

TANZANIA / JUDGMENT

mussa shaibu msangi vs chief editor tanzania mpya online tv another 2023 tzhc 21648 21 july 2023

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THE UNITED REPUBLIC OF TANZANIA IN THE HIGH COURT OF TANZANIA (DAR ES SALAAM DISTRICT REGISTRY) AT DAR ES SALAAM CIVIL CASE NO. 39 OF 2021 MUSSA SHAIBU MSANGI PETITIONER VERSUS CHIEF EDITOR, TANZANIA MPYA ONLINE TV..... 1st RESPONDENT TANZANIA MPYA MEDIA COMMUNICATION LTD 2nd RESPONDENT EXPART-JUDGEMENT Date of last order: 24.05.2023 Date of Judgement: 21.07.2023 Ebrahim, J: The Petitioner herein, Mussa Shaibu Msangi instituted this suit against the Respondents for tort of libel claiming for;

- i. an order for retraction and withdrawal of the false, offending, libellous and prohibited statements published by the respondents on Tanzania Mpya Online TV YouTube Channel on 6th February, 2021 against the petitioner; ii. an order for publication of an unequivocal and unqualified statement of apology on Tanzania Mpya Online TV YouTube Channel and any other online platform where the respondents operate with a view of correcting the bad impression imparted to the public on the petitioner; Page 1 of 22 iii. an order for perpetual injunction against the respondents, their agents, workmen, assignees, employees, or associates or representative from redoing the libel cast on the petitioner or making defamatory publication against the petitioner; iv. an order for payment of general damages to a sum of Tshs. 2,000,000,000/-;
- v. an order for payment of exemplary damages to a sum of Tshs. 1,000,000,000/-; vi. costs of the suit; and vii. any other relief which the Honourable court may deem just to grant. The brief facts of the case gathered from the petition is that the petitioner is the lawful owner of six storey commercial/residential building located on Plot No.2039 Block :A', Tandale area, Kinondoni Municipality, Dar es Salaam, and four storey commercial/residential building located on Plot No. 2037 Block'A',Tandale area, Kinondoni Municipality, Dar es Salaam, (hereinafter referred to as "buildings"). The buildings are currently under construction. That on 06th February, 2021, the respondents published on their Tanzania Mpya Online TV YouTube Channel, a false, offending, libelous and prohibited content against the petitioner, in video form, titled "MAJENGO MAWILI YA GHOROFYA YA HATARISHA MAISHA YA WAKAZI WA Page 2 of 22 TAN DALE". The video can be accessed, viewed and downloaded by

