

**THE HIGH COURT OF UGANDA**  
**IN THE REPUBLIC OF UGANDA AT KAMPALA**  
**CIVIL DIVISION**

**CIVIL SUIT NO. 168 OF 2019**

**ANTHONY KATAMBA.....PLAINTIFF**

**VERSUS**

- 1. THE EDITOR IN CHIEF, THE EAST AFRICAN NEWSPAPER**
- 2. THE NATION MEDIA GROUP**
- 3. MICHEAL WAKABI**
- 4. CHARLES N. MPAGI .....DEFENDANTS**
- 5. MTN UGANDA LIMITED**
- 6. WIM VANHELLEPUTTE**
- 7. MICHEAL SEKADDE**

**BEFORE: HON. JUSTICE SSEKAANA MUSA**

**JUDGMENT**

The plaintiff's claim against the defendants jointly and severally is for recovery of damages for the defamation of his otherwise good name, arising from an article published in the *East African Newspaper of February 16<sup>th</sup>-22<sup>nd</sup>, 2019* on page 5 under the headline "*MTN case pits Uganda against 4 nations* together with interest and costs.

The plaintiff filed this suit against the 1<sup>st</sup> – 4<sup>th</sup> defendants contending that the falsely and maliciously printed and published or caused to be written and published statements of a defamatory nature to the plaintiff. The plaintiff contended that the 5<sup>th</sup>, 6<sup>th</sup>, and 7<sup>th</sup> defendants deliberately released information to various media houses which were utterly false and

unfounded and the words were highly defamatory of the plaintiff and calculated to lower the plaintiff's hitherto high esteem in the eyes of right-thinking members of society.

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

*"....Mr Vanhelleputte's deportation came two days after he had sacked MTN's manager legal and corporate services, Anthony Katamba, after a stormy encounter in which Mr. Katamba reportedly threatened his boss with deportation.*

*Indeed, in his brief to management on the incident, Mr Vanhelleputte, who joined MTN Uganda in 2006, said Mr. Katamba had threatened him with deportation..."*

*"...The sacking of Mr. Katamba, who had worked with MTN for close to 18 years, followed a period of tension between him and other employees who accused him of intimidation and high-handedness.*

*According to court documents, in 2015, Mr. Katamba was accused of working with state security; agents to force confessions from other employees, including threats and torture.*

*Last week a whistle blower brought these issues to management and even attached excerpts from the proceedings of Criminal Case 123 of 2012, in which Justice Lawrence Gidudu refused to admit as evidence a confession by Patrick Ssentongo, a former MTN employee who was charged of defrauding the company.*

*In his testimony before the court, Mr Ssentongo claimed that Mr. Katamba had personally instructed a senior police officer, Nixon Agasirwe to force a confession out of him. Mr. Agasirwe is currently in detention facing charges of illegal arrest and deportation of Rwandan refugees. The case is before the Military court martial.*

*MTN management is said to have considered Mr. Katamba's action as constituting aggravated indiscipline and decided to sack him. In the termination letter, however, MTN cites recent standoffs with the regulator and the numerous court cases that the company has been involved in as evidence that Mr. Katamba had failed in his role as the company's legal advisor.*

*Mr. Vanhelleputte reportedly told Mr. Katamba that the management had lost trust in his ability to provide the company with leadership on his legal brief. Mr. Katamba reportedly refused to accept the termination letter and instead stated that Mr. Vanhelleputte would be deported like the others.*

*In the communication after she had been deported, Ms Muzolline said that during her interrogation, security agents had shown her screenshots of a WhatsApp group discussion in which Mr. Katamba and three deported officers discussed strategies for dropping the new industry taxes. Ms. Muzzoline revealed that while Mr. Katamba was party to the discussion, his part of the conversation was missing from the exhibits..."*

The 1<sup>st</sup> to 4<sup>th</sup> defendants admitted to the publication of the article but contended that the same was not defamatory of the plaintiff and was in any event published on account of justification, fair comment, and qualified privilege.

