



IN THE COURT OF APPEAL OF TANZANIA

AT MBEYA

(CORAM: MKUYE, J.A., FELESHI, J.A. And NANGELA, J.A.)

CIVIL APPEAL NO. 431 OF 2023

ERASTUS MTUI..... APPELLANT

VERSUS

COCACOLA KWANZA LIMITED..... 1STRESPONDENT

COCACOLA BEVERAGES AFRICA 2NDRESPONDENT

THE EXECUTIVE EDITOR MWANANCHI NEWSPAPER 3RDRESPONDENT

THE EXECUTIVE EDITOR THE CITIZEN NEWSPAPER.....4THRESPONDENT

MWANANCHI COMMUNICATION LIMITED.....5THRESPONDENT

**(Appeal from the Judgment and Decree of the High Court of Tanzania
at Dar-es Salaam)**

(Ismail, J.)

Dated the 14th day of February, 2023

in

Petition No. 247 of 2022

JUDGMENT OF THE COURT

27th April & 3rd June, 2026

NANGELA, J.A.:

VINCENT MTUI, the appellant herein, was formerly an employee of the first respondent. He was initially engaged as a Finance Manager on 10/09/2011 and later rose to the position of Finance Director. However, by a letter dated 08/04/2021, the first respondent terminated his employment, and, with effect from 09/04/2021, he ceased to be an employee of the first respondent.

The events that followed his termination form the subject of this appeal. A brief contextual background is therefore necessary.

On 12/05/2021, two sister daily newspapers, namely *Mwananchi* (published in Kiswahili) and *The Citizen* (published in English), carried public notices bearing the appellant's name and photograph under the respective captions "*Taarifa Kwa Umma*" and "*Public Notice*". The newspapers are owned by the fifth respondent and fall under the editorial and publication management and supervision of the third and fourth respondents. The notices were published at the instance and upon the instructions of the first and second respondents. The same notices were also disseminated through the fifth respondent's online platforms.

For convenience, both versions of the notices are reproduced below. First, the Kiswahili version published on page 6 of the 12/05/2021 edition of *Mwananchi* reads as follows:

"TAARIFA KWA UMMA"

(Photograph & Name)

*"Kampuni ya Coca-cola Kwanza Ltd inapenda kuujulisha Umma, washirika wa kibiashara na wateja wake kuwa **Erastus Mtui**, kama anavyoonekana hapo kwenye picha alikuwa mfanyakazi wa Coca-cola Kwanza mpaka tarehe*

08 Aprili, 2021. Tangu tarehe 09 Aprili 2021, mtajwa hapo juu sio mfanyakazi wa Coca-cola Kwanza tena. Kampuni haitahusika kwa namna yeyote katika biashara au makubaliano yoyote yatakayofanywa na mtajwa hapo. Tunatoa rai kwa umma kuchukua tahadhari ili kuepusha usumbufu unaoweza kujitokeza."

The English version of the above, may read as follows:

"PUBLIC NOTICE"

*Coca-Cola Kwanza Ltd wishes to inform the public, its business partners, and its customers that **Erastus Mtui**, as shown in the picture, was an employee of Coca-Cola Kwanza until April 8, 2021. From April 9, 2021, the above-mentioned individual is no longer an employee of Coca-Cola Kwanza. The company will not be responsible in any way for any business or agreements that may be conducted by the named individual. We urge the public to take caution in order to avoid any inconvenience that may arise."*

On the other hand, the notice published in English-language edition of *The Citizen* on 12/05/2021 appeared on page 3. It similarly featured the appellant's photograph beneath its captioned title and read as follows:

"PUBLIC NOTICE"

(Photograph & Name)

*"Coca-Cola Kwanza Ltd would like to inform the public, our customers and stakeholders, that effective from **09th April, 2021, Erastus Mtui** is no longer an employee of Coca-Cola Kwanza and is not authorized to transact any business on behalf of the company. Accordingly, the company will not accept any liability for transactions made with him from hence forth."*

The appellant, being aggrieved by the two advertisements, filed Petition No. 247 of 2022 before the High Court of Tanzania (the trial court) against all the respondents herein. He alleged that the notices, published in both print and online media, were defamatory and had injured his reputation. He contended that the inclusion of his photograph, name, and the contents of the notices portrayed him as an unreliable person capable of engaging in fraudulent transactions in the name of the first and second respondents, notwithstanding that he had ceased to be their employee as of 09/04/2021. He further asserted that the notices were read and understood by members of the public in that manner.

It was the appellant's assertion that, as a result of the two advertisements made 33 days after his termination, his personal and professional reputation was exposed to public ridicule among right-

thinking members of society, his business opportunities were cancelled, and his family members suffered psychological distress.

