

**THE HIGH COURT OF TANZANIA
(IN THE DISTRICT REGISTRY)**

AT MWANZA

HC CIVIL APPEAL No.50 OF 2020

(Arising from Civil Case No.8 of 2019 from Ilemela District Court)

CLEMENT PANCRAS APPELLANT

VERSUS

COLETHA CHARLESRESPONDENT

JUDGMENT

Date of last Order: 15.10.2020

Date of Judgment: 20.10.2020

A.Z.MGEYEKWA, J

This is a first appeal. It emanated from the decision of the District Court of Ilemela in Civil Case No.08 of 2019. In that case, Clement Panras, the appellant instituted the suit against Coletha Charles, the respondent claiming for compensation in a tune of Tshs. 300,000,000/= . Tshs. 299,500,000/= and 500,000/= for general

damage and specific damages respectively. That, the suit was decided in favour of the respondent. The appellant was not happy with the decision of the trial court.

Believing the decision of the trial court was not correct, the appellant lodged this appeal on three grounds of appeal seeking to assail the decision of the trial tribunal. The grounds of appeal are as follows:-

- 1. That, learned trial Magistrate grossly erred in law and fact to disregard the evidence on the part of the Plaintiff/Appellant and dismissed the suit with costs.*
- 2. That, learned trial Magistrate erred in law and fact to hold the statement made by the respondent to the police incriminating the appellant was privileged whereas the same made the appellant to suffer both moral and material loss.*
- 3. That, the learned trial Magistrate grossly erred both in law and fact to hold that the allegation for malicious prosecution was not featured in the plaint hence an after thought, whereas were categorically pleaded in paragraph 16th of the plaint.*

To appreciate the contested issues in this dispute, I find it necessary to preface this judgment with shortened facts of the case. In 208, the matter was before the Primary Court of Ilemelea in Criminal Case No. 706 of 2016 whereas, the appellant was charged and convicted on two counts. On the first count; Burglary contrary to section 296 of the Penal Code Cap.16 [R.E 2002]. On the second count stealing contrary to sections 258 (1) and 265 of the Penal Code Cap. 16 [R.E 2002] Now [2019]. The Primary decided the matter and found the appellant guilty and sentenced him to conditional discharged or the appellant to the respondent pay Tshs. 500,000/=.

Dissatisfied, the appellant filed and appeal before the Ilemela District Court in Civil Case District Court of Ilemela in Criminal Appeal No. 14 of 2018 whereas the first appellate court allowed the appeal.

Eventually, the appellants instituted a suit of malicious prosecution before the Ilemela District Court. The appellants were claiming compensation from the respondent to a tune of Tshs. 299,500,000/= for general damages and Tshs. 500,000 arose from fine which was imposed by the Republic in criminal case.

When the matter was called upon for hearing on 15th October, 2020 Mr, Demetrius, learned Advocate represented the appellants while Mr. John Edward learned Advocate represented the respondent.

Mr. Demetrius started his onslaught by seeking to consolidate the three grounds of appeal. He contended that the District Court did not consider the appellant's evidence. He went on to argue that the appellant narrated the whole story from how her house was demolished, properties were stolen and named the person denied to have named the appellant instead she said that the Police Officer are the one who named the respondent. The learned counsel for the appellant referred this court to Criminal Case No. 701 of 2008 where the respondent named the culprits, she declared that she identified the culprits by the aid of light and their voices. Mr. Demetrius insisted that it was the respondent who named the appellant.

The learned counsel for the appellant went on to argue that the appellant's evidence is contradictory in the sense that what she testified at the trial court and before the first appellate court are quite different. He urged this court to test the credibility of the respondent.

To bolster his submission he cited the case of **Kibwana Salehe v Republic** HCD No. 391 of 1968. He urged this court to be guided by the case of **Mzee Hassan Mfaume v Republic** (1981) TLR 167 to re-evaluate the evidence on record.

