



Photo by Emediong Umoh on Unsplash

Understanding Defamation Laws In Tanzania

TrustLaw



**Thomson Reuters
Foundation**



IDEAL
LAW GROUP
LEGAL PARTNER IN BUSINESS





Introduction

When applied, defamation laws are intended to protect individuals and businesses against false statements that are harmful to their reputation. Yet both civil and criminal defamation laws have the potential to be misused to prevent open public debate.

This Guide provides journalists with a practical understanding of defamation laws and the steps they can take to mitigate defamation liability in Tanzania. This awareness will empower journalists to understand their legal rights and obligations and continue to report on issues of vital public interest. The Guide covers the scope of defamation law, the criminal and civil process of cases in courts, the defences against defamation, sanctions against defamation, and practical steps to mitigate defamation liability.



REUTERS/Thierry Gouegnon

1. Scope of Defamation

What is defamation?

Defamation is broadly defined as a false statement made by a person, whether verbal (slander) or written (libel), that causes harm to another person's reputation or character. In Tanzania, defamation is primarily governed by common law principles (decisions from previous court cases), and customary law (a set of practices, beliefs, and customs that are accepted as rules of conduct by a community).

In Tanzania, defamation is defined as any publication likely to expose someone (whether living or dead) to hatred, contempt, or ridicule.¹ A publication includes:

- (a) Printing.
- (b) Writing.
- (c) Painting.
- (d) Effigy.
- (e) Other means such as exhibition, reading, recitation, description, delivery.²

¹ Sections 35(1) and 35(2) of the [Media Services Act of 2016](#)

² Section 36, [Media Services Act 2016](#)

What constitutes criminal and civil defamation?

There are two key distinctions between criminal and civil defamation:

- (a) the identity of the party bringing the claim; and
- (b) the applicable standard of proof required to prove the claim.

In civil proceedings, the party claiming they were defamed (plaintiff) will file a claim which must be proven on a balance of probabilities (the standard of proof required in civil cases). This means that the evidence presented must be more likely than not to be true. In the case of a criminal offence, the [Director of Public Prosecutions of the National Prosecutions Service](#) institutes the case and must establish the elements of the crime beyond reasonable doubt. This means that there is a higher evidence threshold in criminal cases as opposed to civil cases. Criminal cases are ordinarily punishable by a fine or imprisonment or both. On the other hand, civil defamation is usually punished through damages (money awarded to the plaintiff by the court).

Although there is no criminal defamation in the [Penal Code](#) after the repeal of Sections 187-194, the publication of false information that defames, threatens, insults, or misleads the public is a criminal offence.³ However, that section refers to the publication of material in a “computer system” and it is not clear whether publication elsewhere would constitute a criminal offence.

In what instances can I be sued for civil defamation?

You may be sued for civil defamation by any person or an entity (through their representatives such as company directors) who believe their reputation has been tarnished by your alleged defamatory statement.

For a person to successfully establish a claim against you for civil defamation, they must prove that the statement complained of:

- (a) was false;
- (b) was defamatory;
- (c) was published to a third party;
- (d) referred to the individual or entity claiming defamation.

If the court finds that the statement complained of was defamatory, you will be found liable, unless you can defend the claim with some of the defences allowed as discussed below.

In what instances can I be prosecuted for false publication which is likely to discredit the reputation of a person?

You may be charged/prosecuted if you knowingly publish false information which is likely to harm a person's reputation.⁴ For you to be convicted of the offence, the prosecutor must prove both criminal intent and your actual publication of false material. The prosecution must demonstrate beyond a reasonable doubt that you knew the material was untrue and published it with the aim of damaging someone's reputation.

Does the law criminalise hate speech?

Hate speech is a crime in Tanzania. Hate speech refers to any portrayal by words, speech or pictures or otherwise, which denigrates, defames, or devalues a person or group on the basis of race, ethnicity, religion, or disability.⁵ Conviction for the crime of hate speech attracts a fine of not less than TSh. 5,000,000 or imprisonment of not less than one year or both.

It is also a crime to publish racist and xenophobic material. This is material which advocates, promotes or incites hatred, discrimination or violence, against any person or group of persons based on race, colour, descent, national or ethnic origin or religion.⁶ If convicted of publishing racist and xenophobic material, a person may be sentenced to pay a fine of not less than TSh. 3,000,000 or imprisonment of not less than one year or both.

