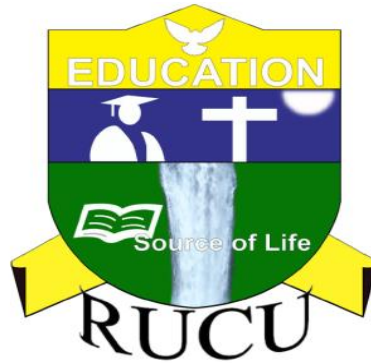


RUAHA CATHOLIC UNIVERSITY



FACULTY OF LAW

**AN ASSESSMENT OF LEGAL PROTECTION OF INDIVIDUALS IN ONLINE
DEFAMATION CASES IN TANZANIA**

**A Research Proposal Submitted at faculty of law in Partial Fulfillment of the
Requirements for the Award of the degree of Bachelor of Laws (LLB)
Degree of the Ruaha Catholic University.**

BY:

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RU/LLB/2019/135

**Prepared Under the Supervision of
Ms. Winniefrida Ngowi**

June, 2023

CERTIFICATION

The undersigned certifies that she has read and hereby recommend for the acceptance by the Ruaha catholic university, Dissertation title An assessment of legal protection of individuals in online defamation cases in Tanzania. In fulfillment of the requirement for awards of the Degree Bachelor of law Ruaha catholic university.

.....

Signed ondayOf 2023

Supervisor

Ms. Winniefrida Ngowi

DECLARATION

I Magori hesha Zonzo Declare that to the best of My knowledge this research paper is my original work and that it has not been submitted to any other institution for similar or any other awards.

.....

RU/LLB/2019/135

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Date... 2023.

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DEDICATION

I would like to dedicate this research paper first and foremost to My supervisor Miss Winniefrida Ngowi As for her well guides to the fate of this research.

Secondarily I would like to dedicate this research paper to My lovely Mr., Fratern William Temba, and all of my brethren for believing in me and supporting my dreams to the best of their abilities.

Thirdly I would like to dedicate this research paper to My lovely daughter Gladness and her Sister Joera Fratern Temba .

Lastly I would like to dedicate this research paper to the legal society of Tanzania, for the maintenance of peace and order the primary purpose of the society

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MAY THE LORD ALMIGHTY BLESS YOU ALL.

TABLE OF LAWS

INTERNATIONAL INSTRUMENTS

Universal Declaration of Human rights 1945

Brussels Convention 1974

REGIONAL INSTRUMENTS

African charter on human and people's rights

DOMESTIC INSTRUMENTS

The constitution of united Republic of Tanzania of 1977

The Magistrate court Act R; E 2019

The Cybercrime Act of 2015

The Media and service Act of 2019

The police and Auxiliary Service Act Cap 322R: E 2019.

The Electronic and Postal Communication Act of 2020(Regulation of online content)

The Tanzania communication Regulatory Authority Act 2003

The Newspaper Act 1976

Sheria ya Ulinzi wa Taarifa Binafisi 2022

TABLE OF CASES

Psssf V Sirel Mchembe [2018] civil appeal .No 126 court of appeal Tanzania at Dar es salaam.

Lazaraus Mrisho mafie &Shidolya Tours and safari V Odilo Gasper Kilenga Alias. Case[2008]Case No 10 The high court of Tanzania at Arusha (unreported)

Maulid Ismail Ndonde V Republic [2019]

Zeng's case 1735.

Peter Keas Vs The editor Mawaio Newspaper & Jabir Idirissa civil Case No 145of [2014]

Karoyo Hassan Vs kithuku [1985]TLR No 212

Robert Manoni Gervas Vs Fikiri John Mihayo civil appeal No 138 /2022

Musa zambi Vs Erick Minga civil appeal No 13/2019

Hamis Vs Akilimali H,C,D (1971)111

Cyprian musiba Vs Membe TLR Case No 2018

ABBREVIATIONS

| | |
|-------|---|
| A C. | Appeal cases |
| CAP. | Chapter |
| CURT | Constitution of Republic of Tanzania |
| D S. | Defamation Statement |
| HCD. | High court Digest |
| I.e . | That. |
| MCA . | Magistrate court Act. |
| No | Number |
| PG | page number |
| R.E | Revised Edition |
| R | Republic |
| TLR. | Tanzania Law report |
| TCRA | Tanzania communication Regulatory Authority |
| V. | Versus (against) |

ABSTRACT

Online defamation refer to the situation that involves the use social media for the intention of lowering someone's reputation or dignity, This might be experienced in Tanzania due to the development of science and technology (digitalization)

So it is the facts that individuals in Tanzania they face this challenge of being defamed through online platforms, Because the law governing online defamation they are totally insufficient and not adequate to grasp online defamation.

However the study indicates that in Tanzania there are legal instruments that governs online defamation But still such instruments are not sufficient to the extent of protecting individuals towards online defamation. The insufficient of the laws observed even though there are more than one laws that governs online defamation because the law also appeared to contradict in imposing punishment. On the aspect that one appear to impose less momentary compensation than the other law

So to grasp out this problem there is a need to Amend the law or to unify those laws governing defamation, Not only that but also the legal instruments governing communication technology in Tanzania (TCRA) has to insure and develop the technology when it comes to online platforms actions committed by ghost and anonymous user.

Table of Contents

| | |
|---------------------------------------|------|
| CERTIFICATION..... | i |
| DECLARATION | ii |
| COPYRIGHT | iii |
| DEDICATION..... | iv |
| ACKNOWLEDGEMENTS..... | v |
| TABLE OF LAWS..... | vi |
| TABLE OF CASES | vii |
| ABBREVIATIONS..... | viii |
| ABSTRACT | ix |
| CHAPTER ONE | 1 |
| 1.1 GENERAL INTRODUCTION | 1 |
| 1.2 BACKGROUND TO THE PROBLEM | 1 |
| 1.3. STATEMENT OF THE PROBLEM..... | 3 |
| 1.4. LITERATURE REVIEW..... | 5 |
| 1.5 STUDY HYPOTHESIS..... | 8 |
| 1.6 OBJECTIVE OF THE STUDY | 8 |
| 1.6.1 GENERAL OBJECTIVE..... | 8 |
| 1.6.2 SPECIFIC OBJECTIVES | 8 |
| 1.7. SIGNIFICANCES OF THE STUDY | 8 |
| 1.8. RESEARCH METHODOLOGY..... | 9 |

| | |
|---|----|
| 1.8.1 RESEARCH DESIGN | 10 |
| 1.8.2 RESEARCH METHOD..... | 10 |
| 1.8.2.1 PRIMARY METHODS..... | 10 |
| 1.8.2.2 SECONDARY METHODS..... | 11 |
| 1.9 SAMPLING AND SAMPLE SIZE..... | 11 |
| 1.9.1 SCOPE AND LIMITATIONS OF THE STUDY | 12 |
| 1.9.2 LIMITATIONS OF THE RESEARCH | 13 |
| 1.10. AREA OF STUDY | 14 |
| CHAPTER TWO | 15 |
| CONCEPTUAL FRAME WORK, BASING ON ONLINE DEFAMATION IN TANZANIA | 15 |
| 2.1 INTRODUCTION..... | 15 |
| 2.2. Explanation on the key terms..... | 15 |
| 2.2.1 Meaning of Defamation..... | 15 |
| 2.2.2. Types of defamation | 16 |
| 2.2.3. Element of defamation..... | 18 |
| 2.3. Online defamation..... | 19 |
| 2.4. Social Media | 19 |
| 2.5. Online platforms..... | 20 |
| 2.6 The coloration of social media and online defamation. | 20 |
| 2.7 Parties to defamation suits..... | 20 |

| | |
|---|----|
| 2.8. Damages..... | 21 |
| 2.8.1 Damages for Online defamation | 21 |
| 2.9. Reasons for defamation plaintiff seek for equitable relief. | 22 |
| CHAPTER THREE | 23 |
| LEGAL AND INSTITUTIONAL FRAME WORK GOVERNING ONLINE DEFAMATION. | 23 |
| 3.0 INTRODUCTION | 23 |
| 3.1 LEGAL AND INSTITUTION FRAME WORKS OF THE RESEARCH..... | 23 |
| 3.1.1 INTERNATIONAL INSTRUMENTS | 23 |
| 3.1.1.1 Universal Declaration of Human Rights 1948 | 23 |
| 3.1.2 REGIONAL INSTRUMENT..... | 24 |
| 3.1.2.1. African Charter on Human and People’s Right 1981..... | 24 |
| 3.1.3 DOMESTIC INSTRUMENT. | 24 |
| 3.1.3.1 Constitution of United Republic of Tanzania of 1977 | 24 |
| 3.1.3.2 The Newspaper Act 1976..... | 25 |
| 3.1.3.3. Sheria ya Ulinzi wa Taarifa Binafisi 2022. | 25 |
| 3.1.3.4 The Cyber Crimes Act of 2015..... | 26 |
| 3.1.3.5. The TCRA Act of 2003 | 27 |
| 3.1.3.6. The electronic and postal communication (online content Regulation 2020)..... | 28 |
| 3.1.4 Case Laws | 28 |

