

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(DAR-ES-SALAAM DISTRICT REGISTRY)**

**AT DAR-ES-SALAAM**

**CIVIL CASE NO. 91 OF 2023**

**GOMBO SAMANDITO GOMBO.....PLAINTIFF**

**VERSUS**

**EVA NDEWALIA JOSEPH NANGELA..... DEFENDANT**

**RULING**

Date: 07/08 & 11/09/2023

**NKWABI, J.:**

The above-named plaintiff instituted the present suit. He is claiming against the defendant the reliefs I emulate below:

1. An order declaring that the information made by defendant against the plaintiff is untrue and is defamatory in nature.
2. An order to the defendant to apologize to the plaintiff and declaration to the public through the same medium that the information was false and build back the good image to the plaintiff.
3. An order for payment of specific damages of T.shs 5,000,000,000/= being an amount and compensation for damages incurred due to the defendant published untrue information aimed at defaming the plaintiff.
4. Interest on the principal sum at commercial rate from the date the cause of action arose.
5. An order for payment of general damages at T.shs 500,000,000/=.

6. Interest on the decretal sum at the Court rate from the date of the judgment until payment in full.
7. Costs.
8. Any other relief this honourable Court may deem fit to grant.

The defendant lodged her written statement of defence in which not only did she dispute the plaintiff's claims but also raised a preliminary objection on point of law which consists of two upcoming wings:

- 1. The suit is bad in law for non-compliance with the mandatory requirement of the provision of Rule 4(1) of the Media Services (Defamation Proceedings) Rule, 2019.*
- 2. The plaint contravenes the mandatory provision of Order VII Rule 1(i) of the Civil Procedure Code Cap. 33 R.E. 2019, which requires the statement of the value to be stated for purpose of jurisdiction.*

The defendant, therefore, urged the Court to sustain the preliminary objection and strike out the suit with costs. It was ordered that the preliminary objection be disposed of by way of written submissions. Ms. Halima Semanda, learned Advocate, submitted for the defendant. The plaintiff had his submissions drawn and filed by Elinihaki Kabura, also

learned counsel.

The presentation on the first wing of the preliminary objection by Ms. Semanda is that it is the practice and requirement of the law that the suit or claims based on defamatory statement published must be filed through petition and not plaint as per Rule 4(1) of the Media Services (Defamation Proceedings) Rules, (hereinafter referred to as the Rules). She therefore prayed Civil Case No. 91 of 2023 be struck out with costs.

In a counter-remark on the first wing of the preliminary objection, Mr. Kabura asserted that the suit at hand does not fall under the Rules, as the defendant provided defamatory statement within the court and out of the court and the media reported the said defamatory statements. He added that defamatory statement reached to the media after the Probate Cause No. 29 of 2018 before Mkuranga Primary Court, after the judgment was issued, the media reported and published to the society.

He further maintained that the plaintiff is correct to institute a suit by way of plaint as per Order IV Rule 1 of the Civil Procedure Code. It was also argued that the defamatory statement was made to the persons who were out of the court after decision of the said Probate Cause then the media published defamatory statement which had already made by the

defendant.

In replication, the counsel for the defendant stressed that the suit itself is misconceived, improper and is incurably defective. She pressed that it should be struck out with costs for offending the provisions of Rule 4(1) of the Media Services (Defamation Proceedings) Rules, 2019. She rejected the suggestion that the overriding objective principle to be invoked to cure the irregularities. She exemplified **Jacob Bushiri v. Mwanza City Council & 2 Others**, Civil Appeal No. 36 of 2019 CAT (unreported) where it was stated that:

*"... the amendment by Act No. 8 of 2018 was not meant to enable parties to circumvent the mandatory rules of the Court or to turn blind to the mandatory provisions of the procedural law which go to the foundation of the case."*

Indeed, the term "publication" has been defined under the Act to mean any communication of content through media. Whereas the term "media" has also been defined to mean the industry, trade or business of collecting, processing and dissemination of content through radio, television or newspapers, and includes online platforms.

At this moment in time, the plaintiff has strongly argued that the suit at hand does not fall under the matters prescribed under part V of the Act because the defamatory statements were uttered during the court's proceedings. In order to resolve this issue, I have searchingly gone through the plaint filed in the instant matter. I discern that the plaintiff's claim arises from defamatory statements alleged to have been published by the defendant. For instance, paragraph 2 of the plaint reads;

*That, the Plaintiff claim against the defendant is to the tune of Tanzania Shillings Five Billion (TZS 5,000,000,000/=) being specific damages incurred due to the defendant **published un-true information** aimed at defaming the plaintiff and ruin his public image. [emphasis added].*

Other paragraphs in the plaint have explicitly talked about the defamation by publication. On paragraph 6 the plaintiff has even attached the copy of the newspaper where the defamatory statements were published. Of importance paragraph 9 of the plaint reads that;

*That, the plaintiff continues to lose his reputation as a politician, in the ruling party and among, business men who believe at the false information **published** by the*

*defendant through different newspapers as well as social medias (WhatsApp groups, Telegram etc), this has caused the plaintiff to have fear of his own safety and distress which has affected his life. [Emphasis added].*

The plaintiff's counsel tried to disown the plaint by stating that the alleged defamatory statements were uttered by the defendant to the people in and out of the court. With respect, I disagree with the plaintiff on these arguments since the plaint speaks of itself as per the paragraphs I have reproduced above. It is overused law that parties are bound by their pleadings, see **Barclays Bank (T) Ltd v. Jacob Muro**, Civil Appeal No. 357 of 2019 Court of Appeal of Tanzania at Mbeya, (unreported) the Court quoted with approval, to a passage in an article by Sir Jack I.H. Jacob bearing the title, "The Present Importance of Pleadings," first published in Current Legal Problems (1960) at p. 174 thus:

*"As the parties are adversaries, it is left to each one of them to formulate his case in his own way, subject to the basic rules of pleadings .... For the sake of certainty and finality, each party is bound by his own pleadings and cannot be allowed to raise a different or fresh case without*

*due amendment properly made. Each party thus knows the case he has to meet and cannot be taken by surprise at the trial. The court itself is as bound by the pleadings of the parties as they are themselves. It is no part of the duty of the court to enter upon any inquiry into the case before it other than to adjudicate upon the specific matters in dispute which the parties themselves have raised by the pleadings. Indeed, the court would be acting contrary to its own character and nature if it were to pronounce any claim or defence not made by the parties. To do so would be to enter upon the realm of speculation."*

Steaming from the above deliberation, I hold that the suit at hand falls under the category of the matters prescribed under part V of the Act. Therefore, the suit does not conform to the requirements of Rule 4(1) of the Rules because it was filed by way of presentation of a plaint instead of a petition. Thus, the suit does not conform with form DP to the schedule of the Rules. For clarity, the rule provides that, and I quote:

*"4.-(1) Legal proceedings under Part V of the Act shall be instituted by way of a petition in the Form DP set out in the*

*Schedule.”*

In closing, I pronounce that there is merit on the first wing of the preliminary objection, it is sustained. In the circumstances of this suit, the overriding objective principal cannot be invoked to circumvent mandatory provisions of the law which go to the root of the very case. The determination of the first wing of the preliminary objection sufficiently disposes of the suit. Thus, I need not scrutinize the 2<sup>nd</sup> wing of the preliminary objection. I declare that the suit is incompetent before this Court. I accordingly strike it out with costs.

It is so ordered.

**DATED** at **DAR ES SALAAM** this 11<sup>th</sup> day of September 2023.



A handwritten signature in blue ink, appearing to read "J. F. Nkwabi".

J. F. NKWABI

**JUDGE**