

TANZANIA / JUDGMENT

Eliakim Chacha Maswi

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IN THE HIGH COURT OF TANZANIA MUSOMA SUB- REGISTRY AT MUSOMA CIVIL CASE NO. 23
OF 2023 REFERENCE NUMBER 20231016000533412 ELIAKIM CHACHA
MASWI..... PETITIONER VERSUS MWITA MWIKWABE
WAITARA..... 1stRESPONDENT KA RO LI JACOB
KAROLI..... 2nd RESPONDENT MARA
TV..... 3rd RESPONDENT

RULING

12th & 21st February, 2025 M, L. KO MBA, J; Petitioner herein is suing respondents for defamation whereby, the 1st respondent in a public meeting which was conducted on 09/08/2023 and attended by more than five hundred participants at Mtana village, Manga ward within Tarime District uttered and published defamatory words against the petitioner. As per pleadings, on 10/08/2023 through assistance and companion of the 2nd and 3rd respondents, the respondents jointly prepared, uploaded and Page 1 of 12 published defamatory publications uttered by the 1st respondent on 09/08/2023 on an online You tube Channel belonging to the 2nd Respondent, namely MARA TV. By 13/08/2023 the said online TV channel had 2.01K subscribers while the respective publication complained by the petitioner attracted a number of 280 viewers from different people across the world. The complained publication is to the effect that the petitioner is involved and is responsible for corruption practices for miss use of his position as a civil servant and Chief Executive for PPRA. The said defamatory words are not only false and malicious but also unfounded intending to lower petitioner's reputation. For that reason, petitioner is claiming for apology on the same manner defamatory words were published, payment of Tsh 12,000,000,000/= as a general damage suffered as a result of defamatory publication and payment of Tsh. 1,000,000,000/= as punitive damages. When served with summons to file reply to petition, 1st and 2nd respondent failed to do so and the matter was ordered to proceed ex-parte against them serve for the 3rd respondent who filed PO that this court is not vested with jurisdiction as petition has no specific damage. Page 2 of 12 When it was scheduled for hearing petitioner had legal service of Mr. Kasim Gilla advocate while the third respondent was represented by Mr. Hekima Mwansipu and Mr. Ernest Mhagama both being advocates. Advocate Mwansipu was the first to make his submission that petitioner has not plea specific damages in his petition while it is the condition that specific damages must be pleaded in order to enable court to know if it has jurisdiction or not and also it will enable court to asses

