

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB-REGISTRY OF MANYARA

AT BABATI

CIVIL APPEAL NO. 23175 OF 2025

(Arising from Civil Case No. 4551 of 2025 in the Resident Magistrates Court of Manyara at Babati)

KIMAI SARONI APPELLANT

VERSUS

MBEDAYO NINI LAIZER 1ST RESPONDENT

DANIEL PAKAS LAIZER 2ND RESPONDENT

JUDGMENT

22nd December 2025 & 17th February, 2026

MWIHAMBI, J.

This is an appeal against the decision of the Resident Magistrate Court of Manyara at Babati (the trial court) in Civil Case No. 4551 of 2025 in which the respondents had sued the appellant for defamation.

Brief facts of the case as can be gleaned from the prosecution side is that sometimes on November, 2024 the appellant; a then Village Chairman, reported to OC CID, Simanjiro ASP Hosea Simon Mwaipopo, that he has been secretly informed that the respondents, and other four people who are not

part of this appeal, are conspiring to kill him and burn his car. The conspiracy, led by the first respondent, was conducted through phone communication. The respondents were called to the police station and interrogated. In addition, the respondents' mobile phones were seized and sent to Dar es Salaam for forensic investigation. About two months later (November, 2024 to January, 2025) the investigation found no truth in the allegations and returned the seized phones to the respondents.

This prompted the respondents to institute a case against the appellant seeking for the following, in verbatim:

- 1. Mahakama itamke kwamba, mashitaka na kauli zilizotolewa na mdaiwa ni za kukashifu.*
- 2. Kutoa tuzo kwa wadai ya milioni mia tano (Tsz 500,000,000/=) kama fidia ya madhara ya kashfa na kuchafuliwa.*
- 3. Gharama za shauri hili zibebwe na mdaiwa.*
- 4. Nafuu nyingine zozote ambazo mahakama hii tukufu itaona ni sahihi na kustahili.*

The trial court framed two issues; whether the defendant alter/made a defamatory word/statement against the plaintiffs, and what are the reliefs entitled to the parties.

In his defence, the appellant denied to have made any report to the police. Upon a full trial, the trial court was satisfied that the respondents had proved their case on the balance of probabilities and ordered that, in verbatim:

(a) Defendant pays the plaintiffs a total of Tsh. 45,000,000/- as general damages which shall accrue no interest.

(b) Defendant issue a public apology to the plaintiffs.

(c) Cost to follow the event.

This decision aggrieved the appellant hence this appeal composed of the following appeal grounds:

- 1. That, the trial Magistrate erred in law and fact by holding that the Appellant uttered defamatory statement against the Respondents without proof of the same.*
- 2. That, the trial Magistrate erred in law by shifting the burden of proof upon the Appellant without ascribing any reasons.*
- 3. That, the trial Magistrate grossly erred in law by making assumptions that the Appellant ought to have known of the defamatory statement, a fact that required proof by the Respondents herein.*
- 4. That, the trial Magistrate erred in law and fact by holding that the evidence of the Respondents was more credible, yet the all of the testimony was based on hearsay and no primary evidence was adduced before the trial court.*

5. *That, the trial Magistrate erred in law by entertaining and passing judgment over case based on a defamation which was instituted without following the proper procedure.*
6. *That, the trial Magistrate erred in law and fact by holding that the Respondents' reputation was tarnished without any evidence to that fact.*
7. *That, the trial magistrate erred in law and fact by ignoring the testimony of PW1 who stated that he had never met, nor interrogated the Appellant, hence has never heard the Appellant make defamatory statements against the Respondents.*

On preference of the parties, this appeal was heard by way of written submissions; with the parties represented by learned advocate Gift Joshua for the appellant and learned advocate Godfrey Mlingi for the respondents. This Court commends both parties for complying with the submission schedule and efforts that they undertook to prepare relevant submissions.

Mr. Joshua decided to consolidate appeal grounds number 1, 2, 3, 4 and 6 and submit for the 5th and 7th grounds separately. He also decided to start with the 5th appeal ground.

The learned advocate submitted that the procedure for instituting defamation cases as laid down by the **Media Services (Defamation Proceedings) Rules, 2019** was not adhered to. That while Rule 4 (1) mandatorily requires defamation proceedings to be instituted by way of a

petition in the Form DP set out in the Schedule to the Rules, in this case such form was not filed, instead the suit was instituted by way of plaint.