What are the possible consequences of being convicted for publishing false information?

Publishing false information is punishable by a fine of up to TSh. 5,000,000 or imprisonment of not less than three years or both.⁷

| 4 Section 16, [Cybercrimes Act, 2015](#)

| 5 Section 3, [Electronic and Postal Communications \(Online Content\) Regulations of 2020](#).

| 6 Section 3, [Cybercrimes Act, 2015](#)

| 7 Section 16, [Cybercrimes Act, 2015](#)

What are the possible consequences of being found liable for civil defamation?

If you are successfully sued for defamation, the court may order for:

- (a) **Damages:** If the defamatory statement has already been published and /an individual or entity is successful in proving a defamation claim against a journalist, they are entitled to an award of monetary compensation for the harm to their reputation.
- (b) **Retraction and/or apology:** Courts may order a retraction of the offending article and apology when requested by the plaintiff and after assessing the facts of the case.

Case examples

Civil defamation

● *Benard Kamilius Membe vs. Cyprian Majura Musiba and others*⁸

In this case, the plaintiff, a former Tanzanian government minister and political figure, accused the defendants, including Musiba and the Tanzanite Newspaper, of publishing a series of defamatory articles and statements that damaged his reputation. These publications falsely alleged that Membe was involved in activities like election rigging, money laundering, and being a threat to national security, which led to personal, professional, and financial harm. The court found the defendants liable for defamation, awarding Membe general and exemplary damages, and issued an injunction against further defamatory publications.

This case re-affirmed the key ingredients in defamation including that the publication must be false, defamatory, published to a third party, and refers to the plaintiff. The case also illustrates the fact that the award of damages in defamation cases is discretionary. In the case, the court ordered the defendant who was a journalist to pay TSh 7,000,000,000 in damages to the plaintiff.

● *Augustino Elias Mdachi vs Ramadhan Omary Ngaleba*⁹

In this case, the appellant sought to overturn the decision of the resident magistrate court that found him liable for defamation. The incident leading to the appeal occurred on July 22, 2016, at Kidimu Street,

| 8 Civil case no. 220 of 2018

| 9 Civil Appeal 65 of 2019 [2020] TZHC 1347

Pangani Ward in Kibaha Urban Council. Ngaleba was monitoring his trucks carrying sand extracted from his farm when he was stopped by Mdachi, a Councillor for Pangani Ward, who was accompanied by two other officials. Mdachi allegedly uttered defamatory statements against Ngaleba, accusing him of conducting sand extraction without a license. The High Court found that the statement regarding the lack of a license was justified and not defamatory since Ngaleba did not have a license for sand extraction, and that there was no evidence of malicious prosecution or proof of damages suffered by Ngaleba. The court also said that it was the responsibility of an appellant to prove that his allegations were true which he did by presenting evidence showing that the respondent did not have the license.

● *Rev. Isack Richard vs. Bishop Solomon Rukumaye & 3 Others*¹⁰

Rev. Isack Richard (the appellant) filed a civil appeal against the respondents concerning defamation. The dispute arose from statements allegedly made by the respondents, which the appellant claimed were defamatory. The Resident Magistrates' Court of Musoma initially dismissed the appellant's petition, stating that the alleged defamatory statements were justified, true, and intended to protect the interests of the church.

The appellant appealed the decision, arguing that the lower court failed to address all necessary elements of defamation and did not provide the fourth respondent the right to be heard. The High Court identified two main issues: the lower court's failure to determine all elements of defamation and the denial of the right to be heard for the fourth respondent. The High Court set aside the proceedings and judgment of the lower court and remitted the case for reconsideration by another competent magistrate. Apart from the importance of the right to be heard, the court also affirmed the following legal principles:

First, for a petitioner to succeed in a defamation suit, three elements must be proven: the statement must be defamatory, it must be directed at the petitioner causing injury, and it must be published to a third party. Secondly, if a statement is proven to be true, it serves as a defense against defamation. Other defenses include fair comment, privilege, lack of malice, and consent.



Photo by Andrew Medhat on Unsplash

2. Procedure for Launching Criminal Cases

Who can complain to law enforcement about publication of false information that defames, threatens, insults, or misleads the public?