In light of the foregoing, the appellant sought the following reliefs:

(a) a declaration that the respondents authored, published, and disseminated defamatory material about the appellant in both print and online media; (b) an order directing the respondents to issue an apology with equal prominence to the impugned publication; (c) a permanent injunction restraining the respondents, their employees, agents, and associates from further defamatory publications; (d) an order compelling the permanent removal of all defamatory content from online platforms, including social media and websites; (e) special damages amounting to TZS 16,465,050,000.00; (f) punitive damages of TZS 10,000,000,000.00; (g) general damages to be assessed by the court, but not less than TZS 15,000,000,000.00; (h) a written apology addressed to the appellant; (i) publication of an apology, including the appellant's photograph, in *Mwananchi* and *The Citizen* newspapers and their online platforms; and (j) such other reliefs as the court may deem just.

In their responses to the petition, the respondents acknowledged publishing the notices but strongly denied that they were defamatory. They maintained that the contents accurately reflected the factual status of the employment relationship between the appellant and the first and

second respondents as of 09/04/2021. Furthermore, they asserted that the publications were made honestly, fairly, and in good faith, with the sole intention of informing stakeholders and the general public that the appellant was no longer in a working relationship with the first respondent, having previously held the positions of Country Public Affairs and Communications Manager and later Director of Finance.

The respondents further averred that the publications were clear and direct in their content and, whether expressly or by implication, did not suggest any criminal conduct or fraud on the part of the appellant. They contended that no reasonable member of society would interpret the statements as implying that the appellant was untrustworthy. Regarding the online comments posted by readers of the fifth respondent, the third, fourth, and fifth respondents jointly asserted that the public notice included a disclaimer stating that such comments were solely the views of the readers.

In conclusion, the respondents sought dismissal of the petition in its entirety, with costs.

At the hearing of the petition, the trial court, with the consent of the parties, formulated three issues for determination. The issues formulated were as follows:

- 1. Whether the words complained of did bear or were capable of bearing the meaning of defamation against the appellant.*
- 2. Whether the publication caused damage to the appellant and to what extent.*
- 3. What relief are the parties entitled to?*

To prove his claims, the appellant called six witnesses, including himself. These were: Erastus Mtui (PW1), Daniel Samwenda (PW2), Jacob Philip Ndaaga (PW3), Prosper Stanslaus Mtui (PW4), John Gracian Kaiza (PW5), and Peter Lucas (PW6). In addition, he relied on thirteen documentary exhibits.

According to the record of appeal, PW1 testified regarding his previous employment with several reputable companies, his professional standing as a Certified Public Accountant (CPA) and a Tanzania Association of Accountants (TAA) resource person, his authorship of books available on the Amazon platform, and his membership in the governing council of the CTI, where he served as Vice Chairperson from 2013 to 2021. He stated that these credentials made him widely known and respected both within and outside the country.

He further testified that the respondents' publications, appearing in newspapers and tendered as exhibits P1 and P2, as well as online

publications (printouts admitted as exhibit P3), were made 33 days after his termination by the first respondent. The publications, he stated, portrayed him as an extortionist, a masquerader, and a falsifier of documents for financial gain, and cautioned the public against transacting with him. He added that his photograph formed a conspicuous part of both the print and online publications, which attracted public comments reflecting readers' perceptions, and that his family was adversely affected.

PW1 further testified that, following the publications, his consultancy contracts and ongoing business negotiations with a foreign company were terminated, resulting in alleged losses of USD 7,000,000.00 and TZS 365,050,000.00. He tendered a letter dated 14/04/2022 and an email dated 09/05/2021, which were admitted as exhibits P4 and P5.

The record further shows that PW1 tendered several additional documents, including a request for expert opinion from RNR Business Solutions on the publications (exhibit P7), RNR's expert opinion together with a tax invoice of TZS 3,000,000.00., (exhibits P8 and P9 respectively), assorted email communications (collectively exhibit P10), a tax invoice of TZS 1,700,000.00., dated 28/05/2021 from Christom Solutions engaged to provide counselling services to the appellant's father (exhibit P11), a letter issued to one Evance Mlekwa, a former employee of the first

respondent, dated 08/02/2013 upon termination which was not publicised (exhibit P12), and an application for withdrawal of NSSF benefits by John Kaiza, a former public affairs and communications officer of the first respondent following his dismissal, which was also not publicised (exhibit P13).

PW1's testimony was corroborated by PW2, who, relying on exhibits P4 and P6, confirmed that his UK-based company had engaged in business negotiations with the appellant. He testified that following the publications on Twitter, the company's management terminated the discussions despite prior board approval and ongoing contractual preparations. Under cross-examination, however, PW2 conceded that he had no evidence that the company had committed to pay the appellant USD 7,000,000.00.

PW3 and PW5, both former employees of the first respondent, associated themselves with exhibits P10 and P13 respectively and confirmed awareness of the publications in exhibit P1. PW3 also referred to exhibit P3. They testified that exhibit P1 conveyed a message likely to raise suspicion. PW5 added that no public notice had been issued in respect of his own termination. PW3 further testified that the employer's disclaimer of responsibility for the appellant's transactions suggested wrongdoing. Although he conceded under cross-examination that neither

the first nor second respondents made online comments, he maintained that subsequent public reactions created an impression of dishonesty.

PW4 testified on the reaction of the appellant's family to the publications featuring the appellant's photograph, stating that the warning against engaging with the appellant led them to believe he had engaged in serious wrongdoing, which adversely affected the health of the appellant's father.

