

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)
CIVIL SUIT NO. 174 OF 2019**

ANTHONY MUTYABA KATAMBA:..... PLAINTIFF

VERSUS

- 1. THE EDITOR IN CHIEF, THE INDEPENDENT MAGAZINE**
- 2. THE INDEPENDENT PUBLICATIONS LTD**
- 3. HAGGAI MATSIKO**
- 4. MTN UGANDA LIMITED:.....DEFENDANTS**
- 5. WIM VANHALLEPUTE**
- 6. MICHEAL SEKADDE**

BEFORE: HON. JUSTICE SSEKAANA MUSA

JUDGMENT

The plaintiff filed this suit against the defendants jointly and severally for recovery of damages for defamation of his otherwise good name, arising from an article published in the *Independent Magazine of February 22nd-28th, 2019 on pages 10,11,12 and 13* under the headline *“Black Days at MTN, Story Behind dumping of 5 bosses”* together with interest and costs.

The plaintiff contended that defendants jointly and severally, falsely and maliciously, wrote, printed and published or caused to be written and published of the plaintiff, in the Article the following words:

“But investigations by the Independent have found that an internal fight between the CEO and company’s little known but powerful and now sacked General Manager-Corporate Services, Anthony Katamba, could have caused the spark.....

Weeks after those interviews, it was made official-Gouldie was leaving. While Gouldie was recalled, Katamba was investigated but kept on the job.....

However, once she joined MTN, Katamba refused to hand over office to her. Apparently, he even threatened to sue MTN for advertising his job without his knowledge. Edroma ended up at HQ in South Africa....

From the position I hold, "the whistle blower's note reads, "I have access to all that is going on and I think it is time I highlight some of the issues. After I witnessed what my colleagues went through at the mercy of one man, we are all scared. The whistle-blower alleges that Katamba had bragged in the "MTN corridors" some weeks before the deportations that he was going to get four top executives in MTN Uganda deported. He allegedly said they were playing with his power in the company and that he is the real CEO.

The whistle-blower also noted that Justice Lawrence Gidudu's ruling on December 10, 2015 implicated Katamba and former Flying Squad Commander Nixon Agasirwe of torturing a one-Sentongo (accused with former MTN Uganda Head of Public Access and Mobile Money, Richard Mwami of embezzeling billions of money from the Company.....

Katamba was also the only member of the group who was never invited for interrogation or arrested.....

He sent the CEO a message saying he would deport him just like the three others, an insider told the independent on condition of anonymity because of the sensitivity of the matter at the company. Those close to Katamba claim he denies all this....

However, insiders say following the threat the CEO fired Katamba.....

At this point insiders claim, Wim suspected that it was Katamba who had passed on such the information partly because he is among the few in the company with such high level access. He is the one who had just threatened to deport him. After the

interrogation, Wim was driven straight to Entebbe and deported that very night. Exactly two days after he sacked Katamba."

The plaintiff contended that the statements contained in the said Magazine Article are utterly false and unfounded and were deliberately published and calculated to lower the plaintiff's hitherto high esteem in the eyes of right-thinking members of society. The words complained of contained in the above article were false and are highly defamatory of the plaintiff.

The plaintiff contended that the defendant's falsely and maliciously, wrote printed and published or caused to be written and published of the plaintiff an article in the Independent Magazine citing, inter alia, that the plaintiff had differences with the 5th defendant and Brian Gouldie which led to an investigation into the plaintiff; that the plaintiff threatened to sue 4th defendant over the advertisement of his job without his consent; that the plaintiff was sacked by the 5th defendant, after the plaintiff had allegedly threatened to have key officials of the 4th defendant including the 5th defendant deported; that the plaintiff was sacked following a period of tension between the plaintiff and other employees; that the plaintiff was implicated in torture; and that the plaintiff is untrustworthy and unfit to hold top offices in any company.

The plaintiff denied having had any stormy meeting with 5th defendant or ever threatening the 5th defendant with deportation. The plaintiff was not issued with a dismissal letter or dismissed because of a stormy encounter he allegedly had with the 5th defendant. The plaintiff has never in his career with the 4th defendant been accused of intimidation or highhandedness or threatened any member of staff of MTN or been a subject of any investigation by MTN.

