

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
(CIVIL DIVISION)  
CIVIL SUIT NO.162 OF 2012**

**BEST KEMIGISHA.....: PLAINTIFF  
VERSUS  
THE REDPEPPER PUBLICATIONS LTD .....: DEFENDANT**

**BEFORE HON. JUSTICE MUSA SSEKAANA**

**JUDGMENT**

On the 24<sup>th</sup> May, 2012, the defendant published a front page headline story in its publication, The Red Pepper, entitled "*Tooro Queen Mother Arrested in USA*".

The defendant in the above story published, *inter alia*, statement as follows:

*".....Kemigisha was detained a few days ago on arrival in the US after being found in possession of the fake dollars. Her passport was confiscated and she is being questioned by the authorities to help in establishing the source of the money..... she was handed over to the authorities to help the police in investigating the circumstances under which she came to be possession of the counterfeits.....there had been a deal of up to USD 5m that was masterminded..."*

On 25<sup>th</sup> May, 2012, the defendant published headline story in its publication, The Red Pepper, entitled "*Queen mother still missing*" In which the following statements were published, *inter alia*:

*".....Red Pepper has exclusively established that Kemigisha was briefly detained by federal police in the USA... We have exclusively established that the US Federal Government accepted Ugandan government request to handle 'the Kemigisha's problem'..... Kemigisha is a member of diplomatic community. Exposing her arrest would cause a diplomatic embarrassment. So it was decided that the issue to be handled in Uganda.... According to our sources, Kemigisha was detained two*

*weeks ago in the US for being in possession of fake dollars. Kemigisha's passport was allegedly confiscated shortly after landing in the land of Obama. She was handed over to the authorities to help police in investigating a USD5M fake cash deal. The deal, we have established was masterminded by Ugandans related to the queen...."*

On 6<sup>th</sup> June, 2012, the defendant published a front page headline story in its publication, The Red pepper, entitled "Tooro Queen mother Arrest Details Emerge" in which it published, *interalia*, the following statements:

*"..... the report indicated that Kemigisha was detained on arrival in the US after being found in possession of fake dollars. Now we have established that the wedding hangs in the balance due to the scandal but efforts are being made to have the queen released....."*

The above edited statements which were published by the defendant are false, defamatory and intended to malign the good repute and social standing of the plaintiff.

The defendant's utterances in the above mentioned articles were, in their natural and ordinary meanings or by innuendo, meant and were understood to mean that the plaintiff:

*Is fraudulent, dishonest, unscrupulous and a counterfeiter.*

*Masterminded or participated in the masterminding of illegal and unlawful sourcing of counterfeit.*

*Is a criminal and / or is criminally disposed and therefore unfit to be dealt with in any business or other transactions.*

*Is a persona non grata in the jurisdiction of the United States of America and cannot be trusted or held credible on other jurisdictions.*

The publication of the said articles has caused the plaintiff to suffer hatred, contempt, ridicule, odium, embarrassment and have lowered the plaintiff's esteem amongst right thinking members of the society generally and her peers in particular.

The plaintiff contended that the defendant's utterance aforesaid are false, malicious, frivolous and defamatory of the plaintiff's character and repute and were calculated to disparage the plaintiff in her position in society.

The plaintiff prays that judgment be entered against the defendant for:

*Declaration that the articles aforesaid published by the defendant in the Red pepper are defamatory of the plaintiff. Permanent injunction against the defendant prohibiting it, its agents, servants or employees from publishing any defamatory materials against the plaintiff. General damages, Exemplary/ punitive damages, Interest on (c) and (d) above at court rate from the date of judgment till full payment. An order that the defendant publishes an apology with equal publicity as were the publications for a period of not less than three working days. Costs of the suits. Any other or further relief this court may deem fit.*

The Plaintiff was represented by Candia & D. W Oundo Advocates whereas the Defendants were represented by Okua & Associates Advocates.