PW6, an accountant, former President of TAA, and CPA trainer, described the appellant as a respected professional and trainer. He nevertheless testified that after reviewing the publication in exhibit P1, the appellant was removed from the list of TAA trainers due to concerns relating to integrity.

On the other hand, the respondents called two witnesses and tendered five documentary exhibits. The witnesses were Ms. Scholastica Augustine (DW1), testifying on behalf of the first and second respondents, and Mr. Haidary Hakam (DW2), testifying for the third, fourth, and fifth respondents.

DW1 testified that the appellant was a former employee who had held senior positions, including Public Affairs Manager and Finance Director, and had briefly acted as Managing Director. She confirmed his termination and produced letters of appointment and termination

(exhibits D1 and D2). She further testified that the publications in exhibits P1 and P2 were issued after the appellant's dismissal as part of standard company practice, as illustrated by prior examples (exhibits D3 and D4). She maintained that the publications were factual, did not disclose reasons for termination, and were unrelated to any personal matters, though she conceded that they were issued 33 days after termination.

DW2 similarly testified that there was no evidence of wrongdoing on the part of the respondents and confirmed the existence of an indemnity clause, which he described as routine. He stated that the publications were intended to inform the public, were truthful, and not defamatory. He produced the company communication policy (exhibit D5), explaining that such publications depend on an employee's position and public engagement. He accepted responsibility for issuing the notices but not for third-party comments on social media, noting that such comments could be moderated but were not removed. He maintained that the publications were accurate, issued within a reasonable time, and aimed at preventing public inconvenience, denying any defamatory intent.

Having heard the witnesses of both parties and examined the documentary exhibits tendered in evidence, the trial court analysed the same and concluded that the impugned publications were not defamatory. Consequently, the appellant's suit was dismissed with costs.

Being dissatisfied with that decision, the appellant has preferred this appeal to this Court. Initially, the memorandum of appeal raised eight grounds. However, at the hearing, learned counsel for the appellant abandoned grounds 1, 3, and 7. The remaining grounds, namely 2, 4, 5, 6, and 8, may therefore be conveniently rephrased and restructured as follows:

1. *That the trial court erred in law and in fact by misdirecting itself on, ignoring, and misapplying the law of defamation as provided under the Media Services Act, 2016 and its Regulations.*
2. *That the trial court erred in law and in fact by failing to properly analyze the evidence on record in order to determine the issues it had framed.*
3. *That the trial court erred in law and in fact by arriving at contradictory findings and conclusions, thereby rendering a judgment and decree in favour of the Respondents.*
4. *That the trial court erred in law by relying on weak and insufficient evidence presented by the Respondents to enter judgment in their favour, despite the existence of material facts and admissions evidencing publication of libel against the Appellant.*
5. *That the trial court erred in law by entering a decree in favour of the Respondents and awarding costs to them.*

In essence, the five grounds of appeal may be distilled into three major areas of concern with key issues to determine:

First, is the misapplication of the law. This concern arises from the first ground of appeal. The issue for determination is whether the trial court misdirected itself by misinterpreting, ignoring or misapplying the statutory provisions and governing principles of defamation under the Media Services Act, 2016 and its Regulations, thereby arriving at the erroneous conclusion that the impugned notices were not defamatory.

Second, is the failure to evaluate the evidence; this being a concern that combines the second and fourth grounds of appeal. The issue here is whether the trial court failed to properly analyse, weigh, and reconcile the evidence on record, including material facts and admissions, and whether its conclusions were unsupported by the evidentiary record.

Third, is the validity and consistency of the judgment; this being a concern arising from the third and fifth grounds of appeal. The issue is whether the judgment is vitiated by internal inconsistencies or contradictory findings, and whether the court erred in entering judgment (including costs) in favour of the respondents despite insufficient or weak supporting evidence.

At the hearing of the appeal, Messrs. Mohammed Tibanyendera and Jeremia Mtobesya, learned counsel, appeared for the appellant. Messrs.

Alex Gaithan Mgongolwa and Kennedy Mgongolwa, learned counsel, represented the first and second respondents, while Mr. Emmanuel Nkoma appeared for the third, fourth, and fifth respondents. All counsel filed written submissions in compliance with rule 106 of the Tanzania Court of Appeal Rules, 2009 (“the Rules”) and made oral clarifications thereof. We have duly considered both their written submissions and oral clarifications in determining this appeal.

Before embarking on the analysis of the issues outlined above, we bear in mind that this is a first appeal. The settled principle is that a first appeal proceeds by way of rehearing, and this Court is entitled to subject the entire evidence on record to a fresh and exhaustive evaluation to determine whether or not it supports the findings and conclusions of the trial court. See: **Registered Trustees of Joy in the Harvest v. Hamza K. Sungura** [2021] TZCA 139, citing **Standard Chartered Bank Tanzania Limited v. National Oil Tanzania Limited & Another** [2013] TZCA 228, which in turn relied on **Peters v. Sunday Post** [1958] E.A. 424, **William Diamonds Limited and Another v. R** [1970] E.A. 1, and **Okeno v. R** [1972] E.A. 32.