Any person (legal or natural) who is aggrieved by information/statements which are likely to harm their reputation can complain to the police. The case may be reported to a police station where a formal statement is recorded. The police will then investigate the matter to determine if there is enough evidence. If sufficient evidence is found, the police may arrest the accused and prepare a charge sheet after interviewing the person suspected of having committed the offence (see the [Criminal Prosecutions](#)

[Case Manual](#)). The case will then be forwarded to the [Director of Public Prosecutions](#) for review and decisions on whether to prosecute or not. If the DPP finds a strong case, the matter proceeds to court. The decision will be determined by the strength of the evidence, public interest and legal considerations.

Who decides whether to prosecute a journalist for publication of false information that defames, threatens, insults, or misleads the public?

Criminal offences are prosecuted on behalf of the state by the [Director of Public Prosecutions](#).

In making the decision on whether to prosecute a person or not, prosecutors are guided by the [Criminal Prosecutions Case Manual](#) available on the [National Prosecutions Service](#) webpage.



REUTERS/Emmanuel Herman

What should I do if I am arrested and/or charged with the publication of false information that defames, threatens, insults, or misleads the public?

If you are arrested and/or charged, you are entitled to the rights of an arrested person that are provided in the [Criminal Prosecutions Case Manual](#).

As an arrested person you have the right:

- (a) to be promptly informed the reason for the arrest (However, the [Criminal Prosecutions Case Manual](#) states that an arrested person may not be given the reason for the arrest if he or she “makes [it] impracticable for the arresting officer to inform him [or her] of that offence”);
- (b) to be brought before a court as soon as practicable (within 24 hours of arrest) “unless the offence appears to that officer to be of a serious nature”¹¹;
- (c) to an explanation of every element of the charge;
- (d) when charged, to have the charge and the particulars be read to you in your own language or in a language you can speak and understand;
- (e) to be given an interpreter if you do not understand the language used in court. This is provided for in Section 211 of the [Criminal Procedure Act](#);
- (f) to be released on bond with or without sureties, of a reasonable amount to appear before a court at a time and place to be named in the bond¹²; and
- (g) if convicted, to appeal a decision made by a lower court or tribunal.

¹¹ See section 32, [Criminal Procedure Act](#)

¹² Ibid



REUTERS/Stringer

3. Procedure for Instituting Civil Defamation in Tanzania

How does an aggrieved party sue a journalist/media outlet for defamation?

Any person, legal (such as companies) or natural (such as an individual), can sue for defamation. The procedure for instituting civil defamation in Tanzania is set out in the [Media Services \(Defamation Proceedings\) Rules, 2019](#).

Family members may pursue claims on behalf of deceased persons if reputational harm extends posthumously. However, they need the consent of the Director of Public Prosecutions to institute the case.¹³ These are the steps that a plaintiff follows:

Step 1: Plaintiff establishes that a cause of action (legal basis of the case) exists

Step 2: Institution of proceedings

Legal proceedings for civil defamation should be instituted by way of a petition in the Schedule Form DP in the [Media Services \(Defamation Proceedings\) Rules, 2019](#).

Step 3: Service of petition

The plaintiff should present the defendant/respondent with a copy of the petition within 7 days of filing. Within 7 days after delivering the petition, the plaintiff/petitioner should file in court a written statement of fact sworn under oath, known as an affidavit, stating the names, address of the place and date where he or she delivered copies of the petition on all persons who are being accused of defamation.

Step 4: Reply to petition

The respondent/defendant should file a reply to the petition within 21 days of receiving it. If the respondent/defendant fails to file the reply within this time and the court declines the request to extend, the court will determine the petition *ex parte* (without hearing the respondent/defendant and relying only on the petitioner's petition and evidence).

Step 5: Determination of preliminary objections

The respondent/defendant may wish to raise objection challenging the jurisdiction of the court to hear the case. This preliminary objection is raised as the respondent/defendant is filing the reply to the petition. The court should make a ruling on the preliminary objections within 30 days of both parties filing their documents.

Step 6: Hearing of the petition

The court examines affidavits and hears evidence from witnesses. After the hearing, the court may allow both parties to make oral or written submissions.