The plaintiff further contended and denied ever working with any state agents in any capacity let alone inducing confessions from co-workers including using threats and torture specifically against Patrick Ssentongo who was accused and found guilty of fraud and was convicted to serve a 10

year jail term. The media houses not limited to 1st-3rd defendants published defamatory stories which were supplied by 4th -6th defendants.

The 1st-3rd defendants in their defence contended that the article complained of was published in good faith based on well sourced information, any opinions therein constitute fair comment on matters of public importance, and the facts reported therein are true and therefore the article was not defamatory and the reporting was fair, balanced and made in good faith.

The 1st -3rd defendants have always sought comment from the plaintiff and other officers of the 4th defendant before publishing any story relating to the 4th defendant and her employees in line with employment. The defendants bore no ill will towards the person of the plaintiff or indeed any person named in the article.

The 2nd defendant received an anonymous whistleblower's report and assigned the 3rd defendant to investigate and verify the allegations made in the said report. Prior to the publication of the Article complained of, the plaintiff was contacted and his comments were sought in relation to the allegations contained in the whistleblower's report but he declined to go on record with a comment and instead advised the 3rd defendant to publish the article at his discretion or use his personal judgment.

The plaintiff is estopped from alleging that the defamatory because he had an opportunity to state his side of the story on a matter of public importance before the publication but he chose not to. The 3rd defendant sought comment from Messrs Sebalu & Lule Advocates, attorneys for the 4th defendant, based on previous experience, where he had referred to this firm for comment on previous articles published relating to the 4th defendant. The plaintiff has never protested to the 1st-3rd defendant after its publication or sought it to be withdrawn.

The 4th-6th defendants contended that on 12th February, 2019, the plaintiff's employment and the communicated to him by way of letter. The termination

letter was handed over to the plaintiff by the 5th defendant in the 5th defendant's office in presence of the 6th defendant. The plaintiff in anger refused to acknowledge receipt of the letter of the termination letter.

The 4th, 5th and 6th defendant did not publish, cause to be published or disseminate any statement or article and deny being the source of any alleged defamatory information said to be reported by the 1st, 2nd and 3rd defendants.

The 4th-6th did not maliciously author, write print or publish the said Magazine Article. Neither did they make any statement to any third party and no such statement is specifically pleaded in the plaint or magazine article complained of.

The Plaintiff was represented by *Ms. Atuhairwe Grace and Mr. Paul Idambi* while the 1st, 2nd & 3rd defendants were represented by *Mr. Kagere Ibrahim and Mr. Kirunda Robert* while the 4th, 5th & 6th defendants were represented by *Mr. Mafabi Micheal*.

The parties filed a joint scheduling memorandum and they did not have any agreed facts and issues were agreed upon and the documents agreed upon were exhibited before trial;

Agreed Issues

- 1. Whether the defendants made any publication defamatory of the plaintiff?*
- 2. Whether the defendants have any legally available defences?*
- 3. Whether any of the parties are entitled to any of the reliefs sought?*

Parties led evidence of their respective witnesses and thereafter filed written submissions which have been considered by this court in writing this judgment.

DETERMINATION

ISSUE 1

Whether the defendants made any publication defamatory of the plaintiff?

The plaintiff's counsel submitted that the defendants alleged that the plaintiff is a criminal who had been implicated in commission of crimes against humanity when they published that he had been implicated in the torture of Ssentongo. They also alleged that the plaintiff collaborated with engineers to erase call data records in order to protect criminals. This in counsel's view was considered defamatory of the plaintiff since it depicted the plaintiff as a criminal.

Counsel cited the case of *Sejjoba Geoffrey v Rev Rwabigonji Patric* [1977] HCB 37 where court held that, the typical form of defamation is an attack upon the moral character of the plaintiff attributing to him any disgraceful conduct such as crime, dishonesty, untruthfulness, trickery, ingratitude or cruelty or casting a reflection upon the fitness of capacity of the plaintiff in his profession or trade.

