

TANZANIA / JUDGMENT

nehemia kyando mchechu vs mwananchi communication limited and another 2023 tzhc 15873 3 march 2023

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IN THE HIGH COURT OF TANZANIA (DAR ES SALAAM DISTRICT REGISTRY) AT DAR ES SALAAM
CIVIL CASE NO. 48 OF 2021 NEHEMIA KYANDO MCHECHU.....PETITIONER VERSUS
MWANANCHI COMMUNICATION LIMITED.....1ST RESPONDENT THE
EDITOR OF THE CITIZEN NEWSPAPER.....2ND RESPONDENT Date of last
Order: 17/11/2022 Date of Judgment: 03/03/2023

JUDGMENT

MGONYA, J. The Petitioner herein, NEHEMIA KYANDO MCHECHU instituted this suit against the Respondents for tort of libel claiming for; a Declaratory Order that the Respondents have defamed the Petitioner, a court order for unconditional apology and retraction of the false and malicious publication complained of with bold and large print in the same Newspaper the Citizen published by the Respondents, the sum of Tshs. 3,000,000,000/= (Three Billion Tanzania Shillings) being compensation for Defamation, Permanent injunction restraining 1 the Respondents, their Agents and or Workmen from publishing defamatory statements against the Petitioner herein, general damages for libel as shall be assessed by this Honourable court, Aggravated damages for libel, interest at court's rate of 12% per annum, the costs for this suit and any other relief(s) this Honourable court may deem just to grant. The material facts giving rise to this dispute are not difficult to grasp. It is gathered from the filed Petition that; the 1st Respondent and 2nd Respondent falsely and maliciously, without adequate inquiry, honest belief and any lawful cause, justification and privilege and with intent to defame the Petitioner wrote, circulated, published and /or caused to be written, circulated, printed and disseminated scandalous, defamatory false and contemptuous allegations against the Petitioner in the Newspaper named THE CITIZEN which has a wide range of coverage within and outside Tanzania, with reference TISSN 0856-9754 No. 4551 dated Friday, 23rd March 2018. The alleged defamatory statements were pleaded in paragraph 7 of the Petition as reproduced hereunder:

- i. "Why JPM dissolved NHC board, sacked Mchechu"; ii. "Source told the Citizen that Mr. Mchechu was being investigated by the Board and questioned by the PCCB over possible conflict of interest 2 during the search and acquisition of 500 acres land for development of

Arusha's NHC Safari City Project"; iii. "The land on which the project stands was initially bought by a company reportedly owned by Mr. Mchechu from a foreigner who had failed to develop it. Mr. Mchechu is then said to have sold the land to NHC at inflated rates, the investigation found, the sources added"; iv. "He was also investigated for alleged using a contractor hired by NHC to prepare access road on his private land that is close to the Safari City project using NHC funds";

- v. "Kawe Project to a Dubai-based firm, PHILS International. The decision was allegedly, made by Mr. Mchechu without involving NHC's head of Procurement Unit, Mr. Hamis Mpinda. The later has already been questioned by PCCB over the issue"; vi. "Investigators were also trying to establish allegations that a company of which Mr. Mchechu's wife is a director was given a contract to provide insurance covers for NHC 3 houses in Mtwara contrary to public service rules on conflict of interest", and vii. "The sources also revealed that the committee formed to investigate abuse of office in the NHC traced gross misconduct and massive abuse of public funds by Mr. Mchechu". It is the Petitioner's allegation through his Petition that, the intention of the above contents is to portray that; the Petitioner is a dishonest person, master minder and/or architect of theft, guilty of dishonourable conduct to wit dangerous criminal, unfit and incompetent to do legitimate business currently and in the future within and outside Tanzania, ultimate fraudster, participating in series of serious deceitful dealings, and therefore should not benefit the trust of anybody, Organisation, Community and he is incapable of leading any Public Office. According to the Petitioner, the said publication which the Respondents knew or ought to have known that were untrue and unjustified, he suffered humiliation, hatred, contempt, ridicule and grave injury to his reputation, character and integrity not only from the right-thinking Members of the Public, Business Partners and the Government of the United Republic of Tanzania, but also from the persons who read or otherwise informed of the publication. Hence the Petitioner set in motion these proceedings. 4 To determine the controversy between the parties, this court framed four issues which were agreed upon by the parties and their respective Advocates as herein below:

