IN THE HIGH COURT OF TANZANIA

AT TABORA

DC CIVIL CASE APPEAL NO. 5 OF 2020

[Originating from Civil Case No. 1 of 2019 in the Resident Magistrate Court of Tabora at Tabora

AMINA MOHAMED @ FANI MOHAMED..... APPELLANT

VERSUS

GULAMHUSSEIN DEWJI REMTULLAH @ GULAM....RESPONDENT

JUDGMENT

Date of Last Order: 23/09/2022

Date of Delivery: 30/09/2022

AMOUR S. KHAMIS, J:

The parties' dispute is founded on a claim for defamation. Gulamhussein Dewji Remtullah @ Gulam instituted Civil Case No. 1 of 2019 in the Resident Magistrate Court of Tabora against Amina Mohamed @ Fani Mohamed for payment of Tshs. 180,000,000/= as damages for a defamatory statement allegedly uttered against him.

The Plaint show that on 9th day of September 2018 at Malabi area, Tabora region, Amina Mohamed @ Fani Mohamed, without any lawful justification or excuse, uttered words that "Gulam Councillor is a thief and bandit. He took my plot of land".

It was alleged that such words uttered before the then District Commissioner for Tabora, Kitwala Komanya, in presence of other people who attended a public rally, referred to Gulamhussein Dewji

Remtullah @ Gulam, being the only Councillor in Tabora Municipality who was known by the name of "Gulam".

It was also alleged that on 20th day of September 2018, Amina Mohamed @ Fani Mohamed repeated the same words in a public meeting presided over by the then Minister for Lands, Housing and Human Settlements Developments at Chipukizi Grounds in Tabora Municipality.

Gulamhussein Dewji Remtullah @ Gulam alleged that in the said meeting attended by several people from within and out of Tabora region, Amina Mohamed @ Fani Mohamed said that he (Gulam) grabbed her land by force and used his political position and status to achieve such unlawful acts.

It was pleaded that the said words were not true but contained serious and highly defamatory comments towards Gulam.

It was further pleaded that such words were communicated and spread to hundreds of people throughout Tabora and beyond, thus posing serious threat to the reputation of Gulam and his family.

It was averred that the said words were unjustified and designed to damage Gulam's social, political and business reputation in the region and beyond.

The Plaint described Gulam as a reputable personality in Tabora region being a Councillor, Chairman of CCM Parents Wing for Tabora Region, Member of the Board of Directors of Tabora Urban Water and Sanitary Authority (TUWASA) and former Lord Mayor for Tabora Municipality, apart from being head of the family.

It was also averred that Amina @ Fani Mohamed falsely and maliciously published such words intending to injure, disparage and lower Gulam's esteem before the right thinking members of the society.

The Plaint also showed that as a result of such words, Gulam was greatly injured in character and reputation and subjected to grave public ridicule, scandal, odium and contempt in the eyes of the society as the general public shunned from him and suffered serious emotional injuries.

Fani @ Amina Mohamed filed a brief Written Statement of Defence in which she generally denied to defame Gulam and subjected him to strictest proof thereof.

In a further reply, Fani Mohamed admitted to have attended a public meeting at Malabi area which was convened and presided over against Gulam for grabbing by the District Commissioner for Tabora to solve land disputes.

She also admitted to have complained her land and registering it in the name of "his wife, Mariam Mohamed Hilali.

She attached copy of a letter from the Tabora Municipal Council referenced TMC/MOS/VOL.III/06 dated 15/01/2019 indicating the registered owner of Plot No. 42, Block "VV", Ipuli area, Tabora Municipality, was Mariam Mohamed Hilali of P.O. BOX 1212 Tabora.

The suit proceeded to trial which saw four (4) witnesses for Gulam and four (4) witnesses for Fani @ Amina Mohamed.

Upon conclusion of trial, the trial magistrate (Hon. Patrick G. Ngaeje, RM) concluded that the defendant (Fani Mohamed) did not dispute to have uttered defamatory words and failed to prove how Gulam grabbed her land.

Consequently, it was held that the defence of qualified privilege was not available to Fani Mohamed.

In the upshot, Gulam was awarded Tshs. 10,000,000/= as general damages and interest thereon at 6% per month. Fani Mohamed was also condemned to pay costs of the suit.