Guided by that principle, we begin with the first issue—whether the trial court misdirected itself by misinterpreting, ignoring or misapplying the statutory provisions and legal principles governing defamation under

the Media Services Act, 2016 and its Regulations, thereby concluding that the impugned notices were not defamatory.

In their written submissions and oral clarifications, Messrs Tibanyendera and Mtobesya answered this issue in the affirmative. They contended that the trial court applied the common law definition of defamation instead of the statutory definition under section 35 (1) of the Media Services Act, 2016 [Cap. 229 R.E. 2023] ("the Act"), notwithstanding that the court had itself cited that provision. They further argued that the trial court misinterpreted section 36 of the Act when, at page 704 of the record of appeal, it stated that the applicable test is:

"...mainly whether the alleged defamatory imputation injures the reputation of the person to whom it refers or lowers his estimation in the eyes of right-thinking members of society, and is capable of exposing him to hatred, contempt or ridicule."

Counsel criticised the court's reliance on **Meneja Mkuu Zanzi Resort Hotel v. Ali Said Paramana** [2020] TZCA 1920, contending that it is no longer good law, as well as its reliance on **Sim v. Stretch** [1936] 2 All ER 1237 on the test for defamation. In their view, the impugned publications were plainly defamatory, and the trial court ought to have so held.

For their part, Messrs Mgongolwa and Nkoma maintained that the trial court correctly applied the law. Mr. Mgongolwa argued that sections 35, 36, and 37 of the Act must be read holistically in determining liability. He submitted that, even if the publications were defamatory within the meaning of sections 35 and 36, they would not be unlawful if they were true and made for the public benefit. Relying on the testimonies of PW1, PW2, DW1, and DW2, he contended that the publications were factually accurate and justified, as they served to inform the public, stakeholders, and clients of the appellant's departure from the first respondent's employment, given his prior role in her business.

Essentially, what constitutes "defamatory matter" in our jurisdiction is defined under section 35 (1) of the Act, which provides that:

"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, is a defamatory matter."

In **Mwananchi Communications Limited v. Richard Mgamba & Another** [2025] TZCA 904, the Court, citing its earlier decision in **Felix Gamaliel Mosha v. Director, Citizen Newspaper & Another** [2024] TZCA 460, observed that:

*"The above definition encapsulates the common law definition of defamation as quoted from the learned authors Edwin Peel and James Goudkamp in **Winfield and Jolowicz on Tort**, 19th Edition, Sweet & Maxwell, London, 2014, in Para. 13-002 thus: "It has been said that a statement is defamatory if it tends to bring a person into 'hatred, contempt or ridicule'. Another frequently quoted test is that the words must tend to lower the claimant in the estimation of right-thinking members of society generally. But to these definitions it is necessary to at least add that words may be defamatory if they tend to cause the claimant to be shunned or avoided...."*

The Court further observed that previously it had endorsed, with approval, a similar definition drawn from *Halsbury's Laws of England*, Vol. 28 (4th Edition), in **Hamza Byarushengo v. Fulgencia Manya & 4 Others** [2022] TZCA 207. See also; **Meneja Mkuu Zanzi Resort Hotel** (*supra*). With respect to the latter authority, we are unable to accept the appellant's counsel's contention that it is no longer good law. Nor do we agree with the submission that the trial court erred in referring to the common law definition of the tort of defamation.

We take this view because, in **Mwananchi Communications Limited** (*supra*), the Court made it clear that section 35(1) of the Act

codifies the classical common law definition of defamation. In substance, the language of section 35 (1) closely mirrors traditional formulations found in English common law (see, for example, **Sim v. Stretch** (*supra*)), where defamation consists of statements that tend to: (a) lower a person in the estimation of right-thinking members of society; (b) expose a person to hatred, contempt, or ridicule; or (c) injure a person in his or her profession or trade.

The only significant point of departure from the common law orthodoxy, if it may be so described, lies in subsections (2) and (3) of section 35, which extend the scope of defamation to include statements concerning deceased persons—a position not traditionally recognised at common law.

From the foregoing, it cannot be said that the learned trial judge misdirected himself, misinterpreted or disregarded the statutory provisions and governing principles of defamation under the Act, as contended by the appellant's counsel. The record of appeal (at pages 702–704) clearly demonstrates that the trial judge properly directed his mind to the applicable law concerning what constitutes defamatory matter. His reference to common law principles was entirely appropriate, particularly given that section 35 (1) codifies that very position, as

supported by the authorities cited above, including **Mwananchi Communications Limited** (*supra*).

Besides, it cannot as well be maintained that the trial court misinterpreted the law. A misinterpretation of the law arises where a court assigns an incorrect meaning to the law itself. That was not the case here. Accordingly, in so far as the first issue — arising from the first ground of appeal — is concerned, and to the extent discussed above, we resolve it in the negative. Its corresponding ground of appeal is therefore unmeritorious.

The more pertinent issue, however, is whether the trial court misapplied the law to the facts on record, as alleged by the appellant's counsel. Misapplication is different from misinterpretation of the law. Misapplication occurs where a court correctly states the law but applies it erroneously to the facts and evidence, thereby arriving at an erroneous conclusion.