By their joint defense, the 5<sup>th</sup>, 6<sup>th</sup>, and 7<sup>th</sup> defendants denied disseminating any malicious or defamatory information to any media houses including the 1<sup>st</sup> to 4<sup>th</sup> defendants, and were unaware of the circumstances by which the documents referred to by the plaintiff were made public. They further denied that the words complained of were false, malicious, or defamatory of the plaintiff or that the said words were capable of being interpreted to bear the meaning attributable to them by the plaintiff.

At conferencing, the following issues were framed for determination by this court;

1. *Whether the publication published by the 1<sup>st</sup> to 4<sup>th</sup> defendants is defamatory of the plaintiff.*
2. *Whether the 5<sup>th</sup> to 7<sup>th</sup> defendants made any publications defamatory to the plaintiff.*
3. *Whether the respective defenses of justification, fair comment, and qualified privilege are available to the 1<sup>st</sup> to 4<sup>th</sup> defendants in respect of the parts of the publication to which they are pleaded.*
4. *Whether the respective defenses of justification and qualified privilege are available to the 5<sup>th</sup> to 7<sup>th</sup> defendants.*
5. *Whether the plaintiff is entitled to the remedies sought.*

At the trial, James Nangwala and Ms Doreen Nangwala Mugweri appeared for the 1<sup>st</sup> to 4<sup>th</sup> defendants, Michael Mafabi for the 5<sup>th</sup> to 7<sup>th</sup> defendants, and Grace Atuhairwe for the plaintiff.

The parties were directed to file final written submissions that were considered by this court.

### **Determination**

I shall deal with issues 1 and 3 concurrently since they relate to each other.

*Whether the publication published by the 1<sup>st</sup> to 4<sup>th</sup> defendants was defamatory of the plaintiff.*

*Whether the respective defenses of justification, fair comment, and qualified privilege are available to the 1<sup>st</sup> to 4<sup>th</sup> defendants in respect of the parts of the publication to which they are pleaded.*

The plaintiff contends that he was defamed by the published statements. In this excerpt, the plaintiff alleged that the statement imputed the commission of crimes;

*"...Mr. Katamba was accused of working with state agents to force confessions from other employees including using threats and torture."*

*"...Katamba had personally instructed a senior police officer Nixon Agasirwe to force a confession out of Mr. Sentongo. Mr. Agasirwe currently in detention facing charges of illegal arrest and deportation of Rwandan refugees. The case is before the military Court Martial"*

The plaintiff contended that the above extracts if read by an ordinary man without reference to the court proceedings and ruling in C.S 123 of 2012 would without a doubt ordinarily use the natural meaning to interpret the above statements to mean that the plaintiff actually had a hand in the torture of Mr. Sentongo.

Counsel for the plaintiff contended that the implication of these words was that the plaintiff was a state collaborator in carrying out crimes against humanity which lowered his reputation in society and the effect was people shunning him. That the statements were defamatory in their natural and ordinary meanings as they attacked the plaintiff's moral character attributing him to disgraceful conduct towards his former employee in order to get a confession.

Counsel submitted that the above allegations were defamatory for imputing the commission of crimes yet there was no evidence brought before this court to prove the commission of the offences stated.

The plaintiff further contended that the defendants had cited the wrong reasons for the termination of the plaintiff contrary to what was in the termination letter.

The article stated;

*“... the sacking of Katamba followed a period of tension between him and other employees who accused him of intimidation and high handedness*

*...MTN considered the plaintiff's actions as constituting aggravated indiscipline and decided to sack him.*

*...He had a stormy encounter with Wim and threatened him with deportation...*

*...That the plaintiff had filed in his role as the company's legal advisor and the evidence is the recent stand-offs with MTN and numerous court cases that the company was involved in.*

*...Mr. Katamba and 3 deported officers discussed strategies for dropping the new industry tax...”*

Counsel for the plaintiff submitted that it was clear from the termination letter attached that those were not the reasons enumerated for his termination but the defendants chose to allege to other facts that were totally false. The same made the plaintiff appear incompetent, and untrustworthy of an advocate in the position held.

