

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

AT BUKOBA

BUKOBA SUB- REGISTRY

CIVIL APPEAL NO. 3264 OF 2023

(Originating from the decision of Ngara District Court in Civil case No. 03 of 2023, dated 17/01/2024)

EMMANUEL NDEKEZI..... APPELLANT

VERSUS

ERADIUS MARKO BATAKANWA.....RESPONDENT

JUDGMENT

24/04/2024 & 10/05/2024

E. L. NGIGWANA, J.

This appeal emanates from the decision of Ngara District Court in Civil Case No. 3 of 2023 in which the respondent sued the appellant for defamation claiming the total sum of **TZS. 12, 000,000/=** being general damages, 30% interest, costs of the suit and, any other relief the trial court would deem just and fit to grant.

The material background of the dispute is not difficult to comprehend. The respondent is a Chairman of Nyabihanga Village, Bukiro Ward within Ngara District in Kagera Region. At the same time, the appellant is a peasant and resident of Nyabihanga Village, Bukiro Ward within Ngara District Kagera Region. On 28/02/2023, the leaders of Tembo Nickel Project had a meeting with citizens from villages surrounding the mining

area to discuss various issues touching people who have been affected by the project. The respondent alleged that during the questions and answers session, the appellant uttered defamatory words. As a result, the respondent decided to file a suit of defamation against the appellant.

After a full trial, the trial court was satisfied that the respondent had managed to prove his claim of defamation therefore; the appellant was condemned to pay general damages for defamation to the tune of **TZS. 4000, 000/=** (Four Million only).

The decision of the District Court provoked the appellant therefore; he knocked on the doors of this court armed with five grounds of appeal which were drawn and filed by Mr. Gaston Thomas, learned advocate. The said grounds of appeal were coached as follows;

- 1. That, the learned trial Magistrate erred in law and facts by entertaining and rendering the decision in Civil Case No.03 of 2023 without taking into consideration that the statements made there at did not meet the test of being defamatory statements.*

2. *That, the learned trial Magistrate erred in law and facts by rendering a decision that is a variance with or contrary to the evidence adduced by both parties in the said Civil Case No.03 of 2023*
3. *That, the learned trial Magistrate erred in law and facts by entertaining and rendering a decision in favour of the respondent in Civil Case No. 03 of 2023 without taking into consideration that the respondent failed to prove his case to the required standard in civil cases.*
4. *That, the learned trial Magistrate erred in law and facts by ordering the appellant to pay the respondent general damages to the tune of TZS 4,000,000/= without taking into consideration that the respondent failed to establish his status before the incident of defamation and thereafter, to ascertain the extent of negative impacts of the statements.*
5. *That, the learned trial Magistrate erred in law and facts by rendering the decision in Civil Case No.03 of 2023 in favour of the respondent without taking into consideration that during the trial, the respondent failed to establish and prove what was pleaded in the plaint.*

Therefore, the appellant is praying to this court to allow the appeal with costs by reversing the trial court judgment and orders. When the appeal was called on for hearing, the appellant appeared in person and represented by Mr. Gaston Thomas learned advocate. On the other hand, the respondent appeared in person, unrepresented.

On the first ground, Mr. Thomas submitted that defamatory words tend to lower a person in the estimation of right-thinking members of society. To support his stance, the learned counsel cited the case of **Khatibu Said Bondo versus Juma Hamis Mbozwa and 2 others**, Civil Appeal No. 10 of 2021 HC Kigoma whereas on page 15, the Hon Judge quoted the case of **Peter Ngomango versus Gerson M.K. & Another**, Civil Appeal No.10 of 1998 in which it was stated that the tort of defamation essentially lies in the publication of a statement which tends to lower a person in the estimation of right-thinking members of 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.

He added that as per the cited case, for the plaintiff to succeed in the tort of defamation, he/she must prove the following elements; - (i) that the defamatory statement exists, (ii) that the statement referred to him/her

(iii) that the statement was published, and (iv) that he/she suffered damages.

Mr. Thomas went on to submit that going through Civil Case No. 3/2023 which resulted in this appeal, it is trite that the appellant testified in the trial court that in the public meeting, he uttered these Swahili words "**Nilimpatia Mwenyekiti (ERADIUS MARKO BATAKANWA) ng'ombe mmoja kama zawadi**".

He further argued that both parties to this case are coming from pastoral societies where the habit of giving cows as gifts is a normal thing, and that matter the words uttered by the appellant were not defamatory though they were referred to the respondent and were heard by third parties.