court fees. He went on contending that at para 5(xi) (b) of petition, the petitioner explained he wrote demand notice to respondents claiming to be paid compensation for damages suffered as a result of defamatory publication. Further, he submitted that in paragraph (f) of annexure 02 of the petition which is demand notice, petitioner claimed from respondent TZS 12 billion as damages for the loss suffered and even in prayers at page 7 (e) of the petition he played general damage of TZS 12 billion. It was his submission that petition is rooted in Media Service Act and there is Media Service (Defamation Proceedings Rules) 2019 GN 108 issued 01/2/2019. At that rule he said rule 4 (2) provides that the provisions of Magistrate Court Act, Cap 11 RE 2002 and the Civil Procedure Code, Cap 33 RE 2022 is applicable in cases of this Nature. Submitting further on Page 3 of 12 those cited statutes, he said section 40(2)(b) of Cap 11 direct that if the case is capable of being estimated to more than 200 million, it has to be filed to High Court but, he insisted that estimation is based on how the monetary value has been pleaded. He then supplied this court with decisions in Tanzania Saruji Coporation vs African Mabie Co Ltd, TLR 2004 at 155, Ami Tanzania Ltd vs Propsper Joseph Mseie, Civil Appeal No. 159 of 2020 CAT at DSM at page 20 and Hamis Mhidin Musa vs Mohamed Than! matter, Civil Appeal no. 237 of 2020 CAT at Zanzibar that Special damage must be specifically pleaded and proved while insisting that only substantive claim will vest this court with jurisdiction. In support of his objection counsel submitted that in Mwananchi Communication Ltd and Two Others vs Joshua Kajura and 2 Others Civil Appeal 126/01 of 2016 the Court affirm decision in Tanzania Saruji Coporation vs African Mabie Co Ltd (supra) that only special damage must be considered for the purpose of jurisdiction and case fee. He insisted that there is no paragraph in petition where petitioner has pleaded specific damage. Page 4 of 12 Mr. Mwansipu proceeded that Defamation cases is common law tort which direct that common law tort has to be instituted in District court. In Albert Mlilo and Another vs William Jeremia Kasege, Civil Case No 1 of 2015 HC it was decided that for any tortious matter the court of first instance should be District and Resident Magistrate court. He said he know that High Court has inherent power to entertain matter as per article 108 (2) of the constitution, however he said the Article refer other laws which specify the matter. The case at hand has its law and rule which direct suits to be filed in District Court or Magistrate Court. He insisted even though the District Court value is less than TZS 200 million, in the petition there is no paragraph explain that; while noting that Paragraph 5(xi) refer demand notice which is not clear if it was specific and prayer (e) resemble para (f) of demand note and there is no specific claim. He prayed the matter to be struck out with costs. When given time to reply Mr. Gilla was of the submission that in Defamation cases complainant suffer against public, a person who defamed cannot be quantified on what and how he suffered. In Irene Wambura Maganga And Another vs Chapakazi Newspaper And 2 Others (Civil Case No. 62 of 2016) [2023] 7ZHC 15906 (3 March 2023) it was decided Page 5 of 12 that petitioner cannot pled specific damage as defamation ruin reputation of a person which cannot be quantified. He then distinguished cited cases that the case of Albert Mlilo vs William Jeremia (supra) the cause of action arose in 2014 and it was about false imprisonment, Mwananchi case (supra) there was suit for defamation which was filed HC and claim was 150 million and was observed in that case that High Court lacks jurisdiction and the cause of action arose 2013, Hamis Mhidin Musa vs Mohamed Thani mattar (supra) cause of action arose in the year 2014 and it discuss special damages, Ami Tanzania Ltd vs Prosper Joseph

Msele (supra) and Tanzania Saruji Corporation vs African Mabie Co Ltd (supra) discusses difference between special damage against general damages and therefore they are distinct case against the case at hand. He said he is aware that Resident Magistrate had mandate to matters of less than TZS 200 million while noting that it is position of the law under section 13 of the Civil procedure Code, Cap 33 (the CPC) that every suit shall be instituted to the lower court. It was Mr. Gilla further submission that in 2016 section 13 of the CPC was amended by adding proviso which retain general jurisdiction of the High Court in every matter. That's why when he was analysing case, he Page 6 of 12 mentioned the time cause of action arose. It was his position that all cases refed by Mr. Mwansipu was determined before the amendment of section 13 of the CPC in the year 2016 which confer High Court a general jurisdiction. He went on submitting that basing on section 13 of the CPC this case was properly filed in the High Court. The referred amendment was tested by this court in Zuhura Fredrik Kalo vs Athman Rubindo, Land Case No. 8 of 2022 in which specific damage was TZS 15 milion and it was objected in the first place. However, because it was filed beyond 2016 amendment, court analyzed intention of the amendment it overruled objection. He went on submitting further that even Court of Appeal had time to analyse amendment of the CPC in Gurdian Limited & Another vs Justin Nyari (Civil Appeal No. 187 of 2020) [2024] TZCA 14 (6 February 2024) and dismissed the issue of jurisdiction. The case of General Manager African Barrick Gold Mine Ltd vs Chacha Kiguha and 5 Others (Civil Appeal No. 50 of 2017) [2017] TZCA 211 (12 December 2017) discussed proviso of section 13 of the CPC and at page 15 it set position that even where a suit would ordinarily file at the Resident Magistrate and erroneously entertained by the High Court, it would be proper. The court went on that the issue of jurisdiction at the High court Page 7 of 12 should not prejudice matter as High Court has general jurisdiction after the amendment of section 13. He finally insisted that in defamation cases there is no claim of specific damage but general damage and that, after amendment of section 13 he finds High Court had jurisdiction and prayed the PO to be overruled with costs. When given time for rejoinder, counsel Mr. Mwansipu noted that counsel for petitioner, Mr. Gilla had admitted that petition has no specific damage and therefore this court lacks jurisdiction just as was decided in Tanzania