That while Rule 5 (1) requires copy of the petition so filed to be served on the respondent within five days after filing the petition, in this case no such petition was served to the appellant at any stage, instead the appellant was served with a plaint.

The learned advocate argued that it is settled in law that where the language of a provision states "shall", whatever it commands has to be done in the manner it so commands. To cement his argument, he referred this Court to Section 54(2) of the **Interpretation of Laws Act** [Cap. 1 R. E. 2023] and the case **Omari Bobi v. Tanzania Railways Corporation** (Tag Civil Reference No. 1 of 2004) [2007] TZCA 376.

In addition, he cited the case of **Harun Ally Muhajiri v. Hon. Musa Swed Kafana**, Civil Appeal No. 15661 of 2024 and **Masumbuko Fadhil Khafidhi Makolokolo v. Elias Mwanisawa**, Land Case No. 3 of 2020, HC to buttress his argument that failure to comply to the mandatory requirements of Rule 4 (1) of the **Media Services (Defamation**

Proceedings) Rules, 2019, renders the proceedings and judgment a nullity.

In relation to the 7th ground, the learned advocate submitted that it is legally untenable and fundamentally erroneous for any court to base its findings on mere hearsay, particularly where the witness never perceived the fact in issue. He argued that the trial magistrate erred by relying solely on the testimony of a witness who explicitly admitted that he neither saw nor heard the appellant utter the alleged defamatory statements.

That such evidence, being hearsay, is inadmissible and incapable of proving the fact in issue. To cement his argument, the learned advocate cited the case of **Sharifa Habibu v. Mohamed Juma Ali & Others** (Civil Appeal No. 445 of 2021) [2024] TZCA 1144 and emphasized that the trial court's reliance on such evidence amounts to a serious misapprehension of the law.

On the consolidated 1st, 2nd, 3rd, 4th and 6th grounds, the learned advocate submitted that the trial magistrate stated in his judgment that it is the appellant that reported the respondents to the police station, while no evidence was given in court to prove the said allegation. That PW1 stated

that he received instructions from the OC CID and that the OC CID informed PW1 that he had received information from an informant but the OC CID was never summoned to testify as to who the informant was.

Referring this Court to the case of **Hemedi Saidi v. Mohamedi Mbilu** [1984] TLR 113, he argued that failure to call this crucial witness creates a negative inference against the respondents.

He argued that since PW4 and PW5 did not provide any proof to support the claim that the appellant reported them to the police, it is strange that the trial magistrate came to such a conclusion.

On the other hand, the learned advocate argued that even if the appellant did make a statement against the respondents to the police, the same does not amount to a defamatory statement within the meaning of Section 3 and Section 35 of the **Media Services Act, 2016**. He referred this Court to its earlier decision in the case of **Advocate Emmanuel Ole Kokan v. Chama Cha Ushirika wa Wakulima wa Umwagiliaji (CHAURU) Limited and Another**, Petition Number 13086 of 2024 on a similar matter.

The learned advocate faults the trial magistrate's statement in page 4 of the judgment that "*...as a right-minded person it is impossible that the defendant being the victim of the offence knew nothing*" as it amounted to the trial magistrate is making up evidence and facts which were not produced or adduced in court.

That at no point during the trial did PW1 adduce that the appellant was a victim of any offence, and no evidence was adduced in court to show that the appellant ever reported any crime committed against him. Instead, the appellant was consistent in pleading ignorance of any offence against him or ever reporting the commission or conspiracy to commit an offence against him.

He argued that the fact that the trial magistrate faults the appellant for not knowing something that he did not do or had any knowledge of is wrong and untenable in law.

The learned advocate further adduced that since the respondents' case rests on the fact that the appellant made the defamatory statements to the police, it was incumbent upon the respondents to produce evidence in court proving that the appellant reported the them to the police.

However, PW4 and PW5 did not present any evidence before the court that the appellant made any defamatory statements against them and no written police statement or any official police record was produced in court as opposed to baseless words, he argued.