On the 2nd 3rd, 4th, and 5th grounds, Mr. Thomas submitted that the respondent had failed to prove his claims to the required standard because, reading the trial court judgment and proceedings, it is trite that the respondent had not tendered any document or called witnesses to prove the extent of the damage he suffered. He went on to submit the respondent's plaint was to the effect that the words uttered by the appellant were defamatory hence, therefore, his reputation was lowered and as a result, villagers lost trust in him but also he lost votes in the

village election and had been getting insufficient cooperation from villagers. Mr. Thomas added that reading the judgment and proceedings of the trial court, nowhere did the respondent prove that his reputation was lowered. He further submitted that the allegation that he lost votes has no leg to stand on because the general election has not yet been conducted. According to Mr. Thomas, the respondent had not proved all four (4) elements of defamation. He ended his submission by beseeching this court to allow this appeal by quashing and setting aside the judgment and decree of the trial court.

In reply, the respondent submitted that the words uttered by the appellant were defamatory. He added that the appellant uttered these Swahili words in a public meeting" ***"Mwenyekiti anapenda rushwa. Nilimpa ng'ombe mmoja kama rushwa. Nilimpa pia rushwa ya TZS 500,000/=***"

He went on to submit that he was never given a cow as a gift by the appellant or received any bribe from the appellant. He further stated that he suffered because villagers had lost trust in him and was subjected to unnecessary discussions because villagers were viewing him as a corrupt person. He ended up his submission praying for the dismissal of this

appeal for being devoid of merit. In his rejoinder submission, Mr. Thomas reiterated his submission in chief.

Having carefully gone through the grounds of appeal and submissions by both parties, the issue for determination is whether the tort of defamation was proved at the trial court as required by the law.

In Winfield & Jolowicz on Tort (13th edition, 1989) W.V.H Rogers (ed) Sweet & Maxwell, London, (International Student edition) 1990, at p.294, Defamation is defined to be,

"The publication of a statement which reflects on a person's reputation and tends to lower him in the estimation of right thinking members of society generally or tends to make them shun or avoid him."

On p.295, the learned authors discuss the community of "right-thinking members of society" thus

"The words must tend to give rise to the feelings mentioned in the definition. But on the part of whom? The answer is the reasonable man. The standard must be that of the ordinary citizen who is "neither unusually suspicious nor unusually naive and [who] does not always interpret the meaning of words as would a lawyer for he is not inhibited by a knowledge

of the rules of construction. He may thus more freely read an implication into a given form of words, & and, unfortunately as the law of defamation has to take into account, is especially prone to do so when it is derogatory".

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."

The Court of Appeal Tanzania, through the case of **Peter Ngomango versus Gerson M.K. and another**, Civil Appeal No. 10 of 1998 (CAT - unreported) had this to say on defamation;

" The tort 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

the publication to a third party of a matter containing untrue imputation against the reputation of another"

Defamation can therefore take the form; of 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 distinction between 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. See **Public Service Social Security Fund (Successor of the Parastatal Pensions Fund) versus Siriel Mchembe (CAT)**, Civil Appeal No. 126/2018.

In the matter at hand, the type of defamation involved is slander. Paragraph 4 of the plaint which was lodged in the trial court read;

*"That the defendant intentionally and publicly defamed the plaintiff during the village meeting that included the Tembonickel Company (LTD) held at Kahororo hamlet within Nyabihanga village on 28/02/2023 by telling the people during the meeting that **"the chairman of the village of Nyabihanga Eradius Marko Batakanwa likes bribery, I gave him five hundred thousand shillings and one cow to measure my land"** the act that was defamatory perse"*

Paragraph 5 of the same read;

"That, being defamed, the plaintiff's images were tarnished and put him into hatred by the whole community and injured his good character and lowered his reputation, and generally, the plaintiff suffered more as follows; (a) currently the plaintiff has no freedom of movement taking into account that he is not trusted with all villagers, (b) loss of voters during village election and, (c) Loss of trust and support from other leaders including the Ward Councilor"

Paragraph 6 read

"That the act of the defendant insisting on isolating the plaintiff from all community, social, political and economic have put the plaintiff into more difficult life and has affected him psychologically and mentally"

Upon being served with the plaint, defendant now appellant, through Mr. Baraka John Samula, Advocate, filed a Written Statement of Defence. Paragraph 4 of the same read;

