

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DAR-ES-SALAAM DISTRICT REGISTRY)

AT DAR-ES-SALAAM

CIVIL APPEAL NO. 145 OF 2022

MICHAEL EDIMUND NOLELO APPELLANT

VERSUS

CARTRACK TANZANIA LIMITED RESPONDENT

(Appeal from the Judgment and decree of the District Court of Kinondoni at
Kinondoni)

(J. J. Regemalila, SRM)

Dated 17th day of August 2022

In

(Petition No. 114 of 2021)

JUDGMENT

29/08/2023 & 26/01/2024

NKWABI, J.:

This appeal concerns a libel dispute commonly known as defamation. The appellant was employed by the respondent as Accounts Manager since the year 2016. When he was dismissed from employment, the appellant was the Credit Controller of the respondent. In 2018, the respondent found some money missing and the missing money were linked to the appellant. On inquiring him, the appellant, through exhibit D.1 admitted to have received from a client USD 1,500/=. He explained that that amount of money were stolen at his home but did not report to the employer about the theft. He pledged to pay the stolen money by monthly

instalment starting from his salary of May 2018 up to the salary of October 2018 inclusive.

In a Newspaper, The Guardian, dated 20th July, 2018 which was admitted as exhibit P. 1, the respondent issued a public notice informing the public and her esteemed clients that the appellant was no longer her employee since 25th June 2018 for the reason of stealing company money. Thus, the appellant petitioned in the trial court for compensation arising from the injuries caused by the slander. After hearing the evidence of both parties, the trial court found that indeed, the appellant was defamed. It, however, declined to award him any damages be it specific or general on account of failure to avail the court with the justification of the injuries or damages that the appellant suffered as a result of the respondent's publication.

Hurt by the decision of the trial court, the appellant is before me with three rationales of appeal but the 2nd one was abandoned in the submissions hence, he remained with two which are:

1. That the honourable district court erred in law and fact by failing to award damages to the appellant after finding that the appellant was truly defamed by the respondent whereas the publication injured the appellant's reputation.

2. That the honourable district court erred in law and fact in making a finding that there was no evidence adduced in court by appellant which showed proof without considering that the appellant pleaded and proved the facts in court.

The respondent is resisting the appeal. The appeal is disposed of by way of written submissions. Mr. Ditrick Mwesigwa is advocating for the appellant while written submissions in reply were drawn and filed by Ms. Shamimu Kikoti, also, learned advocate. I commend their ingenuity.

Explaining the 1st ground of appeal, the counsel for the appellant contended that in Tanzania, the tort of libel is actionable per se citing **Beda Jonathan Amuli v. Kuboja Ngúngu & 2 Others**, Civil Case No. 29 of 2008 HC (unreported). He insisted that it was the duty of the trial court to award compensatory damages to the appellant. He beefed up that general damages are compensatory in nature, as they are intended to take care of the plaintiff reputation as well as a solatium compensation for mental pain and suffering in terms of **Haji Associates Company (T) Ltd & Another v. John Mlundwa** [1986] TLR 107 (HC).

Ms. Kikoti is nurturing an entirely contrary perspectives to those held by Mr. Mwesigwa. She maintained that damages are not automatically

awarded. It is added that the trial court was bound by the law not to award damages to the appellant who failed to justify the loss he suffered for the alleged tortious act of the respondent. She gave an example of specific damages of loss of income citing **Zuberi Augustino v. Anicet Mugabe** [1992] TLR 137, that being so, special damages must be specifically pleaded and proved.

Ms. Kikoti too challenged the criticism of the appellant to the trial court for failure to award him general damages. She says the appellant did not explain how the reputation he owes was damaged so that the court could measure to what extent to be compensated. She relied on the decision of this Court in **Emmanuel Tamila v. Mobax Telecoms Tanzania Ltd & 2 Others**, Commercial Case No. 102 of 2009 (unreported) where it was stated thus:

"Since general damages as a matter of prayer, and which need not be specifically proved, in the absence of evidence of loss in earnings. The plaintiff did not tell this Court the income otherwise he would have earned had there be no breach of contract by the 2nd defendant. It is therefore difficult for this Court to assess and exercise its

discretion to award general damages as prayed, since in doing so this Court would be acting from the vacuum."

