the suits*
vi. *Any other remedy the Court deems fit and just to grant.*

To crown it, the presiding Principal Resident Magistrate declared that: -

1. *The defendant (the appellant) defamed the Respondent.*

2. *The defendant (appellant) was ordered to pay the plaintiff general damages to the tune of Tanzanian shillings fifty million (50,000,000/).*
3. *The defendant (appellant) was ordered to pay the plaintiff (the respondent) the decretal interest at the Courts rate from the time of judgement to the time of full payment.*
4. *Costs of the suits to abide by the defendant* (the appellant).

Being dissatisfied with the decision of the trial court, the Appellants has now rushed to this temple of justice challenging the entire judgement and decree of the trial Court. Principally, the Appellants' grounds of appeal are worded in verbatim as hereunder: -

1. *That, the Honorable Trial Magistrate erred in law and fact by holding that the Respondent was defamed by the Appellants.*
2. *That, the learned trial magistrate erred in law and fact in holding that the first (1st) Appellant defamed the Respondent believing on an incredible and an unreliable Respondent testimony and his witnesses.*
3. *That, the learned trial magistrate erred in law and fact in finding that the first (1st) Appellant defamed the Respondent based on the testimony of the respondent himself and his witness whose evidence during the trial materially contradicted with each other in the presence*

of the first (1st) Appellant at Songea in the year 2020 when Respondent allegedly to be defamed.

4. *That, the learned trial magistrate erred in law and fact by holding that there is no concrete evidence brought by the Appellant on the fact that the first (1st) Appellant was not in Songea for the whole period of 2020 in disregard of the truth that there are uncontroverted testimonies of the Appellants or on the truth of the Appellant's evidence.*
5. *That, the trial magistrate has erred in law for failure to provide reason on how the evidence of PW2, a respondent witness was credible, reliable, and trustworthy contrary to the law despite the truth that the credibility and reliability of the said witness were tested during trial.*
6. *That, the Honourable Magistrate has erred in law and fact by holding that the Respondent is entitled to general damages and further granting large amount of general damages.*
7. *That, the trial magistrate has erred in law and fact for failure to consider and take into accounts the testimony of the appellants and their witnesses which were credible, reliable, and trustworthy.*
8. *That, the trial magistrate has erred in law and facts by failing to make proper analysis, evaluation, and interpretation of the evidence that was*

adduced before the trial court and jump to the wrong conclusion contrary to the law.

This appeal was disposed of by the way of written submissions. The Appellant was represented by none other than the learned advocate, Mr. Selemani Almasi. On the contrary, the Respondent enjoyed the services of none other than the learned advocate, Mr. Makame Sengo.

In addressing the grounds of appeal Mr. Selemani Almasi submitted that, it is an accepted principle of law under Sections 110 and 111 of the Evidence Act (Cap. 6, R.E. 2022), that whoever alleges must prove hence, the burden of proof during trial was on the Respondent to prove that there was defamation. On the same note, the Court has to examine whether the person upon whom the burden lies has discharged his burden in order to arrive at such a conclusion. As a matter of fact, he cannot proceed on the basis of the weakness of the other party. He cited with approval the case of **NCBA Bank Tanzania Limited v. UAP Insurance Tanzania Limited,** Commercial Case No. 131 of 2018 (unreported) while referring to the case of **Mbowe Hotels Limited v. National Housing Corporation and Another;** Miscellaneous Land Application No. 722 of 2016. In addition, as it was held in the case of **Augustino Elias Mdachi v. Ramadhan Omary**

Ngaleba, Civil Appeal No. 65 of 2019 (unreported). Moreover, he contended that the first (1st) appellate court is vested with a duty to review the record of evidence of the trial court in order to determine whether the conclusion reached upon and the evidence received justifies it. He prayed this Court to make a re-evaluation of the judgement to see whether the issues framed during the trial of the case were properly determined.