- (i) Whether publication by the Respondents were Defamatory to the Petitioner; (ii) Whether the publications were made intentionally, falsely and maliciously; (iii) Whether publications were justified and privileged; and (iv) To what reliefs are the parties entitled. In a bid to substantiate his claim, the Petitioner who in this case enjoyed legal services of Mr. Aliko Mwamanenge, learned counsel, was the sole witness and he testified as PW1. In his testimony, the Petitioner herein, Mr. NEHEMIA KYANDO MCHECHU testified as PW1 to the effect that, he is a Director General of National Housing Corporation (herein to be referred as NHC). He is also in different Boards in Public Service, Private Companies, Religious Organisations and Education Entities. Apart to that, he is a Chairman of Bank of Africa, Chairman of Amboni Group of Companies, Chairman of Amboni Sisal Properties and Director of Amboni Beach Limited. In the Government, he is a Board Member of TANTRADE, TANESCO, WATUMISHI Housing Ltd and Tanzania Mortgage Refinancing 5 Company (TMRC). Beyond that he is a Leader in his church Evangelist Lutheran Church

where he serves as one of the Elders of the Church and Secretary at Mbezi Beach Congregation. Further he is the Chairman of Finance in Planning Council of the Eastern and Coastal Region for Evangelical Lutheran Church in Tanzania (KKKT). Besides, he is an active Member in different Communities especially in Education sector where he is a Chairman of Board of Directors of the RIGHTWAY SCHOOLS and the Governing Council Member of TUMAINI UNIVERSITY (TUDACO). PW1 further apprised the court that between 2010 - 2018 he was active in Leadership at National Level and International Levels in various positions at various times. Beyond NHC, PW1 informed the court that he was also assisting the Government in various duties as he was a Chairman of the NATIONAL BANK OF COMMERCE appointed by the President. Also he was a Board Member of TANZANIA INVESTMENT CENTRE (TIC) and DAWASCO. He was also a Chairman of SERENGETI BREWERIES, TANZANIA BUSINESS COUNCIL at Land Section. Further, he is a Founder and CEO of the CEO ROUNDTABLE of which he served for more than 10 years. At International level, PW1 further informed the court he also served as CEO of Commercial Bank of Africa, Board Member of East Africa Breweries, and the Vice Chairman of the Annual 6 General Meeting of SHELTER AFRIC. He also served as Board Member of African Housing Finance Association; just to mention a few. The witness also informed the court to have published many Publications in respect of his various works. To support his assertion, the Petitioner tendered for evidence his Curriculum Vitae, The Journal titled Tanzania 2018 the Business Year and the Journal titled WHO'S WHO TANZANIA 2013/2014 which were collectively admitted for evidence as Exhibit P1. Further are 20 Certificates of attendance, Awards and Appreciation in various courses which were collectively admitted as Exhibit P2. Testifying on what pushed him to institute this suit, PW1 stated that, Friday of 23rd March, 2018 was the darkest day to him as he was written by the CITIZEN NEWSPAPER in its front page, the information which directly planned to defame him that, he is a person not fit for leadership, immoral, disrespectful person not fit to lead anywhere in this universe. To support his assertion, PW1 tendered as evidence the Citizen Newspaper dated 23rd March, 2018 which was admitted as Exhibit P3. Testifying on what was written in the said Newspaper starting with the allegations in the front page where it is written: "Reasons behind the dismissal of NHC board Chair and WHY JPM DESOLVED NHC BOARD, SACKED MCHECHU". The witness regarded the title as misleading with the intention to defame and lower his reputation, as the time when the said information was published, he was still the NHC employee and that he was never sacked by JPM at all. With regard to other paragraph where it is written that "The sources told the Citizen that, Mr Mchechu was being investigated by the Board and questioned by PCCB over conflict of interest during the search and acquisition of the 500 Acres Land for the Development of Arusha's NHC's Safari City Project", PW1 had this to say: The information was to lower his reputation because it is not true and the Newspaper did not make any efforts to find him so as to satisfy itself with such information as their work requires. He went on to state that, he has never been interrogated by the Board or on any investigative Board inclusive PCCB on the purchase of the said land of 500 Acres. He further stated that NHC has never bought 500 Acres at Arusha at the alleged figure. Testifying on the publication that "The land on which the project stands was initially bought by a Company

reportedly owned by Mr. Mchechu from a foreigner who had failed to develop it. Mr. Mchechu is then said to have sold the land to NHC but at inflated rate. The investigation found...”, The witness testified to the effect that, the title and the news thereto is a very merciless information which directed to him to demolish his faith and his 8 reputation to the general public. That the news demonstrates him to be a person who is not honest, a person who misused his office and a conman. While the truth is; he has never owned any land being by way of purchase or grant by any means in Arusha Region. No any of his Companies conducted the business of buying land from a foreigner or any person in Arusha. The witness further professed that in totality it is not true that his company sold the land to NHC at inflated price. Therefore, it is PW1’s assertion that the allegation that he used a contractor hired by NHC to prepare access roads on his private land that is close to the Safari City Project using NHC funds is not true as there was no any NHC contractor who used to construct access road on his land, as he had no any land thereto by that time even up to the time the Petitioner was testifying. Likewise, PW1 denied the published information that, he made the decision without involving the head of NHC Procurement Unit. He testified that in procurement procedures the decision is made by Procurement Board and not by Director General. He contended further that in his employment he has never taken power in procuring Board’s decision. With regard to the allegation that; “a Company which his wife was a director was given a contract to provide insurance covers for NHC houses in Mtwara contrary to Public Service Rules on conflict of interest”, PW1 disputed 9 such allegation stating that they intended to destroy his family to show that they were not honest and trust worth. PW1 testified further that, NHC does not insure its houses, instead they are using “SINKING FUND” where NHC in its business locate a part of funds to be used in case of accident to its properties be it against fire or any other calamities. Further, NHC has never issued insurance cover to any Company which is associated with his wife as Director to that insurance company. PW1 testifying on the published news that, “The Committee formed to investigate the abuse of office in NHC traced gross misconduct and massive abuse of public funds by Mr. Mchechu,” ; the witness defended that it is the false information which touched his soul as there was no any Committee which interrogated him for loss of finances/ funds. Further, there was no any report revealed and published on grave abuse of funds and grave misconduct against him. PW1 testified further that what really happened to him was not what was published, since he was never sacked by JPM to date. The news was published while he was still in his employment. He was on leave/suspended but still employed until 22nd June 2018. Even his departure at NHC he left by good letter thanking him for a good job for revolution he did in the Corporation in his entire tenure. 10 While cross examined PW1 stated that, they have never conducted any NHC Board meeting in Dubai. He was suspended on 17th December 2017. He had never been told the allegations which made him suspended. He was terminated as Director General of NHC though he didn’t know the reasons behind his termination. The Citizen will be right to say that he was suspended to pave the way to investigation. PW1 further stated that, it is true that the said investigation was said to involve PCCB, and that he remembered that the Late Hon. Magufuli said that there was misuse of public funds in NHC. The witness averred that, the Citizen wrote the allegations which are