On the issue of defamation, Mr. Demetrius defined the word defamatory statement to mean a statement of fact which aims to destroy a person's reputation without any reasonable ground. He argued that the defamation statement arises from the respondent's statement that she had an intention to ruin the appellant's reputation. He added that the appellant has never been charged with any criminal charges. The learned counsel fortified his submission by referring this court to the case of **Tito Peter Mwayakuysa v Juma Abdallah Kaputpila**, High Court at Mtwara in Civil Appeal No. 12 of 2019. He went on to add that the appellant is an Assistant Regional Chairman of the Democratic Party since 2015 and he is a parliamentary contestant.

Mr. Demetrius lamented that the appellant was convicted to serve 6 months imprisonment then he filed an appeal at the District Court for Nyamagana and was acquitted. He added that the District Court was required to take judicial note of proving the case as per section

43 A (2), of the Evidence Act, Cap. 6 that a judgment of acquittal is a proof. He also cited section 58 and 43B of the Evidence Act, Cap. 6 that the District Court had to direct itself and find that defamation was proved.

In conclusion, he urged this court to order the respondent to pay Tshs. 300,000,000/= for defamation and set aside the trial court judgment.

Responding, Mr. John Edward contended that, the appellant's Advocate has miserably failed to prove the elements of defamation thus, the appeal is demerit. Mr. John Edward argued that it is not disputed that the respondent was robbed and the appellant was convicted in a criminal case, thus the same means the crime occurred. Mr. John Edward contended that the respondent (DW1) testified to the effect that she saw two people and identified one Maximilian Constantine who named the appellant. He went on to state that DW2, a Police Officer testified that they arrested Maximilian and during interrogation, he named one Clement Pancras, the appellant, thereafter, the appellant was arrested and convicted.

Regarding the appellant's counsel complaint that it was the respondent who reported the incident to the Police. Mr. John Edward stated that in a situation where an incident of robbery occurs any person has a duty to report the crime and name the suspect. Mr. John Edward added that the one who reports the matters to the Police Station is not liable for defamation. The learned counsel for the respondent went on to state that the circumstance of the case shows that there was reasonable ground for the suspect to name the offender. Mr. John Edward forcefully argued that the said appellant's statement is not featured in the court record.

Mr. John Edward argued that political figures are not exempted from criminal liability, he can be prosecuted regardless of his position. He valiantly argued that not all persons who are acquitted can claim for damages but only if he can prove that there was no any reasonable cause. He insisted that there was a reasonable cause for prosecuting the appellant.

In conclusion, Mr. Edward argued that the appeal is demerit. He urged this court to dismiss the appeal with costs.

In his rejoinder, Mr. Demetrius stated that Mr. John Edward admitted that the neighbours are the ones who arrived at the scene of the incident first. He insisted that Clement Pancras was acquitted in the criminal case which means there was no cogent evidence to render his conviction. Mr.

Mr. Demetrius argued that the respondent was a complainant not an informer therefore, she was required to prove what she alleged in court. He referred this court on page 6 of the court proceedings in Criminal Case No. 706 of 2019, he insisted that the witness statements were inconsistent thus she aimed to ruin the appellant's reputation. Insisting, Mr. Demetrius contended that the appellant was acquitted because the respondent had no reasonable cause.

On the strength of the above arguments, Mr. Demetrius reiterated his submission in chief and he beckoned upon this court to allow the appeal.

Having summarized the submissions and arguments by both learned counsels, I am now in the position to determine the grounds of appeal before me. In my determination, I will consolidate the first

and third grounds of appeal because they are intertwined. Except for the second ground which I will address it separately.

Now confronting the first and third grounds of appeal on which the parties locking horns, Mr. Demetrius complained that the District Court of Ilemela did not consider the appellant's evidence that it was the respondent who named the respondent. Reading the trial court records the respondent testified that he recognized the culprits though she was afraid to name them.

It is uncontested that the respondent made a report to the Police that the appellant invaded the respondent's house. It is also uncontested that the Police Officer after receiving the report arrested the appellant and charged him with the offence of Burglary and Stealing. It is also uncontested that the appellant lodged an appeal before the District Court and was acquitted.