In the present appeal, the second and fourth grounds (as rephrased) challenge both the application of the law and the evaluation of the evidence. In our view, these issues are inextricably linked and may properly be considered together. A failure to properly evaluate the evidence inevitably leads to a misapplication of the law to those facts, and consequently, to an erroneous conclusion.

As we alluded to here above, the second issue for determination combines the second and fourth rephrased grounds of appeal. The common thread between them concerns the manner in which the trial court treated the evidence on record in light of the provisions of the law. The question is whether the court properly analysed, weighed and reconciled that evidence, including material facts and admissions, and whether its conclusions were supported by the evidentiary record.

In their submissions, learned counsel for the appellant forcefully argued that the trial court failed to properly evaluate the evidence before it. They contended that, despite the absence of valid defences on the part of the respondents and the existence of evidence demonstrating reputational harm — both directly and through public reaction — the trial judge misapplied the law and disregarded material evidence, thereby arriving at an erroneous decision.

Conversely, learned counsel for the first, second, third, fourth, and fifth respondents maintained that the trial court correctly applied the law to the facts and evidence. They argued that the impugned publications were factually accurate, neutral, and purely informational, communicating the termination of employment without imputing wrongdoing.

It is, however, important to note that in **Mwananchi Communications Limited** (*supra*), the Court emphasised that the

defamatory meaning of a statement is distinct from its truthfulness. In other words, a statement may be defamatory based on the harmful meaning it conveys about a person's reputation, regardless of whether it is true or false. Truth is treated separately as a defence, rather than as part of the inquiry into defamatory meaning.

The proper approach, therefore, is to first examine the content of the statement against the legal elements of defamation. At this stage, the question of truth is irrelevant; the court is concerned solely with the effect of the statement on the claimant's reputation. This position was reaffirmed in **Mwananchi Communications Limited** (*supra*), citing its earlier decision in **Felix Gamaliel Mosha** (*supra*).

Significantly, the Court in that case relied on section 36 of the Act which, for the purpose of determining whether a publication is libellous, provides in subsections (2) and (3) as follows:

*36 (2) It shall not be necessary for defamation that the defamatory meaning is **directly** or **completely expressed**.*

*36 (3) For the purpose of subsection (2), it shall be sufficient that **such meaning and its application to the person alleged to be defamed may be collected either from the alleged libel itself or from any extrinsic circumstances or partly from the one and***

partly from the other means. [Emphasis added].

As the above-quoted sub-sections indicate, the starting point of the analysis is either the impugned publication itself (*ex facie*), the surrounding extrinsic circumstances, or both. With respect to the second limb of sub-section (3), a statement may not be defamatory on its face, yet may assume a defamatory meaning when read in light of external or surrounding facts known to its audience.

In the present appeal, the appellant's complaint is that exhibits P1, P2, and P3 were defamatory. That forms our point of departure. Exhibit P1 was a Kiswahili public notice issued and published by the respondents in the *Mwananchi* newspaper. The notice featured a coloured photograph of the appellant and informed the public that he had been their employee up to 08/04/2021, and that with effect from 09/04/2021, he was no longer in their employment. No reasons were disclosed for the termination of his relationship with the first and second respondents.

However, the publication did not end there. It further stated that the first and second respondents:

*"Will not be responsible in any way for any business or agreements that may be conducted by the named individual. We urge the public **to take***

caution in order to avoid any inconvenience that may arise.”[Emphasis added]

The question that arises is: what would a reasonable, fair-minded reader understand this statement to mean in its natural and ordinary sense? Although, viewed as a whole, the publication may appear to be a disclaimer, a reasonable reader would likely infer an implied meaning extending beyond its literal wording. The testimonies of PW2, PW3, PW4, and PW5, as reflected in the record of appeal, illustrate their natural reactions upon encountering the impugned publication; each adopted a negative view of the appellant.

In the absence of any disclosed or substantiated misconduct, the inclusion of the appellant’s photograph and the cautionary tone of the notice crossed into the realm of reputational harm. Lacking a factual basis, such caution creates a strong suspicion that the appellant is untrustworthy in business dealings or may act improperly. The inevitable conclusion is that exhibit P1 was defamatory, and the trial court ought to have so found.

Turning to exhibit P2, this was an English version of the public notice. Unlike exhibit P1, it did not contain an explicit cautionary tone. On its face, it merely informed the public that the appellant was no longer in the service of the first and second respondents and included a disclaimer that they would not be responsible for any transactions he might undertake

thereafter. However, even this disclaimer is problematic. Ordinarily, it is understood that once an employment relationship ends, the former employee no longer has authority to transact on behalf of the former employer.

In our view, had the publication been limited to informing the public that, as of 09/04/2021, the appellant had ceased to be in the respondents' employment, it would have been unobjectionable. However, the inclusion of his photograph, coupled with the additional statements disclaiming responsibility and emphasizing lack of authority 33 days after the first respondent had terminated the appellant from his employment, gave rise to unwarranted suspicion regarding his character and trustworthiness. In the absence of any justification, these statements constituted unnecessary embellishments. Their combined effect, particularly when reinforced by the publication of the appellant's photograph, portrayed him in a negative light and were therefore defamatory.