non-existing and that the word SACKED is not a journalism profession word. Responding on the shareholders to MGENI Insurance Ltd, PW1 mentioned LSK and HDFC. He also admitted that in one of those Companies he is a shareholder while one of his family member is a Director of MGENI INSURANCE. In his further testimony PW1 testified that, the information intended to isolate him from his fellow Tanzanians and the top leadership as well. He testified further that, the CITIZEN NEWSPAPER is read by different people in the Country and outside. It is also the source of online news spread Worldwide. Hence, the news to offend and defame him spread worldwide. The same brought a lot of phycological stress and health problems. He stated further that, the news destroyed his 11 business to his customers who saw him as immoral and untrustworthy person. He testified that, he used a very long time to build his reputation to the Public and neighbours. The news washed away his trust to the extent that when he was contributing to anything it was seen that he was using money he stole. Being a leader in church at his Congregation, Zone and Diocese, the news brought a lot of confusion and tension to all levels of the church, as he was a leading financial leader of the church therefore the news brought a lot of fear to the church on the safety of their money. The witness went on to testify that National wise, the bad news from a reputable newspaper made him to resign in some National level tasks/duties as he was also the Chairman of the Committee of Experts which was full of Doctors and Professors, but he resigned due to the news. He said that he resigned and stay apart from many other Boards National and International. On the other hand, the Respondents' side which enjoyed the legal service of Mr. Ambroce Nkwera learned Advocate, procured two witnesses. Thomas Mosoba who testified as DW1 and Benard James who testified as DW2. Starting with Thomas Mosoba, this witness testified as DW1 to the effect that; he was employed with Mwananchi Communication Ltd since 2005. His current position is a Business 12 Development Manager. In his testimony he denied to defame the Petitioner. He stated that what they did was to report as Journalists in the cause of their work. They published the fact which was the continuous news to the matter already in Public for Public interest. What they wrote was continuation of the event which took place on 17th December 2017 when the Late President John Pombe Magufuli was inaugurating the NHC Housing Project in Dodoma. In the form, it is said that the President accused the Petitioner and NHC Board on different matters including the misuse of office and imbursement of funds and power. That news was written in CITIZEN Newspaper dated 23rd March, 2018. Further that what they wrote was revealing the reasons which made the President took out Mchechu in his position as Director General of NHC. When referred to Exhibit P3 for identification, DW1 identified the same to be the CITIZEN NEWSPAPER dated 23rd March, 2018 which is the source of the instant allegations where the news are said to originate from the President and later aired by the television. Similarly, the said news apparently to originate from the investigative team, which was appointed to investigate those matters. DW1 testified further that he managed to download the said news and save the same in the flash. He prayed to tender the same for the purpose of evidence. The said video clip from MOA 13 online TV and Azam Media was played and then was admitted as Exhibit D1. To end up his testimony DW1 insisted that the claims are not true and he prayed the same to be dismissed. During cross examination DW1 responded