In my opinion, I find the act of the respondent to report the matter to the Police was proper and to name the suspect was not fatal. It is settled principle of law that where an individual gives information or makes a statement to an officer of the law, whose duty is to detect and prosecute criminals, to the effect that someone has committed a

crime, such information or statement has the protection of privilege. It should be noted that where an individual gives information to the Police it is for the best interest of the society, and the repression of crime could not otherwise be enforced. In the case of **Mbaraka William v Adamu Kissute & another** (1984) TZHC the court held that:-

" When it comes to the knowledge of anyone that a crime has been committed, a duty is laid on D that person, as a citizen of the country, to state to the authorities what he knows respecting the commission of the crime, and if he states only what he knows and honestly believes, he cannot be subjected to an action of damages merely because it turns out that the person as to whom he has given information is, after all, not guilty of the crime."

Based on the above authority, it is clear that the respondent had probable cause to report the matter to the Police. The mere fact that the appellant was acquitted is not a ground for his entitlement of damages since the probable cause was already established. The appellant could succeed only if he could establish that the four elements of malicious prosecution accumulatively existed. In the

celebrated case of **Hosia Lalata v Gibson Zumba Mwasote (1980)**

TLR 154 Hon. Samatta J (as he then was) laid down the essential elements of malicious prosecution, in order to succeed in a suit for malicious prosecution, the plaintiff must prove the following four elements:-

- (a) That he was prosecuted by the defendant;*
- (b) That the prosecution ended in his favour;*
- (c) That, the prosecution was conducted without reasonable or probable cause;*
- (d) That in bringing the prosecution the defendant was actuated by malice..."*

In the instant appeal, as I have mentioned above the appellant did not establish the third element that, the prosecution was conducted without reasonable or probable cause. Therefore, this ground is demerit.

Addressing the second ground of appeal, the appellant claimed that the first appellate court erred in law and facts to hold that the statement made by the respondent to the police incriminated the appellant and the appellant suffered both moral and material. First, let

me define the word defamation. The **Black's law dictionary of 2004, 8th edition** defines defamation to mean:-

"The act of harming the reputation of another by making a false statement to a third person".

Guided by the above definition, I have to say that to prove defamation, a plaintiff must show a false statement purporting to be fact, publication or communication of that statement to a third person, fault amounting to at least negligence, and damages, or some harm caused to the person who is the subject of the statement.

The appellant's counsel alleged that the trial court erred in law and facts for failure to analyse evidence properly to prove that the respondent defamed the appellant. However, in the instant case, the appellant at the trial court in Criminal Case No. 706 of 2018 did not utter any offending words which intended to ruin the appellant's reputation. Even the learned counsel for the appellant did not mention the defamed words uttered by the respondent.

For defamation to stand the words must be strictly interpreted and must within their meaning, be defamatory for the tort to stand. Also, 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. The tort of defamation in the book of Charles T. Mc Cormick, Handbook on the Law of Damages, at 417 (1935) it is stated with authority that:-

“ In cases of defamation, whether slander or libel, words **must be explained to reveal its defamatory meaning...**” [Emphasis added]

It is from this point that the defamation can be actionable per se. To this end, I find that the appellant's claims are speculative. I am not in accord with the learned counsel for the appellant assumptions that as long as the respondent reported the matter to the Police and the appellant was acquitted suffice to prove that the respondent defamed the appellant. There was no any false statement, what was done by the respondent is to report the incident of theft to the Police. In my reverent opinion, the allegation against the respondent affords no legs and falls entirely. Consequently, I find that the appellant allegations are unfounded as the defamation was not proved. This ground is demerit.

The above stated, I find this appeal seriously wanting in merit and dismiss it in its entirety with costs to the appellant.

Order accordingly.

Dated at Mwanza this 20th October, 2020.




A.Z.MGEYEKWA

JUDGE

20.10.2020

Judgment delivered on 20th March, 2020 in the presence of Mr. Demetrius Mtete, learned counsel for the appellants, and the respondent.


A.Z.MGEYEKWA

JUDGE

20.10.2020

Right to appeal fully explained.