### **ISSUES FOR DETERMINATION**

At the scheduling conference the following issues were raised:

- 1. Whether the plaint discloses a cause of action.*
- 2. Whether the impugned publications are defamatory of the plaintiff*
- 3. Whether the impugned publications were true or made under qualified privileged.*
- 4. Remedies available to the parties.*

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

### **ISSUE 2 AND 3**

Whether the impugned publications are defamatory of the plaintiff and whether the impugned publications were true or made under qualified privileged?

Counsel for the plaintiff submitted that defamation has been defined as the publication of a statement which reflects on a person's reputation and

tends to lower him/her in the estimation of the right thinking members of society generally or tends to make them shun or avoid him or her. *See Monitor Publication Ltd v. Ricky Nelson Asimwe SCCA No.16 of 2015*

Counsel further submitted that the plaintiff in paragraph 5 of her witness statement testifies that the publication is false, malicious and was intended to defame her as a criminal in the eyes of the people of Tooro and the entire country at large. The plaintiff adds that the publication of May 24 and 25, 2012 found her in United Kingdom and thus the allegation that she had been arrested in the USA was clearly false. The passport pages of the plaintiff admitted in evidence shows that on May 17, 2012 she was at Heathrow airport and thus the publications that she had been arrested in USA was clearly false, malicious and defamatory.

Counsel for the plaintiff submitted that the Omujwera Musuga (PW2) (the clan head of royal family) in his witness statement dated 2.8.17, states that he was shocked to read that the plaintiff had been arrested in USA, yet he had just spoken with her and she informed him that she was in UK and in doing well. The people of Tooro started calling him that story was not true including Prince Francis Mugenyi. This concern by the people of Tooro prompted PW2 together with Prince Namara, Minister of information in Tooro Kingdom to call a press conference at Speke Hotel in Kampala to inform the people of Tooro that the story and information in the publication was false.

The plaintiff's counsel further submitted that the evidence was never challenged in cross examination nor was the publications in issue neither denied nor was an apology given by the defendant despite demand for an apology by the defendant's lawyers. PW2 further stated that all over Tooro including Fort Portal town, people started treating the plaintiff with contempt challenging PW2 that if the information was not true, where then did Red pepper (the defendant) get it from.

Counsel for the plaintiff submitted that the defendant called on witness DWI, Musinguzi, a member of the editorial team who failed to prove that the story was true as alleged in their defense. He failed to show that the plaintiff was found in possession of fake dollars in the USA and that it is now settled law that the burden of proof lies with the party who alleges that the publication was true. The standard is even higher where the defamatory words impute commission of an offence on the plaintiff. *See Monitor Publication Ltd v. Ricky Nelson Asiimwe SCCA No. 16 of 2015 (Supra)*

Counsel for the plaintiff finally submitted that since the defendant imputed commission of an offence on the plaintiff, the defendant ought to prove the commission of the offence and that the plaintiff was charged otherwise the plea of truth would fail.

Counsel for the defendant submitted that it is instructive that the plaintiff did not avail herself for cross examination despite several adjournments and promises by her lawyers. Indeed it is not enough for one to make claims and then refuse to be cross-examined on the veracity of her allegations. The plaintiff's failure and or refusal to appear for cross-examination cast doubts about whether she had faith in her own claims because it's only through cross examination that her claims would have been tested or proven. He invited this honorable court to take judicial notice of her non-appearance for cross examination and thus place little weight on the averments in her witness statement.

Counsel for the defendant defined Defamation *See; GATLEY ON LIBEL AND SLANDER, page 4-5* and further that a false publication by itself does not make the statements defamatory. When one looks at the title of the article alone Tooro Queen mother Arrested in USA, they would perhaps be alarmed but only if they did not take any time, or bother to read the statements under each mentioned articles. For if they had read the statements under beyond the headline they would have found that the story was a professional coverage of an event as relayed by Uganda intelligence and security sources.