In her submissions too, the counsel for the respondent clings to the opinion that the appellant did not claim for any general damages but only specific damages. She referred me to the authoritative decision of the Court of Appeal in **Magnus K. Laurean v. Tanzania Breweries Ltd**, Civil Appeal No. 15 of 2018 where it was underlined that:

"... in the instant case, we find no basis to interfere with the learned Judge's award. First and foremost, she was justified to vacate the order for reinstatement on the ground that it was not prayed for in the referral form. It is settled that generally an arbitrator or the High Court, Labour Division has no jurisdiction to grant a relief which is not prayed for in the referral form, the said form being understood synonymously with a plaint."

Ms. Kikoti further remarks that the appellant must prove a loss occurred and that it was attributable to the other party and must quantify the amount of loss to prove damages. She prayed the 1st ground of appeal be dismissed for lack of proof.

I have steadily considered the rival opinions of the counsel of the parties to this appeal. I am of the position that in the 1st ground of appeal, the appellant is mourning the lack of award of general damages despite his claim for the same and the trial court's finding that indeed the appellant was defamed. On a reflection, the trial court and the respondent's counsel did not pay attention to the law that general damages need not be proved as per **Beda's** case (supra) where Juma, J. as he then was, stated that:

*"...The law is settled that general damages are those which this court **presumes** to have arisen out of defendant's wrongful act."*[emphasis mine]

That is not all, in **The Cooper Motors Corporation Ltd v. Moshi Arusha Occupational Health Services** [1990] TLR. 96 CAT it was stated that:

"General damages need not be specifically pleaded, they may be asked for by a mere statement or prayer or claim."

See also the case of **Haji Associates Company (T) Ltd & Another** (supra) where it was held that:

"General damages are compensatory in nature, as they intend to take care of the plaintiff reputation as well as a solatium compensation for mental pain and suffering."

In the petition, the appellant claimed for damages for loss of reputation in his words "loss of reputation". He also claimed for damages for psychological torture. In my view, those claims are well captured by the **Haji's** case and **Cooper Motors'** (case supra). Thus, the appellant was entitled to award of general damages. I proceed to assess the general damages at T.shs 30,000,000/= regard being had to his position at the respondent's employment at the time of the malign. In the premises the case of **Emmanuel Tamila** and the case of **Magnus** cited by the counsel for the respondent are distinguishable and irrelevant in the circumstances of this case.

The appellant had claimed for loss of income and family break-up. In my view, those are special damages which ought to be strictly proved. He did not prove loss of income by salary slip or bank statement or anything proving his monthly salary paid to him by the respondent. He did not prove family break-up by a decree of divorce. Those kind of damage claims were legally dismissed by the trial court for lack of proof.

Having discussed the 1st ground of appeal as above, I think it is unnecessary to canvass the 2nd ground of appeal. That is because the handling of the 1st ground of appeal vindicated the appellant. However, I have to make a few comments in regard of the submission by the counsel

of the respondent in the 2nd ground of appeal for avoidance of doubt. In her submission, she claimed that the trial court's finding that "stealing" issue was answered in the affirmative that it was defamatory but noted that one element to be in the affirmative does not imply the tort of defamation is proved in the absence of other elements. She even claims that even the appellant is not sure whether his reputation was lowered or not.

With heartfelt respect to Ms. Kikoti, I find her arguments are misplaced. She even did not dare mention which other elements of defamation were missing. It does not register in my mind that a person who is branded a thief (stealing company money) would not have his reputation lowered or tarnished. Would he not be shunned away due to the malign? It is opportune to remind the counsel for the respondent that defamatory statement was defined in **Halsbury's Laws of England Vol. 28 4th Edition** paragraph 10 p7 to mean:

"... 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 to convey an imputation on him

*disparaging or injurious to him in his office, profession,
calling, trade or business."*

Had the counsel for the respondent taken into account the definition of defamation as defined above, she would have not levelled the criticism towards the submission made by the counsel for the appellant.


To put it all together, I partly allow the appeal to the above stated extent.

The respondent has to bear the costs of the appellant.

It is so ordered.

DATED at **KIGOMA** this 26th day of January 2024.




J. F. NKWABI
JUDGE