Aggrieved, Amina Mohamed @ Fani Mohamed, through services of Ms. Winfrida Emmanuel Mroso, learned advocate, preferred the present appeal premised on seven (7) grounds, thus:

1. That the learned trial magistrate erred in law to admit into evidence USB Flash (Exhibit P.1) which was neither annexed to the plaintiff's Plaint nor entered in a list of other documents and no leave of the Court was sought to that effect.
2. That the learned trial magistrate erred in law to admit into evidence USB Flash Disk (Exhibit P.1) without taking into account the conditions for admissibility of electronic evidence.
3. That the learned tiral magistrate erred in law and in fact for failure to read out the substances of a document USB Flash (Exhibit P.1) after it was admitted as exhibit.

4. That the learned trial magistrate erred in law and in facts for failure to consider that the respondent had no cause of action against the appellant.
5. That the learned trial magistrate erred in law and facts in holding that the respondent was defamed without proof at the preponderance of probability.
6. That the learned trial magistrate erred in law and in fact for failure to consider that the statement or comment made in public to a person who has authority to make inquiry on a certain matter does not amount to defamation.
7. That the learned trial magistrate erred in law and in fact in awarding and assessing general damages together with corresponding interest in favour of the respondent.

Whereas the Memorandum of Appeal, was prepared by Ms. Winfrida Mroso, the appellant was subsequently represented by a number of other advocates including Mr. Noel Nkombe, Mr. Kelvin Kayaga, Ms. Elizabeth Kijumbe and Mr. Saikon Justine.

Throughout proceedings in the lower Court and in this appeal, Gulam enjoyed legal services of Mr. Fadhil Kingu, learned advocate.

The appeal was canvassed by way of written submissions and both sides complied to the timeline set by the Court.

Submissions for and on behalf of Fani Mohamed were drawn and filed by Mr. Saikon Justin Nokoren, learned advocate.

Apart from appearance, Mr. Fadhil R. Kingu, learned advocate, drew and presented submissions in favour of Gulamhussein Dewji Remtullah @ Gulam, the respondent herein.

This is the first appellate Court and my duties were well restated in ***JOYCE V YEOMAN'S (1981) I WLR***, thus:

> *"A court on appeal will not normally interfere with a finding of fact by the trial court unless it is based on no evidence, or on a misapprehension of the evidence or the Judge is shown demonstrably to have acted on wrong principles in reaching the findings he did."*

In order to establish whether the trial Court made its finding(s) of facts based into particular evidence on record – assessed in the light of the legal position in force, the first appellate Court has a duty to review the evidence afresh.

In discharging such duty, I will examine each ground of appeal while considering the rival submissions presented by both counsel.

The first, second and third grounds of appeal revolve around admissibility and weight assigned to a USB Flash disk, Exhibit P.1.

Considering that these three grounds of appeal address the same issue, I opt to consolidate and address them jointly.

In support of the first ground of appeal, Mr. Saikon Justin Nokoren, contended that Order VII, Rule 9 of the Civil Procedure Code, Cap 33, R.E 2019 requires a plaintiff to endorse on the Plaint or annex thereto, a list of documents (if any) which he has produced along with it.

He faulted the respondent for filing a list of documents containing a USB flash disk after the first pre – trial conference was conducted.

He contended that a document intended to be relied upon by the plaintiff cannot be produced in Court at the plaintiff's will without leave of the Court.

Further, Mr. Saikon Justin Nokoren contended that Exhibit P.1 was admitted without taking into account conditions for admissibility of electronic evidence.

He referred to Section 18(2) of the Electronic Transactions Act, No. 13 of 2015.

On the third ground of appeal, Mr. Saikon Nokoren contended that the trial magistrate failed to read out the substances of a document (USB – Flash) admitted as exhibit P.1.

He said contents of the flash disk were not played in Court and thus not known to the Court and the appellant.

The learned advocate faulted the trial magistrate for relying on such exhibit whose contents were not revealed and wondered as to how he became conversant with its contents.