In *Odongkara v Astles* [1970] EA 377 court held that allegations are defamatory if they impute the commission of a criminal offence which he would be liable to imprisonment under the Laws of Uganda. Court considered that the words in question were defamatory of the plaintiff in their natural and ordinary meaning.

According to counsel the implication/imputation arising from the article is that Katamba committed a crime of torture. Torture is an internationally recognized crime, which under the Ugandan law is provided for under the Prevention and Prohibition of Torture Act 2012. The above imputes a disgraceful conduct, commission of crime, cruel character upon the plaintiff as a criminal who used his office and authority to torture fellow workers.

To an ordinary reader, the alleged words imply that the Ruling of Justice Lawrence Gidudu had actually implicated Katamba with Flying Squad Commander Nixon Agasirwe to having tortured Sentongo.

The plaintiff counsel submitted that the 3rd defendant failed to show the truthfulness of his allegations that the plaintiff was implicated as having tortured Ssentongo. In counsel's view, failure to bring evidence to prove commission of the above crimes makes the allegations defamatory of the plaintiff.

The plaintiff's counsel further contended in his submissions that the 1st-3rd defendants published an article that cited wrong reasons for terminations of the plaintiff, they alleged that the plaintiff was terminated for: Allegedly threatening the CEO with deportation; threatening the top four MTN officials with deportation; having an internal fight with the CEO; that the plaintiff had a tense working relationship with other employee, he had a fight with the former CEO Brian Gouldie, which led to the plaintiff being investigated....; the plaintiff's job had been advertised and he threatened to sue the company; he was discussing ways of evading OTT tax among others.

It was counsel's submission that the plaintiff's termination letter does not indicate any of the above as the reasons for the plaintiff's termination of employment with the 4 defendant. The plaintiff submitted that the above allegations are false and only intended to lower the reputation of the plaintiff in society as a disgraceful character, cruel to his fellow employees thus defaming him. No reasonable person would want to associate with a high handed, intimidating, threatening and a person who arranges for the torture of fellow employees. The normal human instinct would be to avoid such a person.

The plaintiff further contended that the 4th to 6th defendants were sued for having published information to the 1st to 3rd defendants which were not true and defamatory. Citing the case of *Okenya & 4 Others v Odok Civil Suit No. 55 of 2019*, court noted and held that any act which had the effect of transferring the defamatory information to a third person constitutes a

publication. Publication occurs when information is negligently or intentionally communicated in any medium.

The information published was information got from emails from Mr Tumusingize from Sebalu and Lule Advocates and that throughout the article the 3rd defendant referred to sources within MTN who gave him information.

The 1st-3rd defendants in their submission contended that the statements published were in factual in nature and justified and in their view the plaintiff had a duty to prove the falsity of the factual statements in the publications complained of.

The defence witnesses DW1-Andrew Mwenda and DW-2 Haggai Matsiko testified that upon receipt of the whistleblowers report and before publication of the article went to great length to verify the contents therein with different sources such as talking to the plaintiff, review and perusal of the court proceedings in the High Court (Anti-Corruption Division) Criminal Session case 123 of 2012-Uganda vs Ssentongo & 4 others, a review of police recorded statements and sought confirmation from MTN's external lawyers of Sebalu & Lule advocates, reviewed the emails from the 5th defendants to his superiors at 4th defendants and also the extract of the call logs.

The 1st-3rd defendants' counsel submitted that in line with journalistic standards, reached out to the plaintiff to verify the whistleblowers report allegations levelled against him. The plaintiff chose not to provide any contrary evidence to rebut the allegations, and as such the plaintiff is estopped from alleging he was not contacted by the writer or the publisher of the article before going to print or that he was defamed by the article in issue.

The plaintiff was reported to police about his threats to 5th defendant after he was terminated from his employment. Which resulted in an exchange between him and the 5th defendant. The plaintiff in the process threatened the 5th defendant with deportation back to his country. Indeed, the 5th defendant was deported to Belgium. Therefore, according to the 1st-3rd defence counsel they have satisfied both the standard of proof and burden of proof since they wrote on an issue that formed part of an official record of Uganda Police, and as such the words complained of, are not defamatory of the plaintiff.