To cement his argument, the learned advocate cited section 72 of the **Evidence Act** [Cap. 6 R.E. 2023] (the Evidence Act) and the case of **Tanzania International Container Terminal Services Limited v. Petrolube (T) Limited** (Civil Appeal No. 54 of 2022) in which the Court held that all facts that a party alleges to be contained in a document must be proved by tendering the very document containing the facts and all facts in a document cannot be proved by oral evidence.

In addition, the learned advocate argued that the trial magistrate made assumptions in finding that evidence of the respondents was more credible than that of the appellant. That the trial magistrate did not explain the credibility of the respondents' testimony, but did not also explain why the evidence of the appellant was not credible.

Furthermore, he argued that the trial court misdirected itself by relying on a document that was never tendered in court. That in addressing the first issue, the learned trial magistrate fundamentally misdirected himself.

The trial court's finding that the appellant made false and untrue statements to the police station was premised on Case File No. OKT/PE/28/2024, and this file formed the foundation of PW1 testimony, as he claimed to have derived knowledge of the alleged statements from the contents of that file. However, the said case file was neither tendered nor admitted as an exhibit during the proceedings. Consequently, the appellant was deprived of the lawful opportunity to examine, challenge, or test the authenticity and credibility of this material, he added.

To buttress his argument, the learned advocate cited a decision of this Court in **Bandin Elias Mushi T/A Nasula General Supplies v. Lodhia Steel Industries Limited**, Miscellaneous Civil Application Number 375 of 2021 that relied on **Shemsa and Two Others v. Seleman Hamed Abdallah**, Civil Appeal No. 82 of 2012 (Unreported), which held that it is improper and substantial error to rely on a document which was neither tendered nor admitted in court as exhibit, as the same lead to grave miscarriage of justice.

Still on the consolidated grounds, the learned advocate submitted that the central purpose of the tort of defamation is to remedy the injury inflicted upon the reputation of the person allegedly defamed. However, upon a careful examination of the trial court's judgment, it is evident that the learned magistrate failed to rely on any substantive evidence establishing such injury.

That according to the trial magistrate, the defamatory statements arose from slanderous utterances, which are not actionable per se, thereby making the proof of actual damage a crucial requirement in this case. Despite this legal necessity, the respondents failed to prove the nature of the business they were engaged in, let alone demonstrate how it was adversely affected by the alleged statements.

Furthermore, no evidence was adduced to show that, in the estimation of reasonable members of the community, the respondents' reputation had suffered any harm as a result of the alleged slander. In the absence of such proof, the alleged extent of damage to the respondents' reputation remains entirely unsubstantiated, he argued.

The learned advocate concluded his submission by the opinion that the proceedings, judgment and orders of the trial court are premised on gross failure to adhere to legal principles of evidence and the case was improperly filed. He then prayed for this Court to allow the appeal with costs.

For the respondents, Mr. Mlingi kickstarted by quoting Jon Michail, Group CEO and founder, www.imagegroup.com.au that *"It's ironic how fortune disappears once reputation and character is damaged, your reputation is your passport to unlimited possibilities, it opens or closes doors, protect it at all costs."*

Responding on the appeal grounds in the manner employed by Mr. Joshua, the learned advocate, on the 5th appeal ground, opposed the argument that the matter falls under **Media Services (Defamation Proceedings) Rules, 2019**.

That the cited Rule 4 (1) refers to legal proceedings under Part V of the **Media Services Act** [Cap. 229 R.E. 2023] and must be defamation arising out of publication of the statement as defined under the Act.

That section 3 of the **Media Services Act** [Cap. 229 R.E. 2023] defines "publication" to mean any communication of content through media

and the word “media” as the industry, trade or business of collecting, processing and dissemination of content through radio, television or newspapers and includes online platforms.

He then argued that defamation complained of by the respondents does not fall within such definitions, because the defamation complained of in this case was slanderous the publication of which was not through any media as defined under section 3 of the **Media Services Act** [Cap. 229 R.E. 2023].

The learned advocate further argued that the case was also not near libel because it does not fall within the ambit of section 36 (1) of the **Media Services Act** [Cap. 229 R.E. 2023] which provides that *a person shall be deemed to make publication of a libel if that person causes the print, writing, painting, effigy or other means by which the defamatory matter is conveyed,* because there is nowhere in the plaint that the respondents allege media publication of libel, rather the respondents’ cause of action was based on the slanderous defamatory statement which does not fall under the **Media Services Act** [Cap. 229 R.E. 2023].