He moved this Court to adopt a Criminal Procedure as set out in ***ROBINSON MWANJISI & OTHERS V REPUBLIC (2003) TLR 218,*** that after any document is cleared for admission and admitted as an exhibit, its contents should be read out to enable accused (and other parties) understand the nature and substance of the facts contained therein.

In reply, Mr. Fadhil Kingu readily conceded on the second, third and seventh grounds of appeal.

In reply to the first ground of appeal, he asserted that Order XVIII, Rule 1 of the Civil Procedure Code, Cap 33, R.E 2019 prohibits admission of a document that is not produced at the time of lodging the Plaint and argued that such document could be admitted if the plaintiff complied with Order XIII Rule (1) of the Civil Procedure Code.

He asserted further that Order XIII, Rule 1 (1) of the Civil Procedure Code allowed parties to produce documents that were not listed in the Plaint.

He contended that in so doing, no leave of the Court is required as contended by the appellant's counsel.

Further, the respondent's counsel contended that leave could only be required if a document introduced in evidence was not previously filed and served on the opposite party before commencement of the trial.

He faulted the appellant's counsel for misconstruing Order VIII A, Rule 4 of the Civil Procedure Code, which he said, was no longer in existence following amendment of the Civil Procedure Code.

Even assuming that the provision existed, Mr. Kingu contended that it did not prohibit parties to file any additional document to be relied upon allegedly because it amounted to departure from the scheduling order.

As regards to the second and third grounds of appeal, the respondent's counsel admitted that the trial magistrate did not follow applicable procedure in the admission of electronic evidence.

Expounding, he said Section 64A of the Evidence Act, Cap 6, R.E 2019 read together with Section 18(2) of (a – d) of the Electronic Transactions Act, No. 13 of 2015 were overlooked.

Mr. Kingu invited this Court to expunge Exhibit P.1 from the records allegedly because as a secondary evidence, its contents were not read out nor displayed after admission.

Further, Mr. Kingu asserted that the effect of expunging Exhibit P.1 from the record was not to vitiate the trial court's proceedings as contended by Mr. Saikon Nokoren.

He submitted that upon expunging any exhibit from the record, it is duty of the Court to assess if the remaining pieces of evidence are sufficient to support the claim.

The parties in this case are at partial loggerheads on the first ground of appeal and thus inviting this Court to decide on whether it was wrong for the trial magistrate to admit a USB flash disk (Exhibit P.1) based on a list of additional documents.

Order ***XIII Rule 1 (1) (2) of the CIVIL PROCEDURE CODE, CAP. 33, R.E 2019*** provides that:

1. *" (1) The parties or their advocates shall produce at the first hearing of the suit, all the documentary evidence of every description in their possession or power, on which they intend to rely and which has not already been filed*

in Court, and all documents which the Court has ordered to be produced.

2. *The Court shall receive the document so produced provided that they are accompanied by an accurate list there of prepared in such form as the High Court directs."*

What is discerned from the above provisions is that filing of documentary evidence in possession of a party before the first hearing of the suit a statutory alternative to parties or a party who did not attach such documents to the pleading(s).

The overriding words used are: *"and which has not already been filed in Court....."* to mean that such documents are in addition to those referred to in Order VII Rule 14(1) (2) of the Civil Procedure Code.

Order VII Rule 14(1) and (2) of the Civil Procedure Code:

1. *"14(1) Where a plaintiff sues upon a document in his possession or power, he shall produce it in Court when the Plaint is presented and shall at the same time deliver the document or a copy thereof to be filed with the Plaint.*

List of other documents.

2. *Where the plaintiff relies on any other documents (whether in his possession or power or not) as evidence in support of his claim, he shall enter such documents in a list to be added or annexed to the plaint".*

In the present case, the plaintiff filed a list of additional documents to be relied upon containing one item, a USB Flash Drive. The said list was filed subsequent to the filing of a Plaint as per Order XIII Rule 1(1) of the Civil Procedure Code.

The USB Flash disk was produced by PW1 Gullamhussein Dewji Remtullah @ Gullam as reflected in page 10 of the typed proceedings.

At the time of production of the USB flash disk, the defendant raised no objection and thus admitted unopposed as Exhibit P.1.

It is therefore wrong on part of the appellant's counsel to argue that the admission of Exhibit P.1 prejudiced the appellant.