the general public on YouTube via link <https://youtu.be/Jmr87-io8Q> . The petitioner accessed the above link, viewed and downloaded the video using YouTube Downloader computer program installed in his Acer Aspire One D270 Personal Computer (PC) and stored the downloaded content in the Compact Disc. In narrating the above heading, the respondents went on to publish, without the petitioner's consent, prohibited content which are false and offending statements, against the petitioner. The alleged defamatory statements were pleaded in paragraph viii of the Petition as reproduced hereunder; "Wananchi wa enep la Tandale katika Manispaa ya Kincndoni jijini Dar esSalaam, wameialamikia ujenzi wa maghorofa mawili yanaypendelea kujengwa katika eneo hila, bila kuzingafia Kdnuni na Sheria za ujenzi, jambo linalolishia maisha yao. Wakiongena na Tanzania Mpya Online TV. wananchi hap wamescma kuwa, maghorofa hayo yaliwahi kuzuiwa kuendelea na ujenzi kipindi cha nyuma kutokana na kukasa viwango na ubara, lakini sasa wanashangaa ujenzi huo ukiendelea, huku kukiwa Page 3 of 22 hakuna mkandarasi wala mafundi wenye sifa. Tanzania Mpya Online TV ilifika eneo la tukio, na kuwashuhudia mafundi hao wakiendelea na ujenzi, ambapo nilipowahoji, walikiri kuwa wao nima fundi wa mtaani na hakuna kampuni yoyofe inayowasimamia. Mbali na kutokuwepo na mkandarasi, pia ujenzi huo unaendelea huku kukiwa hakuna tahadhari yoyofe, ikiwemo vizuizi vya vifu vya hafari, vinavyoweza kudondoka chini na kuwajeruhi wapita njia, na wakazi wajirani na majengo hayo. Mmiliki wa majengo hayo aliyetambulika kwa jina moja la MSANGI, alipohojiwa na Tanzania Mpya Online TV kuhusu malalamiko ya wananchi had, na ubora wa majengo yoke, alisema kuwa yeye ameruhusiwa kuendelea na ujenzi huo no Manispaa ya Kinondoni. Hdfu hivyo, Mtendaji wa Kata ya Tandaie, bwana Mto/wa, alipohojiwa na Tanzania Mpya Online TV kuhusu malalamiko ya wakazi wa eneo hilo, alisema kuwa baada ya kuona hafari ya ujenzi huo, alifikisha taafifa kwa Mainjinla wa Manispaa, hivyo wao ndiyo wanaopaswa kulitolea ufafanuzi jambo hilo. Tanzania Mpya Online TV ilimfafufa 1 Injinia wa Manispaa Page 4 of 22 ya Kinondoni, bwana Mpaki /sack, na alipopatikidha nd kumueleza juu ya malalamiko yawakazi hao, bwana Mpaki alisema kuwa, liana tgarifa ya ujenzi hue, huku akiahidi kulifuatilia jambo hilo Hi kujua kama Mdnispad imeliruhusu. Hatari nyingine iliyopb katika mpja ya majengo hdyo, ni uchakavu wa nondo zi/izofumikd katika ujenzi, kumomonyaka kwa simenti katika kufa nakupinda kwa nguzo takribani zote zHizoshikilia jengo hila'1: it is the Petitioner's allegation through his Petition that, the intention of the above contents is to portray that; the Petitioner is constructing the buildings illegally, without permit and without following proper procedure. He said it also portrayed that regulatory and licensing authorities have allowed illegal construction to proceed on their look and buildings are below standards, unsafe and unfit for whatever intended use. Therefore construction should not proceed and be gutted down. The petitioner averred further that throughout the libelous video subject of this petition, reference was clearly and unequivocally made, to link and associate the petitioner with libelous allegations. Page 5 of 22 Further that the respondents have in publishing the libelous allegations against the petitioner acted maliciously, viciously and negligently. This case proceeded ex parte against the Respondents after they have failed: to enter appearance before the court. The court ordered ex-parte proof on its ruling of 04.10.2022. When this case came for hearing, the

Petitioner was represented by advocate Deogratius Ogunde. The framed issues for determination by the court were as follows:

1. Whether publication by the Respondents Were Defamatory to the Petitioner.
2. Whether the publications were made intentionally, falsely and maliciously.
3. Whether publications were justified and privileged.
4. To what reliefs are the parties entitled. The evidence on the defamatory publication was mainly adduced by the petitioner himself Mr. Mussa Shaibu Msangl who testified as PW1 and two other witnesses. He told the court that he came to know the respondents on 06.02.2021 after they expressed foul Page 6 of 22 language on their online Tv called Tanzania Mpya Online Tv available in Youtube. The foul language concerned his buildings. He received the information from the Engineers from Kinondoni Municipal Council. Engineers who called and showed him the news online. The news said that he has not used the qualified builders but local masons and moth scrappers. He said one building is six storeys and the second one is three storeys which before it was two storeys but he applied for extension to build three storeys building. PW1 tendered in court a CD named Tanzania Mpya Online Tv Video Clip on you tube of 06.02.2021 Musa Shaibu Msangi and it was admitted as Exhibit "PE 1", The contents of exhibit PE 1 were played in court. He explained the played video that the potrayed buildings are has which the Tanzania Mpya Online Tv says they have been built below the standard and can fall down. He averred that those words were not true and aimed to disparage and tarnish his image to the society. He testified further that he used professional architects who sketched the map that was confirmed by the Municipal Council of Page 7 of 22 Kinondoni. He tendered copies of the mops together with the police report which were admitted as Exhibit PE 2 and PE 3 He testified also that he hired the constructors registered by the Board of Constructors in Tanzania and Engineer of moth; and that all the buildings were built in a required standard and have been inspected by the Municipal Engineers from time to time and the reports were signed. He also tendered a report of the Engineers from the University of Dar es Salaam who tested the standards of his buildings which was admitted as "PE 5". PW1 tendered a copy of Building Permit No. 17053 in respect of six stoney Commercial/Residential Building on plot No. 2039 A at Tandale which was admitted as exhibit "PE 6". He said he the valuation in 2017 of both of his buildings where as the six storey building had a value of not less than Tshs 700mi I and the one with four storeys had a value of not less than Tshs 684 million. He testified to have issued the respondents with a demand notice on 11.02.2021 and they responded. Page 8 of 22 While examined by the court PW1 responded that he has not finished the construction of the buildings due to financial difficulties and they are not yet on business. PW2, An Architect from Kinondoni Municipal Council explained to the court that in order to secure the building permit one must show ownership of the land and plans (map), and that they supervise if the client has adhered to the set structures and measurements. When referred to Exhibit "PE 6" for identification, PW2 identified the same to be a building permit issued by Kinondoni Municipal Council issued to PW1. He also identified. Exhibit PE 3 it as structural drawing