The defence counsel further contended that there is a court record (proceedings) in which the plaintiff was implicated in the torture of a one Ssentongo by a one Nixon Agasirwe-Flying Squad Commander. The plaintiff confirmed that there was a criminal case at Anti-Corruption Division and part of the record of proceedings showed how he was subjected to torture while at police station when the plaintiff visited the police cell. This allegation or statement was made after the review of the court proceedings wherein the accused a one Ssentongo narrated how he had been re-arrested after being granted bail, tortured and subjected to all manner of inhuman and degrading treatment by the notorious Nixon Agasirwe in the proximity of the plaintiff coercing him to make a confession that the plaintiff had come to collect to be used in a criminal prosecution.

The defence also contended that it was true that there was existence of tension or internal differences (internal fight) between the plaintiff and 5th defendant or other employees of the 4th defendant. The plaintiff's pleadings and the responses from the 4th defendant clearly confirm the truth of the statement that there was an internal fight or power struggle between the plaintiff and 5th defendant.

The statement to the effect that the plaintiff threatened to go to court by the plaintiff or sue the 4th defendant to enforce his rights after the job was

advertised by the 4th defendant without the plaintiff's knowledge cannot be said to be defamatory.

The 4th to 6th defendants' counsel submitted that apart from mere generalization attributed to them, the plaintiff did not plead any specific document or words alleged to be defamatory which were attributable to the 4th to 6th defendants. The failure to plead any such specific words, document or statements is a violation of order 7 of the civil procedure rules rendering the plaintiff's cause of action unmaintainable against the 4th to 6th defendant.

In addition, counsel for the 4th to 6th defendant contended that in evidence, the plaintiff failed to show that the 4th to 6th defendant were the source of the alleged defamatory statements published by the 1st to 3rd defendants. The record of proceedings will show that the plaintiff could not in the least show any specific causative link between the published story and the 4th to 6th defendant.

The documents relied on by the plaintiff as the source of information were true and not malicious or defamatory of the plaintiff. They were a true account of what transpired between the plaintiff and defendants.

Analysis

According to *Black's Law Dictionary 11th Edition 2019*, defamation means; Malicious and groundless harm to the reputation or good name of another by the making of false statement to a third party.

In the case of *Francis Lukooya Mukome and Anor versus The Editor in chief of Bukedde News Paper. HCCS NO 351/2007*, Hon Justice 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."

The right to reputation is acknowledged as an inherent personal right of every person. A man's reputation is his property and perhaps more valuable than any other property. Indeed, if we reflect on the degree of suffering occasioned by loss of character and compare it with that occasioned by loss of property, the amount of injury by defamation far exceeds that of loss of property.

In defamation suits, for court to determine whether the words complained of are capable of a defamatory meaning, one must first look at the words themselves. Then one has to consider the circumstances under which they were published. In all this, the plaintiff does not shoulder the burden of proving falsity or malice in order to establish a cause of action. If the words are defamatory or capable of being so construed, the law presumes that they are false. The burden shifts to the defendant to show that they are true. The onus is on the defendant to prove the truth of a defamatory statement rather than for the plaintiff to prove its untruth. See *AK Oils & Fats (U) Limited vs BIDCO Uganda Limited HCCS 0715 of 2005*.

The 1st-3rd defendants admitted publishing the said articles but their defence is that what is stated there in is true.

A true statement written and said about another person can never become defamatory. The written publication must be false and without any lawful justification for it to be defamatory. Words are not defamatory however much they damage a man in the eyes of a sector of community unless they also amount to disparagement of his reputation in the eyes of right thinking men generally. To write or say of a man something that will disparage him

in the eyes of a particular section of the community but will not affect his reputation in the eyes of the average thinking man is not actionable in the law of defamation.

In consideration of whether the words complained of are defamatory, the nature of the claim and the language used must be looked at as a whole in considering whether reasonable men could come to the conclusion that the use of the words were not intended to convey, and that those the article would not understand them as conveying imputations suggested by the plaintiff. Where the court finds in an action for libel, that the words complained of were falsely published, the question that next arises is the effect of their publication on the person to whom they published, not whether the words were maliciously published.

