

**IN THE RESIDENT MAGISTRATE'S COURT OF DAR ES SALAAM**

**AT KISUTU**

**CRIMINAL CASE NO. 167 OF 2016**

**REPUBLIC**

**VERSUS**

**BOB CHACHA WANGWE**

**JUDGMENT**

*Date of last Order: 10/10/2017*

*Date of Judgment: 15/11/2017*

**BEFORE HON. SHAIKI – PRM**

Accused is charged with the offence of Publication of false information c/s 16 of the Cybercrimes Act No. 14/2015. That on 15<sup>th</sup> day of March 2016 within the city and Region of Dar-es-Salaam with intent to mislead the public. Published through a social media network namely FACEBOOK a publication containing misleading information relating to political affairs of Zanzibar to wit, "Tanzania ni nchi ambayo inajaza chuki wananchi ..... Matokeo ya kubaka demokrasia Zanzibar ni hatari zaidi ya Muungano wenyewe..... Haiwezekani nchi ya Zanzibar kuwa koloni la Tanzania bara kwa sababu za kijinga."

Prosecution case was mounted by six witnesses and several exhibits amounting to five.

Prosecution case lead that on 07<sup>th</sup> May 2016 Police arrested accused

bob.wangwe@yahoo.com. They managed to seize his mobile phone (Exhibit P2). The cellphone (Exhibit P4) is Sony Experia with IMEI No. 35.2900055645241 and Tigo line Lt-261 No. 0718664381. The cellphone was taken to the Bureau for Forensic Investigation on Cyber Crimes for further investigation. PW5 Innocent Ndowo conducted investigation and he observed that the phone is sound, is working and had IMEI No. 35290005564524. Also that on 15<sup>th</sup> March 2016 at 10:11 pm on Facebook Account at the name of Bob Chacha Wangwe and registered email address bob.wangwe@yahoo.com posted a statement on a timeline with the heading "Doctor Shein akiuwawa na Karume, sitashangaa wala kushtuka.".... Further the publication read ..... "Tanzania ni nchi ambayo inajaza chuki wananchi ..... matokeo ya kubaka demokrasia Zanzibar ni hatari zaidi ya muungano wenyewe."..... Haiwezekani nchi ya Zanzibar kuwa koloni la Tanzania bara kwa sababu za kijinga." PW5 then compiled his report – exhibit P3.

On his side accused do not dispute to have written those words in issue, he put that were his personal views as regards the election conducted at Zanzibar and on how Democracy was faulted. Further, accused tells that the Facebook account is his and that he wrote those words and posted them in a private mode, that means were for his personal consumption not for Public and Specifically to those who follows him.

The evidence by PW5 and Exhibit as well as the attached CD shows that the Publication on the Facebook through the account of accused was in public mode not private as the accused leveled. At the page there were

comments from other people which means they read the comments made by the accused. Further the way the said publication was couched it is obvious was meant to be for the viewers, readers to understand something, to share the idea of the accused with others. I wish to think that his comments purport to be on behalf of Wananchi/Citizens of which I am sure all citizens do not all share the comments as a true account as it is purported to be. Zanzibar is not a colony of Tanzania mainland, there is no truth in this.

Section 3 of Cyber Crime Act 2015 define the word Publish as:-

*"distributing, transmitting, dissemination, circulating, delivering, exhibit exchanging."*

As I have aforesaid, the Publication was communicated to other people for they even communicated on it as per Exhibit P3 and the attached CD. On top of that, even police managed to get the information on the issue after publication, had it been was in private mode they could not be able to read and even to tress the accused.

Out of the aforesaid, I find the prosecution case with substance and I find accused person guilty and I convict him.

Sgd: Hon. H. Shaidi – PRM

15/11/2017

**Prosecutor:** We don't have bad previous record of accused however I pray the court to punish him as per the law.

**Mitigation - Advocate:**

I pray for lenience for the accused is the first offender, very young



new law which is not yet clear to Public. The law under which accused is charged with allows punishment by fine, so I ask for lenience to the accused by ordering him to pay fine.

That is all.

**Sentence:**

Accused is a first offender and really very young. The law allows punishment by fine as well. However the court would like to tell accused that he is very young and with more positive thing to do at the moment not to engage in things or doings which will amount to put him in conflict with the laws of the land. This will be a lesson to him and a call of reminder. Out of the aforesaid the court then opt to fine him with five million shillings (5,000,000/=) and in case of default he shall go to jail for one year and a half.

I so order. Right of appeal explained.

Sgd: Hon. H. Shaidi – PRM

15/11/2017

Delivered in the presence of accused, his advocate and State Attorney.

Sgd: Hon. H. Shaidi – PRM

15/11/2017

MAGISTRATES COURT  
KISUMU DAR ES SALAAM  
I here certify that the foregoing is  
a true and correct copy of the original  
Principal/Senior/Resident Magistrate  
Date: 12/02/2018