that, when the story was published, he was the Managing Editor of the Citizen. His profession is highly regulated and all the times they are supposed to adhere to the ethics and rules. He said, they are also been guided by Editorial Policy National Media Group Service and the Media Act and its Regulations of 2016. According to DW1, the policy needs someone to be availed with time or chance to be heard. However, in this case the Petitioner was not availed that chance as the whistle blower was part of the Investigation Team. On his side Benard James DW2 testified to the effect that, he is a Journalist at Mwananchi Communication Ltd. As of now he is a head of Court Crime Desk. From 2016-2019 he was holding the post of Investigative Editor. He went on to state that, following the statement, he heard from the late President John Magufuli during the inauguration of the Housing Project in Dodoma, on 17th December 2017, where the President declared that he was dissatisfied by the Chief of NHC Mr. Nehemia Mchechu. That Mr. Mchechu was conducting the same 14 development projects as those by the NHC, hence he had conflict of interest. According to DW2 as an Investigative Editor, he realized that there was a need to go beyond the allegations by the President. Then they chose one of their papers which is The Citizen to investigate the matter. DW2 went on to testify that, their paper did not defame Mr. Mchechu. They did their journalist work as those words were from the President hence were already in Public. As the Journalist they have the duty to investigate and inform the Public as NHC is a Public Corporation. They wanted to inform the Public the reasons for dissolution of NHC Board of Directors. Further, that the Publication came out of investigative work they did after talking to people and saw some documents. Responding to the word "SACKED" as they used in the publication, DW2 stated that, in the Citizen they used such word as it is commonly used in journalism. They meant that, he is no longer in a position he used to hold. To them SUNSPENSION means SACKED. On the strength on what he stated DW2 argued the court to dismiss this case. When cross examined on the proof of the allegations written in the Citizen as he was the Editor, DW2 confessed that 15 indeed, before the court there is no any proof of the allegations they published in their Newspaper. That marked the end of Defense case. At the end of the hearing, parties filed their final submissions. In his submission, the Petitioner's counsel tried to convince the court that, the witnesses proved the case to the standard required while, Defendants' counsel on the other hand insisted that, the Petitioner was not defamed. Having captured both parties' evidence, gone through the exhibits as well as serenely perused the final submissions, my duty now is to determine the parties' dispute guided by the framed issues. To start with the first issue as to whether publications by the Respondents were Defamatory to the Petitioner. In the matter under scrutiny, at the outset, I find it germane to understand the meaning of Defamation as define by various scholars and case laws. According to the Halsbury's Laws of England Vol. 28 Fourth Edition at page 7, Defamation is defined 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 16 hatred, contempt or ridicule or convey an imputation on him disparaging or injurious to him in his office, profession, calling, trade or business. Also Winfield and Jolowicz in their Book titled TORT, Nineteenth Edition, 2015, W.E Peel & J Goudkamp, Sweet and Maxwell, at page 360, they define a Defamatory Statement as follows:-

- i) A statement which tends to bring a person into hatred contempt or ridicule; ii) The words must tend to lower the claimant in the estimation of the right-thinking members of society in general; iii) The words tend to cause the claimant to be shunned or avoided. In addition to that, Black's Law Dictionary 8th Edition at page 1261 defined Defamatory Statement to mean: "...a statement tending to harm a person's reputation by subjecting the person to public contempt, disgrace ridicule or by adverse affecting the persons business." 17 In our jurisdiction, the word Defamation has been defined in the Media Services Act No. 12 of 2016 under section 35(1) to mean: "Any matter which, if published, is likely to injure the reputation of any person by exposing him to hatred, contempt or ridicule, or likely to damage any person in his profession or trade by an injury to his reputation". More to that, the Court of Appeal when deciding case of PROFESSOR IBRAHIM H. LIPUMBA VS ZUBERI MZEE

[2004] T.L.R. 381; established what constitutes a Defamatory Statement as a deliberate, untrue, derogatory statement usually about a person, whether in writing or orally. In the light of the above definitions, this court finds that, the tests as to whether the alleged statement is defamatory or not are as follows:

- i) The statement is untrue or false statement; and ii) The effect of the statement is to lower a person in estimation of the right-thinking members of the society. Therefore, in resolving the 1st issue this court will apply the above tests to find whether the published statements are defamatory or not. 18 Test number one as to whether the statements were untrue or false statement. PW1 in his testimony denied all the facts published in Exhibit P3. He denied to be sacked, he denied to own a plot in Arusha, he denied to award insurance contract to cover the NHC Houses in a Company which his wife is a director and he vehemently denied to be interrogated by any team or Committee on the issue of corruption, misuse of his power and misuse of corporate funds. On the other side, the Respondents claimed that what they published was factual as the same was the continuation of the event which took place on 17/12/2017 when the Late President John Pombe Magufuli was inaugurating the NHC Housing Project at Dodoma. The source of what they published is the press conference and the allegation from the late President John Pombe Magufuli against the NHC Board. Exhibit D1 a flash disk was tendered to justify the publication. This court had an ample time to go through the said exhibit. Unfortunately, there was no such allegations in the President's speech. I admit that the late President stated in general that there was misuse of funds and he also alleged that there are other place where the Petitioner is doing the same projects with like NHC although he did not mention any of the places. Therefore, what was published by the Respondents were untrue statements. 19 I do appreciate the role of Journalists all over the world, but I appreciate much the role of investigative Journalist who act fairly and believe in truth at any costs. DW2 informed the court that, after they heard what the President alleged about NHC Board, they went far to investigate on those allegations by interrogating those who were among the investigation team and they had a whistle blower, which is not an offence. Therefore, what was expected by any reasonable person was the said journalist to come out with real evidence on what was stated by the then President.