To cement his argument the learned advocate cited the case of **Waseem Vast v. Komail Rizwan Esmail t/a Kazam Rizwan Esmail** (Civil Case No. 11602 of 2024) [2024] TZHC 7600. He then prayed for this Court to dismiss the 5th appeal ground.

On the 7th appeal ground, the learned advocate submitted that PW1 affirmatively testified that following the appellant's false complaint the respondents were summoned to report to police station. That PW1 was the one who interrogated the respondents about the complaints and seized their phones.

He added that PW1 was insistent and consistent even in cross examination that it was the appellant that had reported implicating the respondents of burning his car and threatening to kill him.

He argued that PW1 was testifying in his official capacity on matters that had transpired in his office whereby the appellant was the informant and to which PW1's office had taken action against the respondents.

He added that testimonies of PW1, PW3, PW4 and PW5 converged in pointing at the appellant having defamed the respondents through a slanderous word uttered about the respondents to the police.

The learned advocate submitted that the respondents' witnesses' testimonies proved on the balance of probabilities that the appellant had indeed defamed the respondents by implicating them, falsely through utterances, of burning his car and scheming to kill him.

To cement his argument, he cited the case of **Re H and Others** (Minors) [1996] AC 563, 586 and **Miller v. Minister of Pensions** [1947] 2 All ER 372. He then prayed for this Court to dismiss the 7th ground for want of merit.

The learned advocate submitted that the consolidated 1st, 2nd, 3rd, 4th and 6th grounds are also devoid of merit.

On absence of call OC CID in the witness list, the learned advocate argued that PW1 testified in his official capacity and that he had acted on instructions of his in-charge to whom the appellant had made a false report, therefore there was no need to duplicate testimonies by calling PW1's in - charge. Because the testimony of PW1 concurred with those of PW3, PW4 and PW5 in pointing at the appellant as having defamed the respondents through a slanderous word uttered about the respondents to the police.

On the argument that even if the appellant did make a statement against the respondents to the police, the same does not amount to a defamatory statement within the meaning of section 3 and section 35 of the **Media Services Act, 2016**, the learned advocate reiterated his submission under the 5th ground that defamation proceedings at hand do not fall within the scope of section 3 or 35 of the of the **Media Services Act, 2016** and that the case of **Advocate Emmanuel Ole Kokan** (supra) is distinguishable. That the case would have been relevant is the case could have fell within the ambit of the **Media Services Act, 2016**.

On the argument that since the respondents' case rests on the fact that the appellant made the defamatory statements to the police, it was incumbent upon the respondents to produce evidence in court proving showing that the appellant reported the them to the police, the learned advocate submitted that submission of recorded statements would hold water if police investigation had established any scintilla of truth in the appellant's allegations against the respondents, but according to PW1, that was not the case.

In addition, the learned advocate referred this Court to the cases of **Anthony Wambura v. Marwa Wambura** (HC Civil Appeal No. 13 of 1982)

[1985] TZHC 139 and **Jackson Keriga v. Chacha Machunte** (HC Civil Appeal No. 2 of 1980) [1980] TZHC 339 on the argument that false criminal allegation to police is actionable and the defendant bear a burden of proof to show reasonable and probable cause and malice is found or may be inferred from making a false report.

On application of section 72 of the **Evidence Act**, the learned advocate argued that the same does not apply as there was no secondary evidence was tendered and admitted as exhibit.

On the argument that the trial court misdirected itself by relying on Case File No. OKT/PE/28/2024 while the same was neither tendered nor admitted as an exhibit during the proceedings, Mr. Mlingi submitted that the trial court considered all witnesses from the respondents and evidence of the appellant and came to a conclusion that the plaintiffs' case was more probable than that of the defendant.

In relation to the alleged failure of the trial court to rely on any substantive evidence establishing injury to the respondents, the learned advocate argued that it is settled law that one of functions of general

damages is to repair and vindicate the harm to reputation caused by the defamatory statements.

