

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA  
DAR ES SALAAM SUB REGISTRY  
AT DAR ES SALAAM**

**CIVIL APPEAL NO. 1534 OF 2024**

*(Appeal from the Judgment and decree of Kinondoni District Court, in civil case No 170 of 2022  
before Hon. RUGEMARILA R.K, delivered on the 21<sup>st</sup> of December, 2023)*

**SHARIFA BAKARI MSHANA..... APPELLANT**

**VERSUS**

**VICTORIA FINANCE (T) LIMITED..... RESPONDENT**

**JUDGMENT**

*29<sup>th</sup> & 30<sup>th</sup> May 2024*

**MKWIZU, J:**

The appellant is aggrieved by the decision judgment of Kinondoni District Court in Civil Case No 170/2023 delivered by Honorable LUGEMARILA R, PRM dated 21<sup>st</sup> December 2023. Believing that the findings of the trial court were based on wrong factual and legal premises, the appellant has moved this court armed four grounds of appeal that.

*1. That, the trial Magistrate erred in law when he failed to take into consideration the defamation established by the Appellant.*

*2. That, the trial Magistrate erred in law and in facts for failure to evaluate and analyse the evidence*

*adduced by the Appellant hence reached into unfair decision.*

*3. That, the trial court erred in law and fact when it failed to grasp the adduced damages suffered by the Appellant from the Respondent actions.*

*4. That, the lower court erred in law when it holds that based on the evidence by the parties the balance of probabilities favored the Respondent.*

On behalf of the appellant, Mr. Kibindu advocate argued the appeal by combining the 1<sup>st</sup> and 2<sup>nd</sup> grounds while arguing the 3<sup>rd</sup> and 4<sup>th</sup> together. He commenced his argument on one and two by the definition of the term defamation as defined by the **Husbury law of England** 4th edition at page 11 and the decision in **Peter Ngomango V Gerson Mk And Another**, Civil Appeal No 10 of 1998, CAT (Unreported) to mean a statement intending to lower a person in the estimation of right-thinking members of the society generally or to cause him to be strained or avoided or to expose him to hatred, contempt or ridicule or convey an imputation on him discouraging or injuries to him in his office, profession, trade or business. He contended that DW1 confessed before the court that the loan in question was granted to a third party not the appellant and the house in question was not subject of the mortgage per exhibit PE1 and

PE2 and therefore the statement drawn in the appellant's house was intentionally made to defame the appellant.

Explaining four elements of defamation, on the 3rd and 4th ground, he said, it is undisputable that the respondent wrote in the appellants property a statement as proved by exhibit PE4, the plaintiff reputation and dignity was lowered by the published statement especially because the house in question is the property the plaintiff uses to secure loans for her business. The intention to defame the plaintiff according to the plaintiffs' counsel is established by her refusal to clear the statement from the plaintiff's house despite several reminders served upon her by the plaintiff. He also blames the respondent for failure to do due diligence during issuance of the loan to that third part and even during the alleged claim that ended into affecting the plaintiff. He lastly prayed the court to allow the appeal with costs.

Ms. Magaigwa advocate for the respondent was in support of the trial courts findings that the appellant failed to prove how the statement written in the plaintiffs wall which are similar to the words written by the Access Bank, and Akiba Commercial bank on the same house had defamed her. She did not adduce any proof on how her reputation was lowered, the claims that she is a reputable business woman, importing things from China was

not established during trial and no evidence was adduced supporting existence of that business or how that business was affected by the defendants statement written in the house.

To him, the issue during trial was whether the respondent had contracted any loan agreement to the third party whose name was Winjones Faustine Mang'anya, the appellant's husband, and it was proved that the loan was issued to that third party in 2011 and it was proved by the appellant that during the issuing the loan, the appellant and the respondent were husband and wife with concrete evidence establishing that the respondents intention was to collect loan arrears from the appellant's husband, Win Jones Mang'anya, the act that was done jointly by Respondent, Access Bank and Akiba commercial Bank.

On the 3 and 4th ground of appeal, respondents counsel was of the view that the appellant failed totally to prove damages suffered and therefore no damages would have been awarded. He prayed for the dismissal of the appeal with costs.

Submitting in rejoinder, Mr.Kibindu said, no evidence was availed to prove that the Access Bank and the respondent had granted any loan to the appellant and whether the title deed of the house by the appellant was used as collateral except for the Akiba Commercial Bank who is the appellant Banker in whose

Bank the title was surrendered as collateral . To the contrary, the evidence was able to establish the grant of the loan to the appellant's husband during the time when the two, were are in court processing their divorce.