Astonishingly, they came out with other new stories of which they don't have even a piece of evidence to prove the same. I am aware that the whistle blower has a right to be protected, and this court did not ask the defence witness to mention who was their source of information, but what was needed was just the hard evidence to show the truth of the Published statements. Therefore, in absence of the real evidence on what was published by the Respondents, there is no doubt that the published news was false statements. I now turn to the second test which is the effect of the published statements in the minds of reasonable man in the society. The Petitioner herein was the Executive Director of the Corporation and is a presidential appointee. He is a Senior Officer who has been trusted with the top Leadership of this country. 20 Therefore, imploring the meaning of defamatory statements as explained by different authorities above, it is apparent that, the statements made in Exhibit P3, which were read by the majority National and International would tend to cause the Petitioner be exposed to hatred, contempt or ridicule by Members of the Public who trusted and respected him. The published news was injurious and intends to lower Petitioner's reputation before the Government and Private institutions which he was among the respected leader. In the event, this court finds that the published news meets the test of being defamatory one. Therefore, the first issue is answered in the affirmative. Next for determination is the issue as to whether the publications were made intentionally, falsely and maliciously. It is a settled principle of law that, a defamatory statement must be published and the same is considered to have been published when the Respondent communicates it to anyone other than the Petitioner. See. THE PUBLIC SERVICE SOCIAL SECURITY FUND (SUCCESSOR OF THE PARASTATAL PENSIONS FUND) VS. SIRIEL MCHEMBE, Civil Appeal No. 126 of 2018 (CAT-Unreported). 21 In the instant case, it is not disputed that, the Newspaper (Exhibit P3) were published which indicates that, the same were read in the whole country and even outside this country. As to whether the same were made intentionally and maliciously, in the book of; The Law of Defamation and Malicious Prosecution, 4th Edition of 2001 at Pg 137 as referred by the Petitioner's Advocate; the Author stated that: "In the law of defamation, the law presumes malice in this sense, from the mere act of the defendant in publishing defamatory matter." More to that, the act is said to be defamatory where a person can foresee the natural consequences of his own act. As it has been stated above, the statements were false, I also find that the publications were made intentionally. The reason for my finding can be drawn from the Headline itself where it is written that "WHY JPM DISSOLVED NHC BOARD, SACKED MCHECHU". The word sacked is among the arguable term in this case. While the Petitioner claims that, when the statement was published, he was still an employee of NHC and he has never been sacked, the Respondents also admit that although, they averred that the word "Sacked" is a journalist jargon or slang, they meant termination from his position. I distant myself from the Respondents' argument that, the word Sacked is Jargon or 22 slang since that word is a normal English word and it is not a jargon or slang of any profession. Therefore, the evidence that the Respondents published the news with malice and intentionally can easily be traced from choice of words used. Henceforth, the second issue is also answered in the affirmative. With regard to the third issue as to whether publications were justified and

privileged; it is the settled law that, once it has been proved that the Published news are defamatory, then, the onus shifts to the Respondents to prove that, there was justification as the words were true and it was a matter of privileged occasion not actuated by malice. See. HAMZA BYARUSHENGO VERSUS FULGENCIA MANYA & Others, CIVIL APPEAL NO. 246 OF 2018, THE CASES OF MENEJA MKUU ZANZI RESORT HOTEL VS. ALI SAID PARAMANA, Civil Appeal No. 296 Of 2019 and THE PUBLIC SERVICE SOCIAL SECURITY FUND (SUCCESSOR OF THE PARASTATAL PENSION FUND) VS. SIRIEL MCHEMBE, Civil Appeal No. 126 of 2018 (Both CAT- Unreported). In a tort of defamation there cannot be a better defense than that of truth, as the law will not permit a man to recover damages in respect of any injury caused by any justified statement. Obviously, if a defamer fails to prove the truth of his statements, then he is liable. Man's reputation is considered to be his precious property. That is the reason the law provides for the damages once someone caused an injury to reputation without any justification. In a bid to justify what was published DW1 testified that, what they did was to report as journalists in the course of their work. They wrote the continuation of the event took place on 17th December, 2017. On his part DW2 testified that following the allegation from the Late President, they went beyond the allegation. The words were from the President hence already in Public. That the publication came out of investigative work they did after talking to people and saw some documents. On top of that, Mr. Ambroce Menance Nkwera the Respondents' counsel submitted that the Publication purely based on a fair comment on a matter of Public interest. It is a settled law that, for a defence of fair comment to stand the alleged defamatory words must concern Public interest, the comments must have been made honestly, not maliciously and based on facts. See CHARLES MAKONGORO NYERERE VS. MWANANCHI COMMUNICATION LTD AND ANOTHER, Civil Case No. 121 of 2008, HC Dar es Salaam. In this case the Respondents strives to establish that what they reported was true as the same was taken from the Late President Magufuli press conference. According to the 24 Respondents' testimonies and submission what they did was to inform the Public the investigative news concerning the allegations made by the President. To prove their defence, Exhibit D1 was tendered where DW2 informed the court that the same was the President's speech which he downloaded and saved it in the flash disc (Exhibit D1). The same was played before this court where it is true that the President stated that: "Unanunua viwanja kule na wewe unakwenda nunua maeneo fulani unayaandika kwa majina fulani tukichunguza tunakuta wewe ndio yako..." Taking from the above quoted speech, I admit that there was the allegation from the then President although the same were in the hidden way. Therefore, in my view as I have stated earlier that, reputation is one's precious property and to ensure fairness and balance, the Respondents who identified themselves as professional journalists who investigated the allegation, they were duty bound to come out with a real /hard evidence to prove the quoted allegations. Any reasonable person could expect that they could come out with tangible evidence as to where the Petitioner bought the Plots the same place with NHC, the real proof as to when and who travelled to Dubai, for how long, which hotels they slept in and how much they spent. Astonishingly, instead of reporting to the Public what was stated by the then President, they created other new allegations purported to be from their whistle