This position was restated in ***DR. WORLFGANG FORRUGIA V ATTORNEY GENERAL AND ANOTHER, CIVIL CASE NO. 472 OF 1988*** (unreported) wherein the High Court of Kenya persuasively held that:

> *"Once documents are admitted by consent, the other party cannot raise technicalities on admissibility".*

Apart from that legal position, the circumstances in this case show that in terms of Order XIII Rule 1 of the Civil Procedure Code, the respondent as a plaintiff was not prevented from introducing into evidence the USB Flash disk that was filed as an additional document.

The appellant's counsel contended that leave to depart from the scheduling order was required and relied on Order VIIIA, Rule 4 of the Civil Procedure Code.

From the outset, I should state that Order VIII A Rule 4 of the ***CIVIL PROCEDURE CODE*** cited by Mr. Saikon is no longer in use.

Through ***GOVERNMENT NOTICE NO. 381 OF 2019*** published on 10/05/2019, the ***CIVIL PROCEDURE CODE*** was amended vide ***THE CIVIL PROCEDURE (AMENDMENTS OF THE FIRST SCHEDULE) RULES, 2019***.

Rule 6 of Government Notice NO. 381 of 2019 provides that:

> *"6. The principal schedule is amended by deleting orders VIII A, VIII B and VIII C respectively".*

Since the provision cited by Mr. Saikon is currently non existent and not a part of our law no sound decision can be made on it. It is therefore important to examine the current legal position.

Trial of the present case was conducted in the lower Court from 15/7/2019 to 19/12/2019 when the Civil Procedure Code had been amended by G.N. No. 381 of 2019.

The law in force, Order VIII Rule 23 of the ***CIVIL PROCEDURE CODE, CAP 33, R.E 2019*** provides that:

> *"23. Where a scheduling conference order is made no departure from or amendment of such order shall be allowed unless the Court is satisfied that such departure or amendment is necessary in the interest of justice and the party in favour of whom such departure or amendment is made shall bear the costs of such departure or amendment unless the Court directs otherwise."*

In ***TANZANIA FERTILIZER CO. LTD V NIC OF TANZANIA LTD & ANOTHER, COMMERCIAL CASE NO. 71 OF 2004*** (Unreported) this Court while interpreting Order VIII A, Rule 4 of Civil Procedure Code (before it was amended) held that the provision was not mandatory.

In my view, the filing of additional list of documents under Order XIII Rule 1 of the Civil Procedure Code is independent from the scheduling order.

Matters to be addressed at the first pre – trial conference are listed in Order VIII Rule 18(2) and 22(1) of the ***CIVIL PROCEDURE CODE*** which does not include filing of additional documents.

Such issues covered at the first pre – trial conference are stated to be possibility for settlement of all or any of the issues in the suit, parties furnishing the Court with any information that is necessary such as interrogatories, discoveries and or application to be made.

Also to be discussed is the speed track of the case in order to secure a just, expeditious and economical disposal of the suit or proceedings.

In the present case, records show the first pre – trial and scheduling conference was conducted on 25/02/2019. On that day, parties indicated that there was neither application nor discoveries to be filed, agreed on the number of witnesses for each of them and case was assigned to speed track II.

There was neither a mention nor indication of filing or non filing of additional documents.

In such circumstances, as earlier on stated, the filing of additional documents under Order XIII Rule 1 of the Civil Procedure Code was an alternative route for introduction of documents in the hands of the plaintiff which were not lodged alongside the Plaint. Therefore the first ground of appeal is rejected for want of merits.

The second and third grounds need not detain me because both counsel are in agreement on inappropriateness of the procedure adopted by the learned trial magistrate in admitting Exhibit P.1.

Electronic evidence can be defined as data (comprising the output of analogy device or data in digital form) that is manipulated, stored or communicated by any structured device, or computer system or transmitted over the communicated system that has potential to make factual account of either part more probable that it would be without the evidence ***(BURKHARD SCHAFER AND STEPHEN MANSON, "THE CHARACTERISTICS OF ELECTRONIC EVIDENCE" IN STEPHEN MANSON AND DANIEL SENG (EDS) ELECTRONIC EVIDENCE, 4TH EDITION, UNIVERSITY OF LONDON, 2017***, at Page 20).