issued to PW1 and it was duly stamped: and signed. PW3, the Civil Engineer, confirmed to knew Musa Shaibu Msangi as a client whom they have been working with for a long time. He said they supervise his two buildings at Tandale at every stage and there is no any challenges. Starting with the first issue as to whether publications by the Respondents were Defamatory to the Petitioner; refer to the persuasive case of Nehemia Kyando Mchechu Vs Mwananchi Page 9 af22 Communication Limited & The Editor Of The Citizen Newspaper Civil Case No. 48 Of 2021, Hc-Dar Es Salaam (unreported) where defamation was defined to mean; "Defamation as define by various scholars and case laws. According to the Hdlsbury's Laws of England Vol. 28 Fourth Edition at page 7, Defamation is defined as: "A statement which tends to tower a person in the estimation of right-thinking members of society generally or to cause him to be shunned or avoided or to expose him to hatred, contempt or ridicule or convey an imputation on him disparaging or injurious to him in his office, profession, calling, trade or business. 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: - Page 10 of 22 A statement which tends to bring a person into hatred contempt or ridicule; 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." Section 35 (1) of the Media Services Act No. 12 of 2016 define defamation 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". Page 11 of 22 From the above definitions therefore, it was observed B.M. Gandhi, Law of Tort, 1987, Eastern Book Company Law Publishers, Delhi, India at page 448 that: "To succeed in an action for defamation, the plaintiff must prove the following essentials; (1J That the statement was false and defamatory; (2.) That is referred to the plaintiff; 13.) It was published by the defendants." In the case of Professor Ibrahim H. Lipumba Vs Zuberi Mzee [2004] T.L.R, 381, the Court of Appeal established what constitutes d Defamatory Statement as a deliberate, untrue, derogatory statement usually about a person, whether in writing or orally. In 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 Page 12 of 22 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 first issue this court will apply the above tests to find whether the published statements are defamatory or not. PW1 in his testimony denied all the facts published in Exhibit "PE 1". He denied that his buildings have been constructed below the standards and all the statements which were uttered by the respondents in exhibit PEI. Further, PW2 and PW3 refuted the allegations that the buildings erected by the petitioner were of lower standards and that PW1 had followed all the requirements of Kinondoni Municipal Council construction procedures. Therefore, Exhibit PEt which was published by the Respondents published news that was false statements. Going to the second test which is the effect of the published statements in the minds of reasonable man in the society. The Petitioner herein is