Counsel submitted that the plaintiff had been summarily dismissed therefore a publication depicting him as a criminal was far more damaging to the plaintiff.

Counsel concluded that the plaintiff was a public figure and defamatory publications about his moral character made at the time when he had just

been summarily dismissed were made under bad circumstances when only the 5<sup>th</sup> to 7<sup>th</sup> defendants had given their side of the story and documents after an alleged stormy encounter.

That the words discredited the reputation of the plaintiff among right-thinking members of society which cast a bad reflection upon the fitness or capacity of the plaintiff in his profession or trade as an advocate hence defamatory.

Counsel cited among others the cases of *Dr. Wasswa Matovu vs Baryamureeba & 7ors (Civil Suit No. 104 of 2020)*, *Sejjoba Geofrey Vs Rev. Rwabigoni Patrick [1977] HCB 37* and *Specioza Kazibwe vs The Independent Publication Ltd CS 12 of 2018* to prove his case.

On the other hand, the defendants denied that the publications were defamatory.

The defendants contended that the publication with regard to the threats of deportation were in fact true. The defendants led both oral and documentary evidence showing that the plaintiff undoubtedly threatened the then Chief Executive Officer, his fellow employee and his supervisor with deportation. They referred this court to the 6<sup>th</sup> defendant's brief to the MTN management wherein he stated that the plaintiff had threatened him with deportation as well as the statement to the police. That the 6<sup>th</sup> defendant was indeed deported two days after the termination of the plaintiff.

The defendants also relied on the oral evidence of the 7<sup>th</sup> defendant who stated that he was in the room with the plaintiff and 6<sup>th</sup> defendant when the plaintiff was handed his termination letter and he threatened the 6<sup>th</sup> defendant with deportation.

The defendants submitted that the threatening behavior was reported to the police, the plaintiff was summarily dismissed and the 6<sup>th</sup> defendant was deported. Counsel submitted that the imputations derived from those factual occurrences were therefore justified.

Further still, the plaintiff was accused in criminal proceedings in Criminal Case No. 123 of 2012 of working with security organs to force a confession from Sentongo. Counsel submitted that this was a fact that was published on an occasion of qualified privilege.

The defendants raised the defenses of justification, fair comment and qualified privilege against the allegations of defamation. The plaintiff denied the defenses and prayed that the court find them unavailable to the defendants.

## *ANALYSIS*

There is no single test that exhaustively defines the term “defamatory”. What is clear is that since the tort of defamation seeks to protect reputational interest, defamatory statement should first and foremost relate to the reputation of the person defamed. The tort of defamation protects the social, moral, business and professional reputation of individuals, the business and trading reputation of for-profit companies and the governing reputation of unincorporated bodies such as registered society.

It can be deduced from the different authorities, a statement is defamatory in nature if it tends to:

- (a) Lower the plaintiff in the estimation of right-thinking members of society generally;
- (b) Cause the plaintiff to be shunned or avoided;
- (c) Expose the plaintiff to hatred, contempt or ridicule.



Words are defamatory if in their meaning they render the person about whom they are spoken of odium, shame and disgrace.

All the above tests relate to the protection of the individual dignity and intrinsic self-worth of the individual and the importance of observing the rules of civility as a member of the community to which the individual belongs.

The essence of defamation is 'publication' which excites others against the plaintiff to form adverse opinions or exposes him to hatred, contempt or ridicule, or injure him in his trade, business, profession, calling or office or to cause him to be shunned or avoided in society.

In defamation suits, for the 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 claimant to prove its untruth. *(see: AK Oils & Fats (U) Limited vs BIDCO Uganda Limited HCCS 0715 of 2005) Potgieter v Kilian 1995 (11) BCLR 1498 (N)*

Words are not defamatory however much they damage a man in the eyes of a sector of the community unless they also amount to disparagement of his reputation in the eyes of right thinking members of society. To write or say of a man something that will disparage him in the eyes of a particular section of the community but will affect his reputation in the eyes of the average thinking man is not actionable in the law of defamation.