Section 64A (1) of the ***EVIDENCE ACT, CAP 6, R.E 2019*** provides that electronic evidence is admissible in any proceedings.

However, Section 64A (2) of the Evidence Act provides that admissibility and weight of electronic evidence shall be determined in the manner stated under Section 18 of the Electronic Transactions Act.

Section 18(2) of the ***ELECTRONIC TRANSACTIONS ACT NO. 14 OF 2015*** provides that:

> *"18 (2) in determining admissibility and evidential weight of a data message, the following shall be considered:*
>
> *a) The reliability of the manner in which the data message was generated, stored or communicated.*
>
> *b) The reliability of the manner in which the integrity of the data message was maintained.*
>
> *c) The manner in which its originator was identified and*
>
> *d) Any other factor that may be relevant in assessing the weight of evidence".*

In the present case, as reflected in page 10 of the trial court's typed proceedings, neither parties nor the trial magistrate addressed themselves to the requirements of Section 18(2) of the Electronic Transaction Act, 2015.

The Trial Court's proceedings further show that the trial magistrate treated the USB flash disk as any other documentary evidence.

Since the Electronic Transactions Act provides for the special criteria to be applied on admissibility of electronic evidence, such procedure prevails over any other general law regulating admissibility of the evidence including the Evidence Act, Cap 6, R.E 2019.

In view of the omission to comply with Section 18 (2) of the Electronic Transactions Act, 2015, the disputed USB flash disk admitted as Exhibit P.1 is hereby expunged from the records.

Having expunged Exhibit P.1, the issue remains on whether the remaining evidence on record is sufficient to establish the respondent's claim.

In tacking this issue, I will simultaneously exhaust grounds no. four, five and six which are all related to the standard required in proving a defamation case.

Defamation is defined to mean publication of a statement that injures a third party's reputation. The tort of defamation includes both libel (written statements) and slander (spoken statements).

Defamation has also been defined as the act of communicating to a third party false statements about a person that result in damage to that person's reputation.

According to the Plaint, the appellant (Amina @ Fani Mohamed) defamed the respondent (Gullamhussein Dewji Remtullah @ Gulam) in two different occasions.

Firstly, it was contended that while at Malabi area, Tabora region, on 9th September 2018, Amina @ Fani Mohamed in presence of the then District Commissioner for Tabora Hon. Kitwala Komanya, and other persons who attended a public rally, she said that "Gulam the Councillor" is a thief and bandit.

In addition, it was alleged Amina @ Fani Mohamed stated that Gulam the Councillor, had grabbed her parcel of land and registered it in the name of his wife.

Secondly, it was contended that on 20th day of September 2018, at Chipukizi grounds in Tabora Municipality, Amina @ Fani

Mohamed in presence of the then Minister for Lands, Housing and Human Settlements Developments, repeated the same defamatory statements.

It was alleged that in the second meeting, the appellant added that Gulam the Councillor improperly used his position as a councillor and political leader to grab other people's lands.

These allegations were partly admitted by Amina @ Fani Mohamed in her Written Statement of Defence, wherein she pleaded that:

> *" 3. That the contents of paragraph 4 of the Plaint are strongly denied and the defendant further avers that there was meeting that was convened by the District Commissioner to solve the land disputes of which the defendant was among of the complainants whom her land was grabbed by the plaintiff and to disguise his wrong he put into it the name of (his) beloved wife, one Mariam Mohamed Hilali. A copy of the letter from Municipal Council with reference No. TMCM/OS/VOL.III /06, hence the plaintiff is put into strict proof thereof."*

PW1 GULLAMHUSSEIN DEWJI REMTULLAH, Former Mayor of Tabora, Municipality, Chairman of CCM Parents Wing (Jumuiya ya Wazazi), Board Member of Tabora Urban Water and Sanitary Authority (TUWASA) Board of Directors, Councillor for Kanyenye Ward and businessman, testified that he was present at Mpela Ward

on 9/09/2018 when the appellant uttered defamatory statements against him.

The witness repeated words stated in the Plaint and testified that the appellant told the public gathering that he (Gulam) was a dangerous person who grabbed her land.