We would add that the appellant's photograph, being personal data, ought not to have been used in the publication without his consent, even if it was previously in the respondents' possession. The circumstances under which the photograph was originally obtained had materially changed.

Next is exhibit P3. This exhibit consists of social media comments made in response to the online publication of the same notices on the fifth respondent's platform. Although Mr. Nkoma denied control over these third-party comments, it is evident that they reflected negatively on the appellant. Indeed, the trial court acknowledged this at page 705 of the record of appeal, observing:

"These comments were manifestly adverse and reflected badly on the petitioner. It follows that his reaction is understandable and quite expected."

In our view, while the question of control over third-party comments may be relevant, the comments themselves have evidentiary value when considered alongside the impugned publications and the provisions of section 35 (1) of the Act. In essence, they demonstrate how members of the public interpreted the notices, thereby reinforcing the conclusion that the publications were defamatory. They also constitute evidence of public ridicule, suspicion, and loss of trust.

Finally, we turn to the question of justification. In his written submissions and oral arguments, Mr. Mgongolwa contended that the publications were justified on the grounds of truth and public benefit. Relying on section 37 (a) of the Act, he argued that truth and public benefit constitute complete defences to defamation, even where the

statements are defamatory. He maintained that the publications were factually accurate, neutral, and purely informational — communicating the termination of employment without imputing wrongdoing — and that no malice could be inferred, as no reasons for termination were disclosed.

At common law, “truth,” also referred to as “justification,” constitutes a defence, and this position is reflected in section 37 (a) of the Act. Similarly, a statement made for the public benefit may be excused. In **Mwananchi Communications Limited** (*supra*), the Court firmly held that:

*"The burden of proof in a defamation action is on the defendant to establish the defence of truth on a preponderance of probabilities. Nevertheless, it is crucial to bear in mind that the law requires the defendant to prove that the defamatory imputations in the publication in question are essentially accurate. In Para. 13-044 of **Winfield and Jolowicz on Tort** (*supra*), the authors assert that, in fulfilling his burden of proof: '[t]he defendant need not show that the statement is precisely true in every particular: **what matters is whether it is substantially true and It has been said that journalists 'need to be permitted a degree of exaggeration even in the context of factual assertions'**. Subject to*

that, it is a general principle that the defence must be as broad as the charge, and must cover the precise charge." [Emphasis added].

In their submissions, learned counsel for the appellant contended that the first and second respondents did not tender any evidence to demonstrate how the appellant could have entered into business arrangements with members of the public in their name. They argued that, according to the testimonies of DW1 and DW2, once the appellant was terminated, he was denied all access.

They further submitted that, as testified by DW2, the only way the appellant could have transacted in the name of the first and second respondents was through dishonest conduct. However, they maintained that no evidence of such dishonesty was ever placed before the trial court to justify the cautionary tone and disclaimers contained in exhibit P1 and P2. They also argued that, following the enactment of the Act, the only available defences to defamation are those provided under section 37(a) of the Act.

We consider it necessary to state that, while section 37 (a) of the Act provides for the defences of truth (justification) and public benefit, this does not mean that these are the only defences recognised in defamation law. As noted earlier, the Act codifies certain protections and

responsibilities for media houses and practitioners, emphasising that a publication may be defensible if it is true and published for the public benefit. However, this does not mean that the Act has completely replaced or abolished the broader common law of defamation. Other common law defences, such as fair comment and privilege, remain recognised by courts in Tanzania, as in other common law jurisdictions. The appellant's counsel's assertion that such defences have been excluded or rendered inapplicable is therefore untenable.

In the present appeal, the question arises whether the publications were made in line with section 37 (a) of the Act. As this Court observed in **Mwananchi Communications Limited** (*supra*), the defence of truth must be considered in conjunction with public benefit. That being so, were the publications wholly or substantially accurate? "Substantial accuracy" (or "substantial truth") refers to a publication that is accurate in its essential or material respects, even if minor details are incorrect.

As stated earlier, although exhibits P1 and P2 informed the public of the appellant's termination—which was factually correct—there was no justification for the inclusion of his photograph or for the cautionary tone accompanied by a disclaimer of liability. As correctly argued by counsel for the appellant, the respondents did not adduce any evidence to show

that, after his termination, the appellant continued to transact with members of the public, clients, or stakeholders in their name.

In our assessment, therefore, the inclusion of the appellant's photograph, the cautionary tone and accompanying disclaimer, following the notification that the appellant had ceased to be an employee of the respondents, served no public benefit. Had there been evidence of dishonest dealings after the appellant's termination, the position would have been different, as the publication would then have served the public interest by warning members of the public. See **Mwananchi Communications Ltd** (*supra*) (citing **National Media Ltd v. Bogoshi** [1998] 4 SA 1195).