Furthermore, in addressing the first (1st), second (2nd), third (3rd), and fourth (4th) grounds of appeal, the learned counsel further submitted that, the grounds of appeal have been consolidated and argued together. Essentially, all these grounds address the question of whether the Respondent was defamed by the Appellants. On the same note, he stated that the Respondent had a legal obligation to prove that the first (1st) Respondent uttered the alleged defamatory words against him while he was at Songea.

Notably, he further submitted that concerning the presence of the first (1st) Appellant at Songea and alleged to have uttered defamatory words to the Respondent. In fact, the first Appellant (PW1) refuted the allegation and stated that throughout the year 2020 he had never come to Songea nor met with his customers from Songea. Strange as it may appear, he stated that

he only came to Songea in January 2021 to attend mediation at the CMA at Songea on the labour dispute filed by the Respondent. Additionally, his testimony was supported by evidence from DW2, who stated that the Respondent never came to Songea in 2020. To add to it, he contended that the testimonies given by the first (1st) Appellant and DW2 were not challenged at all by the Respondent's counsel during cross-examination. Therefore, this implies that it was legally accepted and the first Appellant testified nothing other than the truth. Reference was made to the cases of **Khalidi Mlyuka v. The Republic,** Criminal Appeal No. 442 Of 2019 (unreported), and **Juma Kasama @ Nhumbu v. The Republic, Criminal** Appeal No. 550 of 2016 (unreported) which provides a clear position of the law on the consequences of failure to cross-examine a witness on an important matter. As outlined in the submission in chief, it reads; "*It is a trite law that failure to cross-examine a witness on an important matter ordinarily implies the truth of the witness' tantamount to acceptance of its truth".*

On the other hand, he explained that the Respondent himself had uttered defamatory words. According to the Respondent in his testimony, he said the first (1st) Appellant went to Songea after two (02) weeks or fourteen (14) days after being terminated unfortunately he could not remember the

exact dates. Hence, counting from the final meeting on 17th, November 2020, it means that the first (1st) Appellant came to Songea between 21st, November 2020, and 22nd, November 2020. However, PW3 on his side testified that during the cross-examination he came to Songea in December 2020 but never remembered the dates. Based on the above material contradictions in the Respondent's evidence, there is no clear answer as to who is correct.

On the same view, he further submitted that it is impossible and ridiculous for the same people who are alleging to have met with the first (1st) Appellant at Songea while they were together to state different time and dates on which the first (1st) Appellant met with them. It seems to be true that, if the trial court could have critically scrutinized the contradicted evidence between the Respondent and PW3 on the exact time or month in which the first (1st) Appellant was alleged to have been at Songea, the trial court could not have held as it did. In addition, he contended that the trial court did not provide legal reasons as to why it chose to believe the Respondent side and disregard unchallenged testimony that the first (1st) Appellant did not come at Songea in the year 2020.

For this reason, concerning the failure to call a material witness, the counsel submitted that the Respondent mentioned somebody named Stella who was present when the first (1st) Appellant allegedly uttered the alleged defamatory words. Unfortunately, the said Stella was not called to testify, which could further have helped to resolve the question of whether she met with the first (1st) Appellant at Songea in the year 2020 in the presence of the Respondent when the first Appellant was defaming the Respondent. As a matter of fact, no reasons were given for such a failure to call that important witness, which shows that if Stella could have been called, she could have given evidence contrary to the Respondent's interest. In that regard, the counsel for the Appellants explained the case of **Hemedi Saidi v. Mohamedi Mbilu** (1984) TLR 113.

To add to it, he further averred that under paragraph 11 of the amended plaint the Respondent stated that defamatory statements were uttered to colleagues and customers. However, in the whole of the Respondent's testimony, he failed to bring a colleague as a witness who was present and heard the first (1st) Appellant uttering defamatory words. Besides, he not only failed to call the workmates but also mentioned the name of the workmate, taking into account he had already left employment.

Above all, he insisted on inconsistencies and variations of alleged defamatory words from what was testified by the Respondent (PW1) and his witness (PW3) compared to what was pleaded in the amended plaint in paragraph 11.