He also testified that the appellant alerted the public, to hold him, (Gulam (PW1)responsible for her death in case she died!

PW1 said during such meeting of 20/9/2018 presided over by Hon. William Lukuvi, then Minister for Lands, Housing and Human Settlements Developments the appellant published defamatory words against him.

On cross examination by the appellant's counsel, PW1 stated that:

> *"She said that I was a robber and in case of (her death) people should ask me. She had not complained to me about her land. She alleged to have a customary area at Temi Hill area. I do not have a plot, my wife is the one who has plot there. She will be wrong to accuse me to rob her plot. There were leaders of the political parties. If her land was taken she would have taken the matter to the tribunal. I attended both meetings....."*

PW1's evidence was supported by PW2 SAID SELEMAN MAGANGA, a bodaboda driver who attended the meetings at Mpera Ward on 9/9/2018 and Chipukizi Grounds on 20/9/2018.

PW3 ALLY KAZIKUPENDA, a resident of Gongoni area, Tabora Municipality, and Chairman of the parents Wing of Chama Cha Mapinduzi in Tabora District, was present at Chipukizi Grounds on 20/9/2018.

The witness said he heard the appellant describe Gulam as a robber and land grabber.

PW4 MWAMBA ZUBERI BUNDALA, CCM Chairman at Mpera Ward, described Gulam as a renowned political leader whom he had known for about 21 years.

He testified that during the public meeting, Amina @ Fani Mohamed described Gulam as a land grabber who threatened her life.

DW1 AMINA MOHAMED, the appellant herein, testified that:

> *"On day the District Commissioner for Tabora convened a meeting on 9/09/2019 and asked all people of Mpera who had disturbing issues (kero) to express their issues.*
> *I so went and expressed my issues where I complained on land conflict that I once complained against Gulam on the area of Mbugani Ward where he was the Councillor but I was told that Gulam and other persons had been given occupation of my area.*
>
> *After about four years Gulam told me that he had a plot on my land. I asked him how he got it but he replied "* ***Aah usiniulize, mimi nina Kiwanja.****"*

I found there was no need to follow up through him. I so passed through many offices including PCCB, and the then Deputy Minister, Simbachawene. On the incidental date, Gulam was present there. I said to the DC that I was a heir to my father's land but Gulam had come to own it.

I also complained before minister for lands one Lukuvi. I did not defame him. It was truth that I had a land that was taken by him".

I just said that he was a thief. It is true I said so because he stole my land. However, I was not given cooperation because he was a leader".

DW2 HUSSEIN YUSUF, Ex -Member of the Land Conflicts Committee in Mpera Ward, testified on the appellant's attempts to report the land dispute against the respondent to several political leaders including Hon. Goodluck Ole Medeye, Hon. George Simbachawene, Hon. William Lukuvi William and the District Commissioner for Tabora.

According to him, the disputed plot was owned by the respondents' wife, Mariam.

When DW1 was recalled, she insisted calling Gulam "a thief" and explained that:

"A thief is a person who takes another person's property without the other's consent."

DW3 BONIFACE RAPHAEL KIMARO, a businessman and resident of Malabi area, Tabora Municipality confirmed that on

9/09/2019 the appellant aired to the District Commissioner, a land conflict.

On examination in chief he stated that:

> *"The defendant called Gulam "a thief" because she complained that he took her land without her consent".*

DW4 RAMADHAN RAJABU, an entrepreneur at Muhalitani area, Tabora, Municipality testified to being aware of the land dispute between the parties herein.

He told the trial Court that he was a member of the Land Committee that handled the dispute.

However, on further examination, the witness said he never heard Amina @ Fani Mohamed, refer to Gulam as a thief.

These pieces of evidences considered in the light of the express admission by the appellant in her Written Statement of Defence and during her testimony as DW1, establishes that the appellant referred to the respondent as a thief and land grabber.

The said words, taken in their ordinary meaning, are meant and were calculated to mean, that Gulamhussein, the respondent herein, was a person who steal and grab other people's land and that he used his political clout to further such unlawful acts.

I have no doubts that these words lowered the respondent's status in estimation of the right thinking members of the society where he was a political leader, corporate leader, businessman and head of a family.