That the respondents, honored, respected, businessmen and well-disciplined residents of Loibosiret, have already been marked and labelled killers and trouble makers. That it is common knowledge that slanderous statements are actionable per se meaning no proof of special damage is required. That the words uttered by the appellant and heard by PW1 and PW3 has equivalent to an absolute affirmation of guilty and it is an offence punishable with at least imprisonment in our penal laws.

To cement his argument, the learned advocate cited a decision of this Court in the case of **Scott Rushogo v. Simoni Sekimonyo** (PC Civil Appeal No 264 of 1975) [1976] TZHC 94 and **K. Hassani v. Kithuku & Amp; Chali** [1983] TZHC 34.

The learned advocate further argued that the appellant has not advanced any argument to challenge the quantum of damages, obviously because the awarded amount as general damages to the respondents was not excessive and it is on the low side considering the gravity of defamation and the damage it occasioned to the respondents.

Mr. Mlingi summed up by a prayer for the consolidated grounds and the whole appeal to be dismissed for want of merit, with costs.

In rejoinder, learned advocate Joshua reiterated that the case falls within the ambit of the **Media Services Act, 2016** and the **Media Services (Defamation Proceedings) Rules, 2019**. That with defining the word "publication" learned advocate Mlingi ought, as well, to have taken cognizance of the definition of "publish" under the same provision.

That, even the trial magistrate at page 3 of the judgment derived the definition of defamation from section 35 (1) of the **Media Services Act, 2016**, meaning that his reasoning for the judgment was based on the same law.

On the cited case of **Waseem Vast** (supra) Mr. Joshua argued that the same is distinguishable from this appeal. In this appeal, clear reference is made to the provisions of the **Media Services Act, 2016**, whereas **Waseem Vast** (supra) makes no reference to the same law.

He added that there is no wording in the legislation that categorically limit the reach of the **Media Services Act** and the rules to matters related

only to media publication. If the legislature had intended otherwise, it would have specifically laid out such distinction.

On the argument that PW1 stated that it was the appellant that reported that the respondents wanted to burn his house and car, the learned advocate reiterated that PW1 clearly stated that he had never met, nor interviewed the appellant. At no point did PW1 state that such a statement was uttered to him. Instead, he said he believed that the appellant was an informant to the OC CID.

That the fact that PW1 was testifying in his official capacity does not bend the rules of evidence, nor does it make him more believable than anyone else, he argued.

He added that the appellant was equally consistent that he had never heard of such a plot and never reported such a matter to the police, and none of the witnesses made any actual connection between the alleged statements and the appellant; no any witness had a first-hand account of the alleged defamatory statement.

That in this case, the very definition of defamation fails; the said defamatory statement was never read out in court. The actual words

allegedly uttered by the appellant and to whom they were uttered were never presented in court, nor were they mentioned in the plaint. No substance or context was presented for testing before the trial court.

On reply regarding the consolidated grounds, the learned advocate reiterated his submission in chief. That the assertion that written statements from the police are only a product of the truth is grossly misdirected. The police force as any other institution can only communicate through writing, otherwise whatever is alleged to be said was never said.

The fact that none of these were presented again raises a negative inference that they never existed, and if they never existed, whatever was allegedly said was never said, he argued.

The learned advocate also argued that the case of **Anthony Wambura** (supra) is distinguished from the facts the present appeal. First, in the cited case there was an admission that a report was made to the police and that there was dispute between the parties preceding the making of the report, while in the appeal at hand there is no evidence of the report being made and the appellant has vigorously denied ever making such a report. Secondly, there is no fact or evidence from which malice may be inferred.

The learned advocate admitted the stance that damages are meant to repair harm suffered, but argued that in this case the damages are not warranted as the judgment itself is based on the wrong principles of the law, as there was no evidence that constitute the actual words allegedly uttered by the appellant.

In relation to special damages, the learned advocate submitted that while the respondents adduced that their businesses suffered and they lost considerable revenue as a result of the alleged defamation, there was no evidence was produced to show that they first of all ran any business, but secondly, to show how the said businesses suffered.

On the argument that the appellant did not challenge the quantum of damages, he reiterated that the whole award and quantum are based on wrong legal principles and the appellant does not hold hands with the award and the amount.

Mr. Joshua concluded by a prayer for this Court to allow the appeal with costs.