Notably, he further submitted that there are material contradictions and inconsistencies from what they testified to be alleged defamatory words compared to what was pleaded in the pleading. Nevertheless, the trial magistrate did not bother to look for different statements as to what was testified in court compared to that quoted in paragraph 11 of the amended plaint. Likewise, in paragraph 11 of the amended plaint the words alleged to have been spoken by the first (1st) Appellant are not the same as those testified to by the Respondent and PW3 during the trial. Moreover, under paragraph 11 of the amended Plaint the quoted words alleged to have been uttered by the first (1st) Appellant towards the Respondent are *"... they are no longer working with him since he is no longer a man of trust, integrity, and honor."* To be precise, he emphasized that during the trial the Respondent stated the following words alleged to have been spoken by the first (1st) Appellant: "*Huyu Narender Reddy Kolampally siyo Branch Manager wa Songea. Hayupo kazini toka leo kwakuwa siyo mwaminifu na muadilifu*

ni mwizi ameiba pesa ya kampuni". On the contrary, PW3 according to page 36 of the typed copy of the trial court proceedings, stated as follows: *"... that we should not trust the plaintiff as manager of his company. I asked why he said he was useless, a thief, that he left for India and that he believes that he stole the money from the company".*

Furthermore, he stated that a party to the case is bound by his own pleadings and he cited the case of **Makori Wassaga v. Joshua Mwaikambo and Another** [1987] TLR 88, in deciding this case they also quoted the case of ***Abbas Ally Athuman Bantulaki & Others v. Kelvin Victor Mahity (Administrator of the Estate of the late PETER WALCHER),*** Civil Appeal No. 385 of 2019, as referred to in his submission in chief. In a nutshell, in the case of **Abbas Ally Athuman Bantulaki & Another v. Kelvin Victor Mahity (Administrator of the Estate of the late Peter Walcher)** at page 15, it was stated that; -

> *" ..... settled law is to the effect that parties are bound by their own pleadings the rationale of which is to let the parties face a case they know as presented in the pleadings and to avoid surprises.... Similarly, the court is equally bound by the pleadings of the parties. It is required to*

adjudicate upon the specific matters in dispute that the parties themselves have raised by the pleadings. According to its nature and character, it has to pronounce itself on the claim made by the parties. To do otherwise, it would be to enter upon the realm of speculation...."

Exclusively, he further argued that following various inconsistencies, contradictions, and variations of the Respondent's testimonies, the trial court failed to examine clearly the pleadings and parties' testimonies, thus arriving at a wrong conclusion by finding that the Respondent was defamed while there was no proof of such defamation as it was found in the case of **Augustino Elias Mdachi v. Ramadhan Omary Ngaleba,** Civil Appeal No. 65 of 2019 (unreported).

The 5th, 7th, and 8th grounds of appeal were combined and addressed together. Actually, the counsel for the Appellants addressed those grounds of appeal as follows; that the trial court failed to make a proper analysis, evaluation, and interpretation of the evidence and as a result, it failed to provide a reason on how the evidence of PW2 corroborated that of a Respondent and how it found it was credible, reliable and trustworthy contrary to the law. Also, he stated that the trial court failed to consider and

take into account the testimonies of the Appellants and their witnesses, which were credible, reliable, and trustworthy. He emphasized that it is a binding legal obligation of the trial court to make a proper analysis, evaluation, and interpretation of the evidence tendered and determine whether it complies with the law. Principally, in doing so the trial magistrate had a primary responsibility to determine whether the evidence presented by the parties and their witnesses was credible and reliable and whether a witness testified only to the truth. With respect to the evidence, he further stated that on these combined grounds of appeal, the following issues were observed: the trial court failed to make a proper analysis, evaluation, and interpretation of the evidence tendered;