| | |
|---|----|
| 3.2 INSTITUTIONS FRAME WORK..... | 29 |
| 3.2.1 THE COURT OF LAW | 29 |
| 3.2.1.1 JURISDICTION OF THE COURT IN DEALING WITH DEFAMATION CASES IN TANZANIA. | 30 |
| 3.2.1.2 PECUNIARY JURISDICTION..... | 31 |
| 3.2.1.3 TERRITORIAL JURISDICTION; | 31 |
| 3.2.3 THE POLICE FORCE | 33 |
| 3.2.4 THE TCRA..... | 33 |
| 3.3 Conclusion | 34 |
| CHAPTER FOUR | 35 |
| DATA ANALYSIS, RESEARCH FINDINGS AND ANALYSIS OF THE LAW..... | 35 |
| 4.1. INTRODUCTION..... | 35 |
| 4.1.1 ANALYSIS OF THE LAW..... | 35 |
| 4.1.2. LITERATURE DATA..... | 37 |
| 4.1.3. FIELD DATA..... | 38 |
| 4.1.3.1. DATA OR INFORMATION OBTAINED FROM ADVOCATES IN THE FIELD | 39 |
| 4.1.3.2. DATA OBTAINED FROM OTHER RESPONDENT IN THE FIELD | 40 |
| 4.1.3.3. DATA OBTAINED FROM JOURNALIST (MEDIA PERSONALE) IN THE FIELD..... | 40 |
| 4.1.3.4. DATA OBTAINED FROM MAGISTRATE’S IN THE FIELD. | 41 |

| | |
|--|----|
| 4.4. TESTING THE HYPOTHESIS OF THE RESEARCH..... | 42 |
| CHAPTER FIVE..... | 43 |
| CONCLUSION AND RECOMMENDATIONS..... | 43 |
| 5.1. INTRODUCTION..... | 43 |
| 5.2. CONCLUSION OF THE DATA OBTAINED FROM LITERATURE AND FIELD. | 43 |
| 5.3. RECOMMENDATIONS..... | 44 |
| 5.3.1 Government has to ensure that there are strict measure’s to be taken against online platforms actions,..... | 45 |
| 5.3.2. On the Parliament | 45 |
| 5.4 Conclusion | 47 |
| BIBLIOGRAPHY..... | 48 |
| APPENDICES | 50 |
| APPENDIX 1: QUESTIONS TO THE RESPONDENT: | 50 |

CHAPTER ONE

1.1 GENERAL INTRODUCTION

This is part of the research that provides on the general introduction of the research about online defamation in Tanzania. Online defamation it has become a problem in Tanzania because people are not protected with the law when it comes to the situation individuals are defamed through online platforms. This is due to the fact that the current legal regimes applicable dealing with online defamation appeared not to be sufficient and effective when it comes to the issue of online defamation against individuals.

So the purpose of this research is that the researcher aims on assessing whether the law dealing with online defamation in Tanzania is effective and sufficient

Also the purpose of this research is to examine whether the sentence established by the law is enough to cure the problem of online defamation in Tanzania. Not only that but also the researcher entrails to assess does the law protect individuals against online defamation in Tanzania?.

1.2 BACKGROUND TO THE PROBLEM

Defamation is defined as false communication that is either published publicly or spoken that tends to injure other's reputation good name or business¹. Defamation include the common law of tort that defamation can be committed basing on liberal means to mean the defamatory statement are made in writing in other way this form is subjected to be permanent due to the facts the defamatory statement is in writing. Also defamation can be made through slander whereby it involves oral or

¹ R; Jerome *The sociological tort of defamation A source book for information and communication technology law* (1986) California's law reviews

spoken statement. However libel and slander can also be committed via internet or social media.

Also defamation is explained by the judicial proceedings specific in the case of *Hamisi V Akilimali*.² Whereby the court define defamation as communication to the mind of another on the matter which are untrue and a likely to lower the reputation of the third party.

Part V of the Media Service Act of 2016 has provide more detailed information about defamation whereby the term defamation is defined under section 35(1) of the Act stating that “ *Defamation as 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 professional or trade by an injury to his reputation is a defamatory matter*³

Historically the law of defamation was developed during the earliest ancestors of modern defamation law that came from English courts (common law) beginning in the early 1500s at that time the law governing slander focused on oral statements also the English court treated slander action like civil tort claims for damages. During the earliest ancestors the government of legal traditional brought a most influential defamation case which is famous up to date the *Zenger’s* case we’re the defendant publishes a weekly newspaper criticizing the royally appointed by the governor.⁴

² (1971) H.C.D.111

³ Section 35 (1) of the Media service Act of 2016.

⁴ Zenger’s case 1735.

Basically the development of defamation in Tanzania is from common law as the part of the colonial legacy inherited at era of political independence.⁵

The adoption of new technology possesses significances problem in Tanzania, since the use of communication technology has come with some difficulties through the use of internet and social media communication. It appears that the users of internet and social media in Tanzania face problems of identifying a liability over online when a person been defamed, this is due to the fact that in Tanzania the law appeared not to be effective and sufficient to protect individuals against online defamation.

This is per the case of *Pssf V Siriel Mchembe*⁶ Where the court held that “in Tanzania mostly have no adequate laws towards social media defamation”, so the court ruled that the authorities has to ensure that defamation laws are designed so as to be applied to all kinds of social media defamation

1.3. STATEMENT OF THE PROBLEM

It is in fact that in Tanzania mostly defamation acts are widely practiced through online platforms hence, leading to lot of grievances to the subscribed Users .

That it has become a tremendously challenge since the presence legal regimes (laws)is insufficient and inadequate to protect individuals against online defamation. because the laws do provide insufficient remedy to the defamed individuals, also the law appeared to be less adequate on the manner that the

⁵ [www.academia.edu.thefoundation](http://www.academia.edu/thefoundation).(Accessed on 3rd July 2022 at 17:12PM.)

⁶ Civil appeal No 128 of 2018 in the court of appeals at Dar es salaam .

imposed sentences to the defendant is not enough to cure the problem of defaming person through online platforms.

The cyber-crime Act of 2015 and the Media Service Act of 2016, have appeared to be less adequate and less sufficient in its operation, implementations also effectiveness on the manner that do not protect individuals against online defamation because the sentence that provided by this laws appeared not to be enough to the extent of stopping the problem,

section 16 of cyber-crime provides that “*Any person who commission of an offence commits on conviction be liable to fine of not less than five Million Tanzanian shillings or imprisonment for terms of not less than Three years and not exceed five years or to both*”⁷

Also section 50 of the media service Act provides on the punishment to however *commit an offence shall be liable to fine of not less than five Million shillings but not exceeding twenty million or imprisonment for a period of three years not exceed five years*⁸

Despite the fact that there are legal regimes catering for defamation, providing punishment verdict for the same still there is prevalent of online defamation cases, That it can be said that Tanzania has not been able to identify proper vision and challenges to curb the problem of online defamation. As per the case of *Musa zambi Vs Erick Minga*⁹ in the case the

⁷ Section 16:of the cyber crime Act of 2015

⁸ Section 50 of the Media Service Act of 2016

⁹ Civil appeal No 13 of 2019 In the high court of Tanzania Mbeya Sub registry at Mbeya.

amount that ordered to be paid is less proportional to the harm caused. Thus how laws is less adequate to cover the matter.

1.4. LITERATURE REVIEW

In reviewing the research topic the researcher passed through different books which have written by different Author In which they have tried to analyze and give their views concerning online Defamation and to which can be held liable as the internet user as per beneath are the views basing on different Author on the subject matter

Harpwood; the author gave an overview on defamation together with the forms of defamation and to what extent the defamation action can be concerned that statement are made by the freedom of communication guided by the media also he explain that tort law was to ensure the freedom of speech not to overweight the interest of the individual also He went further explaining on who can constitute a claim over defamation that he came to argue that only rich can afford suing for defamation claims¹⁰

However the Author has engaged the Lacuna since has not provided anything when it comes to defamatory acts through online. so the purpose of the research is not to provide what defamation is but rather to emphasize the government of Tanzania to enact the law that shall be sufficient and effective to protect individuals against online defamatory actions when took place.