the entrusted businessman in the cause of his business. Page 13 of 22 In the case of Mrs. Caroline M. Whiteside Vs The Editor Samifu Newspaper & another Ciyii Case No. 7 of 2000 (unreported), Mchome J, referring to the book of Sir John Spry in Civil Law of Defamation in East Africa page 19 defined defamation as: "A statement is defamatory if it likely to lower the person of whom it made in the estimation of ordinary just and reasonable men. it may be defamatory according to the ordinary meaning of the words used or according to some innuendo they may convey, in deciding whether words could reasonably be regarded as meaning, not only to the general public but also to all those who have a greater or less special knowledge about the subject matter. The fact that a statement is made to a person who knows it to be unfounded does not make it any less defamatory". [emphasis added] Therefore, by reflecting to the meaning of defamatory statements as explained above, it is apparent that, the statements made in Exhibit Page 14 of 22 PEL which were heard by majority 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 society. In the event, this court finds that the published news meets the test of being defamatory. Therefore, the first issue is answered in the affirmative. the second issue is as to whether the publications were made intentionally, falsely and maliciously. it is a settled principle of that 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 case of The Public Service Social Security Fund (Successor Of The Parastatal Pensions Fund) Vs. Siriel Mchembe, Civil Appeal No. 126 of 2018 (CAT-Unreported). In the case at hand, it is not disputed that, the clip (Exhibit PEI) was published which indicates that the same was heard in the whole country and even outside this country. Page 15 of 22 As to whether the some were made intentionally and maliciously, in the case of Nehemia Kyando Mchechu Vs Mwananchi Communication Limited & The Editor Of The Citizen Newspaper (supra) Mgonya J, (as she then was) referred to the book of; The Law of Defamation and Malicious Prosecution, 4th Edition of 2001 at Page 137; where the Author stated that: "In the law of defamation, the law presumes malice in this sense, from the mere act of the defendant in publish in g de famatory m after. I' I fully subscribe to such observation. 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. 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. Page 16 of 22 With regard to the third issue as to whether publications were justified and privileged. It is the settled law that, once it is 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 as observed in the case Hamza Byarushengo vs Fulgencio Many & Others, Civil Appeal No. 246 Of 2018, and The Public Service Social Security Fund (Successor Of The Parastatal Pension Fund) Vs. Siriel Mchembe, (supra) In a tort of defamation there cannot be a better defense than that of truth. 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. In Halsbury's Laws of England, 3rd Edition, Volume 24, at para 1 on page 5(3) the learned treatise observes: "In English law, speaking generally, every person is entitled to his good name and to the esteem in Page 17 of 22 which he is held by others, and has a right to claim that his reputation shall not be disparaged by defamatory statements made about him to a third person or persons without lawful justification or excuse." It is therefore right to say that a person's good name or his good reputation is an entitlement that is part and parcel of that person's dignity as a human being. That is the purpose of the law to provide for the damages once someone injures another persons reputation without any justification. 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 is privilege even if it is defamatory. As to under which circumstances 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: Page 18 of 22 "...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 stance it is clear 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 in the honesty perform of their work. The publication in this case cannot be taken as a fair publication on the fact that what the Respondents did was to create allegations and proceeded to publish them without even informing the Petitioner so as to allow him enjoy the right to be heard and reply on the same before sharing it to the Public. From the above findings the third issue is answered in negative that, the publications were not justified and privileged. Now, this court determine the first three issues to this Petition this court confirms and is 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. Page 19 of 22 At this juncture, I have to say that there is no doubt that the Respondents' publication at issue, lowered to petitioners reputation in the eyes of any right - thinking member of the society. The magnitude of the statements was too personal of which triggered this litigation. It is believed that, the publications were malicious, reckless, published without verification with intent to destroy the Petitioner and injure his repute. Thus, it is obvious that the Petitioner herein has suffered emotionally and physiologically. I therefore proceed to proclaim that the Petitioner has successfully proved his case to the standards required by law. With the above findings, I now move to the last issue which is on the relief(s) which parties are entitled to. I have considered petitioner's solid reputation, and evidence of the defamatory words which were intentional, false and without just cause. Therefore, it is only fair that Petitioner be adequately compensated for the damage cause to his reputation. Page 20 of 22 In the final analysis judgment is entered for the petitioner, with the following order:

- i. The Respondents to retract and withdraw the false, offending, libellous statements published on Tanzania Mpya Online TV Youtube channel on 6th February, 2021 ii. The Respondent should publish an equivocal and unqualified statement of apology on Tanzania Mpya Online TV Youtube channel and any other online platform that the Respondents operates iii. An injunction permanently restraining the defendant and his agents and/or associates from making any defamatory statements of publishing any defamatory matter against the petitioner. iv. The Respondents to pay the plaintiff Tshs.30,000,000/= being general damages.
 - v. The Respondents to pay the plaintiff Tshs. 10,000,000/= being exemplary or punitive damages. vi. Costs of this suit to be borne by the Respondents. Page 21 of 22 21.07.2023. Page 22 of 22
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