

IN THE HIGH COURT OF TANZANIA

AT DODOMA

DC. CIVIL APPEAL NO. 24 OF 2016

(Arising from Judgment of Dodoma District Court

in Civil Case No. 40/2016)

LAZARO NJALABI.....APPELLANT

VERSUS

H. M. H. GULAMALIRESPONDENT

JUDGMENT

03/07/2017

&

21/08/2017

H. H. KALOMBOLA, J.:

Appellant herein is called LAZARO NJALABI. The respondent is H. M. H GULAMALI. Appellant is before this Court for appeal after he was aggrieved by the Judgment and Decree of Dodoma District Court in Civil Case No. 40/2015. He lodged the following grounds of appeal:-

1. That, the trial court erred in Law and in fact by holding that the statements by defendant were not defamatory rather qualified privilege communication.

2. That, the trial Honourable magistrate erred in Law and in fact by disregard the Lucid evidence by the plaintiff which proves that his reputations was lowered.
3. That the trial Honourable Court erred in Law and in fact by holding that the defendant did not publish the statements.

The parties agreed and the Court blessed that the appeal be disposed by written submissions.

Mr. Nyabiri representing the appellant submitted on the 1st ground of appeal that the appellant testified before the trial court that the respondent had wrote a letter to the Commissioner for Domestic Revenue doubting his integrity in employment and by then he was the Regional Manager for TRA Dodoma Region. That this letter meant appellant was not fit to the position he was holding. It is their submission those words were defamatory, they lowered his reputation which led to his demotion from being Regional Manager to a normal officer. It is their submission there was no qualified privilege in the letter as decided by the trial court because the appellant proved to the trail court that the respondent did maliciously and dishonestly communicate the letter to the Commissioner, therefore the respondent had malicious intention, he did not prove good faith. In that regard

there was no occasion of privilege to warrant existence of the defence of privilege.

In respect to the 2nd ground it is their submission the trial court disregarded the evidence by the appellant which proved his reputation was lowered. He proved that the respondent maliciously published defamatory statement to the Commissioner General and Commissioner for Domestic Revenue, which led to his demotion. As a result his salary was decreased from Tshs. 4,500,000/= to Tshs. 4,000,000/= and he was put as a normal officer from Regional Manager i.e he was put under supervision of officers who were his junior.

As on the 3rd ground of appeal they found the trial Court erred when it hold that the respondent did not publish the statement. It is submitted the respondent wrote the letter to the Commissioner for Domestic Revenue and copy to the Commissioner General, therefore there was publication of the said defamatory words. And the said letter was sent from Dar-es-Salaam to Dodoma in an open mail as the respondent himself stated (at page 27 of the proceedings) the Secretary of the Commissioner for Domestic Revenue saw it. Furthermore the respondent in his testimony (at page 29 of the proceedings) went on to defame him, they insist there was malice on part of the respondent.

Respondent whose advocate is Mr. Wasonga replied that the trial court was proper to not order any amount of compensation as there was no case from the beginning. They stated so because the letter (exhibit P5) was addressed to the Commissioner for Domestic Revenue of TRA Head Office, it was confidential which was received by the Commissioner himself, the Commissioner for Revenue declined to tender the said letter in Court, the Court received its copy which was certified and the alleged copy of letter was illegally obtained by the appellant.

It is submitted the demand notice (exhibit P1 and P2) the appellant claimed Tshs. 250,000,000/= but in paragraph 21 of the plaint it is stated Tshs. 100,000,000/=, therefore the demand and the claim differ from each other. That position of Law is clear to the effect that it is prohibited to mention the amount to be paid as general damages. They referred to this court the case of EDWIN WILLIAM SHETTO VRS MANAGING DIRECTOR OF ARUSHA INTERNATIONAL CONFERENCE CENTER (1999) TLR 130 to support this point.

It is further submitted, there is no defamation if one asks a person to be honest.

And with regard to the letter which was sent to Commissioner it is their submission this was a confidential one and at pages 12 and 13 of the proceedings the said Commissioner

declined to release the said letter, it shows the letter went to appellant illegally. They pray this Court not to consider it, as through Section 8 of the Tanzania Revenue Authority Act, Cap 399 and Section 140 of Income Tax Act, Cap 332, employers and any other person working with TRA are prohibited to disclose information including to tender any document in Court.

And in respect with exhibit P4, the respondent was only complaining about tax (as per paragraph 6 of the letter) that in paragraph 8 of the plaint it is stated the alleged defamation was referred to TRA officers and Regional Manager. It is surprising only the appellant complained. There is no single person who was brought to prove they received the documents at TRA. Since that the alleged defamatory statement was directed to TRA officers and the manager, the one ought to complain was the TRA and not the appellant.

It is further submitted the alleged photocopy ought not to have been received as evidence by the trial Court because requirements of Section 85 of the Evidence Act, Cap 6 R.E. 2002 were not met. They mentioned the requirements which were not met as, the TRA Manager was not a custodian of the letter (exhibit 5), There is no proof of demand of the alleged letter, No legal fees was paid to the effect, there is no date that was shown by the officer, there is no name of the officer shown, there is no seal shown at the foot, the stamp shown is not that

of the Commissioner for Domestic Revenue, and the Regional Manager did not issue certified copy.

