**Lipumba v Mzee**

**Division:** Court of Appeal of Tanzania at Zanzibar

**Date of judgment:** 4 December 2003

**Case Number:** 92/98

**Before:** Mroso, Munuo and Nsekela JJA

**Sourced by:** LawAfrica

**Summarised by:** A Mwanzia

*[1] Damages – Slander – Power of appellate court to review award of damages – Whether trial Judge*

*applied wrong principle or misapprehended facts to make wholly erroneous estimate – Whether general*

*damages flow from wrong complained of.*

*[2] Slander – Actionable* per se *– Slanderous words imputing commission of crime – Whether necessary*

*to prove special damages – Fair comment – Whether party must plead facts upon which defence of fair*

*comment predicated.*

**Editor’s Summary**

The Appellant who was a party chairman and professor of economics, had at a public rally uttered words which the Respondent complained were defamatory of him. The Respondent was the chairman of the Electoral Commission of Zanzibar, and the Appellant had alleged that the Respondent bought a house worth TShs 60 million immediately after the elections through corrupt means. The Respondent claimed that the words spoken by the Appellant were defamatory and were understood to mean that the Respondent was a corrupt person who was bribed and so bought a house worth over TShs 60 million soon after announcing the election results. The Respondent claimed *inter alia* TShs 100 million as general damages from the Appellant and three others in the trial court. After due consideration and analysis of the evidence, the trial Judge held that the Respondent had been defamed and ordered each of the four Defendants to pay TShs 30 million as general damages. The Appellant appealed on grounds *inter alia*, that the trial Judge had failed to appreciate the distinction between libel and slander; that the trial Judge had erred in holding the Appellant equally liable as the rest of the Defendants; and that the trial Judge had erred in awarding such a huge sum of money as damages while the evidence adduced did not prove any special damage to the Respondent.

**Held** – A slander is a false and defamatory statement made by spoken words or gestures which tend to injure the reputation of another. The trial Judge correctly found that the spoken words imputed the commission of a crime and so were actionable *per se*. The Respondent did not need to prove special damages. It is trite law that the defence of fair comment is concerned with the protection of comment. The Appellant had to plead the facts upon which the comment was based and the facts must have been in existence. The spoken words, as found by the trial Judge, constituted a false statement of fact. The defence of fair comment was not therefore applicable (*Reynolds v Times Newspapers* [2000] 2 LRC 750 considered). The power of an appellate court to review awards of damages on the ground either that they are too high or too low is limited. It must be shown that the trial Judge arrived at his figure by applying a wrong principle or through a misapprehension of facts, or that for some other reason made a wholly erroneous estimate of the damaged suffered (*Associated Newspapers Ltd v Dingle* [1962] 2 All ER 737 adopted). The law presumes general damages to flow from the wrong complained of and they need not be specially pleaded (*Admiralty Commissioner v SS Susquehanna* [1926] AC 655 considered). The trial Judge was unduly influenced by the staggering claim of TShs 100 million from each of the general damages made by the Respondent. The award of TShs 30 million as general damages was on the high side and would be substituted with the figure of TShs 10 million.

Appeal dismissed.

**Cases referred to in judgment**

(“**A**” means adopted; “**AL**” means allowed; “**AP**” means applied; “**APP**” means approved; “**C**” means

considered; “**D**” means distinguished; “**DA**” means disapproved; “**DT**” means doubted; “**E**” means

explained; “**F**” means followed; “**O**” means overruled)

*Admiralty Commissioner v SS Susquehanna* [1926] AC 655 – **C**

*Associated Newspapers Ltd v Dingle* [1962] 2 All ER 737 – **A**

*John v MGN Limited* [1996] 2 All ER 35

*Reynolds v Times Newspapers* [2000] 2 LRC 750 – **C**