Step 7: Judgement

The court determines the case within 6 months from the date of completion of preliminary matters. The court may extend the time to determine the petition by up to 3 more months.

Where does an aggrieved party file a case of defamation?

A civil defamation suit can be pursued through several avenues, depending on the jurisdiction and specific circumstances of the case. The avenues available to the aggrieved party are the High Court, courts of a resident magistrate or district court¹⁴ and alternative dispute resolution channels:

Courts of law

These are:

- (a) **High Court:** the court has jurisdiction over significant defamation cases, especially if the case involves complex legal questions or substantial claims for damages. The law does not prescribe the monetary value of cases that the high court should determine.
- (b) **District Court:** has jurisdiction over civil and criminal matters within its designated district, and it also has appellate and revisional jurisdiction over the Primary Court. It can handle defamation cases not exceeding TSh. 300,000,000.
- (c) **Resident Magistrates Court:** has jurisdiction over a specific area as defined by an order of the Chief Justice. It can handle defamation cases not exceeding TSh. 300,000,000.
- (d) **Small Claims:** if the damages sought are relatively low, below Tshs. 100,000,000, a defamation case may be heard in the district/resident court using the small claims rules which makes the proceedings faster, less formal and sometimes parties do not require the presence of a lawyer.

Independent Media Council: The Independent Media Council was established by the [Media Services Act](#) to, among other things, deal with complaints between the public and the media. The Act provides for the establishment of a Complaints Committee under the *Independent Media Council*. The Complaints Committee handles complaints relating to content in print media. If one is not satisfied with an award from the Council, they can then appeal to the High Court.

Alternative Dispute Resolution (ADR)

Mediation: Parties may choose to resolve a defamation dispute through mediation, where a neutral third party helps facilitate a settlement without the need for a court trial.

What should I do if I am served with a defamation suit?

Step 1: Seek legal representation

Engage a lawyer specialising in defamation or media law to guide the defence.

Step 2: Review the petition

Carefully analyse the allegations to identify the specific defamatory statements and assess their validity.

Step 3: Gather evidence

Collect supporting evidence to challenge the claim or establish defences as below:

- sources for the publication;
- get documents or recordings supporting the truth of the statements; and
- get testimonies from witnesses.

Step 4: File a reply to the petition

Draft and file a reply to the petition within 21 days from the date of service. The reply may outline the available defences such as truth, fair comment or privilege, among others. At this point you may also raise objections if the court has no jurisdiction to hear the case.

Step 5: Consider settlement

If the petition has merit, explore settlement options, including issuing retractions or apologies.

Step 6: Prepare for Trial

Work with a lawyer to prepare a robust defence, including witness preparation and legal arguments.



SHUTTERSTOCK/Westock Productions

4. Defences to Civil Defamation

How can I defend myself in a defamation case?

Where it is found that a journalist has published a defamatory statement, the journalist is expected to raise a defence that establishes a lawful justification or reason to the defamation charge. Journalists (or defendants) in defamation cases may rely on several defences to avoid liability:

Truth

The defamatory statement is true and made for the “public benefit”.¹⁵

Absolute privilege

The publication of defamatory matter is absolutely privileged, and a journalist is not liable to punishment where the matter published is in fact a fair report of anything said, done or published in the National Assembly¹⁶. It does not matter whether the publication is false. It also does not matter whether the publication was made maliciously or without good faith.

Conditional privilege/qualified privilege

Qualified privilege applies on condition that it was published in good faith. In Tanzania this covers publications that are a fair report of anything said, done or shown in a civil or criminal inquiry or proceedings before any court¹⁷. This defence would fail if the court had prohibited the publication of anything said or shown before it, on the ground that it is seditious, immoral or blasphemous. It also covers the republication of a publication which enjoys qualified privilege.