It is further their submission the circumstance is clear that communication was privileged one as it was a letter of complaint against TRA officers to their superior boss. In the premises they invited this court to look at the case of ATHUMANI KHALFANI VRS P. M. JONATHANI (1983) TLR 6, [CA – Dar-es- Salaam] and the case of BOARD OF INTERNATIONAL TRADE VRS YOHANA MAPENZI COURT OF APPEAL OF TANZANIA AT DAR- ES- SALAAM, (1998) TLR, page 306.

It is insisted since ingredients of defamation i.e the letter was confidential, it was addressed to Commissioner for Domestic Revenue, no proof from third party who received it was brought to Court, no proof of damages occurred to the appellant e.g salary and letter of defamation, and the letter was a complaint against tax assessment, were not met, they pray for dismissal order with costs.

In rejoinder, it is submitted that there was a case of defamation as shown in the plaint, evidence and in grounds of appeal as the respondent communicated defamatory statement to a third party other than the appellant and the statement lowered the appellants reputation, causing him demotion.

That it was proper for the appellant to put the amount of Tshs. 100,000,000/= in the plaint instead of Tshs. 250, 000,000/= (exhibit P1 and P2) because it is the appellant own decision and it is not fatal for him to put specific amount in general damage.

The word doubting integrity of the appellant amount to defamation. The respondent's communication to the commissioner and his secretary doubted the honest and moral principles of the appellant i.e the appellant was dishonest and without moral principle in assessing his tax affairs.

It is their submission it was proper for the appellant to receive the said letter because the respondent had put a defamatory statement and the appellant was to be informed officially. And the letter was properly tendered by the appellant in Court because all procedures were followed. There is no doubt that the respondent wrote the letter (i.e in written statement of defence, during hearing and in submission (pages 2 and 5).

It is insisted the Communication by the respondent is not qualified privilege, and the respondent failed to prove the basis of his doubt to the appellant's integrity. That in the case of *ATHUMANI KHALFANI VRS P. M. JONATHAN* (1983) TLR (CA) it is a requirement proof must be there that he did communicate honestly and without malice. On the contrary the appellant on his part succeeded to prove that the respondent maliciously and

dishonestly communicated the letter on balance of probability as per the case of MAKORI WASSAGA VRS JOSHUA MWAIKAMBO & ANOTHER (1987) TLR 88.

It is insisted respondent's statement is defamatory therefore if the other TRA officials did not sue, it cannot deter the appellant to sue. That TRA could not bring a suit because it was not directly defamed. They submit their appeal be allowed with costs.

At this juncture let me now discuss the submissions and the record of the trial Court so as to find out whether the appeal at hand has merit or otherwise.

For a tort of defamation to be successful the plaintiff must be able to prove that the words spoken against him or those alleged to be in the permanent form (in the letter) as the ones in the instant appeal lower his reputation in the estimation of right thinking members of society and thereby making them shun or avoid him (see Winfield & Jolowicz on Tort Fifteenth Edition 1998). As the statement allegedly turning the appellant's reputation in the instant appeal are in the form of a letter, the appellant can only be said to have proved the tort of defamation if successfully shows that the same have been communicated to at least one person other than himself.

The question falling for consideration is whether the statement in the said letter which question the integrity of some

TRA officers including the appellant regarding the aforesaid tax affairs are defamatory of the appellant. First of all it should be noted that the letter was primarily addressed to the Commissioner for Domestic Revenue TRA, Dar-es-Salaam, by no means the same was meant to be communicated to persons other than the addressee. Most important, the respondent had the right to question the integrity of TRA officials including the appellant for the obvious reason that there is always a possibility that human beings may at times be subjected to misconducts, the appellant in the instant appeal is and cannot at any rate be exceptional. The respondent in the instant appeal cannot be said to have wronged the appellant by merely doubting his integrity when infact a possibility like that ought to be explored in an effort to safeguard his interests in business. Besides, the respondent did not, in the said letter confirm the allegations that is why he addressed the same to the Commissioner for Domestic Revenue to look into it and decide wisely. Suffices to say, the respondent is protected by the defence of qualified privilege for there is sufficient proof that he was acting honestly and was not actuated by malice (see the case of MAKORI WASSAGA VRS JOSHUA MWAIKAMBO & ANOTHER [1987] TLR 88 (Court of Appeal). At any rate the respondent cannot be said to have publicized the letter when infact the same was addressed to the person incharge with among other things, handling complaints presented before him. Infact the letter was confidential, it was

never meant to be read by persons other than the Commissioner for Domestic Revenue, TRA, Dar-es-Salaam.

Again, as the respondent's letter to the Commissioner for Domestic Revenue, TRA, Dar-es-Salaam seems only to have the account doubting the integrity of the appellant without confirming the same, must have acted in good faith, for if the allegations against him were found to be true would only reduce his reputation to its proper level in which case the tort of defamation would be one without any foundation (see Winfield & Jolowicz on Tort, Fifteenth Edition, 1998).

It is for the foregoing reasons, I hold that the tort of defamation against the respondent as it was found by the trial Court, has not been proved, consequently the instant appeal is dismissed. No order as to costs.

Ordered accordingly.



(H. H. KALOMBOLA)

JUDGE

21/08/2017