Counsel for the defendant in his submissions defined the word *Arrest* per the Oxford Dictionary to mean to detain, to restrain ... to question... and that it is a fact of life that everyday thousands of people get arrested or stopped or restrained or her subjected to questioning by authorities.

Counsel for the defendant submitted that the test in defamation is an imputation tending to lower the plaintiff in the estimation of "right-thinking members of society", and NOT the plaintiff himself and further cited the case of *Francis Lukooya Mukome and Anor versus The Editor in chief of Bukedde News Paper. HCCS NO 351/2007*, Hon Justise Yorokamu Bamwine as he then was stated

*"That defamation is something more than insult or derogatory comment. It is not capable of exact definition. How far a person is affected by unkind words will depend not just on the words used, but also on the people who must then judge him.....Defamation is an injury to one's reputation and reputation is what other people think about a man and not what man thinks about himself."*

Counsel for the defendant submitted that nowhere does it show in evidence that the plaintiff was shunned, ridiculed or otherwise exposed to hatred or contempt by right-thinking members of society by reason of the impugned publications. PW2 Charles Kamurasi who testified in court failed to prove neither that the people of Tooro were not alarmed by the article nor that have they since shunned the Queen mother on account of the impugned publications. Apart from his own ill-informed perception Kamurasi did not present any evidence to show that the plaintiff's standing in community has been lowered as a result of the publications.

Counsel further submitted that it is not in dispute that the defendants ran three articles concerning the plaintiff's arrest in the USA. The first of the stories ran in the issue of May 24 2012. The second paragraph thereof quotes intelligence sources as saying that the plaintiff had been detained in USA. This information was corroborated during examination and cross-examination by the single defense witness Mr. John Musinguzi. It is the defense case that is having obtained information from reliable intelligence

sources the defendants were within their right to publish the story especially since the plaintiff is a public figure who enjoys the limelight. In further evidence of exercising professionalism the defendants sought a comment from the head of the Tooro Royal Family Mr. Charles Kamurasi who is quoted at paragraph 5 stating that he was not aware the Queen Mother had been arrested. By reaching out to the Royal Family for a comment the defendants showed that they had no malice or ill-will towards the plaintiff.

Defendant's counsel submitted that the plaintiff in her witness statement paragraph 5 avers that the publication was false, malicious and intended to defame her as a criminal in the eyes of the people of Toro and the entire country at large. Nothing can be further from the truth. It's the defendant's case that there was nothing defamatory about being arrested or being questioned by authorities especially in a foreign land. It happens every day, even to dignitaries. Indeed a former Mayor of Kampala Nasser Ntege Ssebagala served a prison term in the USA under similar circumstances and upon return was resoundingly re-elected to the high office of the Mayor of Kampala. In the fourth column the impugned article cites a police investigating under CRB 445/2012 into illicit printing of fake dollars in Kampala to back up the story. The Sole defence witness testified to this in court and his evidence was not challenged. Furthermore, there was no evidence submitted to show that the plaintiff was stunned, ridiculed or otherwise exposed to hatred or contempt by reason of duties normally.

Counsel for the defendant finally submitted that the defendant's case that the impugned publication was not false and was not defamatory of the plaintiff and prayed the issue two be answered negative and issue 3 be answered positive.

## **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 9<sup>th</sup> 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 v 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.*

In the present case it is true that the Plaintiff is a public figure that is a Queen Mother of Tooro.

I have carefully reviewed the evidence and the submissions in this matter and I agree with counsel for the Plaintiff that the publications directly lowered the status of the Plaintiff before right thinking members of society and the fact that the Plaintiff was always stated in the articles that had demeaning headlines an aspect that caused it to be malicious. The contents of the publications were by far not true as we have seen above and there was malice proved.

Issue 2 is resolved in the affirmative and issue 3 is resolved in the negative.



