

**IN THE HIGH COURT OF TANZANIA**

**MUSOMA DISTRICT REGISTRY**

**AT MUSOMA**

**CIVIL APPEAL NO. 19 OF 2022**

*(Originating from Resident Magistrate's Court of Musoma in Civil Case No. 14 of 2021)*

**MWITA NYEBHERO ..... APPELLANT**

***VERSUS***

**ANNA MNANKA ..... RESPONDENT**

**JUDGMENT**

*11<sup>th</sup> & 19<sup>th</sup> September, 2023*

**M. L. KOMBA, J.:**

Resident Magistrate court via Civil Case No. 14 of 2021 ordered the appellant to pay respondent ten million shillings as general damages for the act of slander and libelous words maliciously by the appellant. That decision was not appreciated by the appellant and collected his three points to move this court at this stage of an appeal.

Briefly what happened is; on 03/06/2021 the Butiama District Commissioner called a meeting at Magunga village with small scale miners including Irasanilo Gold Mine and invited participants to air out their

complains regarding mining activities. Miners stated bearing out their complains and the appellant was among them whom started that;

*'Anna Mnanka ni mzurumati sana na anawanyang'anya maduara yao na kuwa anajigamba kuwa Serikali yote ya Mkoa wa Mara ameiweka mfukoni mwake na haiwezi kumfanya lolote.'*

The trial Magistrate was satisfied that those words are defamatory hence award damage as presented previously. To show his dissatisfaction, appellant is armed with the following grounds;

- 1. That, the trial magistrate erred in law and on the fact in holding that the words uttered by the appellant were defamatory against the respondent without proof thereof.*
- 2. That, the trial magistrate further grossly erred and misdirected herself in failing to properly assess and evaluate the evidence adduced to the required standard which could have shown that the respondent evidence was tainted with contradictions, thus arriving at an erroneous decision.*
- 3. That the trial magistrate further grossly erred and misdirected herself in awarding damages which are excessive and were awarded without any legal jurisdiction.*

The appellant hired Mr. Baraka Makowe to defend his appeal while respondent had a legal service of Mr. Edson Philipo both of them being learned Advocates.

Mr. Makowe complained that there was no proof of defamation and prayed to join ground number 1 and 2 that in order for the words to be found defamatory there are issues to be proved that a person lost trust in community as it was in the case of **Saudi Ally Maswanya vs. African Buyer & Trader (Publication) Ltd and Others** (1981) TLR 221 where the court decided that the court should look at the effect in the mind of reasonable man in the community. He said there was no evidence that after such words, Anna, the respondent was not a reasonable person as there is nowhere respondent complained that after such words people started to shine away or isolate her. It was his submission that PW2 admitted that words were uttered but the effect was not disclosed. Further to that, PW3 (Lukas) also complained of the words without mentioning its effect to respondent. that is how do they perceive respondent after defamation.

Mr. Makowe further submitted that respondent did not disclose who altered those words as she did not attend the meeting. She did not hear direct but she did not inform the court who informed her while agreeing that all witnesses said the words were altered. In **Manager Mkuu Zanzibar Resort Hotel vs. Ally Said Paramana**, Civil Appeal No. 296 of 2019 CAT

at Zanzibar at page 23 and 24 it was directed that the person who share information should be disclosed. In the matter at hand, he said the respondent did not mention a person who informed him. He prayed this court to find it was wrong and therefore the grounds has merit that there was no proof that respondent was defamed and that words were altered within the meeting as was in **William Diamond Ltd and Another vs. Brown**, 1970 EA at 1. In the case at hand people were invited to give out their problems, this court should see that was privilege communication and were altered within the meeting which was chaired by the District Commissioner. He prays this court to allow an appeal and nullify findings of the trial court.

On the 3<sup>rd</sup> ground which is about damage Mr. Makowe submitted that he did not find the base of the amount awarded. While referring at page 16 of the trial court judgment, he said the trial Magistrate said the respondent suffered from the words altered by the appellant but there is nowhere in evidence that show appellant altered words with bad motive. He complained that at page 15 of judgment there are words which are creature of the court and the name of the leader who decline to associate

with the respondent was not mentioned. He concluded that the Hon. Magistrate has her own version which led to the award of the damages.