Having considered the written submissions for and against the appeal and relevant case records, the issue for determination is whether the appellant defamed the respondents as alleged.

This being a first appeal, this Court is enjoined to re-evaluate the evidence and draw its own inferences of fact or conclusions subject to the usual deference to the trial court's findings based on credibility of witnesses (See **M and M Food Processors Company Limited v. CRDB Bank Limited and Others** (Civil Appeal 273 of 2020) [2023] TZCA 243 among many others).

In addition, taking leaf from **Hamza Byarushengo v. Fulgencia Manya & Others** (Civil Appeal No. 246 of 2018) [2022] TZCA 207, I will also restate that, it is a cherished principle of law that, generally, in civil cases, the burden of proof lies on a party who alleges anything in his favour. The principle is embraced in section 117 of the **Evidence Act**.

It is also common knowledge that in civil proceedings, a party with legal burden also bears the evidential burden and the standard of proof is on the balance of probabilities. Confronted with the similar scenario, the Court of Appeal in the case of Anthony M. Masanga v. Penina (mama Mgesi)

and Another (Civil Appeal No. 118 of 2014) [2015] TZCA 556, cited with approval the case of **Re B** [2008] UKHL 35 where Lord Hoffman in defining the terms balance of probabilities stated thus:

"If a legal rule requires a fact to be proved ... a judge or jury must decide whether or not It happened. There is no room for a finding that it might have happened. The law operates in a binary system in which the only values are 0 and 1. The fact either happened or it did not. If the Tribunal is left in doubt, the doubt is resolved by the rule that one party or other carries the burden of proof. If the party who bears the burden of proof fails to discharge it, a value of 0 is returned and the fact is treated as not having happened. If he does discharge it, a value of 1 is returned to and the fact is treated as having happened."

The Court in **Hamza Byarushengo** (supra) held on that in a nutshell, the standard of proof on balance of probabilities simply means that the Court will sustain such evidence which is more credible than the other on a particular fact to be proved.

Therefore, in determining the appeal at hand, this Court will accordingly be guided by the stated principles.

As I have stated hereinabove, this is a defamation case. As to what defamation entails, this Court in **Tito Peter Mwakyusa v. Juma Abdallah**

Kapikulira (DC Civil Appeal Case 12 of 2019) [2020] TZHC 1735 (Dyansobera, J) referred the case of **Hamis v. Akilimali** (1971) HCD 111 that defines defamation as:

"... communicating to the mind of another, matters which are untrue and likely in the natural cause of things substantively to disparage the reputation of the third person".

In the light of the above in order for a person to succeed in a suit of defamation, he has to prove the following five essential ingredients; *First*, the statement complained of was defamatory. *Second*, the statement was published. *Third*, the statement was false. *Fourth*, the statement was injurious to the appellant's reputation. And *fifth*, the statement was unprivileged.

According to relevant plaint in this case, the respondents alleged as follows:

"... 4. Kwamba, kati ya mwishoni mwa mwezi wa kumi na mwanzoni mwa mwezi wa kumi na moja mwaka 2024, mdaiwa alisambaza taarifa na maelezo ya uongo na yenye kukashifu akiwalaumu na kudai katika kijiji na baadae kutoa taarifa hizo kituo cha polisi Orkesmet – Simanjiro kwamba wadai wamepanga kuchoma nyumba na gari lake na kutaka kumuua. ("Mbedayo wa

familia ya nini na huyo mtoto wa ndugu yake anaitwa Daniel, wanapanga kunichomea nyumba yangu na gari na wanataka kuniua”).

5. *Kwamba, kutokana na madai hayo na taarifa hiyo, **wadaiwa walikamatwa na kuwekwa chini ya kizuizi cha polisi** kwa muda mrefu kabla ya kudhaminiwa na simu zao kushikiliwa na polisi kwa ajili ya upelelezi wa kitaalam kutokana na tuhuma hizo kwa jalada la uchunguzi namba No. P.E 28/2024.*

6. *Kwamba, **wadai walipewa sharti la kufika kila wiki katika kituo cha polisi Orkesmet kutokea Loibosiret** wakati upelelezi ukiendelea toka tarehe ya kukamatwa kwao na kudhaminiwa mpaka upelelezi utakapokamilika.*