i) *Inconsistencies in proper words alleged to have been uttered by the first (1st) Appellant and contradictions on when the first (1st) Appellant came at Songea in the year 2020. Whereas, the Respondent according to his testimony said that it was in November 2020 while PW3 on his side said that it was December 2020 there is another piece of evidence that shows that evidence of the Respondent and PW3's reliability and credibility are questionable.*

ii) *Moreover, the Respondent failed to mention the full names of those alleged customers, such as Stella and Nico showing that whatever he was testifying was nothing other than cooked evidence taking into account they are his permanent customers for not less than four (04) years.*

iii) *Lastly, PW3 failed to bring single evidence either the second (2nd) Appellant's invoice, business license or any other document showing that he was not only a businessman but also was a customer of the respondent hence his credibility, reliability and trustworthy is questionable.*

With regard to the sixth (6th) ground of appeal, he submitted that the Appellants are disputing not only the trial court's grant of general damages but also the general damages granted in the highest amount. For emphasis, reference was made in the case of **Augustino Elias Mdachi v. Ramadhan Omary Ngaleba** (Supra) which provides for the meaning and elements of defamation.

The first (1st) element to be proved is that the statement was defamatory, or in other words, it lowered the reputation of the person against whom it was made. Basically, the question to be asked is whether

the statement uttered was of such a nature that it lowered the reputation of the Respondent to the extent that it was entitled to general damages and whether it was uttered by the first (1st) Appellant. On the same note, in this ground of appeal the counsel for the Appellants observed the following matters which the trial court didn't consider in reaching its decision;

i) First and foremost, there is neither mentioning of any kind of economic cost suffered by the Respondent nor proof of economic costs incurred by the Respondent during the trial, which the trial court alleged to have been suffered by the Respondent.

ii) Moreover, no explanation was given on how a good reputation has been lowered but only alleged that his reputation has been lowered. The whole Respondent's testimonies had no evidence tendered to show how the Respondent's reputation was lowered. Also, there was no evidence produced showing that the Respondent was shunned or avoided by the right-thinking of society or even the business community.

iii) Last but not least, on psychological torture, the same has not been proven. This is because from the Appellants' evidence which was

not challenged during cross-examination the first (1st) Appellant did not come at Songea in the year 2020.

Furthermore, it is undisputed fact that the Respondent did not dispute more than one hundred and sixty-six million (166,000,000) Tanzanian shillings the property of the company (the second Appellant) has not been accounted for by the Respondent hence causing loss. Thus, to continue granting fifty million (50,000,000) Tanzania shillings, the trial court had sympathy towards the Respondent than looking at the reality on the Appellants' side. Conclusively, he insisted that the appeal has merit and he further emphasized that the Court should consider seriously the submission in chief in its entirety.

On the contrary, Mr. Makame Sengo, the Respondent's learned advocate submitted that it is a principle of law that every person who is a competent witness in terms of the provisions of section 127(1) of the Tanzania Evidence Act (Cap. 6, R.E. 2022) is entitled to be believed and, hence, a credible and reliable witness unless there are cogent reasons as to why he should not be believed.

However, the credibility of the witnesses can be determined in two (02) ways; one is by assessing the coherence of the testimony of the witness,

and two; when the testimony of the witness is considered in relation to the evidence of other witnesses. It is worth considering that, the trial court easily assessed the credibility of the witnesses while testifying. As a result, this is done through the demeanor of the witnesses as it was said in the case of **Yasin Ramathani Chang'a v. Republic** (1999) TLR 489 when the Court observed that: -

> *"Demeanor is exclusively for the trial Court; however, demeanor is important in a situation where from the totality of the evidence adduced and interferes can be made which would appear to contradict the spoken word."*

He further contended that the Appellant claims that PW1 and PW3 evidence was contradictory in itself as to when the first (1st) Appellant came at Songea from Dar-es-Salaam. As much as the proceedings of the trial court are concerned, it stated that he came back to Songea waiting for his response. In that case, after two (02) weeks he came at Songea without any information. Notably, from those words, PW1 never mentioned exactly the date when he left Dar-es-Salam to Songea. Moreover, during those two (02) weeks he never stated when the last meeting was convened, as the Appellant alleged.