The defendants, in this case, contend that whatever was published was, in fact, true and led evidence to prove the same and also raised the defenses of justification, fair comment, and qualified privilege.

## **Justification**

The defendants pleaded justification for the publication in relation to the words threatening deportation. Counsel submitted that with this defense, the court considers the defense made out if what was published was true in fact and in substance. That the defense was concerned with whether the allegedly defamatory statement was true.

The defence of justification if successfully raised, constitutes a complete defence against the plaintiff's claims and can only be defeated by proof of malice on the part of the defendant.

The rationale of the defence of justification is based on the presumption that by telling the truth about the plaintiff, his reputation is not lowered beyond its proper level, but is merely brought down to it. Further, the law does not protect the reputation that a man has , but only the reputation he deserves.

The defendant in raising this defense needed not to show that the statement was precisely true in every particular: what matters is that it is substantially true. That this defense absolves a defendant completely provided that it can be shown that the allegedly defamatory statement is factual in substance. See *Winfield & Jolowicz on Tort 19<sup>th</sup> edn. Para 13-044 at page 376*

In the case of *Okenya & 4 ors vs Odok (Civil Suit No. 12 of 2009)* Justice Mubiru J reiterated 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, grounds of justification merely constitute prima facie proof; this proof may in turn be rebutted where the defendant abuses or exceeds the bounds of justification or acts with improper motives.

Counsel for the plaintiff while relying on the case of *Angwee Kalanga vs Odongo Milton and anor Civil Suit No. 0065 of 2011* where the court held that the defendant relying on the defense of justification must prove that the content of the statement was true, not that it was made and that the imputations conveyed by the words were true rejected this defense contending that in making the said publications, the defendants didn't take caution to establish the truthfulness of the statement but simply relied on one side of the story that is MTN. Counsel further argued that the defendants were required to prove that the imputations conveyed by the publications were true but failed to prove that the plaintiff participated in the said deportations.

Counsel concluded that the imputations carried by the publication were not true and the defendants failed to prove the same as required by law hence they could not hide behind the defense of justification.

The defendants led evidence that proved that the statements published were true in fact and substance. Documentary and oral evidence was led to show that the plaintiff uttered threats of deportation to the 6<sup>th</sup> defendant and was indeed deported after two days which justified the defendants' publication of the article. The plaintiff was a 'whistle-blower' to the 6<sup>th</sup> defendant about his future deportation which was not within his knowledge at the time. At the time of publication, the 6<sup>th</sup> defendant had indeed been deported and the story was true as disclosed by the plaintiff.

## Qualified privilege

Qualified privilege means that: the defendant enjoys a qualified or relative privilege as opposed to an absolute privilege. This means that in establishing a defence of qualified privilege, a defendant must justify the lawfulness of a defamatory statement by proving the immunity on which he or she relies. He or she must prove that he or she had an interest in making the statement to someone who was interested in hearing it, and that the communication was relevant to the matter under discussion. *See Baird v Pretorius 1996 (2) SA 825; National Education, Health and Allied Worker's Union v Tsatsi [2006] 1 All SA 583 (SCA)*

The defendants also relied on the defense of qualified privilege contending that the plaintiff was in fact accused in criminal proceedings in Criminal Session case no. 123 of 2012 of working with security organs to force a confession from Sentongo which was the basis of the publication.

Counsel further submitted that a publication made out of court proceedings was given particular attention in law with regard to the defense of qualified privilege. Counsel referred the court to *Gatley on Libel and Slander in a Civil Action 4<sup>th</sup> Edition published by London Sweet & Maxwell Limited page 294-295*. Counsel submitted that the defendants committed no tort in reporting what transpired in court however unfair and injurious such reporting could have been to the plaintiff.