In the present case the 1st -3rd defendant published an article titled “Black Days at MTN, Story Behind dumping of 5 bosses” which set out the management crisis with the 4th defendant and this article has been reproduced herein before. The said story or article was published according to DW1(Andrew Mwenda) and DW2 (Haggai Matsiko) based upon a whistleblower’s report and that before the publication of the article containing the words complained of, went to great length to verify the contents therein with different sources like talking to the plaintiff, perusal of court proceedings in the High Court (Anti-Corruption Division) Criminal Session Case No. 123 of 2012 Uganda v Ssentongo & 4 Others, review of the recorded statements by the 5th and 6th defendants, review of the contents of the email from the 5th defendant to his superiors at the 4th defendant.

The plaintiff in his testimony under the witness statement had denied and contended that the writer and publishers of the article had failed to exercise due care and diligence to verify the allegations in the whistle blower's report. The main contention by the plaintiff was that no where in the judgment of Justice Lawrence Gidudu was he implicated alone or with others for torturing Mr. Sentongo. The source of this story were the court proceedings which set out the manner and how the Sentongo was tortured. The court proceedings show that Sentongo in his testimony he stated as follows;

".....at 5:00 mugisha and Katamba the Company Secretary came in. Nixon moved out saying I was cooperating. I told Katamba that I will make the statement but I needed to see my lawyer, eat, bath and sleep. Katamba was annoyed. He called Nixon to say I was not co-operating.

Nixon slapped me hard saying I had embarrassed him. I got up and told him I was ready to do what he wanted. Nixon told Katamba he would brief him. I was locked in a room.

At about 9:00 a person called Owana came in with a paper from nixon's office and told me he wanted to record my charge and caution statement. I told him I was not in my state of mind. I was hungry and sleepy. He said I had to do it because he had to go. He wrote the statement and told me to sign."

The plaintiff in cross examination he confirmed that he was aware about the criminal case about Sentongo and seems not to specifically deny the story as per the record of proceedings at Anti-Corruption court. The story was setting out the facts and indeed true in as far as the source is clear. It was only implying that the plaintiff was an accomplice or an alleged violator of human rights as per the court proceedings in Ssentongo's testimony in court

when he made an alleged confession under serious circumstances of torture at the hands of Agasirwe Nixon.

The plaintiff denied being involved in the deportation of the 5th defendant from Uganda and that the story about the deportation of the 5th defendant was false since it was an act of government for which he was not responsible. The testimony of the 6th defendant as DW3 showed that upon termination of the plaintiff's employment on 12th February 2019, the 5th defendant set an email to his superiors to brief them about what had transpired in the meeting with the plaintiff.

The 6th defendant testified that the plaintiff walked out of the meeting briefly and when he returned moments later enraged, demanding to know from the 5th defendant the where about of his lap top computer. He further quoted the plaintiff to have said;

You have crossed the line and I'm going to get you deported. You will see who I am. You have been persecuting me for a long time. I am going to report the case to police.

The 5th defendant further sent an email and in that email [Exhibit DE-5] stating what the plaintiff had told him as follows;

- *"You (Wim), as CEO have no mandate to terminate me, the only mandated body is the board of directors, I don't want you rubbish letter*
- *I will Madam Felleng immediately for confirmation*
- *I want Eben to call me, I distrust the validity of your signature*
- *I am going to report to police immediately on allegation/accusation that you are personally threatening and torturing me*
- *You (Wim) will be deported shortly as 'those people' are holding a lot of 'evidence' against us(=MTN)*

- *You and your friend OP and 'the rest' have been harassing me all this time, you have crossed the line, you wait and see"*

In the chronology of events and as stated by the plaintiff, the 5th defendant was indeed deported on the 14th February 2019 two days after the plaintiff's employment was terminated. The alleged threat of deportation as threatened/stated by the plaintiff was reported to police on 13th February 2019 by both the 5th and 6th defendants.

The allegation that the threats to deport and indeed the deportation of the 5th defendant was true and the plaintiff was in the know of what was happening even if he claims not to have been behind it. The evidence on court record shows otherwise.