Owen; according the author in his book he has successfully gave out the general views on what amount to defamation that he has provide for the elements that constitute for defamation he stated that for the action to be

¹⁰ H; Vivienne; *principles of tort law* , published in Great Britain 4th Edition (2000)PG 365.

subjected as a defamatory statement then the statement must be published, the statement must refer to the plaintiff, the statement must be false to mean the defamatory statement must compose of the false information over the plaintiff also He went far and provide for the difference between the forms of defamation that is libel and slander.¹¹

Whoever the author has composed the general views on defamation and its element, But he has leave the gap due to the fact that the author did not provide what constitutes defamatory acts through online platforms, also he has failed to show what should be done if online defamation takes place, so the aim of this research is to expose what is online defamation to the society in Tanzania at large also to emphasize the need of the law that will govern online defamation in Tanzania.

Salmond; The author has tried to show that defamation is like any other civil wrong under tort and it has remedy which is compensation whoever tort law is concerned with liability of a person for tort arising from defamation thus why any other caused damage or injury to other person so the ones caused harm will be liable for the compensation as the primary punishment for the defendant.¹²

Although the writer has write-in brief on the side effect of causing harm to other person, the author has failed to address about online defamation which is now conducted tremendously so the purpose of this research shall be to

¹¹O, Richard; *exploring the law of tort*.Cambridge university press (2005)

¹²H;& Salmond, *Law of tort*(1992)4th edition.

quire and propose the best method on quarrying the problem of online defamation in Tanzania.

Binamungu; The author in his writings in general he argued on defamation and it's types which he provides that libel is one of the form of defamation that defamation statement are ought to be made in writing whereby it subjected to be made permanent also He went far he address on the other forms of defamation which is slander, also He provide on the elements that constitute defamatory actions¹³

Whoever the author has provide on the general overviews of defamation but in his book he has failed to address whether in Tanzania there are specific laws that governs the matter when it comes to defamatory actions.

Juma; The thinker in his writing he has just proposed and came with a novelty about tort in general whereby he has suggested that Not every injury or damage has a remedy in tort he argued that one among the function of lawyers is to determine when remedy is available, so basing on the need of the research the writer has not propose any thing concern the need of the research, whoever the purpose of the research is not to criticize what have not addressed but rather the intention of the research is to suggest the designs for the law that will be useful in all actions basing on the defamatory actions in Tanzania.

Mambi; the author explained that the development of internet encourage free speech which can lead to Defamation. The author failed to show if

¹³ C;S,Binamungu *The law of tort in Tanzania*.publishedby research and publications Department Mzumbe (2004)

Tanzania law governing Defamation covers online Defamation not only that but also failed to show if internet user providers in Tanzania are liable for online defamation occurring over the internet.¹⁴

1.5 STUDY HYPOTHESIS.

It seems that the laws governing online defamation do not adequately protect the people in Tanzania.

1.6 OBJECTIVE OF THE STUDY

1.6.1 GENERAL OBJECTIVE

To make a legal assessment on protection of individual against online defamation in Tanzania.

1.6.2 SPECIFIC OBJECTIVES

- determine whether the designated of law is the solution for online platforms actions
- To assess on the effectiveness of the law on protection of people regarding to online defamation
- To assess whether the imposed punishment by the law is sufficient to cure the problem of online fabricates content.

1.7. SIGNIFICANCES OF THE STUDY

The study shall have a skepticism for the government of Tanzania to respond to the development of technology (ICT) that will aim to gather thought within the country and from broader that shall suggest on the enactment of the law that shall protection individual against online defamation in Tanzania

¹⁴ A.,Mambi, ICT law book *A source book for information and communication technology and cyber law*. Mkuki na nyota published Ltd Dar es salaam 2009.pg 154.

Another significant of the study is to create the awareness to the majority about the gap in the law of Tanzania, The majority should be aware that in Tanzania the current legal regimes do not protect individuals against online defamation so therefore to deal with online defamation when person has been defamed through online platforms, such as Facebook, Instagram and so many other social media so there is a need to the government of Tanzania to enact the law that will help to govern and protect individuals against online platforms actions.

1.8. RESEARCH METHODOLOGY.

This is a qualitative research in nature in manner the information was collected. The researcher opted to use qualitative research methodology because is the kind of research methodology that is interesting In discovering the behind motivation factor. Example why and how people acts or thinks in a particular manner.

Also other reason behind that emphasis the researcher to prioritize the use of qualitative research methodology is because normally qualitative is conducted quickly. Not only that but also qualitative research methodology normally use smaller sample size than any other research methodology,

Thus the researcher in this research interviewed a small number, which the sample size did not exceed 20 people because the information required was limited to specific group of people as one of the cons when using qualitative research methodology.

1.8.1 RESEARCH DESIGN

This is a qualitative research in which most of the information was from the literary work and information from the field, that was limited to the semi structured interview with open ended questions with Advocate, journalist (Media personally) Magistrates and citizens. The researcher opted to choose this group because mostly they appeared to qualify and be conversant providing information that was relevant to the subject matter of the research.

The researcher opted to use interview because of the small number of sample size.

1.8.2 RESEARCH METHOD

1.8.2.1 PRIMARY METHODS

In this research primary data collection was obtained through interview which was effective because it involve semi structured with open ended questions. Since semi structured interview can be modified to fit the need of the research and it provides more information as it does not constrict the interviewee.

The researcher interviewed five Advocate five magistrates, five journalists, as well other five respondents,

since this person has much details on defamation cases such advocate has experience in the cause of representing client before the court of law also the researcher interviewed Magistrate because are the ones who a there to make interpretation of the law on whatever matter arose and be brought before the court of law With the inclusion of defamation cases

The researcher also interviewed journalist on the cause that this person they normally use social media services to publish things to the public so for them

they might be aware on what constitutes to publications of fabricates content. lastly the researcher interviewed other five respondent in the society the reason behind on interviewing this group is on the fact that they also use social media for different purpose so the researcher interviewed them for the purpose of catching how do they use social media also they were interviewed by the researcher to assess them whether do they have knowledge on what constitutes to publications of false statement or not.

1.8.2.2 SECONDARY METHODS

The researcher reviewed various literature such as books, journals, article, and other related material that are useful for the purpose of the research. The researcher has employed the use of secondary data collection because most of the valuable and relevant information is from written source as per books journal and article.

1.9 SAMPLING AND SAMPLE SIZE

The sampling method will be a systematic random sampling, this is because the research requires information from specific groups, and the sample size shall not exceed 20 people because information required is limited to specialized individuals specifically, advocates, journalist, person's and Magistrates And each group has to compose the total of five members.

The researcher has targeted these specific groups since they possess the necessary information the researcher requires. As advocates are the ones who represent the client before the court of law in their suits so it will be easier to get the relevant information by the researcher from this practitioner of the law that would fit the need of the research, also Magistrates are the ones

who conduct any legal procedure also they have mandated to make clarification and interpretation of the law, so for the purpose of research the Magistrates are more needed on providing the relevant information basing on what the research needs because they are the ones with obligation duty on making an interpretation of the law , so by doing so means it will be helpful to get relevant information.

Also the researcher targeted to interview the media personal on the fact that they are the one's conducting their activities through social media service, so they must be aware on what entails the publications of fabricates information. Lastly the researcher targeted to interview citizens in the society on the fact that are also involved in the use of social media for different purpose . The researcher divide the interview groups into four, whereby each group have a total of five members so as to meet the requirements of this research.

1.9.1 SCOPE AND LIMITATIONS OF THE STUDY

As much as the study borrowed the experience From the Common law on the basis of Defamation then the scope is centered in Tanzania to enact the law that has to be adhered to governs defamation acts, also the has provide for its significances so as to make the internet and social media user in Tanzania to be secured from conducting online defamation. Because the presence law including the cyber-crime Act and The media service Act appeared not to be sufficient and effective to protect individuals against online defamation on the manner that even the punishment imposed appeared not to be enough.