7. *Kwamba, baada ya zaidi ya miezi miwili ya upelelezi na uchunguzi wa kitaalam wa simu, wadai waliitwa kwa ajili ya kuchukua simu zao tarehe 20 mwezi wa kwanza 2025 bila mashitaka ya Jinai dhidi yao kama ilivyodaiwa na kutolewa taarifa na mdaiwa kutokana na kwamba hakuna kilichopatikana kinachohusiana na mashtaka ya mdaiwa. (Nakala ya fomu ya polisi ya kurejesha simu baada ya upelelezi, zimeambatanishwa na zimepewa alama MDI kwa pamoja, ruhusa ya mahakama hii imeomba ili ziwe sehemu ya shauri hili) ...”(Emphasis is mine)*

To prove their allegation, the respondents presented five witnesses; H. 5017D/CPL Hashimu (PW1), Robert John (PW2), Lopia Kina Parimero (PW3), the 1st respondent who testified as PW4 and the 2nd respondent who testified as PW5.

According to the trial court proceedings, PW1, in verbatim, testified that:

*"... On the 04th November 2024, I was at Orkesmet police station in the offices of the investigation department, an investigation file was opened by the OC CID of Simanjoro one ASP Hosea Simon Mwaipopo, the case file was in regard of Mbedayo Nini and Daniel Pakas Laizer, the case file was registered with reference no. OKT/PE/28/2024. **The complainant is the OC CID** but after receiving complaints from Kimay Saruni. According to the Complaint from Kimay Saruni is that he has received credible information that there are people who are conspiring to burn his car and murder him. But he never mentioned the person who gave him this information. And the conspiracy was engineered by phone communication by six people to wit; Mbedayo Nini, Daniel Pakas Laizer, one Lahrua, Taiko Kurunjo, Meegi Julius and Yakobo Payana. And these persons did conspiracy to burn and murder him under the leadership of Mbedayoo Nini. So, after receiving this information, the OC CID did then open an investigation file with reference no. OKT/PE/28/2024.*

*On the 06th November 2024, at around 0800hrs at Orkesmet police station, Mbedayo Nini and Daniel Paskal lazier **did arrive at the police station after receiving a call** from the OSC of Orkesmet one SSP Christina Mkonongo, and there arrival they were interrogated and I was the one who interrogated them, and during the interrogation I did inquire about the conspiracy of them burning*

the car and trying to commit murder of one Kimay Saron, and since the complaint was in regard to their phones we decided to seize their phones for further investigation. So, after seizing the phones, we did send the phones for forensic analysis at Dar es salaam to see if there claims were credible that the suspect intended to commit murder and arson ... The forensic started from November 2024 up to January 2025, and after the return of the phones as well as the report it was discovered that there were no information or contact of the suspect to conspire to commit murder or touching a vehicle. So after the investigation came to a halt we decided to call the suspects and return their phones back ... So in my investigation I did discover that there was no conspiracy to commit any offence and I since I was the investigator, I did return the case file to the OC CID for his actions.”
(Emphasis is mine.)

I will come back to the bolded phrases in due course.

Adduced evidence also shows PW2 escorted the 1st respondent (PW4) to Orkesmet Police Station on 4th November, 2024. PW2, with no mention on when the interrogation commenced, testified that the 1st respondent was interrogated up to 1800hrs. That he also bailed out the 1st respondent. PW2, who also sells soft drinks and other things, further testified that on 7th November, 2024 some people at his place of business told him that they have heard from other people that Mbedayo is accused by conspiring to

murder Kimay and commit arson on his car and house. According to PW2, the community did despise the respondents and they lost faith in them as persons not to be trusted, because when the respondents went at his place of business, other customers would leave and they would despise them as people who wanted to murder Kimay.

During cross examination, PW2 adduced that:

"... Kimay has never uttered that the plaintiff wanted to kill, but also I have never heard that there is any written publication. Those people who were speaking about Mbedayo try to kill Kimay I can't remember them. No one has ever come forward and told me they don't trust Mbedayo Nin and Daniel Paskal. People were talking about losing confidence in Mbedayo and Daniel."