It is further clear from the above email by the 5th defendant that indeed there was a stormy meeting between the plaintiff and 5th defendant although the plaintiff tried to deny this fact. In fact, the plaintiff's lap top was taken from him immediately as he was meeting the 5th defendant without notice or his knowledge. Such an act cannot be interpreted as a rosy relationship as he wants this court to believe. In the email by the 5th defendant to his superiors he stated that: *" The attached letter was drafted by our lawyers and provides for 18 months salary pay out, in-line with a very generous interpretation of the applicable labour law. We have taken his computer and have disabled his access to the building"*

The plaintiff further contended that the article showed that there was or existed tension or differences (Internal fight) between the plaintiff and 5th defendant or other employees. This is confirmed by pleadings in support of the plaintiff's claims filed at the industrial court and responses by the

company-MTN; Industrial Court Labour Dispute No. 202 of 2019 arising out of Labour Dispute No. 214 of 2019 as exhibited in this court.

The statement of some hostility between the plaintiff and other employees including the 5th and 6th plaintiff is indeed true and satisfactorily explained from the pleadings filed in the labour dispute before the tribunal. There was indeed an internal fight or power struggle between the plaintiff and 5th defendant. The 1st-3rd respondents article which stated that; *“But investigations by the independent have found that an internal fight between the CEO and the Company’s little known but powerful and now sacked General Manager-Corporate Services, Anthony Katamba, could have caused the spark....”* Was indeed a true story or true reflection of the existing state of affairs at MTN at the time.

Justification is a defence in an action for libel. If the statement made about the claimant is true, there can be no action for defamation. A plea of justification means that the libel is true, not only in the allegation of fact but also in any comment thereon. Although depending on the circumstance, a defendant is not obliged to prove the truth of every word in libel, he is, however, obliged to prove the main charge or gist of the libel is true. See *Amuzie v Asonye (2011) 6 NWLR (pt 1242) p. 19*

In the case of *Okenya & 4 ors vs Odok Civil Suit No. 12 of 2009* Justice Mubiru noted that although a statement need not be perfectly true, it should be substantially true in order not to be false. Slight inaccuracies of expression are immaterial if the defamatory statement is true in substance.

However, the defence of justification is such a potent defence in a defamatory suit that it should not be flippantly set up for the sake of merely doing so. The tort of defamation concerns damage to character of the person

defamed whether in libel or slander. The 1st -3rd defendants had a duty to prove that the defamatory imputation of the plaintiff is true about being involved in torture claims. This has been strictly proved against the plaintiff when he mentioned in the record of proceedings of court as being present when Sentongo was tortured by Nixon Agasirwe.

When considering the defence of justification, a useful question is whether that which has been proved to be true corresponds with that which the publication has been interpreted to mean. *See Eric Evans Abu v BPI Bank Ltd [2014] 68 GMJ 115 CA*

The entire article as published was based on facts proved to have existed at the time and were indeed true as proved before this court. It is not clear to this court what the plaintiff's motive was in trying to twist or deny the story and make it appear grossly false when these facts were within his knowledge as indeed truthful.

The law requires the plaintiff in an action for libel to strictly prove publication. The burden of proof is fixed on him at the end of pleadings and he must discharge that burden before it can shift to the defendant. The plaintiff alleged that the 4th to 6th defendants made a publication of the alleged defamatory statements. The pleadings do not mention the specific or exact words made of or about the plaintiff and the same has remained a mere statement. The 4th defendants external lawyer was only requested to verify statements made at police and existence of complaints at police.

The 5th and 6th defendants only made statement at police when recording a case against the plaintiff. The said information was never disseminated to any person but rather was available to the public as references for complaints

made by the affected parties to police. The 1st -3rd defendants do not state the 4th -6th defendants as the source of the said information but rather the whistle-blower's report which triggered the entire story as reported. The plaintiff failed to strictly prove the publication of the information in possession of the 4th -6th defendants.

As noted earlier, the words and what is stated in the article were true and not malicious or defamatory of the plaintiff.

This suit fails and is accordingly dismissed with costs to the defendants.

I so Order.

SSEKAANA MUSA
JUDGE
31st August 2023