1.9.2 LIMITATIONS OF THE RESEARCH

In conducting the research the following are the challenges that the researcher meets and experienced

- I. Include difficult in getting relevant information from people supposed to provide information concern the research. this is because most of them they delayed on providing and addressing the relevant information to the researcher on the right time, The researcher overcome this challenge by visiting their residence and their working places for the purpose of interviewing the respondent so as to get valuable details about the research. Thus how the researcher succeed to get the details information about the research. .
- II. Financial phenomenal, The researcher face different cost such of stationary so as to make research in printing photocopy, but such challenge overcome by avoiding defects in research by writing, The researcher use to accomplish this task and overcomes this challenge of financial by managing to have a good budget .
- III. Lack of enough time, this is because on conducting such research, include collecting of more relevant information to this research so the time was not enough for the purpose of getting lot of relevant information. But this doesn't mean that the researcher ended or stopped there to conduct the research, whoever the researcher overcomes this phenomenon by managing to work hardly by considering the drafted timetable for a week.

Generally the researcher overcomes the challenges basing on different Techniques, such on the limitations of time. That although the time was not enough, the researcher tried to manage to work hardly hence getting to the fate of the research. Also on the aspect of financial problem the researcher tried to have a managed budget thus lead's to accomplish this task.

1.10. AREA OF STUDY

Basically the case study is in Mwanza region found in Tanzania Main Land. Since the researcher has discovered that in Tanzania Main Land there are lots of tremendously defamation acts through online, and to that extent the current legal regimes in Tanzania on tort appeared to be less adequate and non-effective because the law do not protect individuals against online defamatory actions.

CHAPTER TWO

CONCEPTUAL FRAME WORK, BASING ON ONLINE DEFAMATION IN TANZANIA

2.1 INTRODUCTION

This chapter digests the basic concept literally that has entails to set the assumption values and definitions that it gives the meaning on the key terms such concepts namely Defamation and its element and how defamation can be evaluated its types .

The chapter also will have to define the meaning of online defamation, social media, also showing the correlation of social media and online defamation, parties to defamation suits, damage's reasons for defamation plaintiff seeks for equitable relief. So the purpose of this chapter is to elaborate more on the main key concepts about the research.

2.2. Explanation on the key terms

2.2.1 Meaning of Defamation.

There are many definitions and explanation from different scholars providing what defamation is, One of the Sociological idealistic in the law of tort use to define the term defamation that Defamation is a false communication that are either published publicly or spoken that tends to injure others reputation good name or business.¹⁵ Defamation include the common law of tort that defamation can be committed basing on libel that defamatory statement are in writing in other way this form is subjected to be permanent due to the facts the defamatory statement is in writing. Also defamation can be made through slander under this it involves oral or spoken statement. Whoever

¹⁵ R; Jerome *Sociological in law of tort* published in Great Britain 3rd Edition 2009).

libel and slander can be committed via internet or social media. Also defamation has been defined in the case of *Hamis Akilimali*¹⁶ whereby the court define defamation as communication to the mind of another on the matter which are untrue and a likely to lower the reputation of the defamation.

2.2.2. Types of defamation

- **Libel** this is the kind of defamation that is mostly under written form that libel is subjected to be permanent example is in the case of *Musa zambi Vs Erick Minga*¹⁷ The fact of the case is all about tort basing on Defamation that plaintiff brought the cause before the court law claiming for compensation of five Million Tanzanian shillings from the defendant on the fact that he was defamed through WhatsApp group .on the appeal judge stated that” The Trial Magistrate did not give his reason on how he reached to award such excessive and un proved damages by the respondent “that in final event the appellant appeal is meritorious and it is accordingly allowed.
- **Slander** is type of defamation that defamatory statement are meant to be conducted orally with the intention of lowering others reputation and dignity¹⁸ justice Sisya in the case of *Karoyo Hassan Vs kithuku*¹⁹ he started that slander is the type of word that are likely to hatred Ridicule or contempt or calculate to injure hum in social standing in his

¹⁶ 1971)H.C.D. 111.

¹⁷ Civil appeal No 13of 2019 in the high court of Tanzania Mbeya in the district Registry of Mbeya.

¹⁸ www.law.cornell.edu/wexford . Cornell education Wexford accessed on 13th July 2022 at 08:08 A M.

¹⁹ (1985)TLR 212.

community. His Lordship went further and provides by stating that slander consist of defamatory matter merely spoken.

For the establishment of defamatory statement the case of *Augustino Elias Mdachi Vs Ramadhan Omary Ngaleba*)²⁰ the court of appeals at Dar es Salaam. whereby under the 7th page of this case provide for that it is to be Noted that in suits of defamation weather libel or slander as Instant case four ingredients must be proved.

Also in the case of *Khatibu Said Vs Juma Hamis and two Others*²¹. This was applied case arising case no 4 of 2020 kigoma District court that the appellant applied the case on the ground that the district court Magistrate Grant the payment of punitive damages to the respondent without taking into consideration on the evidence that were provided by the appellant

However the respondent were claiming that the appellant normally use to defame them orally on the village meeting. But under the proceeding it appears that they lack sufficient evidence to prove their claims so as to be compensated basing on the relief playing for .

Other case relating to slander as the way of defamation is the case of *Robert Manoni Gervas Vs Fikiri John Mihayo*²² In this case the claimants was claiming being defamed orally by the defendant to the extent that lowering his reputation , hence Leads to family misunderstanding and breaking up with his relationship.

²⁰ Civil appeal No 65 of 2019 in the high court of Tanzania Dar es salaam sub registry at Dar es salaam.

²¹ Civil appeal No 10 of 2021 in the high court of Tanzania in the District registry of kigoma at kigoma.

²² The high court of Tanzania at Mwanza Sub registry at mwanza civil Case No 12of 2019

2.2.3. Element of defamation

- The defamatory statement must be published, That in order to determine the presence of defamation then the defendant has to publish those defamed words over the plaintiff, through this means it will create the appearance of the third party who had the defamatory statement so under legal perspective defamation will be evaluate²³ this publications can be made weather orally or through written form by the defendant
- The defamatory statement must be referred to the plaintiff, also this stand's as one of the element for defamation this can be referred in the case of *Bernard membe V Cyprian Musiba* ²⁴. Where defendant appears to publish defamatory statement directly to the plaintiff. This was through having the men's rea that intend on publishing false statements that will injury the plaintiff reputation²⁵
- The statement made must be false ,also in order to determine defamation is through making observation that the statement made by the defendant is full of false words that aims to lower someone reputation and dignity ²⁶
- Statement made must cause harm or injury to the plaintiff the determination of one to be defamed is that the statement made by the defendant has to be seen with the impact of causing harm and injury that will lead to lower the reputation and dignity of another

²³ Cottrell, law of defamation in common wearth African chapter 4 fourth edition

²⁴ Civil case No 220 of 2018.

²⁵ www.law.cornel education.wex Accessed on 13th July 2022 at 08:10 A:M

²⁶ Ibid.

person.²⁷ in the case of *Manoni Gervas Vs Fikiri John Mihayo* in the case the plaintiff was claiming for compensation because he suffered a lot of injury such as getting difficult time in his family relationship because he was no longer trusted.

2.3. Online defamation

This refers to the situation where plaintiff reputation and dignity is being lowered through internet and social media. That one can use social media posting things public for the purpose and desire of causing harm and injury to another person that online defamation can be through social media such as Instagram, Facebook, Twitter, WhatsApp, TikTok, and many others, not only that but also online defamation can be done through computer systems as per the case of *Siriel Mchemba Vs Pssf*²⁸ as the claimant's brought a suit before legal regimes. Basing on the fact of being defamed through online platforms.

2.4. Social Media

Many authors and idealistic persons have tried to give out the meaning of what social media is that social media refer to the computer based technologies that facilitate the sharing of ideas, thoughts and information through virtual networks. Also social media has been elaborated as a collective term's for website and application that focus on communication, community base in posts and collaboration.²⁹

Also the term social media has been established under the electronic and postal communication (online content) Regulation which stipulates that social

²⁷ Ibid.