Offer of amends and innocent publication¹⁸

A journalist who realises their mistake in publishing statements that are alleged to be defamatory of another person may make an offer of amends to that person if they published the statements innocently. To demonstrate that the statements were published innocently, the offer of amends must be accompanied by an affidavit specifying the facts the journalist relied upon. An offer of amends includes correction and sufficient apology, or notification of alleged defamation to the parties to whom the copies of the publication were distributed. If the other party does not accept the offer of amends, the journalist can rely on the defence of having made an offer of amends and having published the statements innocently.

| 16 section 38, [Media Services Act 2016](#).

| 17 section 39, [Media Services Act 2016](#)

| 18 section 40, [Media Services Act 2016](#)



Photo by Joshua Hoehne on Unsplash

5. Practical Steps to Mitigate Against Defamation Liability

Journalists in Tanzania should be guided by the [Code of Ethics for Media Professionals](#) produced by the [Media Council of Tanzania](#). They should also be guided by the [Media Services \(Amendment\) Regulations](#), and the [Electronic and Postal Communications \(Online Content\) Regulations](#).

Summary

It is worth remembering that truth is a complete defence to a defamation action. There may be other limitations on publishing information, but to the extent that the information is and can be proved to be true, a defamation action will not be successful. A good rule of thumb is to only report what you are confident you can prove.

A rigorous focus on fair and accurate reporting at each stage and verifying the truth of the matters reported will put you in the best possible position if faced with legal threats or claims. The suggestions below are intended to help you to think about practical means of achieving this. There are also other defences to a defamation claim which may be available to you depending on the jurisdiction, some of which are mentioned below.

Newsgathering

- Gather information early - as time passes and memories fade, information and sources can become less reliable.
- Use confidential sources with caution – if you rely solely on information from a confidential source in respect of certain allegations or statements in your reporting, be aware proving the truth may be more difficult.
- Non-disclosure agreements are permissible and effective to protect journalists from disclosing their source. If you do not conclude such an agreement – expressly or impliedly – you are not contractually (although you may be ethically) obligated to protect sources and maintain confidentiality.
- Use public records to your advantage. You can use them to verify information you received from other sources.
- If you choose to use audio or visual recording, always pause to consider whether you can record without permission, or whether permission is required. When in doubt, ask for consent.
- Keep a good record of your notes, meetings, etc.
- Research carefully. Verify sources and double-check your facts to ensure accuracy. Generally, you may only adopt communications from authorities and recognised agencies without further verification where you clearly attribute the source of the information.

Drafting and vetting the article

- Familiarise yourself with defamation law in the countries where you're working (see above). Be aware there may be more restrictive laws in some countries – for example in some countries it is easier for a company to bring a defamation challenge than others.
- Familiarise yourself and comply with your news organisation's ethics guidelines and policies.
- Use credible sources to verify the accuracy of any potentially defamatory statements.

- Ask yourself whether there are any statements directed to identifiable individual(s) or companies that could be reputationally damaging. Confirm accuracy, and if doubt remains, weigh the benefits of keeping the statement in versus taking it out.
- Make your reliance on trustworthy and non-confidential sources transparent (for example, by hyperlinking to or otherwise disclosing the relevant reports or public records).
- A cornerstone of responsible journalism is seeking comment from the subject(s) of the reporting you intend to publish, in particular where you intend to make allegations about them or their conduct – you should clearly put the substance of allegations to the subject, in advance and invite their response.
- Ensure, especially where you are engaging in investigative reporting, the subjects of your reporting have sufficient time to respond and have enough information to respond adequately. You should not show them a draft of your intended reporting but you should be prepared to share the substance of the intended publication.
- Reflect the comment /response in the article (you may use your editorial discretion in doing so). Even noting “no comment” or source “did not respond to requests for information” will go a long way in showcasing the steps you took to report factual information.
- Be precise with your language and the meaning you intend to convey. Avoid any ambiguity, over-exaggerations or speculations. To the extent that you’ve made any assumptions, disclose them clearly as such.
- Always reproduce quotations correctly and attribute them clearly.
- Consider exculpatory circumstances and avoid one-sided reporting. Reporting should be balanced and not create a distorted picture of reality.
- Do not spread mere rumours, whether about public or private matters. Report only when a minimum body of evidence is available and say what you don’t know, where applicable.
- Consider how litigious and risky the subjects of your reporting are, and plan accordingly. If it is someone with a history of litigious activity toward the press, engage your news organisation’s legal/compliance team early.
- Consider whether you are making an assertion of fact or a potentially protected opinion. There must be sufficient evidence for a statement of fact. If there is any uncertainty or doubt, consider formulating it as an expression of opinion (based on true facts) or presenting it as an assumption.
- Beware of republication liability. If you take information from another medium for your reporting, you assume responsibility for its content. Always conduct the research yourself.

