

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)

CIVIL SUIT NO. 28 OF 2014

ATIKU JOEL OKUYO PRYNCE ===== PLAINTIFF

VERSUS

1. THE EDITOR IN CHIEF OF THE RED PEPPER PUBLICATIONS.

2. THE RED PEPPER PUBLICATIONS LTD.

3. ISAAC TUGUME ===== DEFENDANTS

BEFORE HON. JUSTICE SSEKAANA MUSA

JUDGMENT

The plaintiff sued the defendants jointly and/or severally on a claim for general libel, special damages, exemplary damages, aggravated damages, a published apology, a permanent injunction, interest and costs of the suit. The 1st defendant is sued in the capacity of Editor-in-chief of 3 newspapers known as 'Red Pepper, 'Hello', and 'Sunday pepper'.

The 2nd defendant is sued in its capacity as the publisher and proprietor of the aforesaid newspapers while the 3rd is sued in his capacity as an agent and/or employee of the 1st and 2nd defendants. The defendants denied the claim and filed a joint written statement of defence to the amended plaint.

The following facts were agreed to by the parties and set out in their joint Memorandum of scheduling which was endorsed by court at hearing of the case on 07.11.2018.

The defendants published an article appearing at page 14 of the Red Pepper publication of 02.12.2012 under the title 'Named Ugandan Businessman implicated in trafficking young gals (sic) for sex slavery.' The defendants published an article appearing at page 23 of the Sunday Pepper publication of 03.02.2013 under the title 'Victims of Malaysian sex trafficking petition Museveni.' The defendants published an article appearing at page 25 of the Sunday pepper publication of 10.02.2013 under the title 'Dead Ugandan sex slave rots in China.' The defendants published an article appearing on page 4 of the Hello newspaper publication of 05.07.2013 under the title 'Ugandan's notorious sex slave exporter netted'. The defendants published an article appearing on page 7 of the Hello newspaper publication of 12.07.2013 under the title 'Ugandan sex slave exporter in hiding.'

The defendants published an article appearing on page 7 of the Hello newspaper publication of 19.07.2013 under the title 'Atiku recruits more girls.' The defendants published an article appearing on page 7 of the Hello newspaper publication of 23.08.2013 under the title 'In hot soup! UCU Don loses job and business over sex slave trafficking'.

The defendants published an article appearing on page 7 of the Hello newspaper publication of 04.10.2013 under the title 'UN warns M-Net Africa over Atiku deployment.' The defendants published an article appearing on page 10 of the Hello newspaper publication of 03.01.2013 under the title 'Trafficker Atiku relocates to Wandegaya.' On 04.07.2014, the defendants published and/or caused to be published an article entitled 'Have your say on their Facebook page 'Red pepper Ug'. The defendants published an article appearing on page 6 of the Hello newspaper publication of 28.07.2014 under the title 'Okuyo skips bail, flees'. The defendants published an article appearing on page 6 of the Hello newspaper publication on 02.09.2014 under the title 'Police hunt for human trafficker Atiku.'

The defendant published an article appearing on page 4 of the Hello Newspaper of 12.10.2014 under the title 'Suspected human trafficker Okuyo faces jail over assault.' The defendant published an article appearing on page 6 of the Hello Newspaper of 10.11.2014 under the title 'Secrets about 4 Turkeys boss murder emerge.' The defendant published an article appearing on page 6 of the Hello

Newspaper of 22.11.2014 under the title 'Suspected human trafficker Okuyo pinned in court.' The defendant published an article appearing on page 6 of the Hello Newspaper of 07.01.2015 under the title 'Okuyo jailed over sex slavery.'

The defendant published an article appearing on page 4 of the Hello Newspaper of 14.08.2015 under the title 'Okuyo cited in Uchumi fraud.' The defendant published an article appearing on page 8 of the Hello Newspaper of 08.10.2015 under the title 'Owori's model Okuyo recruits varsity girl into porn.' The defendant published an article appearing on page 8 of the Hello Newspaper of 12.10.2015 under the title 'Atiku cited in closed Uchumi Branches.' The defendant published an article appearing on page 14 of the Hello Newspaper of 18.12.2015 under the title 'Actor Okuyo caged over human Trafficking.'

