

Can cyber bullying and harassment be prosecuted in Tanzania?

Yes. Recently the Court of Appeal of Tanzania has issued a landmark judgment against a public authority for cyber defamatory statements.

Brief facts of the dispute:

In the case of **the Public Service Social Security Fund (Successor of the Parastatal Pensions Fund (PPF)) Versus Siriel Mchembe**, Civil Appeal No. 126 of 2018, the Court of Appeal of Tanzania at Dar es Salaam (Unreported), Siriel worked with PPF for over 15 years from the rank of Executive Assistant to Contributions Manager. Siriel was terminated from her employment and she filed a labor case against PPF. Siriel was claiming compensation of TZS 100 million (approx. USD\$ 43,000) from PPF on the grounds that, PPF was responsible for publishing defamatory statements that Siriel was possessed by an evil spirit of prostitution and adultery at work place. Such statements tarnished Siriel's reputation, caused a strain in her marriage and church and the public in general. Siriel won the case at the lower court, the High Court which led to the final appeal at the Court of Appeal of Tanzania by PPF.

The Court of Appeal upheld the decision of the lower courts and established the following principles:

- The term **defamation** was defined mean the publication of a statement which reflects on a person's reputation and tends to lower him on the estimate of right-thinking members of the society generally or tend to make them shun or avoid him.
- There are two forms of defamation slander and libel.
- When the defamatory statement is published the liability is not limited to the writer but it also extends to the publisher and in terms of online publication, to internet service providers including blogs, websites, web hosting and the like.
- Repetition of defamatory statement is a fresh publication and creates a self and independent cause of action.
- There are four elements of defamation, i.e. the defamatory statement against the Plaintiff, the statement referred to him or her, the statement was published and the Plaintiff suffered damages.
- For a case of defamation to stand there must be publication of the same and the later be accessed by other persons regardless of the media of communication / publication.
- There is no defamation for statements sent straight to the person of whom it is written, since for you cannot publish a libel of a man against himself.
- The Court defined the term social defamation, or in other words character assassination, cyber bullying and cyber harassment to mean, the content that is published to a social media platform that defames or is injurious to the person or business reputation. It occurs when a computer or modern electronic devices connected to the internet is used as a tool or medium to defame a person or entity (Twitter, Facebook, Instagram, etc) or sending an email containing defamatory content about a person with the intention to defame him or her. For online defamation to stand the followings are the elements to be:
 - i. Reasonableness
 - ii. The hypothetical reasonable reader is not naïve but not unduly suspicious
 - iii. Over-elaborated analysis is best avoided
 - iv. The intention of the publisher is irrelevant
 - v. The publication must be read as a whole and any bone / antidote taken together
 - vi. The hypothetical reader is taken to be representative of those who would read the publication in question.

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