

**THE UNITED REPUBLIC OF TANZANIA**

**JUDICIARY**

**IN THE HIGH COURT OF TANZANIA**

**(MTWARA DISTRICT REGISTRY)**

**AT MTWARA**

**DC.CIVIL APPEAL NO 6 OF 2023**

**(Originating from Civil Case No.1 of 2022 of Tandahimba District Court)**

**YUSUFU TWARIBU HASSAN ..... APPELLANT**

**VERSUS**

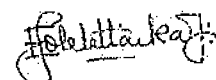
**SOPHIA SALUMU MTAUSI ..... RESPONDENT**

**JUDGMENT**

*7<sup>th</sup> & 28<sup>th</sup> /11/2023*

**LALTAIKA, J.**

In the matter at hand, the appellant, **YUSUFU TWARIBU HASSANI**, initiated Civil Case No. 01 of 2022 at the District Court of Tandahimba against the respondent. The appellant alleged that the respondent had defamed him through words directed at him. Furthermore, the appellant sought various reliefs, including specific damages amounting to TZS. 2,000,000/=, general damages of TZS. 3,000,000/=, and litigation costs. Subsequent to the litigation, the district court ruled in favor of the respondent. Dissatisfied, the

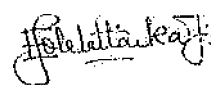


appellant has appealed to this court, setting forth six grounds of appeal. I take the liberty to reproduce them as hereunder:

- 1. The trial court erred in law and fact by holding that the appellant had no cause of action against the respondent.*
- 2. The trial court erred in law and fact by failing to acknowledge that the respondent's uttered words were defamatory and harmed the appellant's reputation.*
- 3. The trial court misdirected itself by giving weight to weak evidence presented by the respondent, without duly considering the stronger evidence presented by the appellant during the trial.*
- 4. The trial court erred in law and fact by intentionally deviating from the evidence presented during the trial, leading to an erroneous decision and a miscarriage of justice for the appellant.*
- 5. The trial court erred in law by asserting that the respondent did not utter defamatory words, contrary to the testimony of all witnesses who attested to the defamatory nature of the respondent's words.*
- 6. The trial court misdirected itself in interpreting the laws governing defamation cases, resulting in an unjust decision against the appellant.*

During the appeal hearing on 7/11/2023, both parties appeared in person and without representation. As per customary practice, the appellant commenced the submissions. On the first ground, the appellant argued that he believed the language used was defamatory, asserting that it damaged his reputation. He contended that the respondent, being someone's wife, made him less appealing to neighbors. The appellant claimed ignorance about the alleged accusation of sleeping with the respondent.

Regarding the second ground, the appellant insisted that the words uttered by the respondent were defamatory. He quoted the respondent saying, **"WEWE MCHAFU, NA UCHAFU HUWO NDIYO UNAO UENDELEZA UNAWACHANGANYA MTU NA MDOGO WAKE RASHIDI TWALIBU NA YUSUFU TWALIBU."** The appellant highlighted the respondent's claim of refusing sex for a sum of money and the magistrate's labeling of him as a troublemaker.



Concerning the third ground, the appellant argued that his statements were consistent with the testimony of his witnesses, emphasizing that the court failed to consider their accounts. He criticized the respondent's witness, her husband, as the source of the alleged trouble, and urged the court to revisit the lower court file.

On the fourth ground, the appellant submitted that the magistrate told him not to interfere in matters unrelated to him and neglected his duty to resolve the problem.

The respondent countered that the court was justified in instructing the appellant not to interfere with another family's disputes, suggesting that any complaint should have come from the appellant's sister. Addressing the fifth ground, the appellant maintained that the defamatory words were mentioned by his witnesses, including his brother.

The respondent disputed the appellant's account, asserting that the appellant's witnesses were untruthful and that she never made statements about setting a house on fire.

Upon careful consideration of the lower court records, grounds of appeal, and submissions from both parties, it becomes necessary to elucidate the concept of defamation. Scholars and courts, including our Apex Court, have extensively defined defamation. In the case of **HAMZA BYARUSHENGO VS FULGENCIA MANYA & OTHERS** (Civil Appeal 246 of 2018) [2022] TZCA 207 (14 April 2022), the Court of Appeal of Tanzania provided a comprehensive definition, emphasizing statements that tend to bring a person into hatred, contempt, or ridicule and lower the claimant's estimation in the eyes of right-thinking members of society. In our jurisdiction,

defamation was defined in **PROFESSOR IBRAHIM H. LIPUMBA VS ZUBERI MZEE** [2004] T.L.R 38 as a deliberate, untrue, derogatory statement usually about a person, whether in writing or orally.

Analyzing the present case, the appellant failed to **establish the essential elements of defamation**. The alleged defamatory statements were not directed at the appellant but at the respondent's sister. Additionally, the statements were not published or communicated to any third party, and the appellant did not demonstrate any resulting damage. Furthermore, the appellant did not prove malice on the part of the respondent.

According to the case of **SAID ALLY MASWANYA VS AFRICAN BUYER AND TRADER (PUBLICATIONS) LTD & OTHERS** [1981] T.L.R 221, which considers the effect on the reasonable person in the community, it is evident that the words exchanged between the respondent and her sister were part of a normal family dispute and did not constitute defamation against the appellant.

Consequently, the appellant failed to discharge the burden of proof required to establish defamation, and as such, the appeal is dismissed in its entirety. The decision of the lower court is upheld, and no costs are awarded.

It is so ordered.



*E.I. Laltaika*

**E.I. LALTAIKA**  
**JUDGE**  
**28.11.2023**

*E.I. Laltaika*

**Court:**

Judgment delivered this 28<sup>th</sup> day of November 2023 in the presence of both parties who have appeared in person and unrepresented.



*E.I. Laltaika*

**E.I. LALTAIKA**  
**JUDGE**  
**28.11.2023**

**Court:** \*

The right to appeal to the Court of Appeal of Tanzania fully explained.



*E.I. Laltaika*

**E.I. LALTAIKA**  
**JUDGE**  
**28.11.2023**

*E.I. Laltaika*