However, the appellant advanced the a defence of privilege to such defamatory statements. ***HALSBURY'S LAWS OF ENGLAND, 4TH EDITION, VOL. 28,*** paragraph 111, states that:

> *"The defence of qualified privilege, lied where the person who makes a communication has an interest or duty, legal, social or moral to make to the person to whom it is made, and the person to whom it is made has corresponding interest or duty to receive it".*

In the present case, the respondent admitted that the disputed plot was registered in the name of his wife, Mariam Mohamed Hilali.

A letter of 15/01/2019 from the Tabora Municipal Council to advocate Hassan, Kilingo with reference no. TMC/M/0S/VOL III/06, was attached to the Plaint and subsequently tendered by DW1 for identification purposes only.

This letter was not subsequently admitted as Exhibit to give it the evidential value. However, it was referred to in the plaint to show the disputed plot No. 42, Block "VV", Ipuli area, Tabora Municipality, is owned by Mariam Mohamed Hilali of P.O. BOX 1212 Tabora.

Throughout the trial court's proceedings, no tangible evidence was led to prove that the said Mariam Mohamed Hilali had illegally and unjustifiably grabbed the plot from the appellant.

Since the Constitution of the United Republic of Tanzania guarantees everyone's right to land ownership, such ownership can only be challenged in a proper and competent forum.

Section 167 of the ***LAND ACT, CAP 113, R.E 2019*** provides that the Court of Appeal, the High Court, the District Land an Housing Tribunal, the Ward Tribunal and the Village Land Council are the only forums vested with exclusive jurisdiction to hear and determine all manner of disputes, actions and proceedings concerning land.

There is no doubt that, the defence of qualified privilege could be available to the appellant if she lodged the land a dispute the ward tribunal the District Land and Housing Tribunal or the High Court which are vested with original jurisdiction to preside over land related disputes.

To the contrary, the appellant uttered such defamatory statements in a public rally where the respondent could not be afforded the right of reply. Such a forum was not envisaged by Section 167 of the Land Act.

The last ground of appeal should equally not detain me. Mr. Fadhil Kingu, conceded that it was wrong for the trial magistrate to award the respondent 6% interest on the general damages per month.

The underlying principle in assessment of damages was traced by Bubeshi, J (as she then was) in ***FRANK MADEGE ATTORNEY GENERAL, V AG, CIVIL CASE NO. 187 OF 1993*** (unreported), thus:

> *"Assessment of general damages has its origin in the speech of Lord Blackburn in the case of LIVINGSTONE V RAWYARDS COAL CO. (1880) 5 APP. CAS 25 where he defined the measure of damages as that sum of money*

which will put the party who has been injured, or who has suffered, in the same position as he could have been if he had not sustained the wrong for which he is now getting compensation or reparation."

In ***THE COOPER MOTOR CORPORATION LTD V MOSHI ARUSHA OCCUPATIONAL HEALTH SERVICES (1990) TZCA 96***, the Court of Appeal held that:

".....Whether the assessment of damages by a judge or jury the appellate court is not justified in substituting a figure of its own for that awarded below simply because it would have awarded different figure it had tried the case. Before the appellate Court can properly intervene, it must be satisfied either that the Judge, in assessing the damages, applied a wrong principle of law (as taking into account some irrelevant factor or leaving out of account some relevant one), or short of this, that the amount awarded is so inordinately low or so inordinately high that it must be a whole erroneously estimate of the damage."

In the present case, other than awarding 6% interest on the general damages, there is nothing wrong to fault the trial magistrate.

As such, the award of 6% interest on the general damages is hereby quashed and set aside.

Consequently, the appeal partly succeed to the extent herein stated.

Therefore, the respondent is entitled to Tshs. 10,000,000/= payment as general damages for defamation.

Each party to bear own costs. It is so ordered.

AMOUR S. KHAMIS

JUDGE

30/09/2022

ORDER

Judgement delivered in Chambers in presence of Mr. Saikon Justin, advocate for the appellant and Ms. Christina Jackson holding brief of Mr. Fadhil Kingu, advocate for the respondent is also present in person.

Right of Appeal is Explained.

AMOUR S. KHAMIS

JUDGE

30/09/2022