*" That, the contents of paragraph four (4) of the plaintiff's plaint are strongly denied to the **extent that what was stated by the defendant was true, as there was no lies between the***

statements altered by the defendant, the same can be proved by a copy of the cooked letter of transfer of an interest in land from one Mbonabucha Shebushashu to one Emmanuel Ndekezi dated on 01/02/2011 and a copy of a real letter of transfer of an interest in land from one Mbonabucha Shebushahu to one Emmanuel Ndekezi dated on 01/02/2011 and both are collectively attached and marked annexure EN-1 leave of this court is craved for them to form part of this Written Statement of Defence"

Paragraph 6 of the W.S.D. read;

*That the contents of paragraph six (6) of the plaintiff's plaint are strongly disputed as **the defendant has nothing to be blamed for as the plaintiff is really involved in bribery transactions and therefore,** the defendant should not be responsible for the plaintiff's wrongdoing and the plaintiff is put into a strict proof thereof"*

It is trite law that parties are bound by their pleadings and that evidence which tends to be at variance with the pleadings must be rejected or ignored. Pleadings are the bedrock upon which all the proceedings derive from. It hence follows that any evidence adduced in a matter must be in

consonance with the pleadings. Any evidence, however strong, that tends to be at variance with the pleadings must be disregarded.

The Court of Appeal in the case of **Barclays Bank (T) Ltd versus Jacob Muro**, Civil Appeal No. 357 of 2019 (unreported), cited with approval a passage in an article by Sir Jack I. H. Jacob Titled "The Present Importance of Pleadings" published in Current Legal problems

(1960) at page 174 that: -

"As the parties are adversaries, it is left to each one of them to formulate his case in his way, subject to the basic rules of pleadings... For the sake of certainty and finality, each party is bound by his own pleadings ...Each party thus knows the case he has to meet and cannot be taken by surprise at the trial. The court itself is as bound by the pleadings of the parties" (Emphasis supplied).

The Court further held that;

"We feel compelled, at this point, to restate the time-honored principle of law that parties are bound by their own pleadings and that any evidence produced by any of the parties which do not support the

pleaded facts or are at variance with the pleaded facts must be ignored".(Emphasis added)

Similarly, in one of the South African cases to wit; **The Minister of Police versus Mathibela** (A165/20210 ZAGPPH C8049 2 November 2022, it was held that;

"As the parties are adversaries, it is left to each of them to formulate his case in his own way, subject to the basic rules of pleadings For the sake of certainty and finality, each party is bound by his own pleading and cannot be allowed to raise a different or fresh case without due amendment properly made. Each party thus knows the case he has to meet and cannot be taken by surprise at the trial. The Court itself is as much bound by the pleadings of the parties as they are themselves. It is no part of the duty or function of the Court to enter upon any inquiry into the case before it other than to adjudicate upon the specific matters in dispute which the parties themselves have raised by their pleadings. Indeed, the Court would be acting contrary to its own character and nature if it were to pronounce upon any claim or defence not made by the parties. To do so would be to enter the realms of speculation"

In the case at hand, reading paragraphs 4 and 6 of W.S.D, it goes without saying that the appellant admitted to having uttered the words in public meeting that the respondent likes bribes and that he bribed him by giving him TZS. 500,000/= and one cow to measure his piece of land. However, he raised the defence of justification meaning; an assertion that the words published are true in substance and fact. a

In the trial court, the respondent testified that the appellant uttered those words in the public meeting held on 28/02/2023 and that the statement was referred to him. His evidence was supported by PW2 and PW3. Therefore the issues on whether the words uttered and that they were referred to the respondent and whether they were published, were answered in the affirmative. According to the respondent, the words were false and defamatory.

Contrary to what he pleaded in his Written Statement of Defence (W.S.D.), the appellant told the trial court that he gave the respondent one cow as a gift since the respondent was his friend. He further testified that he did not say in the said public meeting that he bribed the respondent by giving him a cow but he said that he gave him a cow as a gift. He also testified that he never gave the respondent TZS. 500,000/= as a bribe for him to

measure his land. His evidence was supported by DW2 to the effect that the appellant stated in the village meeting that he gave the respondent a cow as gift.

It is settled law that to prove the plea of justification in an action for defamation, the defendant must prove that the defamatory imputation is true. The defendant must justify the precise imputation complained of. In other words, strict proof is required, a plea of justification means that the slander is true. In other words, the defendant who pleads justification is required to deliver full particulars of the facts and matters upon which he relies in support of such a plea in its statement of defence and the evidence at the trial in support of this plea of justification. See the case of **First Bank of Nigeria versus Ghanny International Limited & Another** (2022) LPELR-58083 (CA).