The objective test for this defense was whether there was a duty to publish the information reciprocated by an interest to receive the information by the public. Defence counsel contended that being a media house, the defendants indeed had a legal, moral or in the very least a social obligation to report on matters concerning the 5<sup>th</sup> defendant and the public also had an interest to receive the information.

Counsel for the plaintiff rejected this defense as well contending that it was not available to the defendants on grounds that they totally and recklessly disregarded the truth that the plaintiff had not been found or proved to have threatened or tortured the accused Sentongo but reported to the contrary which proved malice on the 1<sup>st</sup> to 4<sup>th</sup> defendants. Counsel submitted that instead of relying on the court proceedings and ruling that the plaintiff was not implicated anywhere in the torture of Sentongo, the defendants relied on the whistleblower's report whose contents were not verified and therefore did not qualify the defendants for the defense of qualified privilege.

The fair, accurate and contemporaneous reports in courts which are publicly heard are privileged. The defence of qualified privilege arises where the defendant has an interest or duty whether legal, social or moral, to communicate the information and the recipient has the corresponding interest or duty to receive the information. *See Cook v Alexander [1974] QB 27;*

The duty of the press to inform the public of newsworthy material should be an additional category of an extended defence of qualified privilege. The courts should adopt an objective test and the defendant must prove that he acted within the limits of privilege. The defendant must prove that the defamatory statements were relevant or bore a reasonable relationship to the fulfilment of the duty. The relevance of the duty is determined objectively in accordance with the test of objective reasonableness.

The plaintiff failed to prove negligence or malice on the part of the defendants in publishing about the ongoing or concluded criminal proceedings where the plaintiff's name was cited in torture to extract a confession. The defendants reported on the court proceedings and court ruling to publish the article however unfair it seemed against the plaintiff.

## Fair comment

This ground of defence relates to publication of defamatory allegations which constitute fair comment on facts which are true and in the public interest. The underlying rationale for the defence of fair comment is the right to free speech and the promotion of open discussion. *See Oversea-Chinese Banking Corp Ltd v Wright Norman [1994] 3 SLR (R) 410 at [32]*

The four requirements to succeed on defence of fair comment;

1. *The allegation concerned must amount to comment or opinion on the facts and it must be possible to distinguish between the facts and the comment. (The test is that of objective reasonableness)*
2. *The comment must be fair. The test of what constitutes fair comment is that of reasonableness.*
3. *Facts commented on must be true and correctly stated.*
4. *The comment must refer to matters of public interest.*

The defendants contended that in many aspects the publication was a commentary on the facts surrounding the termination of the plaintiff from the employment of the 5<sup>th</sup> defendant. Counsel submitted that the publication cited incidents to back up the statements that the plaintiff was accused of high-handedness and intimidation which were all factual and not exaggerated.

On the other hand, the plaintiff contended that the publication was not fair and honest and was purely a statement of fact in as far as it related to the circumstances surrounding the plaintiff's termination of employment. Counsel submitted that the title of the Article was deceptive as it referred to MTN Case pits Uganda against 4 nations but the story changed and focused on the plaintiff and his relationship with his former employer and employees.

Counsel submitted that matters relating to the termination of the plaintiff from MTN were not built on facts truly stated and a comment could not be fair based on misstated facts. It was counsel's submission that failure to prove the true facts surrounding the plaintiff's termination by the defendants defeated their defense of fair comment. Counsel prayed that the court find that the defense was unavailable to the 1<sup>st</sup> to 4<sup>th</sup> defendants.

To succeed in the defence of fair comment, the defendant must show that the word (or nature of words) are a comment and not a statement of fact, that there is a basis of fact (which is true) for the comment complained of and that the comment is of the fact of legitimate public interest. Per Ntabgoba vs Editor in Chief of the New Vision News Paper & Anor [2004] 2 EA, Godfrey Amanyire Vs The New Vision [1999] KALR.