- China Friendship Textile Co. Ltd vs Our Lady of the Usambara Sisters [2006] T.L.R. 70 which, according to him is proper authority. He then wonders how defamation cases have to claim general damages only while it is court discretion. He insists there is no substantive claim and therefore this court lacks jurisdiction. My duty is to determine if PO has merit. The central issue in this PO is jurisdiction of this court over the matter. Respondent claim that petition has no specific damage and therefore this court lacks jurisdiction while petitioner insisted that after amendment of section 13 of the CPC in the year 2016 this court has general jurisdiction in every matter. It is a correct Page 8 of 12 position as argued by the learned counsel for the petitioner that s. 13 of the CPC was amended and since 2016 it reads;
- 13. Every suit shall be instituted in the court of the lowest grade competent to try it and, for the purposes of this section, a court of a resident magistrate and a district court shall be deemed to be courts of the same grade: Provided that, the provisions of this section shall not be construed to oust the general jurisdiction of the High Court. In the first place, Mr. Mwansipu

did not have an issue on amendment as cited by counsel for the petitioner in his rejoinder and therefore it is noted by this court that the proviso does bring some changes in our legal regime. While holding that in' mind, the cited cases by counsel Mwansipu about special damage as the means of determining the jurisdiction of this court is of no value. Mr. Mwansipu insisted that the position in Tanzania -China Friendship Textile (supra) fit for the case at hand. I had time to read development of the issue of damage as claimed in pleading visa vis the jurisdiction of this court. Among the authorities I shall start with General Manager African Barrick Gold Mine Ltd. vs Chacha Kiguha and 5 Others (supra) in which the court analysed the case of Peter Joseph Kilibika and CRDB Bank Public Company Ltd vs Patrick Aloyce Page 9 of 12 Mlingi, Civil Appeal No. 37 of 2009 and Tanzania -China Friendship Textile (supra) the two cases have conflicting decision and the court refrain from departing on previous decision. However, in General Manager African Barrick Gold Mine Ltd vs Chacha Kiguha and 5 Others (supra) in which respondent filed a suit claiming for general damage to the tune of TZS 600,000,000/ it was awarded TZS 300,000,000/ by this court. The appellant in that case complained of the jurisdiction of this court in entertaining the matter which attracted a lot of precedents to be analysed including the amendment of section 13 of the CPC and the Court finds the issue of jurisdiction of the trial court basing on general damage was of less merit. The position was arrived after consideration of the amendment of section 13 by introducing proviso and their previous decision in Benitho Thadei Chengula vs Abdulahi Mohamed Ismail, Civil Appeal No. 183 of 2020 (unreported) in which the issue of jurisdiction of the High Court based on a similar point was raised, they observed thus: '...it is our considered view that the error of instituting it in the High Court instead of the District Court did not occasion a miscarriage of justice as it did not prejudice any of the parties. Besides, since Page 10 of 12 section 13 of the CPC was amended two years later by Act No. 1 of 2016 by adding a proviso whose effect is to render the present objection regarding jurisdiction to be redundant, we shall not uphold the [objection]' The case at hand has similar facts that petitioner has sued respondent for defamation as narrated previous and claimed for general damage to the tune of TZS 12,000,000,000/= for defamatory publication and TZS 1,000,000,000/= as punitive damages as confirmed by counsel during oral submission. They did not claim for specific damage as in tort the damage suffered is not quantified. See Irene Wambura Maganga and Another (supra) am aware of the existence of Article 108 of the Constitution of United Republic of Tanzania and also am aware that there is specific legislation in specific matters including the CPC which deal with civil matters. Am also aware that court of appeal in our jurisdiction is the apex court and is court of record. While celebrating the case of General Manager African Barrick Gold Mine Ltd vs Chacha Kiguha and 5 Others (supra) Court of appeal rule that the proviso introduced in section 13 of the CPC intend to deal with objections just like this at hand. This is a recent precedent and I don't find the need to re-invent the wheel which is settled. Page 11 of 12 Basing on the truth that there exist a proviso under section 13 of the CPC and cited precedent on the matter, I find the PO has no merit and is hereby overruled with costs. It is so ordered. DATED at TARIME this 21st day of February, 2025. Page 12 of 12

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