In the matter at hand, the appellant did not prove his defence of justification which he raised in his W.S.D; instead, he adduced evidence which is at variance with his W.S.D. therefore, such evidence deserves to be ignored. It is good as the appellant had failed to prove that the words he spoke were true. In other words he had failed to prove his plea of justification.

Taking into account the circumstances of this matter, it is my considered view that had the learned counsel for the appellant carefully read the pleadings of the parties, the evidence adduced by the parties and the decision reached by the trial court, probably he would not have crafted the grounds of appeal the way he did or he would have advised his client otherwise.

As regards the complaint that there was no proof of damages suffered by the respondent, I shake hands with the learned counsel for the appellant that, there is no evidence on the trial court record supporting what the respondent pleaded in paragraphs 5 and 6 of his plaint. In other words, the appellant did not adduce evidence that is at variance with his pleadings, but he did not adduce any evidence to prove damages and to what extent he suffered.

However, it is worth noting that while libel is actionable per se, slander, as a general rule, needs proof of damages. In the case of Prof. **Ibrahim H. Lipumba versus Zuberi Juma Mzee** (2004) TLR 381, The Court of Appeal held that;

"When one was defamed in a slander form there is a need of proving actual damages suffered by the aggrieved party"

Again, it should be noted that every general rule has its exceptions. For instance; (i) where the words impute to the plaintiff the commission of a criminal offence punishable by imprisonment, (ii) where they impute to him a contagious or infectious disease, or (iii) where they impute un-chastity or adultery to a woman or girl, slander is actionable *per se* in those circumstances *i.e.* without need for proof of actual damage suffered. See **Hassani versus Kithuku & Chali** [1985] TLR 212 and **Odongkara versus Astel** [1970] E.A 377.

Similarly, in **Paulo John versus Japhaery Misong'ombe**, Civil Appeal No.46 of 2017 HC- at Dsm (Unreported), it was held that

"In an action for slander, there is a need for proof of actual damage suffered whereas; libel is actionable per se, i.e. without need for proof of actual damage suffered. Although Slander is ordinarily not actionable per se, it becomes actionable per se, i.e. without need for proof of actual damage when it imputes the commission of a criminal offence"

In my view, the matter at hand falls within the stated exception because the words uttered by the appellant would in my view convey to the ordinary man, in their natural meaning that the respondent had committed the offence of corrupt transactions. As I have said earlier, allegations are

defamatory if they impute the commission of a criminal offence which the plaintiff would be liable to imprisonment.

On the face of it, imputation of corrupt transactions is an imputation of a criminal offence under section 15 (1) (a) of the Prevention and Combating of Corruption Act [Cap. 329 R.E 2019, now R.E 2022]. As revealed by the trial court record, the appellant was unable to rebut the imputation suggested by the words themselves. Undoubtedly, damages may be awarded even though actual damage is neither found nor shown, for in such a case, the requirement of showing of actual damage as a basis of an award of damages is satisfied by the presumption of injury which arises from showing of slander that is actionable *per se*.

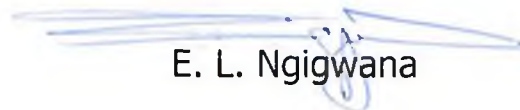
It is also trite law that where a trial court has exercised its discretion to award general damages, an appellate court cannot interfere with the exercise of that discretion unless it is satisfied that the trial court in doing so, misdirected itself in some matter of principle and as a result arrived at a wrong decision, or unless it is manifest from the case as a whole that the trial court was wrong in the exercise of its discretion arriving at entirely erroneous estimate of damages as to occasion an injustice (see **Mbogo and another v Shah** [1968] EA 93).

I have reviewed the reasons for the award as stated by the trial court and the quantum awarded to wit; **TZS. 4,000,000/=** to the respondent who is the village chairman and, satisfied that the trial court did not misdirect itself on the principles for the award of damages and neither was the award so excessive as to amount to an entirely erroneous estimate. Therefore there is no basis for interfering with the awarded amount.

In the upshot, I uphold the judgment and orders of the trial court (The District Court of Ngara) and dismiss this appeal for being devoid of merit. Given the nature of the suit, each party shall bear its own costs.

It is so ordered.

Dated at Bukoba this 10th day of May, 2024.



E. L. Ngigwana

Judge

10/05/2024

Judgment delivered this 10th day of May 2024 in the presence of Mr. Deogratius Batakanwa (Respondent's brother), Mr. A.A. Madulu, JLA, and

Ms. Queen Koba B/C, but in the absence of the appellant and his advocate though they were aware of the judgment date.




E. L. Ngigwana

Judge

10/05/2024