In the defence of fair comment, there is no necessity to show the truth of the comment, only that the comment was fair. A fair comment is an opinion that a fair-minded person could honestly hold, with some allowance given for prejudices and exaggeration. See *Aaron Anne Joseph v Cheong Yip Seng [1996] 1 SLR (R) 258*; *Turner v Metro-Goldwyn-Mayer Pictures Ltd [1950] 1 All ER 449 at 461*

A perusal of excerpts of the impugned article shows that the publication was commentary about the ongoing events at the 5<sup>th</sup> respondent's office which was a matter of public interest. The defendants did not make statements that they claimed were their own but rather informed the public about the ongoing circumstances. The comments were based on true and existing facts and related to events occurring at the time with MTN management. The words used or which constitute the comment relied upon are fair and an honest expression of the editors real opinion.

Issues 1 and 3 therefore fail.

## **Issues 2 and 4**

*Issue 2: Whether the 5<sup>th</sup> to 7<sup>th</sup> defendants made any publications defamatory to the plaintiff.*

*Issue 4: Whether the respective defenses of justification and qualified privilege are available to the 5<sup>th</sup> to 7<sup>th</sup> defendants.*

The plaintiff contends that the 5<sup>th</sup> to 7<sup>th</sup> defendants falsely and maliciously released and disseminated information to media houses including the 1<sup>st</sup>, 2<sup>nd</sup>, and 4<sup>th</sup> defendants who then wrote, printed, and published and caused to be written and published of the plaintiff's defamatory stories relying on such information alleged to have been released and disseminated to them.

Counsel for the plaintiff submitted that the defendants did not take any reasonable actions to make sure that their statements were not published and that a communication made recklessly, negligently, inadvertently, or by omission might as well give rise to liability.

The defendants denied disseminating any malicious or defamatory information and were unaware of the circumstances by which the documents referred to by the plaintiff were made public. They also denied that the words complained of were false malicious or defamatory to the plaintiff.

It is the plaintiff's own case that the 5<sup>th</sup> to 7<sup>th</sup> defendants did not publish the article complained of. The plaintiff alleged that they however disseminated the information that was then used by the 1<sup>st</sup> to 4<sup>th</sup> defendants to defame his person.

The plaintiff contends that during cross-examination, DW2 clearly testified that his sources of information for the article were from interviews with several persons at MTN and named Mr. Mbiire as one of the sources. That



DW2 also stated that he got the documents from MTN. The documents complained of by the plaintiff include emails from MTN extracts from court proceedings, handwritten whistle-blowers report complaint, and police statements of the 6<sup>th</sup> and 7<sup>th</sup> defendants. It is his case that after several interviews conducted the defendants published the documents well knowing that he was a reporter who would publish them to the public.

The defendants denied that the sources of information referred to by DW2 were the 5<sup>th</sup> to 7<sup>th</sup> defendants. They contended that the plaintiff could not rely on his evidence to discharge the burden to prove that the 5<sup>th</sup> to 7<sup>th</sup> defendants objectively participated in the impugned publication to defame the plaintiff.

### *Analysis*

I concur with counsel for the defendants, there is no specific reference to the 5<sup>th</sup> to 7<sup>th</sup> defendants and which documents or information they are guilty of disseminating. DW2 stated that he interviewed several people that he knew had full knowledge of the circumstances surrounding the plaintiff's termination and as he continued to dig deeper into the issue, he came across documentation to support the information he gathered. This did not implicate the defendants as the source of information or documentation.

The only person that was specifically referred to was the Chairperson Mr Mbire who stated that he did not know what was happening and had nothing to say about the developments. He also stated that they should wait for security to appraise them on the reasons for the deportations. That statement in itself was in no way defamatory.

The defendants also pleaded justification in regard to the statutory declaration by the 7<sup>th</sup> defendant in proof of facts P. Exh. 5.

They contended that the contents and truthfulness of the same were never challenged and reflected matters that were true in fact. The plaintiff confirmed and admitted what happened when he was given his termination letter by the 6<sup>th</sup> defendant in the presence of the 7<sup>th</sup> defendant. Indeed there were several pieces of undisputed evidence that confirmed the threats of deportation made by the plaintiff which were never challenged by the plaintiff in cross-examination. Therefore the plaintiff suffered no injury by these statements or any publication as they were based on a true set of facts.