Principally, he submitted further that, the Appellant's failure to cross-examine the Respondent and his witness on the material issues did not help his case when these three (03) objections mentioned above are considered. To add to it, section 123 of the Evidence Act Cap. R.E. 2022 bars the Appellants from casting doubts at this stage as their time for casting those doubts was wasted by themselves during the trial. Basically, at the trial that is, during the cross-examination the Appellants through their learned advocate only questioned the Respondent as to when the first (1st) Appellant came to Songea. However, they never denied the fact that the first (1st) Appellant came to songea in December 2020, as has been alleged in this appeal. Therefore, the act of casting doubt on the evidence of PW1 at this stage has been barred by law and various decisions of the Court of Appeal. On the same note, He quoted the case of **Naville v. Fine Arts and General Insurance Co. LTD** (1897) AC at page 72 the Court defined a defamatory statement as;

> *"A statement is said to be defamatory when it had a tendency to injure the reputation of the person to whom it refers. Such statement is one which exposes him to hatred, ridicule or contempt or which causes to be shunned or*

avoided or which has the tendency to injure him in his office, profession, calling, trade or business."

Additionally, he cited the case of **Professor Ibrahim H. Lipumba v. Zuberi Juma Mzee** (2004) TLR 381 where defamatory statement was defined as;

"Deliberately, untrue, derogatory statement usually about a person whether in writing or orally."

He added that, in the tort of defamation for the complainant to succeed as libel or slander, he has the duty to prove the following **First,** that, the alleged words are defamatory in nature. **Secondly**, that, those words to be referred to the complainant. In fact, there must be publication communicated to the third party and the onus is then on the defendant to prove that the words were true or had justification for those words, that it was a fair comment on a matter of public interest or it was made on a matter of privilege and that there was consent.

He stated that the Respondent was required to prove his case on the balance of probabilities and cited the case of **RE B (Children)** 1998

UKHL35, in which in defining the term balance of probabilities, it was stated as follows;

> *"If a legal rule requires a fact to be proved (a fact in issue) a judge or jury must decide whether or not happened. There is no room for a finding that it might have happened. The law operates a binary system in which the value is 0 and 1. The facts either happened or did not. If the tribunal is left with no 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 turned and the fact is treated as not having happened. If he does discharge it, a value of 1 is returned and the fact is treated as having happened."*

On the other hand, he further submitted that the root of the plaintiff's (Respondent) claim was whether the first (1st) Appellant uttered the defamatory statement against the Respondent and the Court had to sustain the more credible evidence than the other upon proving such facts at issue. Likewise, what transpired during the trial was that the first (1st) Appellant used defamatory words against the Respondent. Besides, the words are

quoted as they are no longer working with him since he is no longer a man of trust, integrity, and honor. However, during the trial PW1 said the exact words in Swahili meaning that; *Huyu Narender Reddy Kalampally branch manager wa Songea hayupo tena kazini kwa kuwa siyo mwaminifu na mwadilifu.* As a matter of fact, the same words were also testified by PW3 during the trial. Apart from that, he further contended that the Appellants are still confusing those two statements as the statement in the amended plaint. Additionally, he continued to cite section 143 of the Evidence Act, Cap. 6, R.E. 2022. In any case, no specific number of witnesses is required for the proof of any fact. In the same way, he further stated that general damages have been under the direction of the Court whether or not and how much to grant depending on the circumstances of the case and they are not specifically pleaded. Reference was made to the case of **The Cooper Motor Corporation LTD v. Moshi/Arusha Occupational Health Services** (1990) TLR 96 where the Court of Appeal of Tanzania held that:

> "*Whether the assessment of damages is by a judge or jury, the appellate Court is not justified in substituting a figure of its own for that awarded below simply because it would have awarded a different figure if had tried a case. Before*

the appellate Court can properly intervene, it must satisfy either that the Judge in assessing damages applied a wrong principle of law (as taking into account some irrelevant factors or leaving out of account some irrelevant facts or short of this, that the amount awarded is no ordinary law or so in ordinary high that it must be a wholly erroneous estimate of damage."