ISSUES FOR DETERMINATION

- 1. Whether the articles / publications complained of are defamatory of the plaintiff?**
- 2. Whether the plaintiff is entitled to the reliefs claimed?**

The plaintiff led evidence through the plaintiff while the defendant led evidence through a one Musinguzi a director in the 2nd defendant company.

ISSUE 1

Whether the articles / publications complained of are defamatory of the plaintiff?

In his submission, counsel for the plaintiff argued that the statements complained of were indeed defamatory of the plaintiff and defined defamation referring to the case of *Scovia Nabuuso Kagimu v. The New Vision Printing & Publishing Co. Ltd HCCS No. 554 of 2005 (Unreported)*.

Plaintiff's counsel further submitted that the defendants published 20 articles on different dates and from 02.12.2012 to 08.12.2015 and in all the publications they refer to the plaintiff either by name or photograph or both name and photograph. Further that the titles are evident enough of the defamatory claim.

Counsel for the defendant raised a preliminary objection under O.6 r 28, 29 & 30, that the plaint does not set out verbatim in the statement of claim the actual defamatory words. He cited *Kibuuka Mukasa vs The New Vision Publishing Co. Misc. Application 148/13, Nkalubo vs Kibirige (1973) EA 102; 2 ULR 49, John Kizito vs Red Pepper Publications Limited Civil Suit 624/2016.*

Defendant's counsel further submitted that the words complained of are not defamatory which is the crux of the matter in this suit and cited *Scovia Nabuuso Kagimu v. The New Vision Printing & Publishing Co. Ltd HCCS No. 554 of 2005, Astaire vs Campling (1966) 1 WLR 34, Francis Lukooya Mukeome & Anor vs The Editor in Chief of Bukedde News Paper HCCS No. 351/2007.*

Counsel further submitted that the plaintiff did not adduce evidence nor present a witness to prove that his reputation was lowered and caused feelings of hatred, contempt, ridicule, fear, dislike and disesteem and relied on the cases of *Shah vs Consolidated Printers Limited, David Etuket & Another vs The New Vision Printing and Publishing Corp. 86/96, Peter Kaggwa vs New Vision Printing & Publishing Corp & others 244/2002.*

Counsel for the defendant submitted on the defence of qualified privilege and defined it as immunity from a lawsuit for defamation, for acts committed in the performance of a legal or moral duty and acts properly exercised and free from malice. Counsel cited *Gatley on Libel & Slander 7th Edition Sweet & Maxwell page 186, Pullman vs Hill Ltd (1891) 1 QB 528, Reynolds vs Times Newspapers Ltd (1999) 4 ALL ER 609 and Civil Suit No. 1 of 1976 Geoffrey Ssejjoba vs Rev. Patrick Rwabigonji.*

Defendant counsel relied on the evidence of DW1 Mr. Musinguzi Johnsons who testified that they got the information from credible sources of news in Uganda and United Nation, further that when they contacted the police for a comment, the latter confirmed that the investigations were still on going.

DETERMINATION

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

And also Defamation is the act of harming the reputation of another by making a statement to a third person. The wrong of defamations consists in the publication of a false and defamatory statement concerning another person without lawful justification. *Black's Law Dictionary 9th Ed. pages 479 and 480.*

The test used to determine whether a statement is capable of giving defamatory meaning was discussed in the case of *A.K. Oils & Fats (U) Ltd vs Bidco Uganda Limited HCCS No. 715 of 2005* where Bamwine J (as he then was), relied on *Sim vs Stretch [1936] 2 ALL ER 123 A.C.*, where Lord Atkins held that the conventional phrase "*exposing the plaintiff to hatred, ridicule and contempt*" is *probably too narrow. The question is complicated by having to consider the person and class of persons whose reaction to the publication is the test of the wrongful character of the words used. He proposed in that case the test: "would the words tend to lower the plaintiff in the estimation of the right thinking members of society generally?* This position has been adopted with approval in Uganda in *Honourable Justice Peter Onega vs John Jaramoji Oloya HCCS No. 114 of 2009.*