²⁸ Civil case no126 of 2018 Tanzania Court of appeal

²⁹ www.note.com.legal encyclopedia Accessed on 13th July 2022 at 08:13

media means online based application and platforms that build on the ideological and technological of web and that allow the creation of exchange of highly interactive users generated content and platforms through which individual, organization and communities share ³⁰

2.5. Online platforms

The conceptual meaning of online platforms has established and proved under Regulation for electronic and postal communication online content Regulation specific under sub regulation 3 of the Act which provide that online platforms means any internet outlet where people can get News, entertainment such as online television and social media.³¹

2.6 The coloration of social media and online defamation.

Under this perspective social media came to correlate with online defamation due to the fact that persons use social Media to communicate through sharing ideas and thoughts³²so one can also apply the use of social media for the purpose of publishing false statements that will amount to defamation³³

2.7 Parties to defamation suits

The aggrieved party can file a suit in a court to recover damage's so the one defamed is one with valuable to file or institute the suit before the court of law that the victim of online defamation is determined to have a valid legal claim so has the right to file a defamation law suit .however this person has to consider the procedure on filing the case. Things to consider is to determine

³⁰Regulation 3 of the electronic and postal communication online content Regulation of 2020

³¹ Electronic and Postal Communication (online content Regulation of 2020

³²[https:// legal, dictionary.law.com](https://legal.dictionary.law.com) accessed on Tuesday 2022 at 17:13P:m

³³ [www.stewartslaw](http://www.stewartslaw.com) .com News Accessed on 15th July 2022 at 22:09 P;M

the correct person to sue³⁴ on addressing the law that impose compensation on the aggrieved person the law states that “commission of an offences commits shall on conviction be liable to fine of not less than five Million Tanzanian shillings or to imprisonment for a period of not less than Three years but not exceeding five years or to both ³⁵as per section 50(2) of the media service Act also the cyber-crime Act of 2015 from for the same compensation when conviction for publications of false statement³⁶.

2.8. Damages

Refer to money compensation for loss injury caused by wrongfully act of another, recovery of damage’s is the objective of most civil litigation³⁷

2.8.1 Damages for Online defamation

In most suit the primary form of legal recovery for a plaintiff is momentary damage’s , mostly a successful plaintiff in defamation law suit can recover any of the three types of defamation damage’s which are Actual damage’s/ General damage’s that in actual the recovering damage’s much shall base on plaintiff economic loss and under general it’s much based on how the reputation threaten and harm the plaintiff emotional and distress, other type is nominal damage’s under this the plaintiff is awarded by the court where the plaintiff will get trouble in proving the results from defamatory statement and last type is punitive this is much based on the exist of punishment to the wrongful conducts that includes defamation ³⁸

³⁴ www.minc.law >defamation. Accessed on 22nd August 2022 at 11:01 A:M

³⁵ Section 59(2) of the media service Act R;E 2019.

³⁶ Section 16 of the cyber crime Act of 2015

³⁷ [https:// legal dictionary.law.com](https://legal.dictionaries.com).accessed on Tuesday 2022 at 16:23pm.

³⁸ Ibid.

2.9. Reasons for defamation plaintiff seek for equitable relief.

Equitable relief is legal remedies that involves the court ordering someone to or not do something. So equitable relief may be the most important type of relief in defamation law suit. Due to the fact that this can force defendant to take down all materials and stop the publications of online defamation. Also obtain immediately relief in the event that a defendant publishes.³⁹

So under legal perspective equitable relief is not just obtaining money but is are legal remedies that involve court ordering.⁴⁰

³⁹ [www.katzlaw](http://www.katzlaw.com) . group.com. Accessed on 22nd August 2022 at 11:11 A:M

⁴⁰ [Https://; dictionary.com](https://dictionary.com) online defamation accessed on 4th November 2022 at 11:00Am.

CHAPTER THREE

LEGAL AND INSTITUTIONAL FRAME WORK GOVERNING ONLINE DEFAMATION.

3.0 INTRODUCTION

In this part of the research the researcher intends to provide and explain the legal and institutional framework associated with the research. In this part the researcher will explain the legal and institutional framework of defamation in Tanzania.

3.1 LEGAL AND INSTITUTION FRAME WORKS OF THE RESEARCH.

3.1.1 INTERNATIONAL INSTRUMENTS

3.1.1.1 Universal Declaration of Human Rights 1948

The Universal Declaration of Human Rights 1948 is a historic document that was adopted by the United Nations Assembly on 10th December 1948. Tanzania incorporated bill of rights in the constitution through Act 15 of 1984⁴¹ that the bill became justifiable after the grace period of the government, so basing. In the general overview of the protocol it has proved more on the rights that human being had to possess, so if one infringe others right will be subjected to cause harm and threatening this is per article 1 of the universal declaration of human rights which states that all human being are born free and equal in dignity right.⁴² Looking more on this provisions we came to see that everyone has the right to respect other person's dignity and reputation that no one had permitted to lower other dignity or reputation compared to what is conducted on social specific on

⁴¹ m.killander, international and domestic human rights litigation in Africa Pretoria university press;cape town 2010.159

⁴²Article 1 of the universal declaration of human rights 1948.

defamation, so the aim of the provisions is to ensure person's dignity and respect are to be valuable, whoever the protocol have not examine on what procedure to be taken to those who tend lower other person's dignity through social media.

3.1.2 REGIONAL INSTRUMENT

3.1.2.1. African Charter on Human and People's Right 1981

In Tanzania the African charter on human and people's rights 1981{ACHPR} was ratified on 9th march 1984 and came into force in 21st October 1986 it generally address the protection of fundamental rights that it recognize the respect this is per article 16 of the African charter on human and people's rights which states that All people shall be equal, they shall enjoy the same respect and shall have the same rights.⁴³ The said right by the convention is appearing to prohibit the defamatory actions since it provide that all people shall be equal and they shall enjoy the same respect.⁴⁴

3.1.3 DOMESTIC INSTRUMENT.

3.1.3.1 Constitution of United Republic of Tanzania of 1977

The constitution of united Republic of Tanzania has provided clearly for the freedom of expression in Article 18⁴⁵

In fact the same constitution under article 16 ⁴⁶ it provide for the respect and protection of the person privacy in his family matrimonial life and private communication all this showed in the constitution, the do directs on the reformers and makers to regulate and protect the reputation and right of the

⁴³Article 19 of the African charter on human and people's right 1981.

⁴⁴ ibid

⁴⁵ section 18 of the constitution of united Republic of Tanzania of 1977

⁴⁶ Article 16 of the Constitution of united Republic of Tanzania of 1977

people⁴⁷ in the lights of the provisions we cannot tell exactly that the defamation is provided in the constitution of united Republic of Tanzania but rather the constitution provides on the rights of citizens to be respected and personal privacy protection.

3.1.3.2 The Newspaper Act 1976

This Act was provided for the definition of the Defamation in Tanzania part VI of this Act actually State how ,how when and where the Defamation can be said to be done or deemed to be done section 38 provide for the definition of libel defamation while section 39 of the same Act provide as to when a defamation statement can be taken as the Defamation this section stating that *Defamatory matter is matter likely to injure the reputation of any person by exposing him to hatred contempt of ridicule or likely to damage any person in his professional or trade by injuring to his reputation*⁴⁸.

In considering part VI of the Newspaper Act I can tell that is the Act which provide clearly the meaning of Defamation and circumstance that it can be Said Defamation is quiet occur

3.1.3.3. Sheria ya Ulinzi wa Taarifa Binafisi 2022.

The Act was purposely enacted to protect personal information, Actually the Act stipulates on how personal information are to be protected by the publishers and the one preparing information for the purpose of publishing.

⁴⁷ Article 30(2)(d) of the constitution of united Republic of Tanzania of 1977

⁴⁸ Section 39 of the Newspaper Act of 1976.

This is evidenced under section 4 of that Act that provides on the objective of the Act, it stipulates that “kudhibiti ukusanyaji na uchakataji wa Taarifa Binafisi , paragraph (b) provide kulinda faragha za watu Binafisi.”⁴⁹

Also the law provides and show the compensation section when the owner of information incur injury basing on the information published. That the publishers of the information will be liable to make compensation to the owner of the information if the published information cause harm and injury. this is per section 37 (1) which provides that “Mhusika wa Taarifa atakayepata Madhara Kwa sababu za ukiukwaji wa masharti ya Sheria hii uliofanywa na mkusanyaji au mchakataji ,Atakuwa na haki ya kulipwa Fidia kutoka Kwa mkusanyaji au mchakataji kutokana na Madhara hayo.”⁵⁰

Making connection to the research the law appeared to have weaknesses due to the fact that the remedy imposed by the law is unknown, Not only that but also the law is insufficient to protect other individuals apart from the ones who owns information that are to be published by the publishers, because the law shows compensation are only to be awarded to the specified individuals by the law as per section 37 (1) (2).⁵¹

3.1.3.4 The Cyber Crimes Act of 2015.

Basing on section 16 of the Act the provisions is obviously detect that in Tanzania All defamatory statement arising out of social media are criminal offense were by through this one can articulate that Tanzania is the one of the country that use to criminalize Cyber defamation the provisions States that

⁴⁹ Section 4 a) (b) Sheria ya Ulinzi wa Taarifa Binafisi;2022

⁵⁰ Section 37 (1) Sheria ya Ulinzi wa Taarifa Binafisi;2022

⁵¹ Idem

Any person who publishes information or data presented in a picture text symbol or any other form in a computer systems knowing that such information or data is false deceptive, misleading or inaccurate and with intent to defame, threaten, abuse, insult or otherwise deceive or mislead the public or counseling commission of an offence commits shall on conviction be liable to fine of not less five Million Tanzanians shillings or imprisonment for terms of not less than three years or to both ⁵²

So through the assessment made by the researcher in this Act, it is the fact that the law is insufficient and not adequate to protect individuals against online defamation in Tanzania. Because the punishment imposed is not enough to cure the problem of online cases.