blower. I am aware that the role of whistle blower is appreciated all over the world. A good example where even other Journalist may learn something is on the Watergate Scandal in 1972, which is one of the worst Political Scandal in the history of the United States. The Reporters for the Washington Post Newspaper namely, Bob Woodward and Carl Bernstein were investigators. They had anonymous source nicknamed “Deep Throat” who gave them the information on the involvement of the President in Burglary issue. Apart from the facts that their informer was the reliable source, the said Reporters did not act on the mounting suspicion until when they got the real proof which was the tape of Nixon’s conversations. The name of the Deep Throat was not revealed although the matters reached the Supreme Court. Likewise in this case, this court is not in need of knowing the name or the source of the allegations in Exhibit P3, what is required is the real evidence to be tabled before this Court to prove the truth of what was written. Failure of that, there is no justification for the publication. Now turning to the question as to whether the publications were privileged. Privilege is one of the fundamental principles that, there are circumstances when freedom of speech has privilege and even if it is defamatory. As to what circumstances 26 the defence of privilege applies, the Court of Appeal of Tanzania in the case of MAKORY WASSAGA V. JOSHUA MWAIKAMBO AND ANOTHER (1987) TLR 88, among other things had this to say: “... That is so because the law just requires that a privilege should be used honestly not that it should be used carefully” It is a settled principle that, in every right there is responsibility. With that stand it is open that, while the journalist enjoys privilege in reporting the news at the same time they are responsible to make sure that they enjoy such rights while they honestly perform their work. It was Mr. Nkwera learned Advocate’s submission that, according to Section 39 (a) of the Media Service Act, 2016, it is clear that the Publication by the Respondents is privileged because it was a fair publication of what transpired in the Late President Pombe Magufuli’s speech and the Azam news aired on 16th December, 2017. With respect, I distance myself with his assertions as I have already discussed earlier that, what was written is not the same to what was stated and reported in Azam TV. Also, the publication cannot be taken as a fair publication on the facts that, what the Respondents did was to create other allegations and went on to publish without even informing the 27 Petitioner so as to allow him enjoy the right to be heard and reply on the same before sharing to the Public. From the above finding, the third issue is answered in negative that, the publications were not justified and privileged. Now, as I have already determined the first three issues to this Petition, where indeed this court has confirmed and satisfied that: The Publication by the Respondents were Defamatory to the Petitioner; That the Publications were made intentionally, falsely and maliciously; and That the Publications were not justified and privileged; then I have some few observations in that respect as herein below: As Respondents herein, the 2nd being a professional Journalist and the 1st Respondent being a reputable Media, still both have the duty to their respective profession. The duty calls upon this profession, being Journalism just like other professionals such as Lawyers, Doctors, Engineers etc. to sustain people’s rights and integrity when exercising their duties. Failure to that, injuries and un-necessary discomforts to some members of the Society will occur. Everyone deserves to live on a fair and happy environment without any

