

TANZANIA / JUDGMENT

ELIA MBUYO NNKO VS

COURT
TANZLIIDECIDED
16 December 2024

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA SUB REGISTRY OF ARUSHA AT ARUSHA CIVIL APPEAL NO. 20497 OF 2024 (C/F Decision of the District Court of Arumeru in Civil Case No. 4 of 2024.) ELIA MBUYO NNKO..... APPELLANT
VERSUS AMINIEL FURAHINI MUNGURE @ AMINIEL FURAHINI KISIMA
MUNGURE RESPONDENT

JUDGEMENT

1st November & 16th December, 2024 KAINDA, J.: The appellant, Elia Mbuyo Nnko is appealing against the judgement of the District Court of Arumeru vide Civil Case No. 4 of 2024. The fact of this case as can be gleaned from the plaint is as follows; the respondent/ plaintiff in the lower court filed a claim as against the appellant for among other reliefs, a general damages for libel, malicious falsehood, psychological and emotional distress based on a tort of defamation resulting from appellants act of publishing and distributing the false statement which aimed at lowering the reputation of the plaintiff and his business at large. It was alleged further that the appellant wrote a letter to one Soori Siyoi Mungure, the head of Mungure Clan, Ngarenanyuki area and the Executive Director, Meru District Council and copied it to eighteen (18) other natural and juristic people where he was publicly insulted and abused. He further alleged that, being a well- respected i person serving as Ward Councilor, is a trusted member of the public and his Political Party. In his Written Statement of Defense, the appellant refuted the allegation. He stated at paragraph 4 that he never uttered any abusive words to the respondent or prosecuted him maliciously. After hearing the parties, the trial Court decided in favor of the respondent and gave the following reliefs;

1. The defendant is ordered not to publish any defamatory statements.
2. The defendant is ordered to publish the summary of judgement and he is required to apologies to the plaintiff.
3. Nullification of all letters written by the defendant.
4. Compensation at TZS. twenty (20) Million.

5. Costs of the suit. The appellant could not see justice in the decision hence this appeal which is prefaced on the following four grounds; one that, the trial magistrate erred in law and in fact for improper admission of evidence tendered by the respondent, failure to properly evaluate and consider the evidence on record consequently made a finding in favor of the respondent erroneously; two that, the trial court erred in law and in fact when it decided that the appellant defamed the respondent in absence of evidence to that effect; three that, the trial court erred in law and in fact when ruled that defamation was established; four that, the trial magistrate erred in law and in fact when it granted the respondent reliefs which were never proved, prayed or pleaded. 2 The hearing of the appeal was by written submissions. I will start with considering the first, second and third grounds jointly which faults the finding of the trial court that defamation was established and proved by evidence on record. The appellant submitted that, the basic elements of defamation particularly libel is to see whether the alleged publication were communicated to someone other than the plaintiff. In this case, he argued, it is not stated in evidence if PW2 received the publication. The appellant contended that it was the duty of the respondent to establish that the publication was communicated. He cited Section 110 (1) and (2) of the Tanzania Evidence Act. In reply, the respondent submitted that the trial court was correct to hold that the appellant defamed the respondent because the defamation was established as evidenced by exhibits P2, P3 and P4. He further argued that, the defamatory statements were published and successfully communicated to various people especially PW2. In order to prove defamation, a plaintiff must show a false statement purporting to be fact, publication or communication of that statement to a third person, amounting to negligence, damages or some harm caused. Defamatory statement can also be defined to be a statement which lower a person. In the case of *Meneja Mkuu Zanzi Resort Hotel v. Ali Said Paramana*, Civil Appeal No. 296 of 2019 [2020] 1920, TanzLII at page 16 quoted with approval 3 Halsbury's Laws of England Vol. 28 4th Edition which defines defamatory statement as; "a statement which tends to lower a person in the estimation of the right-thinking member of the society generally or to cause him to be shunned or avoided or to expose him to hatred, contempt or ridicule or to convey an imputation on him disparaging or injurious to him, in his office, profession, calling, trade or business." In *Hamza Byarushengo v. Fulgencia Manya & Others*, Civil Appeal No. 246 of 2018 [2022] TZCA 207, TanzLII, the Court held; "The two learned scholars, Winfield and Jowits in their book titled TORT, nineteenth edition, 2015, WE Pee! & Goudkamp, Sweet and Maxwell, at page 360 define a defamatory statement in the following manner; one, a statement which tends to bring a person into hatred, contempt or ridicule; two, words must tend to lower the claimant in the estimation of the right - thinking members of the society in general; three, if words tends to cause the claimant to be shunned or avoided." In this case, my reading of the plaint does not provide for the complained statements. Attachment A2 and A3 attached to the plaint are copies of letters by Elia Mbuyo Nnko addressed to Mhe. Mkurugenzi Wilaya ya Meru copied to different people. It is a two-page letter. In this case, I have failed to comprehend which are the statements of claim bearing the specific defamatory words. In the case of *Godfrey Benedicto & Another, v. Dorothea Benedicto*, Civil Appeal No. 43 of 2019 at page 6-7, when considering as to 4

whether the word; "bage wavute vizuri na sio kuwavutia watu" is defamatory or not, it held; "The above words were properly quoted on page 3 of the trial court judgement. In their submissions, the learned counsel for the appellants who claimed that the appellant was smoking bange. It is worth noting that where the words complained of are natural and ordinary meaning capable of being held to be defamatory, no innuendo is necessary and what the ordinary man will infer from those words is to be regarded as part of their natural and ordinary meaning and does not require the addition of an innuendo. In other words, the plaintiff must set out in his or her statement of claim the specific defamatory meaning which they conveyed to the person to whom they were published/written." In the instant case, it is my finding that, the respondent did not include in the statement of claim the specific defamatory words complained of. It is beyond expectation that all the statement in the two letters in annex A2 and A3 is the defamatory statements complained of. In *Godfrey Benedicto & Another, v. Dorothea Benedicto* (supra) this court went on quoting with approval the book of Charles T. McCormick, *Handbook on the Law of Damages*, at page 417, (1935); "in cases of defamation, whether slander or libel, words must be explained to reveal its defamatory meaning." The finding on the first, second and third ground has disposed of the appeal. I see no reason to discuss the fourth and fifth grounds. Accordingly, 5 for the aforesaid findings, I allow the appeal. The decision of the trial District Court is hereby reversed. I have considered as to whether to grant costs or not, I order that each party to bear his costs. It is so ordered. Dated at Arusha this 16th December, 2024. S. J. KAINDA JUDGE 16.12.2024 Judgement delivered under my hand and seal of this court in Chambers this 16th December, 2024 in the presence of respondent in person and in the absence of the appellant. Right of appeal fully explained. S. J. KAINDA^ JUDGE 16.12.2024 6

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