3.1.3.5. The TCRA Act of 2003

The Act was enacted to go together with rapid development of information and communication technology in Tanzania. The major aims of this Act is to form regulatory Authority which will be under taking or acting as the sensor body to police and regulate network service provider telecommunications and broadcasting also postal service spectrum.

However in this Act there is no provisions that is relevant to defamation in the nutshell, although is the Act enacted purposely to control the new imaging ICT technology like digital Transmission. So still the law appeared to be inadequate to protect individuals against online defamation.

⁵² Section 16 of, cyber Crime Act 2015

3.1.3.6. The electronic and postal communication (online content Regulation 2020)

The regulation was formulated for the purpose of prohibiting different online content; such of the prohibited content are sexuality personal privacy and respect of human dignity. The regulation also was formulated for the purpose of prohibiting publications of information that may cause public havoc and disorder that is per the third schedule of the regulation.

Also the regulation succeeded to impose the penalties to whoever misleading the regulation is provided under section 21(1) of the regulation which provides that “A person who contravene the provisions of this Regulation commit an offence shall, Upon be liable to fine of not less than five Million shillings or imprisonment for a term of not less than twelve years.⁵³

However the regulation has appeared to impose penalties for any misleading of the regulation on the prohibited content, but this Regulation seems to be insufficient and not adequate to cure the problem, this is on the fact that the established penalties seems to have no effect to cure the problem because it has low gravity on the fact that still people are misdealing and publish the prohibited content hence Leads to publications of fabricates content.

3.1.4 Case Laws

As the common law legal system the legal system of Tanzania relies on principles and rule's set by the precedent, the court has set criteria to be followed when dealing with online defamation that the criteria are not for

⁵³ Section 21(1) of the Electronic and Postal Communication (online content Regulation;2020

every specific case but rather they have guidelines by which the Court should consider when dealing with online content many cases have dealt with online defamation but the most case referred is the case of *Sirieli Mchemba Vs Pssf*⁵⁴ the case laid down the standard when dealing with online defamation that whether there is the law to be used as the guidance on defamation made through social media also the case of *Musa zambi Vs Erick Minga*⁵⁵ Whereby the case employed was about the defamation that were conducted via WhatsApp group composed members of CCM for songwe the case appeared to have all element for the establishment of defamatory statement.

3.2 INSTITUTIONS FRAME WORK

3.2.1 THE COURT OF LAW

The court of law in Tanzania has three tier systems in which the court of appeals at the top and subordinate Court at the bottom the court of appeals has the highest appeal jurisdiction followed by the high court and subordinate Court.

The court of appeal is established under Article 117 of the constitution of united republic of Tanzania as the court with the last say on dispensing justice⁵⁶ it manned by the chief justice of appeal appointed by the president⁵⁷ the high court is established under article 108 of the constitution and manned by judge of the high court and appointed by the president and subordinate Court is established under the Magistrate court Act and manned by the Magistrate that the subordinate Court consist of the Residents

⁵⁴ Civil case no 126 of 2018 Tanzania Court of appeal.

⁵⁵ Civil appeal No 13 of 2019 in the high court of Tanzania Mbeya Sub registry at Mbeya

⁵⁶ Article 117 of the constitution of the united republic of Tanzania of 1977 as amendment time to time.

⁵⁷ Article 118 of the constitution of united republic of

Magistrate court, ⁵⁸District court ⁵⁹and primary court⁶⁰ where one of the tasked job the court given is solving disputes both criminal and civil litigation as per online defamation one of disputes to be solved by the court.

3.2.1.1 JURISDICTION OF THE COURT IN DEALING WITH DEFAMATION CASES IN TANZANIA.

The jurisdiction of the court in defamation is in both subordinate court and supreme court .

In Tanzania the court with mandated jurisdiction of dealing with defamatory actions is the subordinate and supreme court, where the supreme court establish the judicial competence in determining the place of the first publications of defamatory statement also the place in which defamatory statement was added such as website.⁶¹

The jurisdiction of the Court in defamation is in both subordinate and Supreme Court depending on the value of compensation and geographical location where the matter arose this was explained in the case of *Peter Keas Vs The editor Mawaio Newspaper & Jabir Idirissa civil Case No145 of 2014*.⁶²

Justice Dyansobera stated that” for the purpose of jurisdiction the court subordinate to this court have jurisdiction to try and determine this suits by the plaintiff together with the counter claim raised by the defendant” the subordinate to the high court are the Primary court, District court and the Court of Resident Magistrate court depending on the pecuniary jurisdiction.

⁵⁸ Section (5) of the Residents Magistrate court Act Cap 11 R;E2019.

⁵⁹ Section (4) of the Residents Magistrate court Act Cap 11 R;E 2019.

⁶⁰ Ibid (3)

⁶¹ [www.exology](http://www.exology.com). Com supreme court. Accessed On 1st January 2023 at 10:10 A:M

⁶² Civil case No 145 of 2014 in the high court of Tanzania Dar es salaam sub registry at Dar es salaam.

3.2.1.2 PECUNIARY JURISDICTION

The jurisdiction of the court in defamation cases is regulated in accordance with the provisions of the Magistrate court Act.

Every suits shall be instituted in the court of lowest grade competent to try it and for the same grade this entails that The District court of Resident Magistrate court and the high court have original jurisdiction to entertain defamation cases the Magistrate court Act provide for pecuniary jurisdiction⁶³that pecuniary jurisdiction must be in respect to the type of damages that being claimed on weather general or specific damages also it was established in the case of *Peter Keas Vs The editor Mawaio Newspaper & Jabir Idirissa*)⁶⁴ were the plaintiff was claiming for Two Billions Tanzania shillings the Court held for the party of the plaintiff to have earned in jurisdiction because contained general damages which cannot be regarded as substantive claim hence such the matter has to be tried by the District court and the court of Resident Magistrate court for the first instance.

3.2.1.3 TERRITORIAL JURISDICTION;

Pertaining the fact that internet respects no boundaries, the matter of jurisdiction became a problem. The Brussels Convention contains a set of regulations that explained when, who and where does the matter of defamation in cyberspace entertain. For example, if a defamation claim occurred, and the defendant domiciled in a Member State, are sued in that Member State without considering their nationality.⁶⁵ The defendant may also be sued in a Member State where by the harmful event occurred,

⁶³ Section 40 of the Magistrate court Act R:E 2019.

⁶⁴ Civil Case No 145of 2014.

⁶⁵ Article 2, the Brussels Convention, 1974.

automatically the place where the publication takes place.⁶⁶ And where there are more than one defendant, who are of different nationality, then the claimant may choose to whom court he wishes to institute the legal proceedings where in cyber defamation, the plaintiff may choose which law, and where to institute the claim, because the internet has respect no traditional borders.⁶⁷

The above mean that, lodging a petition on defamation the plaintiff has to consider the territory from where the transaction arose for a competent Court to entertain the matter that arose within its geographical territory.

Also determination in defamation cases are likely to be complex even more so in the cases of online defamation, since the internet makes information might be in different global area. So because of this shows the application of the rule known as “*Lex loci delict*” That if Defamation takes place, then the law of the place where the action has arose and committed or the law of the place of domicile or habitual Residence of the defendant should be applied⁶⁸

But turning back to Tanzania it is a bigger problem when online defamation actions arose in Tanzania, this is on the fact that laws governing online defamation in Tanzania such as cyber-crime Act and the Media service Act they are not sufficient and effective to handle the matter, hence people are unprotected to online defamation.

⁶⁶ Ibid, Article 5(3).

⁶⁷ I. Bainbridge, *Introduction to Information Technology Law*, Edinburgh Gate: Ashford Colour Press Ltd, 2008,389.

⁶⁸ P;Emerick “Liability and jurisdictional issues in online defamation cases” *counsel of Europe*:2019.