segregation which might be caused out of unpolished and unconfirmed news. 28 The duty of informing the Public on necessary and relevant news have to be discharged in accordance with the Laws of the Land and applicable professional rules of ethics. In the event where one has the platform to write or to speak, he is not allowed to deceive anyone's rights and freedom. No man shall get a benefit from a lie if the law can prevent him. No excuse or justification is permitted. It is not allowable to tell a lie in order to achieve a just result. A good end does not justify a bad means. Over one hundred and fifty years ago, Mr. Justice Crampton in *R. v. O'Connell* (1844) 7 Irish Law Reports 261 said something which is still very true today; he said: "..... The object of all equally should be the attainment of Justice; now justice is only to be reached through the ascertainment of the truth but we are all together concerned in this search of the truth. The professional man gives to his client the benefit of his learning, his talents and his judgment, but he never forgets what he owes to himself and to others. He will not knowingly and not willfully misstate the facts, though it be to gain the cause for his client. He will ever bear in mind that if he be retained and remunerated for his 29 services, yet he has a prior and perpetual retainer on behalf of truth and justice." From the above precedent and Jurisprudence, it is also my firm view that, despite the fact that our fellow professionals here being Journalists, have like other professionals the duty of care to their clients. The duty to tell them the truth and nothing but the truth is paramount for the interest of Justice and truth. It is a mistake for him just to tell his clients what they just want to hear or what they desire to hear or read, but they should be told the truth. It is a mistake to suppose that he is the mouthpiece of his readers to say what he wants, or his tool to do what he directs. The Journalist in my view owes allegiance to a higher cause. It is the cause of truth and justice. He must not consciously mis- state the facts, and he must not knowingly conceal the truth. He must not unjustly make a charge of misappropriation of any kind without evidence to support the same. In the event of serious allegations such as the ones in the instant case, the journalist when it comes to this point of litigation, he is expected to produce all the relevant evidence that he believes that made him do what he did. The code requires a professional to do all this in good faith and allegiance to those who are to be informed. It is a code of honor. If he breaks it, he is offending against the rules of profession and is subject to its discipline. 30 As far as advice goes, I wish to quote the words of C.B Srinivasan, a distinguishable Indian Advocate, which are to be found in his book titled *Towering Justice: Portrait of a Judicial Personality of Chief Justice of India, Honorable Mr. Justice M. N. Venkatachalaiah*, Bangalore: Karnataker Law Journal Publications, 1996" where he had this to say: "..... the profession calls for a dedicated service. It has for its capital an intellect that dissects. It seeks solution to intricate problems affording many a time a method of fight against injustice, and at other times a battle for the sought after justice." At this juncture, reflecting to the evidence that have been tabled before this Honorable Court, for and against the claim, I have some few questions in respect of tasking our minds to digest and take steps where a need arise especially for those who we are calling ourselves professionals: First, is our professional conduct beyond reproach? Second, are we guilty of indifference to professional misconduct? Third, are we constantly conscious of the need to live as honorable citizens and honorable professionals; and 31

Fourth, is our respective professions in this Land/country meeting the legitimate expectations of the people? From the above, it is my firm observation that we are yet there and it is our duty to meet expectations of the Citizens of this Country by revealing the true facts of whatever sector be it social, political, economic for their well-deserved welfare. Tanzania such as some other jurisdictions professes the RULE OF LAW. I believe that the Rule of Law means more than acting in accordance with the Law. The Rule of Law also means Fairness. The Rule of Law should extend to examination of the contents of the laws to see that every Citizen of this country lives comfortably and see that individual rights are not infringed. While we are not questioning the right to freedom of conscience particularly freedom of expression under Article 18(a) and (d) of the Constitution of the United Republic of Tanzania (1977) to the effect that every person has a freedom of opinion and expression of his ideas; [Article 18(a)]; and further that every person has a right to be informed at all times of various important events of life and activities of the people and also of issues of importance to the society [Article 18(d)], still we have the duty to observe on other individual rights as enshrined in the same Constitution. The right to Equality, as it has been observe in Article 12(2) of the Constitution, which provides that: 32 "Every person is entitled to recognition and respect for his dignity." In the case of PROFESSOR IBRAHIM LIPUMBA VS. ZUBERI JUMA MZEE (Supra), the Court observed as it associated itself with Lord Nicholls in the case of REYNOLD VS. TIMES NEWSPAPER [200] 2 LRC 750 at page 760; It was held that: "Reputation is an integral part of dignity of the individual. It also forms basis of many decisions in a democratized society which are fundamental to its wellbeing,Once besmirched by unfounded allegation in national newspaper, a reputation can be damaged....." At this point I have to make it clear that, while we are exercising our Constitutional rights as seen above, we have to remind ourselves that right and freedom should not be without Limitation. Here I would like to quote Article 29(1) of the Constitution of the United Republic of Tanzania on Fundamental rights and duties. The same provides: "Every person in the United Republic has the right to enjoy fundamental human rights and enjoy the benefits accruing from the fulfillment by every person of this duty to society as stipulated under 33 Article 12 - 28 of this part of this Chapter of the Constitution." So, as we are all sons and daughters of this country, we are all bound to live the Constitution of the United Republic of Tanzania and we have to treat each other fairly with respect and take of someone's dignity and reputation seriously and with a great caution. The reason and logic behind is that man's reputation is not built in one day to leave him in a minute. At this juncture, I have to say that there is no doubt that from the Respondents' action and particularly from the publication at issue, the Petitioner's reputation was lowered in the eyes of any right - thinking member of the society. The statements which have been confirmed to be defamatory in nature, were intentional, false and without any justification. The magnitude of the statements were too personal of which triggered this litigation. It is believed that, the publications were malicious, reckless, published without verification purposely intended to destroy the Petitioner and injure his repute. From the same, it is obvious that the Petitioner herein has suffered emotionally, physiologically and that he was somehow though not direct, distant from his common men. As I am aware that in this kind