- Consider whether any available defences to defamation – for example truth, public interest reporting, qualified or absolute privilege, fair and accurate reports of certain proceedings – apply.
- There are several defences to a defamation action other than truth/justification, some of which may be particularly applicable to journalists – for example in some countries there is a defence for reporting in the public interest. There may also be defences available where an article expresses an opinion and is written in the public interest. However, these defences are not fool proof and will usually involve satisfying a number of requirements. If you intend to rely on a defence, consult your legal team or research precedent to ensure that the defence is likely to be available.

After publication

- Stay informed of any developments in the subject matter that might change, call into question, or shed new light on the published information. Originally permissible reporting may generally be kept in the online archive. You typically have no active duty to investigate or update the reporting.
- Only if an affected party raises a qualified complaint about the reporting, you may be required to add supplementary information or take reasonable precautions to prevent the reports from being found in search engines in name-related search queries (“right to be forgotten”).
- Consider whether to keep your notes and relevant communications and, if so, for how long – knowing the limitation period for defamation claims in the relevant jurisdiction may assist.
- Be willing to correct or retract your mistakes and issue an apology to the extent necessary for the justification/truth defence. You may be required to correct factual allegations that have subsequently proven to be incorrect and have a lasting effect on the personal rights of the person concerned. This is usually done via a supplement/correction in the next issue or on the website.

Please note that journalists must also remain cognisant of emerging trends in other areas of the law that place their wellbeing at risk, or which could create legal risk – such as applicable privacy laws.

About Thomson Reuters Foundation

The [Thomson Reuters Foundation](#) is the corporate foundation of Thomson Reuters, the global news and information services company. As an independent charity, registered in the UK and the USA, we leverage our media, legal and data-driven expertise to strengthen independent journalism, enable access to the law and promote responsible business. Through news, media development, free legal assistance and data intelligence, we aim to build free, fair and informed societies.

TrustLaw, an initiative of the Thomson Reuters Foundation, is the world's largest pro bono legal network. Working with leading law firms and corporate legal teams, we facilitate free legal support, ground-breaking legal research and resources for non-profits, independent media and social enterprises in over 190 countries. By spreading the practice of pro-bono worldwide, TrustLaw wants to strengthen civil society and drive change. If you have ideas for resources we could develop or [legal research projects](#) that would be of assistance after reading this guide, please [contact us](#). If you are a non-profit or social enterprise in need of legal support, you can find out more about the service [here](#) and join [TrustLaw](#) for free.

About iWatch Africa

iWatch Africa is a non-governmental media and policy organisation with considerable national reputation and significance. We have carved a niche in Ghana's policy and journalism environment for putting out objective, fact-based and independent assessment on many issues. iWatch Africa tracks digital rights in Africa, trans-national organised crime, human rights abuse, climate change and ocean conservation and overall government performance in Ghana.

Through a rigorous deployment of data journalism, storytelling and policy advocacy tools, iWatch Africa is shaping the national and regional discourse to deepen transparency and accountability, as well as to encourage citizen participation in the governance process in Africa.

Acknowledgements & Disclaimer

The Thomson Reuters Foundation and iWatch Africa would like to acknowledge and extend their gratitude to the legal team at Ideal Law Group, who contributed their time and expertise on a pro bono basis to make this Guide possible. This Guide is offered for information purposes only. It is not legal advice. Readers are urged to seek advice from qualified legal counsel in relation to their specific circumstances. We intend the Guide's contents to be correct and up to date at the time of publication, but we do not guarantee their accuracy or completeness, particularly as circumstances may change after publication. Ideal Law Group and the Thomson Reuters Foundation accept no liability or responsibility for actions taken or not taken or any losses arising from reliance on this Guide or any inaccuracies herein.



Photo by Emediong Umoh on Unsplash

The Thomson Reuters Foundation's global pro bono legal network, TrustLaw, works with leading law firms and corporate legal teams to facilitate free legal support, research and resources for civil society organisations, social enterprises and non-profit independent media around the globe.

For more information, visit www.trust.org.

TrustLaw



**Thomson Reuters
Foundation**