

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**CIVIL SUIT NO. 0126 OF 2011**

**CHARLES BWENVU:.....PLAINTIFF**

**VERSUS**

**ABT ASSOCIATES:.....DEFENDANT**

**BEFORE HON. JUSTICE SSEKAANA MUSA**

**JUDGMENT**

**BACKGROUND**

The plaintiff was an employee of the defendant from December 2009 to April 2011 working as an Administration Manager/ Procurement Officer. His employment was terminated by the defendant on 8<sup>th</sup> April 2011. The defendant caused a notice to be published in the Daily Monitor Newspaper warning the general public that the plaintiff was no longer an employee of the defendant. The plaintiff sued the defendant for libel of the said publication and general damages. The defendant filed a defence wherein it stated that the notice published in the Newspaper was a reasonable and fair attempt by the defendant to protect its interests against any misunderstanding on the part of any public who had come to know the plaintiff as a procurement officer connected with the defendant and prayed that this suit be dismissed with costs.

At the scheduling conference the following issues were raised:

1. Whether the notice which was published by the defendant in the Daily Monitor Newspaper on 19/5/2011 was defamatory of the plaintiff?
2. What remedies are available to the parties?

The parties filed written submissions which were considered by this court.

## **DETERMINATION**

### **Issue 1**

**Whether the notice which was published by the defendant in the Daily Monitor Newspaper on 19/5/2011 was defamatory of the plaintiff?**

In the Daily Monitor Newspaper of Thursday May 19, 2011 the Defendant caused for the publication of a Public notice bearing the Plaintiff's photograph, and having the following words Exhibit PE.12 refers;

*"This is to inform the general public that Mr. Charles Bwenvu whose photo appears is no longer an employee of Abt Associates/Uganda IRS Project. He is no longer authorised to conduct business in the name of or on behalf of the company/project in any way whatsoever. Anyone that deals with him in matters concerning Abt Associates/Uganda IRS Project does so at his/her own risk."*

Plaintiff's counsel extensively submitted that it was the Plaintiff's contention that by using the foregoing phrase bearing the word risk, the

Defendants warned the public from dealing with the Plaintiff or else they would be susceptible to suffer injury, harm or loss. The notice thus published by the Defendant without expressly pointing out any transgression committed by plaintiff, the Defendant did by implication portray him as an unscrupulous person, one whose moral character is questionable, untrustworthy, and corrupt.

The plaintiff called 4 witnesses at the trial to prove his case. The plaintiff's witnesses testified that the contents of the said publication depicted him as an untrustworthy person and that it put his name and integrity in disrepute in the minds of right thinking members of the of the society.

Counsel submitted that it was not necessary for the defendant to publish him in the papers since such publication that carried words of impunities of association with the public would ordinarily lead to disparaging of the plaintiff in his profession.

Defendant's counsel in response submitted that the notice complained of was incapable of being defamatory of the plaintiff. Counsel submitted that an action for libel can only be maintained where the defendant publishes to some other person other than the plaintiff false and defamatory matter in reference to the plaintiff. Counsel further submitted that it is a fact that prior to the publication of the said notice the plaintiff's employment with the defendant had ceased. It is also a fact that the plaintiff had been employed by the defendant as a procurement of officer and in that capacity

he dealt with members of the public on the defendant's behalf. There was no malice in the defendant's action of seeking to protect its interests.

A defamatory publication is the publication of statement about a person that tends to lower his reputation in the opinion of right thinking members of the community or to make them shun or avoid him. *See John Patrick Machira v Wangethi Mwangi and anor KLR 532*

Justification is one of the defences of defamation as pleaded by the defendant. Where the defence of justification has been put up in a case of defamation, the burden is on the defendant to prove that the statements contained in the publication were true.

In the present case it is true that the plaintiff's employment with the defendant was terminated as was published in the notice. The defendant pleaded and submitted that it was in their best interest to warn the public that the plaintiff's employment at the company was terminated.

The notice in issue was published on 19<sup>th</sup> May 2011 whereas the plaintiff's employment was terminated on 8<sup>th</sup> April 2011. At the time, the plaintiff had handed over all company properties as required. DW1 also testified that he did not recall the plaintiff ever held out on behalf of the company after the termination and that in fact he does not recall anyone having ever claimed payment after the Plaintiff had left the Company, this only points to the fact that the Defendant causing the publication of the Plaintiff in the Newspaper was only intended to malice his reputation and integrity in the

eyes of the public. It was thus the Plaintiff's contention that the information in the said notice was published by the Defendant maliciously to injure the Plaintiff's reputation.

Counsel for the defendant in his submissions cited different authorities wherein different courts of repute have held such notices as the one in issue were held not to be defamatory. Counsel also cited GATLEY ON LIBEL AND SLANDER 4<sup>TH</sup> EDITION P.31 where it is stated that **"It is not in itself libelous for a person to publish of one who has ceased to be employed by him that he is no longer so employed, and no longer so authorized to do business or receive moneys on behalf of the person lately employing him..."**

Defence Counsel cited the case of **Murozi Joel Benard vs Stanbic Bank HCCS No. 100 of 2001**. In that case Hon. Lady Justice Arach Amoko held that:

**"I have carefully considered their submissions in light of the evidence on record and the authorities on defamation cited and I find that the said publications are not actionable in that they are not defamatory of the plaintiff. It is a fact that the plaintiff was dismissed by UCBL vide its letter dated 1<sup>st</sup> December 1997 Ref; Ex/PC/M/968, with immediate effect for the alleged gross negligence that had led to loss of bank funds. The publications were simply made after that to inform members of the public that the plaintiff and other colleagues, were no**

**longer employees of the bank. It is clear from the newspaper excerpts exhibited in court that the fact of the dismissal or the reason for their dismissal were not published, nor was there any suggestion in the said publications that the plaintiff was being prosecuted for any crime.”**

I have carefully reviewed the evidence and the submissions in this matter. I have to note that it is common practice for different companies to send out public notices informing members of the public that a certain employee is no longer an employee of that company.

This should indeed be done with caution depending on the position a particular employee holds in the organization and whether there is any direct interaction with the public and thus the need to inform them through the publications.

In this case I am inclined to concur with the defence submission and authorities cited therein and find that this notice was not defamatory. The plaintiff took caution to protect the company interests by informing the public that the plaintiff was no longer an employee of the company.

As a procurement officer, the plaintiff interacted with members of the public on behalf of the company and the defendant company was justified to inform the public that he was no longer authorized to do the same.

The fact that the notice was published later than the termination of the employment did not cause it to be malicious as no other intention other than inform the public of the plaintiff's termination has been proved. The contents of the notice were by far true as we have seen above and there was no malice proved.

Issue 1 accordingly fails.

## **Issue 2**

**What remedies are available to the parties?**

On the basis of how I have ruled on issue 1 above, the plaintiff is accordingly not entitled to any remedies.

In that regard, the suit is dismissed.

Each party bear its own costs.

I so order.

***SSEKAANA MUSA***

***JUDGE***

***21<sup>st</sup> June 2019***