I have carefully reviewed the evidence and the submissions, however the aspect I would like to expound on is qualified privilege that was raised by the defence counsel, and this defence only operates to protect statements which are made without malice regardless of where one is discharging a legal, moral or social duty. *see; Winfield and Jolowicz on Tort, Fifteenth Edition, 1998, ch 12, pg. 390 – 461 or Michael A Jones, Textbook on Torts, Seventh Edition, 2000, ch 13, pg 495*

– 534, *Reynolds vs Times Newspapers Ltd (1999) 4 ALL ER 609 & Loutchansky v Times Newspapers (QBD, 27 April 2001)*

Considering the evidence adduced in court by the plaintiff, it is no doubt that the titles once read they are defamatory in nature, however when one reads the content underneath those titles, it appears to them that they were protecting an interest and that is the public hence fulfilling their social duty. I therefore find that the defendants were discharging their duty although they performed that duty in a defamatory nature.

ISSUE 2

Whether the plaintiff is entitled to the reliefs claimed?

In his submission on general damages for libel occasioning to injury to reputation and injury to feelings, counsel for the plaintiff relied on a legal text titled *McGregor on Damages 15th Edition, Sweet & Maxwell London at pg. 1050* and cited cases; *Scovia Nabuuso Kagimu (supra), Walking v Hall (1868) LR 3 QB at 399, John v MGN Ltd (1996) 2 ALL ER 35 at pg 47* and that the plaintiff was on a rise in his profession and career as a film actor, fashion designer and advertising model, who suffered damage on his reputation.

Defence counsel submitted that the plaintiff is not entitled to any of the reliefs sought in their pleadings, as they have not proved their claim of defamation and relied on the case of *Francis Lukooya Mukeome & Anor vs The Editor in Chief of Bukedde News Paper HCCS No. 351/2007*.

DETERMINATION

Having decided on issue 1, I hereby cite the case of *Hon. Rebecca Kadaga vs Richard Tumusiime & 2 ors HCCS No. 56 of 2013*, Hon. Justice Nyanzi Yasin while awarding general damages stated that;

“In the same spirit, the Plaintiff being a third ranking citizen of this country an award of shs 80 million is appropriate as general damages to compensate her for the damage caused to her reputation”

In the case of *John vs MGN Ltd (1997) Q.B 586*, it was stated by Thomas Bingham MR in giving the judgment of the Court of Appeal that;

“The successful Plaintiff in a defamation action is entitled to recover, as general compensatory damages such sum as will compensate him for the wrong he has suffered. That sum must compensate him for the damage to his reputation, vindicate his good name and take account of the distress, hurt and humiliation which the defamatory publication has caused.”

GENERAL, EXEMPLARY, AGGRAVATED DAMAGES

I have reviewed the evidence adduced and the submissions of all parties and I find it that the Plaintiff did not adduce any documentary evidence to show that his contracts with the various institutions were terminated due to the publications and how he suffered damage on his reputation apart from his testimony which was probably in his mind. I therefore grant general damages amounting to 15,000,000/= to compensate for the damage caused on the Plaintiff's reputation.

SPECIAL DAMAGES

The general rule states that special damages must be specifically pleaded and proved, however the plaintiff failed to adduce evidence of loss of employment to prove the claim for special damages. I decline to grant any special damages.

INTEREST

I award interest at the rate of 10% on damages from the date of judgment to the date of payment in full.

INJUNCTION

I decline to issue any injunction since no evidence has been adduced to show any threat of repeating the same.

COSTS

The plaintiff is awarded costs of the suit.

I so order.

SSEKAANA MUSA

JUDGE

26th March 2020