I prayed this court to find there was no legal justification of the damages award as the trial Magistrate based on the perception of people of Mara Region not the respondent. I prayed further that the appeal to be found with merit and the award to be nullified.

Responding the appeal. Mr. Philipo submitted that there is no dispute that words were altered and it is not revealed that respondent informed the court that she did not attend the meeting and therefore there was no need of disclosing the person who informed her. It was his submission that the respondent is a mineral dealer and the society perceive her as *Mzulumati* (deceiver) but appellant did not prove that *uzulumati* and therefore he finds the trial court decision was correct. Regarding the case of **Manager Mkuu Zanzibar Resort Hotel** (supra) which is about privilege, he submitted that the appellant has no any privilege that's why the case was cited by the trial court.

Finally, he said the judgment was based on what was uttered and not otherwise and for that he prays this court to find the words uttered were

defamatory and pray the decision by the trial court to be maintained and the appeal be dismissed with costs.

During rejoinder, Mr. Makowe said the issue that respondent was present or not is explained by DW4 who is the chairman of the village at his statement he said '*Mh Mkuu wa Wilaya alimuita Anna lakini hakujitokeza*' the same was narrated by DW2 so to him it was important for respondent to say from who she heard those words.

Effects for uttered words was expected to be raised by the plaintiff who is the respondent in this appeal and could be easy for this court to award damages. He then reiterates his previous prayers.

Having heard the parties submissions and subscribed to the records of appeal. I find the pertinent issue is whether the appeal is meritorious.

At the trial the matter was defamation. Appellant contended that the offence was not proved as provided in the case of **Saudi Ally Maswanya vs. African Buyer & Trader (Publication) Ltd and Others** (supra).

Reading the trial court record, the plaintiff who testified as PW1 in her witness statement explained that words intend to trigger hatred between her and leaders although she did not mention those leaders. I further wanted to know what was the intention of the appellant towards those

uttered words. It was explained in Witness statement of Mwita Nyabhero (DW1) that not only the statement was uttered by him but many small mines were complaining. The issue as rises by appellant during trial was that, the respondent closed the mduara number 162 and 163 the action which made other miners to suffer economically. It was further adduced by DW2 that those words were uttered frequently by the respondent in their (*wanachama wa maduara*) meetings for long time.

From record, Hon. District Commissioner called the respondent but she did not show up. In his defence, the appellant said he raised the issue as among the complaint so that the said *miduara* can be re-opened.

What I gathered is that the respondent closed two of the miduara and caused production to stop and refused to re-open. In the miners meetings she was saying those words that why according to appellant he repeated them in the DC meeting as a way to show how they are treated. DC called respondent and did not show up. Respondent did not dispute that she did not show up although during cross examination she said she was around. If she was in the said meeting, why didn't she show up when needed for clarification as testified by defence witnesses.

It is undisputed fact that, words were uttered in meeting. Those words were among the miners nuisance and was uttered in the official meeting. Basing on submission by both counsels, I find the words were fair comment and not defamatory as they were pronounced in a meeting with the intention to know problems faced by the small miners. However, respondent failed to prove how she was affected by those words. The appellant was privileged with intention to inform Hon. District Commissioner what is going on in small miners. See **Manager Mkuu Zanzibar Resort Hotel** (supra). I find the 1 and 2 ground meritorious.

The 3<sup>rd</sup> ground was about damages. As said, the respondent failed to show how she was affected by those words. How can she say her reputation was damaged '*...ni kashfa kwangu na yamepelekea kushuka kwa heshima yangu*' she did not explain how she came into that conclusion, what made her to think her reputation was damaged. Just as submitted by Mr. Makowe that award was granted by perception as respondent did not show she was affected by words and she even failed to mention the leader whom she said was conflicted with uttered words. So far as this court finds that the first and second grounds is meritorious, then the award too is nullified.



All said and done, I find the appeal has merit and I allow it in its entirety.

Due to the nature of the case, each side shall bear its own costs.

It is so ordered.



*Nk*  
**M. L. Komba**

**Judge**

**19/09/2023**