From the foregoing, we find that, had the trial court properly evaluated the evidence and applied the law to the facts, it would have reached a different conclusion regarding the nature and implications of the publications. In our view, after noting that the comments were manifestly adverse and reflected badly on the appellant, its conclusion that the publications were not defamatory reflects a misapplication of the law to the facts and is not supported by the evidence on record.

Similarly, the finding that the appellant's "*consternation on the public notice issued to communicate the first respondent's parting ways with*

him" is at best an amalgam of hot air that cannot be disguised with anything" was unjustified.

In the circumstances, the second issue — covering the second and fourth rephrased grounds of appeal — is answered in the affirmative, and those grounds are upheld.

The final point concerns the validity and consistency of the judgment. As noted earlier, this issue encompasses the third and fifth rephrased grounds of appeal, namely:

"whether the judgment is undermined by internal inconsistencies or contradictory findings, and whether the court erred in entering judgment, including as to costs, in favour of the respondents despite insufficient supporting evidence".

In our view, little need be said on these grounds. A reading of the trial court's decision reveals internal inconsistencies and contradictions. For example, at page 704 of the record of appeal, the court observed as follows:

"While the petitioner appears to be extremely perturbed or flabbergasted by the issuance of the notices, his serious outrage is heightened by the comments that followed the publications. These comments were manifestly adverse and reflected

badly on the petitioner. It follows that his reaction is understandable and quite expected."

Further, on page 705 of the record of appeal, the trial court observed as follows:

"In the instant case, most of the reactions were an insinuation that the petitioner's termination may have been a result of the latter's fleeing of the 1st respondent's resources. ... This was the feeling that PW3 and PW5 shares as well. They both held a feeling that the petitioner had been involved in a criminal indulgence."

In our view, these observations—particularly the fact that a substantial portion of the audience, including witnesses, understood the publication to impute criminal conduct—constitute compelling evidence of its natural and ordinary meaning. The trial court erred in dismissing that interpretation as unreasonable without adequate justification. This error undermines the validity and internal consistency of the judgment, as the court's own observations indicate that the publications conveyed a defamatory meaning. This creates a clear tension with its ultimate finding that the publication was "not defamatory."

The third issue under consideration also encompasses the award of damages and costs. In his submissions, Mr. Mgongolwa contended that the appellant failed to strictly prove the specific damages claimed.

It is evident that the appellant sought, among other remedies, special, general, and punitive damages. In **Zuberi Augustino Mugabe v. Anicet Mugabe** [1992] T.L.R 137 and **Stanbic Bank Tanzania Limited v. Abercrombie & Kent (T) Limited** [2006] TZCA 7, the Court emphasized that claims for special damages must not only be pleaded but must also be specifically particularized and strictly proved.

A review of the record of appeal reveals, save for the claims substantiated by exhibits P7, P8, P9 and P11, no other indication that the appellant successfully proved the rest of special damages claimed. As reflected on page 27 of the record, the appellant claimed USD 7,000,000.00 and TZS 365,050,000.00, relying on exhibits P4 and P5. While these exhibits relate to the cancellation of partnership discussions allegedly arising from the impugned social media publications, they do not specify the value expected from such arrangements.

Furthermore, on page 170 of the record of appeal, PW1 admitted that he had no documentary evidence of the alleged investment arrangement with the foreign entity.

Additionally, PW2 — who would have been expected to provide such supporting evidence, including proof of board resolutions or minutes — admitted during cross-examination (page 178 of the record of appeal) that there was no proof that USD 7,000,000.00 would have been payable

to the appellant had the discussions been successfully concluded. In this regard, we are guided by the observation in **Malec v. J.C. Hutton Pty Ltd** [1990] 169 CLR 638 that "*damages founded on hypothetical evaluations defy precise calculation.*"

In light of the foregoing, the claims for special damages in the sums of TZS 365,050,000.00 and USD 7,000,000.00 lack the requisite proof and cannot be sustained. They are accordingly rejected as unsubstantiated.

However, the appellant also claimed TZS 3,000,000.00 as costs incurred for obtaining expert opinion on the impugned publications, and TZS 1,700,000.00 as expenses incurred for counselling services provided to his father following psychological distress caused by the publications. In our view, these claims were sufficiently proved through exhibits P7, P8, P9, and P11. We therefore find that the appellant is entitled to these amounts. The respondents are jointly and severally liable to pay a total of TZS 4,700,000.00.

The appellant further claimed punitive damages in the sum of TZS 10,000,000,000.00. According to *Black's Law Dictionary* (8th Edition), punitive damages are "damages awarded in addition to actual damages when the defendant has acted with recklessness, malice, or deceit." In **Peter Joseph Kilibika & Another v. Patric Aloyce Mlingi** [2012] TZCA 258, the Court held that:

*"The purpose of punitive damages is to punish the defendant for outrageous misconduct and to deter the defendant and others from similar misbehaviour in the future. **We need to establish whether there was arbitrary and unconstitutional action, bad faith, fraud, malice, oppression, outrageous, violent, wanton, wicked, and reckless behavior on the part of the appellants in order to justify the award of punitive damages....** In **Obongo** (supra) it was stated as under: - Exemplary damages should not be used to enrich the plaintiff, but to punish the defendant and deter him from repeating his conduct."*[Emphasis added.]