I have amply evaluated the records and the submissions by the parties. Before I go to the examination of the grounds, I find it pertinent to albeit briefly summarise the background facts of the dispute. Appellant was a the plaintiff in the lower court suing the defendant, now the respondent for the sum of Tanzania Shillings 150,000,000/= damages suffered for the painting made by the defendant in her wall announcing to the public that the house has been confiscated by the Bank while she had never taken a loan from the defendant resulting into her being ignored by the society, lowering her reputation and therefore losing all business connections.

The defendants came with a different version of the story. Firstly, that the house was pledged as security of the loan by one Winstones Faustine Mng'anya, the appellant's husband way back in 2012. The borrower defaulted on the payment; they issued a notice to the borrower before the alleged statement. However, after the painting in February 2022, they learnt that during the confiscation announcement, the house was already sold to

Kahanza Tilumanywa Mwiko, DW1 who was yet to finalise payment.

Now turning to the crux of the matter. The core issue in this case is whether the claim by the plaintiff was proved to the required standards. The answer to this issue, will resolve the four grounds of appeal presented for determination by the court. Defamation is the key point here. According to **Ratanlal and Dhirajlal, Law of Torts**, 22nd edition, 1994, on pg 4:

*"A defamatory statement is a statement calculated to expose a person to hatred, contempt or ridicule, or to injure him in his trade, business, profession, calling or office, or to cause him to be shunned or avoided in society".*

The **Halsbury's Laws of England Vol. 4th** edition at page 7, also defined defamation as:

*"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."*

This defamatory statement may be a permanent statement made in writing or broadcasted known as libel or non-permanent defamatory statement, words, or gestures commonly known as slander. See **Public Service Social Security Fund (Successor of the Parastatal Pensions Fund) v. Siriel Mchembe** (CAT), Civil Appeal No. 126/2018 (Unreported).

In this case, the plaintiffs are referring to written statements painted in her wall. Now, the question is having the Plaintiff been defamed by that libel. To prove libel, one needs to establish that the defamatory statement is about the claimant, must be published and the statement must cause serious harm. There is no dispute in this case that the defendant/ current respondent painted the words **NYUMBA HII NI MALI YA ACCESS BANK 0658999577** on the appellant's house. The painting was however without a reason. According to the respondent, the painting came after default in payment by the borrower, Winjones Faustine Mng'anya the appellant's former husband and after a 60 days' notice issued in accordance with the procedure and several reminders by the bank. This fact was confirmed by the plaintiff herself in her evidence on page 13 of the proceeding. This is a signal that the plaintiff/ appellant was not the targeted person of the statement.

Looked at broadly, the statement is a true fact made in the process by the respondent to recover their legal amount granted to the then plaintiff's husband, a well-known individual and was never directed to the plaintiff as alleged. This dissolves the first ingredients to defamation.



Further to that, the fact that at the time of the alleged painting the house was already sold to Kabanza Tilumanywa Mwiko is not contested by the plaintiff/ now appellant. According to DW1, he bought the house on 17/1/2022 though he had at the time of the painting in February 2022 not finalised the payments. And in the sale agreement, exhibit DE 1 admitted without objection the mentioned borrower, featured as the appellant's witness during the sale. This proves that the two appellant and the claimed borrower, Winstones Faustine Mng'anya, were still in congruence through divorced.

Worse, no evidence was tendered in court to establish the business if any carried by the plaintiff/ appellant and how the same was affected by the said notice. Paragraph 7 of the plaint is an averment as to the loss of business and reputation. According to that paragraph, the appellant's plan to sale the said property to support her was affected by the notice that the prospect buyer had disappeared after the sale announcement by the respondent. This allegation was however negated by DW1



who was candid enough to show his readiness to pay the remaining purchase price after the conclusion of the legal issues pending before the court including the plaintiffs loan that was granted by the Akiba commercial Bank. Meaning that even without the respondents move, still the said house would not have been disposed of before the appellant had cleared the Akiba Commercial Bank loan. The other issues, the loss of business connections, loss of business and the lowered reputation have remained as a mere assertion without any proof. To this end, I find the plaintiff's case brittle without the required proof. The appeal is thus unmeritorious. The same is hereby dismissed with costs. It is so ordered.

**Dated at Dar es Salaam, this 30<sup>th</sup> day of May 2024.**



**E.Y. MKWIZU**  
**JUDGE**