On the other hand, the plaintiff rejected the defense of justification contending that the defendants had failed to produce any evidence to prove their version of the events that transpired the day his employment was terminated. It was his case that the statutory declaration made by the 7<sup>th</sup> defendant was a repetitive defamatory statement and had no evidence of the alleged threats therefore the defense of justification could not stand.

It is quite absurd that the plaintiff still denies the defendants' version of events when there is a plethora of evidence to their truthfulness. They led evidence to prove that the plaintiff threatened the 6<sup>th</sup> defendant with deportation as already discussed.

The defendant has executed his duty and onus to show that the basic facts are true. There is a subtle difference between the proof of facts in the defence of fair comment versus the defence of justification. Lord Denning MR in *London Artists Ltd v Littler* [1969] 2 QB 375 at 391-392 stated that:

*"In fair comment [the defendant] need only prove the basic facts to be true. In justification he must prove the comments and inferences are true also"*

The defendants also pleaded qualified privilege with regard to the email by the 6<sup>th</sup> defendant to the Board of Directors of the 5<sup>th</sup> defendant, the police

statements by the 6<sup>th</sup> and 7<sup>th</sup> defendants, and the email from Mr. Charles Mbire regarding the torture and abuse of human rights allegations in the court proceedings.

This court agrees with the defence counsel that the email by the 6<sup>th</sup> defendant to the Board was without malice to a group of people who had a legitimate interest in knowing of the plaintiff's termination and connected matters including the threats made by the plaintiff to the 6<sup>th</sup> defendant. Similarly, the police statements by the 6<sup>th</sup> and 7<sup>th</sup> defendants were made pursuant to the 6<sup>th</sup> defendant's right to protect himself from the threats to his person without any malice which were covered by qualified privilege.

Lastly, the email by the Chairman was simply instructing the Chief Executive to verify information as in his view such allegations were serious and the 5<sup>th</sup> defendant would not be associated with such allegations which was neither malicious nor defamatory.

The plaintiff, however, contended that malice was shown by the 5<sup>th</sup> to 7<sup>th</sup> defendants in several instances, that is; the defendants maliciously embarrassed him when they advertised his job in the media while his contract was still running, involving external lawyers to draft his termination letter rather than the 7<sup>th</sup> defendant who was the Human Resource Manager who had the mandate to do the same, never giving the DW2 the termination letter so he relied defamatory statements from MTN Management as well as relying on and publishing the whistle blowers report.

The plaintiff's counsel also submitted that the defendants could not successfully put up the defense of qualified privilege in regard to what was published about the criminal proceedings against the plaintiff because

what was reported in the record of proceedings and court ruling differed greatly from what was published.

Counsel concluded that the intention of the defendants and publishing the statements from the events preceding the events of the day only led to a conclusion that they were made with malice to further embarrass and humiliate the plaintiff who had already been dismissed.

I concur with counsel for the defendants, there was no malice imputed from the actions of the 5<sup>th</sup> defendant's Chairman. He was simply verifying the allegations against the plaintiff. The 6<sup>th</sup> defendant also had a duty to communicate to the 5<sup>th</sup> defendant's Board on the events surrounding the plaintiff's termination of employment. No malice was shown here.

The plaintiff's allegations of malice are mere conjecture that he failed to prove. It is further understood that the plaintiff was bitter after losing his employment and made some utterances in rage and fury. The plaintiff's claim and cause of action in defamation was merely an extended anger towards his employers and colleagues at MTN. There was nothing malicious about the publication of the article as he wanted this court to believe.

Issues 2 and 4 therefore fail.

In sum therefore, this suit fails and is hereby dismissed costs to the defendants.

I so order

**SSEKAANA MUSA**

**JUDGE**

**31<sup>st</sup> August 2023**