On his part, PW3 adduced that on 1st November, 2024 while on the way to a Leigwanan meeting, he met the appellant. That PW3 informed the appellant on the meeting and immediately the appellant took out his phone and called the OC CID of Simanjiro, informing the OC CID of the meeting with the Leigwanan, and that the persons; Daniel Pakas and Mbedayo Nini, who did try to kill him and burn his car did concoct a meeting and so the OC CID should come to stop the meeting.

PW3 further adduced that when the appellant finished with the phone call they left and went to the meeting. When the meeting had started, a ward police officer arrived and instructed the Leigwanan to end the meeting. He further adduced, in verbatim, that:

"... I knew Kimay did call the OCD as the OCD is the police officer. When he called the OCD, I was present and I heard him call the OCD and I too also has the OCD's number on my phone. He was not talking about me but he did mention the plaintiffs ... Kimay never told me he was speaking with the OCD but I heard him talk with the OCD ... Mbedayo told me he is summoned to the police on accusation that he wanted to kill a person and burn his car, but the accusation was false as no one was killed nor a car burnt. People got threatened on the rumors that Mbedayo did try to kil Kimay. I know Kimay did spread the rumors after he called the OCD and requested the Laigwanan meeting be cancelled as well as he told the OCD that Mbedayo and Daniel tried to kill him. Kimay was the one who spread the information after calling the OCD ... Mbedayo and Daniel never tried to burn or kill anyone. The society is afraid of the plaintiff on the accusation that they tried to burn and kill the defendant."

The evidence of PW4 and PW5 is a replica of what is contained in the
plaint.

Looking at the pleadings and adduced evidence, and putting defamation ingredients in the context of the case at hand, this Court asked itself; is the statement complained of defamatory? According to all five prosecution witnesses, the appellant reported to OC CID that the respondents, and other four people, are planning to kill him and burn his car. The appellant denied this. The respondents were unable to substantiate this allegation by failing to produce to the trial court the statement made to the police by the appellant. In the context of **M/S Impressa Engen Fortunato Federici S.P.A v. Pius N. Mosha** (Civil Appeal No. 22 of 1997) [1997] TZHC 495 (N. M. Mushi, J) this evidence was crucial as far as the respondents' case was concerned. There were no reasons as to why such evidence was not made available.

Let's assume the appellant did report the matter to police, does it amount to "publishing" the matter? where does this allegation of defamation comes from? According to PW1 (see the proceedings extract hereinabove), the respondents were phone - called and required to report to the police station; they were not arrested. PW1 also testified that relevant investigation was conducted in collaboration between Orkesmet Police Station and forensic unit in Dar es Salaam. Evidence also shows that when the allegations

were found to be untrue, the respondents were again called to Orkesmet Police Station and their phones were returned to them.

On the other hand, PW2 adduced that people were speaking at his place of business but in cross examination he indirectly shunned away from his testimony. PW3 adduced that when he was together with the appellant on the road the appellant called the OC CID and reported the respondents, but in cross examination he changed the version and claimed that the appellant was the one who spread the information after calling the OC CID, but PW3 did not clarify as to whom were these rumors spread to. So, who published the "defamatory statement" and where?

Looking at the adduced evidence on record, be it as it may, it is my considered opinion that a citizen was reporting a matter to police in fear of his life and property. The police is duty bound to protect people and their properties. I would also say police operation depend on information accrued in various ways/sources including information from the people; sources which are in most cases not revealed. That is why even in the case at hand, in police case file and according to PW1, the complainant was written as the OC CID and not the one who allegedly informed the OC CID (see the proceedings extract hereinabove).

In totality therefore the action for defamation was completely unfounded and had the learned trial magistrate properly directed his mind to the evidence, he would have dismissed the claims.

The above said and done, I find merit in this appeal and allow it. In consequence whereof, I quash the judgment of the trial court and set aside the decree entered in favour of the respondents. The appellant shall have his costs.

It is so ordered.

DATED at **BABATI** this 17th day of February, 2026.



N. J. MWIHAMBI

JUDGE

Right of appeal explained.

COURT: Judgment delivered today in presence of the appellant and his advocate; Mr. Lauriano Mwalongo holding brief for Mr. Gift Joshua, and the respondents and their advocate Mr. Godfrey Mlingi. B/C: Ms. Anna Mathayo (RMA) is present.

Nene

N. J. MWIHAMBI

JUDGE