of litigation, the onus of proof of malice lies with the Petitioner and non-other; this was 34 settled in the case of ASTUS NJALE MASULE & SAMSON MIPAWA MOLLA VS. DOGANI LUNALA [2002] TLR at page 201. From the evidence gathered and submitted before the court, and upon this court's satisfaction, I proceed to proclaim that the Petitioner has successfully proved his case to the standards required in law. With the above findings, I now move to the last issue which is on the relief(s) which parties are entitled to. As alluded to above the plaintiff's claims for declaratory order that he was defamed by the Respondents, a court order for unconditional apology and retraction of the false and malicious publication complained of with bold and large print in the same Newspaper, the sum of Tshs. 3,000,000,000/= being compensation for defamation, Permanent injunction restraining the Defendants, their Agents and or Workmen from publishing defamatory statements against the Petitioner, General damages for libel as shall be assessed by this Honourable Court, Aggravated damages for libel, Interests of Court's rate of 12% per annum from the date of Judgment to the date of full and final payment, costs of this suit and any other relief(s) this court deem just to grant, were pleaded. On the premise of what has been discussed and decided herein above it is obvious that, the Petitioner has managed to prove his case to the required standard that, he was 35 defamed. Indeed this court is satisfied that the Petitioner has been ridiculed, shunned and tarnished in the society where he commanded high respect and confidence. The extent on which the suffering has been experienced touches on his emotions, career, ambitions and business just to mention the few. This naturally caused mental and emotional torture for the allegiance and loyalty he had all along. He therefore deserves compensation. Further to that, Respondents need to apologise for their acts. With regard to payment of Tshs. 3,000,000,000/= being compensation for defamation, unlike the award of special/specific damages which needs to be specific pleaded and proved, the assessment of the amount to be paid as compensation for defamation will rely on the extent of publication, the prominence of the publication, the words used and whether the Newspaper is National or International circulated and also the position of the article in the Newspaper. As earlier stated by the Petitioner, that THE CITIZEN Newspaper is widely spread within and outside this country, the defamatory words appeared even in the front page with humiliating words like "Sacked". Therefore, it is more than millions of people who read those defamatory statements against the Petitioner. Taken into account the nature of the publication in print and permanent form, but on a higher note is 36 the Petitioner's status being a man of integrity and of a higher personality as well observed and evidenced in Exhibit P1 being his Curriculum Vitae and profile before the court, all that have to be taken on board when awarding the reliefs prayed in this respect. As rightly observed from Mr. Mwamanenge the learned Advocate for the Petitioner in his final submission where he stated that, during pendency of this suit, the Petitioner was reappointed back in the same organisation and the same position; in my considered view, the re appointment of the Petitioner reveals that he still owns the respect and trust before the Public, and that the published statements had no any justification under the circumstances. Having said all the above, I therefore find the award of Tshs. 2,000,000,000/= (Two Billion Tanzania Shillings only) would meet the ends of Justice. As regard to the payment of general damages for libel,

it is settled that, general damages are awarded at the discretion of the Court. As far as general damages is compensatory in nature, this court will consider the upset, hurt and distress caused to the Petitioner. From the adduced evidence the Petitioner testified that, the publication made him a distrusted man, a corrupt man, master mind of corruption deals. Bad enough the defamatory words involved even his wife which means that not only his 37 reputation but it is the whole family which was injured by the Respondents' act. It has been stated by the Court of Appeal in the case of PETER JOSEPH KIBILIKA VS. PATRIC ALOYCE MLINGI, Civil Appeal No. 39 of 2009 (CAT-unreported) when quoting the case of ADMIRALTY COMMISSIONERS VS. SS SUSQEHANNA [1950] 1 ALL ER 392, had this to say: "If the damage be general, then it must be averred that such damage has been suffered, but the quantification of such damage is a jury question." Further, in the case of P.N. JONATHAN VS. ATHUMAN KHALFAN 1980 TLR, 175 at page 190, Lugakingira J. (as he then was), had this to say: "The position as it therefore emerges to me is that general damages are compensatory in character. They are intended to take care of the Plaintiff's loss of reputation, as well as to act as solarium for mental and pain suffering." In this matter, there is no dispute the Petitioner claimed general damages, though he did not quantify the same of which I find the omission not offensive. However, in consideration of the injury explained by the Petitioner, this court finds the award 38 of Tshs. 500,000,000/= (Five Hundred Million Tanzania Shillings only) as a general damages, would meet the ends of Justice. All said and done Judgment is entered in favor of the Petitioner to the extent stipulated as hereunder:

1. The Court declares that the Respondents herein defamed the Petitioner;
 2. The Respondents herein are ordered to apologize and retract the false and malicious publication against the Petitioner as complained in this case through the same Newspaper that is THE CITIZEN;
 3. The Respondents herein shall jointly and severally pay the Petitioner Tshs. 2,000,000,000/= (Two Billion Tanzania Shillings only) as compensation for defamation;
 4. The Respondents herein are ordered not to repeat the publication of defamatory statements against the Petitioner;
 5. The 1st and 2nd Respondents to pay the Petitioner Tshs. 500,000,000/= (Five Hundred Million Tanzania Shillings only) as general damages; 39
 6. The awarded amount to be charged interest of 12% per annum from the date of Judgment till the date of full satisfaction of the Decree; and
 7. The Respondents shall pay the costs of this suit. It is so ordered. Right of Appeal Explained.
- L. E. MGONYA JUDGE 03/03/2023 40

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