3.2.3 THE POLICE FORCE

This is the institution tasked with the protection and maintenance of peace in the United Republic of Tanzania. Police force is established under the police force and Auxiliary Service Act Cap 322, ⁶⁹the police force in Tanzania is the national body that falls under the ministry of home affairs and led by the inspector general of police, so this institution can be helpful in making investigation on who has committed online defamation since investigation by police force is one of their mandated duty or task ⁷⁰

3.2.4 THE TCRA

The TCRA is an acronym for Tanzania Communication Regulatory Authority, which is a statutory body responsible for regulating communication and broadcasting in Tanzania it was established under TCRA act No 12 of 2003 which merged the Tanzania commission (TCC) and Tanzania Broadcasting commission (TBC) .TCRA is mandated to regulate the postal electronic communication and broadcasting industries in the United republic of Tanzania⁷¹.whoever much focusing the institution, the researcher has succeeded only to see the institution provide for its function and power where by one of its function is to protect its consumer in competition also protecting the interest of its consumer⁷² and the institution itself does not speak on the protection of customers about acts being committed through online platforms in Tanzania

⁶⁹ The police force and Auxiliary Service Act Cap 322 .

⁷⁰ Section 5 of the police and Auxiliary Service Act Cap 322.

⁷¹ [www.tcra](http://www.tcra.go.tz) go Tanzania. Accessed on 1st January 2023 at 10:12 A:M

⁷² Section 5(1)(b) of the Tanzania Communication Regulatory Authority Act of 2003.

In the analysis as to whether internet service User are liable for online Defamation the researcher make a conversation with TCRA legal officers who argued that TCRA aimed at regulating ICT that established to regulate communication, but not limited to the use of social media as the organization suggest TCRA cannot regulate the communication sector, TCRA exercise its duty under TCRA Act.

3.3 Conclusion

Despite of various laws that has just tried to provide different views about defamation and its element still there is a gap on its effectiveness on how to protect individuals against online defamation .that conducted through social media. So in closing this chapter it should be borne in mind that in Tanzania the laws that govern online defamation are not sufficient to protect individuals against defamatory actions via online platforms.

Also one of the Author in his analysis on development of online defamation in Tanzania has pointed out the lacuna which has subsist to online defamation through social media whereby he State that ⁷³it is impracticable for a person to claim for damages for defamation arising out of social media or internet usage simply because there is no law that cater the development of online defamation he also went further describes that in Tanzania there is no sufficient law that govern and protect individuals against online defamation.

⁷³ B;P, Ashley Magalla the analysis on online defamation 2019.

CHAPTER FOUR

DATA ANALYSIS, RESEARCH FINDINGS AND ANALYSIS OF THE LAW.

4.1. INTRODUCTION

In this chapter the researcher has provided a detailed analysis on the data obtained from the field through an interview with the specified groups of individual as well as an analysis on the data obtained from different literature so as to prove or to disprove the hypothesis provided by the researcher

There after the research make an analysis on the law so as to prove the lacuna established under the hypothesis, such law is the law of cyber-crime Act of 2015 and the Media service Act of 2016. The researcher makes analysis on the law on the ground that this law appeared to be inadequate and less effective to protect individuals against online defamation.

Also the researcher makes analysis on the established objectives of the research so as to meet the requirements of the research, and lastly the researcher make analysis on testing the research hypothesis.

The analysis is divided into Three parts whereas the first part is the analysis on the law second part is about the analysis on the literature findings basing on literature data there after Analysis on research findings from the field also the next analysis made by the researcher on the objective of the research, and lastly is the analysis on testing the research hypothesis.

4.1.1 ANALYSIS OF THE LAW

On making the analysis on the law the researcher come to determine that tremendously challenge occurring through online platforms media like WhatsApp, Instagram, Facebook and so many other led to online defamation

cases, so focusing on this facts come to conclude the law governing the matter appeared to be inadequate and less sufficient because even the punishment established under the law seems not to be enough for the purpose of handling the problem thus why still online defamation in Tanzania still is the problem however there is the law, this is evidenced under section 16 of the cyber-crime Act, however the law stipulates on the imposed punishment but the established punishment appeared not to be enough as it states that "Any person publishes information or data presented in a picture text, symbol or any other forms in a computer system knowing that such information or data is false shall conviction be liable to a fine of not less than five Million shillings or imprisonment for a term of not less than Three years or to both.⁷⁴ Not only this law which establish week punishment also the media service Act under section 50 which stipulates that "A person commits an offence and upon conviction shall be liable to a fine of not less than five Million shillings but not exceeding twenty million or to imprisonment for a period of not less than Three years but not exceeding five years or to both.⁷⁵

So the researcher determine the problem through making the analysis of the law where come to determine that in Tanzania most people are not protected against online defamation because the established law to be enforced appeared not to be sufficient and effective to protect individuals against online defamatory actions on the way how the law exercise its objective that however the law has provide for the provisions about online defamation but still there is many online defamation cases, this is on how sentences imposed

⁷⁴ Section 16 of the cyber crime Act of 2015

⁷⁵ Section 50(2) of the media service Act of 2016.

it's seems to be lower hence Leads to the continuation of publications of false statement so the reason why the law is insufficient is because the punishment imposed is low

Also the other reason for the insufficient of the law is that the punishment appeared to be proportional with the harm caused over online platforms, Thus still there is the use of online platforms to publish fabricates content, on the manner that people publishing they are able to afford the Punishment imposed by the described law

Moreover the law is insufficient on the reason that there is no any provisions that stipulates on the technology that would be taken over anonymous and ghost user of online platforms. So this is the weakness of the law that appeared to be inadequate to protect individuals against online defamation.

4.1.2. LITERATURE DATA

The researcher consulted various cases and different published literature ie. Books Articles, journals Report and other relevant written works.

In the article written by Ashery B,P Magalla on the analysis on the foundation of defamation in Tanzania the Author has dramatized. Much explaining how defamation arises in Tanzania where he proposed by pointed out the lacuna which has subsist to online defamation stating that it is impracticable for a person to claim for damages arising out of social media because there is no law that cater the development of online defamation he went further by

describing that in Tanzania there is insufficient law that governs online platforms defamatory actions.⁷⁶

The case of *Siriel Mchemba Vs Psssf civil appeal No 126 of 2018 Tanzania court of appeals at Dar salaam*⁷⁷. Also this is the how the researcher collected the information basing on literally means that fit the need of the research in the case online defamation appeared to be made by the respondent to the appellant through establishing defamatory statement the court of law held that in Tanzania mostly have no specific law towards online defamation the court ruled by stating that the authorities has to ensure that defamation laws are designed so as to be applied to all kind of social media defamation because the high court failed to reevaluate the applicable law that are concerned about defamation made online.

4.1.3. FIELD DATA

The researcher also obtained data from the field through semi structured interview by using open ended questions that facilitates the respondent to give sufficient data. Interview was conducted at Mwanza region where the total numbers of respondent were 5 Advocate 5 Magistrates 5 journalists and 5 Citizens in the society.

Whoever the researcher gets different answers from each group interviewed as per beneath

⁷⁶ A,B Magalla *analysis on development of digital technically*.(2016)

⁷⁷ Civil appeal No 128 of 2018 court of appeals at Dar es salaam.

4.1.3.1. DATA OR INFORMATION OBTAINED FROM ADVOCATES IN THE FIELD

The researcher interviewed a number of ten advocates in their practice about the research when they meet cases from clients with facts based on online defamation, however during the interview the researcher obtained different views and opinions from the respondents, but the large number of the interviewed respondents appeared to have the same backup on the matter

They're arguing by saying that for them it is difficult to represent clients before the court of law with cases related to online defamation. Because laws governing the matter appeared to be inadequate and insufficient to protect individuals against defamatory statements via social media. The law is insufficient on the manner how it imposes sanctions on those who publish false statements through online platforms.

Also they continued saying that any Advocate before taking a case on behalf of his or her client to represent before the court of law, it is mandatory for them to be conversant with the law that governs the matter that shall enable them to file the matter before the court of law by considering the jurisdiction of the court.

So the interviewed advocates came to conclude that for them in practice they mostly face a lot of challenges on how to file and institute such cases before the court of law, since the current legal regimes on defamation appeared not to be sufficient and effective when it comes to protect individuals against online platform actions. In this aspect the researcher came to prove the established hypothesis of the research that it seems that laws

governing online defamation in Tanzania do not provide for sufficient protection, hence people being unprotected for this problem

4.1.3.2. DATA OBTAINED FROM OTHER RESPONDENT IN THE FIELD

The most realizations the researcher got from interviewing five citizens in the society who use social media in Tanzania, is that most of interviewed person in this group they appeared to have no knowledge on what is called online defamation, because during the interview most of the respondent provides their views, that in Tanzania every smartphone user also every social media user is a journalist, because he or she can use social media to post and publish whatever thinks to publish because there is a freedom of expression in Tanzania as it's recognized by the constitution.