## ISSUE 4

### Remedies available for parties?

Counsel for the plaintiff submitted that in the amended plaint, the plaintiff seeks from this court a number of remedies;

Declaration that the articles aforesaid published by the defendant in the Red Pepper are defamatory of the plaintiff.

The plaintiff's counsel prayed that an order of permanent injunction is issues against the defendant prohibiting her, her agents, servants or employees from publishing any defamatory material against the plaintiff.

General damages in defamation cases are awarded to remedy the damage suffered by the plaintiff due to the impugned false publication.

Reputation is the asset that one has and the law of defamation is meant to protect this reputation from injury without any just cause. *See Monitor publications Ltd V. Ricky Nelson Asiimwe SCCA No.16 of 2015*

Paragraphs 6 to 21 PW1 witness statement and that entire witness statement of PW2, show how the publications of the defendant injured the reputation of the plaintiff and only in Uganda but also internationally since the plaintiff under paragraph 2 of her witness statement states show that she is an international figure leading to number of organization either as president or director among others. These publications still appear on Google, which continue to damage the plaintiff's reputation. In the premises, counsel prayed for UGX 1,000,000,000 (one billion shillings) in general damages with interest at court rate against the date of judgment till payment in full.

Counsel also prayed that court awards Exemplary and punitive damages with interest at court rate against the defendant so that in future the defendant will first investigate her stories before publishing them to damage people's reputation. The publication of the defendant was high

handed and malicious to say the least. *Semu Amanu Opio SCCA No. 3 of 1993*.

He also prayed for an order that an apology be published with equal publicity as the impugned defamatory publications for a period of not less than three (3) weeks. He also prayed for costs of the suit and any other consequential remedy this court may deem fit.

Counsel for the defendant submitted that the remedies the plaintiff is seeking from this honorable court are an overkill and expose her true intentions i.e. to unjustly enrich herself and to abuse the due process to shield herself from further public scrutiny. Take the claim of UGX shs. 1,000,000,000/= that the plaintiff is demanding. The figure is extortionist when compared to recent court awards in similar cases. For example in **HCCS No. 133 of 2003- NTAGOBA HERBERT versus NEW VISION**, where an allegation of corruption was made against then serving principal judge; and a sum of UGX 30 million was awarded in general damages. Also see; *SEMPA LUGAZI versus TEDDY SSEZI CHEEYE, HCCS No. 56 of 2013 –REBECCA KADAGA versus RICHARD TUSIIME & 2 ORS, KINSELLA vs. KENMARE RESOURCES PLC & Anor [2019] IECA 54*

## DETERMINATION

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 DAMAGES

I have reviewed the evidence adduced and the submissions of all parties and I resolve that the Plaintiff suffered damage to her reputation. I am inclined not to award the shs 1,000,000,000/= as claimed by the plaintiff

because it is exorbitant as submitted by counsel for the defendant, therefore I grant general damages amounting to 72,000,000/= to compensate for the damage caused on the Plaintiff's reputation.

### ***EXEMPLARY DAMAGES***

And since the punitive damages are awarded to serve as a punishment to the defendant so that he does not repeat the same mistake, an award of 11,000,000/= is appropriate as exemplary damages to punish the defendants and discourage them from publishing any further defamatory statements about the Plaintiff.

### **INTEREST**

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

### **APOLOGY**

In regards to the order directing the Defendant to publish an apology be published with equal publicity as the impugned defamatory publications for a period of not less than three (3) weeks, I hereby order that the apology to be made for twice week.

### **INJUNCTION**

As held in the case of *Hon. Rebecca Kadaga vs Richard Tumusiime & 2 ors HCCS No. 56 of 2013*, this court also issues a permanent injunction restraining the defendants jointly or severally by themselves, their agents and assignees from publishing further defamatory statements about the Plaintiff.

### **COSTS**

The Plaintiff is awarded the costs of the suit.

I so order.

***SSEKAANA MUSA***

***JUDGE***

*13<sup>th</sup> March 2020*

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