To crown it all, he said that it is his firm view that the trial magistrate correctly awarded the said amount of general damages following the defamatory words.

On the foregoing, the Appellant's counsel on his rejoinder submitted as his submissions in chief indicated hereabove he prayed that the judgement of the trial court be quashed and set aside and finally the appeal to be allowed.

It is worth considering that, at this stage, it is good and healthy to start talking about the meaning of the keyword defamation and the types of defamation. It is a fact that defamation may be libel (when it is in writing) or slander (oral), as described in the case of **Augustino Elias Mdachi v.**

Ramadhani Omary Ngaleba, Civil Appeal No. 65 of 2019, High Court Dar-es-Salaam in which it was stated that: -

> *"Defamatory statement is broadly defined to mean, a statement uttered against the plaintiff which injures the reputation of another by exposing him to hatred contempt, or ridicule or which tends to lower him in the esteem of right-thinking members of society (See* ***Lord Atkin in Sim v. Stretch [1936]*** *All E.R 1237."*

Moreover, defamation may be libel (when it is in writing) or slander (oral). Subject to the two (02) types of defamation, libel, and slander, in view of the stated above, the claimant must prove the following. **Firstly,** if the statement was defamatory. **Secondly,** if it referred to him, and **thirdly,** if it was published, i.e., communicated to the third party. As a matter of fact, the burden of proof will then shift to the defence (appellants) to prove the following three (03) defence. **Firstly,** there was justification. **Secondly,** fair comment on matters of public interest, and **thirdly,** it was made on a privileged occasion. Additionally, the Respondent submitted that the act of stating that *"huyu siyo mwadilifu na mwadilifu"* as revealed in the District Court of Songea case records amounted to defamation and prayed for the hereabove damages and other relief.

Consequently, This Court has considered the evidence and submissions of both counsels. I will address my mind to the test in order to determine whether the statement is capable of giving a defamatory meaning. For more emphasis reference is made to the case of **Smith v. Streth** (1936)2 All ER 123. Whereby, Lord Atkins held that the controversial phrase "exposing the plaintiff to hatred radical and contempt". Also, in the case of **Byrne v. Deane** (1937) 1KB 818 it was stated that, something which could be regarded as injuring the claimant's reputation in the mind of the right thinking.

In a nutshell, a quick perusal of the proceedings in Civil Case No. 8 of 2020 of District Court of Songea reveals that the defamatory words were made at the workplace. According to the Respondent, the evidence adduced by the witnesses for the Appellants when uttering the defamatory words clearly showed that they were alone. In that case, the issue here is whether the defamatory words were published by the Appellants. It is true that, the District Court of Songea judgment reveals that the statement is defamatory however the Respondent did not prove the elements of defamation. Consequently, at this juncture, it is necessary to make reference to the defamatory words *"Huyu Narender Reddy Kalampally branch manager wa*

Songea hayupo tena kazini kwa kuwa siyo mwaminifu na mwadilifu' and check whether all elements of the defamation were proved.

Principally, the existence of the defamation statement and whether this statement was directed to the Respondent. In fact, if the Appellant's words led to defamation, these words, depending on where they were spoken, do not amount to a defamatory statement, because defamatory words are offensive words and the Respondent has failed to prove to the Court that the above words are defamatory by nature. It is worth considering that, he is no longer working with the Appellants. Is it correct that he was not honest? All these defamatory words were not proved on the balance of probabilities.

Therefore, the words that were spoken, the Respondent failed to prove to the Court that they were false and amounted to defamatory words. I sincerely find merit in this appeal and the same is allowed and the judgment and decree of the trial court are set aside. I find it is prudent to order each part to bear his/her own costs.

DATED and **DELIVERED** at **SONGEA** this 18h day of October, 2022.

U.E. MADEHA

JUDGE

18.10.2022