See also **Seif Mohamed Maungu v. Weindumi Lameck Sawe t/a W.L, Sawe Garage**, [2017] TZCA 969; and **Obongo v. Kisumu Municipal Council** (1971) EA 91.

In the instant appeal, we are of the view that, even if exhibits P1 and P2 did not disclose the reasons for the appellant's termination, their wording was couched in a manner that cast aspersions on the appellant's good standing and thus justified an award of punitive damages. However, as was stated in **Obongo** (supra), such damages should not be used to enrich the plaintiff, but rather to punish the defendant and deter repetition of the impugned conduct.

In the circumstances, and based on the authorities cited herein above, we consider that an enhanced award of TZS 20,000,000.00 as punitive damages would sufficiently serve the purpose. Accordingly, the respondents are jointly and severally liable to pay the appellant TZS 20,000,000.00 as exemplary damages.

Finally, the appellant claimed general damages in the sum of TZS 15,000,000,000.00. In the decision of the Court of Appeal England and Wales in **John v. MG Ltd.** [1996] 1 All E.R. 35, the Court held that:

"The successful plaintiff in a defamation action is entitled to recover, the general compensatory damages such sum as will compensate him for the wrong he has suffered. That must compensate him for damages to his reputation, vindicate his name, and taken account of the distress, hurt and humiliation which the defamatory publication caused."

It is settled law that general damages must be specifically pleaded, and any award thereof must be justified on the basis of the evidence on record. The quantum of such damages, however, lies within the discretion of the court. In the present appeal, the respondents acted irresponsibly when they initiated the publication of the impugned defamatory notices about the appellant with an unnecessary cautionary tone. They knew, or ought to have known, that they lacked justification for publishing what

they termed a cautionary statement to the public, particularly in the absence of any evidence that the appellant had undertaken, or intended to undertake, transactions in the names of the first and second respondents.

The testimony of the appellant (PW1), as reflected in the record of appeal, establishes that he was a professional of good moral standing among his peers, an author, a consultant, and a holder of CPA qualifications, as well as a listed CPA trainer. He had also held reputable positions in established companies and accounting firms. Evidence was also led to the effect that he sometime served as an acting general manager of the first respondent.

Essentially, the fact that the appellant held a reputable professional standing was corroborated by PW6, who testified, *inter alia*, that, following the publication of the impugned notices, the appellant lost his position as a listed member of the TAA. There is no doubt, therefore, that the impugned publications gravely affected his reputation and character, future employability, and professional engagements.

On the importance of protecting a person's reputation and character, William Shakespeare once observed:

*"**Lago:** Good name in a man or woman, dear my Lord, is the immediate jewel of their souls. Who*

*steals my purse steals trash; 'tis something,
nothing; 'Twas mine, 'tis his, and has been slave to
thousands; But he that filches from me my good
name Robs me of that which not enriches him;
And makes me poor indeed."* (Othello Act 3 Scene
3,155-161).

In view of the foregoing, we consider it appropriate to award the appellant TZS 100,000,000.00 as general damages, for which the respondents shall be jointly and severally liable.

We also note that, apart from the monetary reliefs, the appellant sought additional reliefs as set out at pages 26 and 27 of the record of appeal, namely: (a) a declaration that the respondents authored, published, and disseminated defamatory material concerning the appellant in both print and online media; (b) an order directing the respondents to issue an apology with the same prominence and in the same manner as the impugned publication; (c) a permanent injunction restraining the respondents, their employees, agents, and associates from further defamatory publications; (d) an order compelling the permanent removal of all defamatory content from online platforms, including social media and websites; (e) a written apology addressed to the appellant; and (f) an order for the publication of an apology, including the appellant's

photograph, in *The Mwananchi* and *The Citizen* newspapers and their respective online platforms.

Having found that the impugned publication was defamatory, we are satisfied that these reliefs are warranted, and we accordingly grant them as prayed. In the result, the appeal is allowed with costs to the extent stated herein.

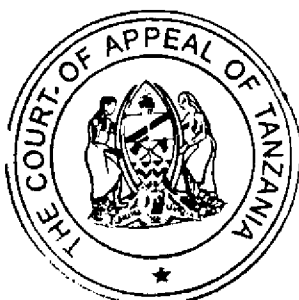
DATED at DODOMA on this 2nd day of June 2026.

R. K. MKUYE
JUSTICE OF APPEAL

E. M. FELESHI,
JUSTICE OF APPEAL

D. J. NANGELA
JUSTICE OF APPEAL

Judgment delivered virtually this 3rd day of June, 2026 in the presence of Mr. Mohamed Tibenyendera, learned counsel for the Appellant, Mr. Kennedy Mgongolwa, learned counsel for the 1st and 2nd Respondents, Mr. Emmanuel Nkoma, learned counsel for the 3rd, 4th and 5th Respondents, and Ms. Anna Utou, Court clerk, is hereby certified as a true copy of the original.




A. L. KALEGEYA
DEPUTY REGISTRAR
COURT OF APPEAL