Here the researcher implanted new idea from the interviewed five person, that most of social media user they lack the knowledge that explain however there is enjoyable rights for individuals, still every right has its limitations that there is no absolutely right.

So this came to stands as a the connecting factor to the objectives of the research that there should be Enactment of effective law that govern and protect individuals against online platforms actions, also the creation of awareness to the majority or the user of social media in Tanzania.

4.1.3.3. DATA OBTAINED FROM JOURNALIST (MEDIA PERSONALE) IN THE FIELD.

The most frustrated thing that the researcher got from interviewing the media personal in the field, is that most of the interviewed respondent in this group they appeared to work under journalism carrier with high competition of

getting many followers for their Media source of information, so this is the risky and harm that come with digitization because most of media personal appeared to make fabrication of the content for the purpose of gating many followers. This is because mostly their appeared to dishonor the ethics that established under the carrier not because they have not trained it is because they use experience to work and not knowledge and skills that they were imputed.

Connecting to the objective of the research it's the fact that there should be a creation of awareness to the people using social media not to fabricate content so as to avoid publishing false statement to the public.

4.1.3.4. DATA OBTAINED FROM MAGISTRATE'S IN THE FIELD.

The researcher interviewed a number of five magistrates in the field about the subject matter when they meet cases with the element of online defamation. For them they have provided detailed information that in their practice when they meet such case's it became difficult to administer Justice to the parties because the law that embarked them about online defamation in Tanzania mostly are not sufficient also there are not adequate to determine the matter.

Basing on this problem they argued by saying that they are forced to apply common law only when there is a lacuna in our law but for this matter mostly they a using Precedents so as to handle the matter, that brought before the court of law, because domestic laws of Tanzania in relation to online defamation They appeared to be insufficient to render justice to parties.

Also for them they are arguing by saying that it becomes a huge task for them to make the interpretation of law since they have mandated to make

interpretation of the law, because the laws to be interpreted their appeared to contradict them self on the basis of imposing punishment because one stipulates the maximum momentum should not exceed twenty million⁷⁸ while other stipulates on the momentum less to other stipulates with other law ⁷⁹

So basing on this view actually it shows and proves the established hypothesis by the researcher that in Tanzania law governing online defamation they're not adequate hence people are not protected against online defamation. So this come to make the objective of the research to be workable on the basis that there is a need of designated law that would be there to adhered and protect people over online platforms actions in Tanzania.

4.4. TESTING THE HYPOTHESIS OF THE RESEARCH

Actually basing on the research findings analysis obtained from literature analysis, findings from field and analysis of the law it is the fact that the findings analysis came to prove the established hypothesis that “it seems law governing online defamation do not adequately protect the people in Tanzania.”

⁷⁸ Section 50 of the Media Service Act of 2016

⁷⁹ Section 16 of the Cyber Crime Act of 2015.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.1. INTRODUCTION

This chapter provide a conclusion and recommendations basing on the research findings the conclusion herein is based on the data collected and the analysis done followed by recommendations as per the approved hypothesis, Approved in the affirmative and see whether the objectives of this research have been met.

The recommendation will basically aim to bring about the Enactment of law as approved by the hypothesis that in Tanzania it appears that the current legal regimes for defamation is not adequate and sufficient to protect individuals against online defamation. Here under is the conclusion and recommendations of the research.

5.2. CONCLUSION OF THE DATA OBTAINED FROM LITERATURE AND FIELD.

After analyzing the data obtained from literature, field and from the analysis of the law, the researcher has come to a conclusion that online defamation can only be cured through establishing the law that will be adequate and to regulate and protect people against online defamation, as per the held of the applied case, the case of *Psssf Vs Siriell Mchemba*⁸⁰.whereby the court ruled by stating that the authorities has to ensure defamation laws are designed so as to be applied to all kind of social media defamation.

⁸⁰ Civil appeal No 126 of 2018 court of appeals at Dar es salaam.

This researcher aim at looking at the existing online defamation in Tanzania by analysis whether the law in Tanzania covers the gap which is exiting in that efforts a lot come like the fact that the law of Tanzania does not cover when comes to online defamation The researcher examine the existing laws regulate cyber space in Tanzania but yet they have not provide any details information about online Defamation in Tanzania

5.3. RECOMMENDATIONS

Online defamation has become a tremendously problem, because of the digital technically or digitalization that many people does use social media for different purpose. but through the use of this social media is where publications of false statement to the public arises, this has become common issue in Tanzania not because people have freedom of expression of their idea or views to the public but rather it has become common because people have no ideas on what can constitutes online defamation not only that, but the biggest reason of people publishing and fabricates content is because the present law such cyber law and the media service Act do not protect individuals against online defamation

The researcher recommend for the establishment or designated of the law that shall be used as the guidelines, also as the ruler to the people in the society to avoid the publications of false information because this publications of false statement leads to injure and harm persons reputation or dignity and once this happens in the society the defamed person get to feel inferior and not respected in the society because of the published words over he or she

5.3.1 Government has to ensure that there are strict measure's to be taken against online platforms actions,

In this issues the government has to ensure that available of torts is well implemented and various measure has to be taken to ensure that the law governing online defamation is effective , However there should be various remedies to ensure that people are not causing harm to other people .Some measure to be taken is especially to those people who use social medias as the means of spreading false information with the purpose and intentions of causing harm to other people so the government has to ensure that they impose strict measure's example imposing higher payment of compensation to the victim as the means of reparations to them

Also for the effective and protection of people right are pronounced in the Article 18 of the constitution of united Republic of Tanzania which inter Lia state that `every person has a freedom of opinion and expression of his idea (b) has a right to seeks, receive and, or disseminate information regardless of boundaries” and Article 16 that stipulates ' Every person is entitled to respect and of his person, the privacy of his own person, his family and his matrimonial life and respect protection of his residence and private communication”

In this spirit of the above provision from the constitution it is the duty of the Executive and the government to create awareness to the majority that every right has its limitations that there are no absolutely rights.

5.3.2. On the Parliament

As the parliament is the making body it should revise the law which regulate the Defamation in Tanzania to include the liability of Internet service User's

and to seal all the ways possible the internet user who use social media publishing false information through Creating bogus account for the purpose of causing injury and harm to other people Refer to *zeitam.blogspot.com* they normally use the bogus account for the purpose of establishing false information

I would recommend on the unification of the law. On the law to be amended because there is no any sufficient reason having more than one law stipulates on the same matter

To cope with this problem there a need of the parliament to Amend the law that cater the development of defamatory actions over online platforms.

Also the law makers should consider to extend the liability even if the acts of defamation has occurred outside Tanzania but involve a computer system or network.

Frankly speaking This problem can only be cured through observing the following first through making an amendment of the law, second through making the unification of the law so as to avoid any unnecessary contradiction of the law. third the amended law have to impose strict punishment proportional to the harm caused and fourth The institution governing communication technology in Tanzania (TCRA) have to insure that there is sufficient technology when it comes to online platforms actions so as to determine the user. this will be helpful to handle this anonymous and ghost user of online platforms.

5.4 Conclusion

In this final chapter the researcher provide for the recommendation of the research by suggesting the important steps in which Executive, Parliament should take in order to secure the reputation of the people which are in the risk of being ruin due to development of new technology.

In order to solve this problem there is need of having the law that stipulates strictly on the heavy punishment proportional to the alleged harm, through this it will help people to avoid any unnecessary publications that leads to lower others reputation.

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APPENDICES

APPENDIX 1: QUESTIONS TO THE RESPONDENT:

1. have you ever been a victim of online defamation?
.....
2. How Did you find that your being defamed online?
.....
3. What kind of online platforms were used to defame you?
example social media, Blogs, forums
.....
4. Did you Take any action to stop online content?
.....
5. if yes What action did you take ? reporting to the forum or filling a law
suit
.....
.....
....
6. Were you satisfied with the action taken by the legal system to address
defamation ?
.....
.....
7. Do you think the current legal frame works in Tanzania adequately address
online defamation
.....
.....
8. Do you think the established punishment by the law of defamation is
enough to cure online defamation in Tanzania?
.....
.....,.....
.....
9. Do you think that there should be more education and Awareness on the
issue of online Defamation?
.....
10. Do you think that online platforms should be held responsible for the
Defamatory content posted by their users in Tanzania?
.....
11. What measure do you think should be taken to prevent online defamation
in Tanzania?
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