

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

CIVIL SUIT NO. 175 OF 2015

- 1. ASP ISABIRYE KALOLI
- 10 2. MUHAMMED KIGONGO
- 3. MOSES KINTU KAVUMA :::::::::::::::::::::PLAINTIFFS

VERSES

- 1. MAYI NABAYUNGA
- 2. EDITOR IN CHIEF BUKEDDE NEWSPAPER
- 15 3. NEW VISION PRINTING & PUBLISHING CO. LTD
- 4. GEORGE MUTEKANGA ::::::::::::::::::::: DEFENDANTS

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BEFORE HON. LADY JUSTICE H. WOLAYO

JUDGMENT

Introduction

20 The plaintiffs' claim against the defendants is for a permanent injunction, aggravated/ exemplary damages for defamation, general damages, interest, costs and an order the Defendants make a public apology to the plaintiffs.

The brief facts are that on Wednesday 20<sup>th</sup> May, 2015 at page 7, the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants published an article titled " OMUMYUKA WANGE AKOZESA

5 EMMUNDU” following a council meeting that was held on 17<sup>th</sup> May, 2015  
convened by the 4<sup>th</sup> defendant as the Chairman LC1 Tuba zone which article  
mentioned that in the said meeting, the 4<sup>th</sup> defendant shared concerns about the  
plaintiffs who, on the pretense of patrolling, carried guns which they use to go  
door to door threatening residents with erroneous charges so as to extort money  
10 from them or else take them to prison.

The 1<sup>st</sup> defendant Mayi Nabuyiga is the author of the article, the 2<sup>nd</sup> defendant is  
the editor of Bukedde newspaper where the article appeared while the 3<sup>rd</sup> defendant  
was sued as proprietor of Bukedde newspaper. The 4<sup>th</sup> defendant George  
Mutekanga is the LC 1 chairman Tuba zone where the alleged misdeeds by the  
15 plaintiffs took place.

The plaintiffs’ claim is that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendant maliciously caused the  
publication about the plaintiffs a lurid, scandalous and defamatory story based on  
allegations made by 4<sup>th</sup> defendant at a meeting in Tuba zone.

The defendants denied the article was defamatory and aver the plaintiffs were  
20 subjected to police investigations , released on police bound and had their homes  
searched.

The 4<sup>th</sup> defendant denied causing the publication of the story and that he held a  
routine village meeting.

#### **Issues for determination**

- 25
1. Whether the publication was defamatory of the plaintiffs
  2. Whether the statements made by the 4<sup>th</sup> defendant during the village meeting  
held on 17<sup>th</sup> May 2015 are defamatory.
  3. Whether the defendants have any defences

5 4. Remedies

**Plaintiffs' case**

It was the plaintiffs' case presented through their three witness statements and in oral testimony that Kigongo is the vice chairperson Tuba zone and that together  
10 with the secretary for defence ( Kavuma) and police, they patrolled the area and responded to emergencies.

It was Kigongo's evidence the police carried guns during these patrols while he carried a stick.

According to ASP Isabirye, Kigongo and Kavuma on 17.5.2015, the LC1  
15 Chairman Mutekanga convened a meeting at which he alleged ASP Isabirye gave out guns to Kigongo and Kavuma to terrorize residents.

The plaintiffs' case is that these statements were reckless, false, malicious and defamatory.

It was ASP Isabirye's case he was investigated by his superiors after the  
20 allegations and homes of Kavuma and Kigongo searched but no guns were found.

It was after these statements that Kigongo and Kavuma were arrested and investigated for being in possession of a fire arm and their residences searched. Subsequently, the DPP advised against their prosecution on grounds of scanty evidence.

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5 **The 1st, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants' case**

The three defendants maintain they reported a story of what in fact transpired without any malice or ill motive.

The 4<sup>th</sup> defendant maintains he called a village meeting to discuss issues that affect the area and one of the issues that emerged was the carrying of guns by Kigongo  
10 and Kavuma.

**Issue No. 1: Whether the article was defamatory of the plaintiffs**

Justice Yorokamu Bamwine in the case of **Francis Lukooya Mukoome & Anor vs Editor in Chief Bukedde Newspaper & 2 Ors, Civil Suit No. 351 of 2006**, (ulii) defined defamation as an injury to one's reputation and that reputation is  
15 what other people think about a man and not what a man thinks about himself.

A summary of the legal position on libel which is the permanent form of defamation, is that that the defamatory statement is made about the claimant and communicated to another person other than the claimant and causes damage to the claimant's reputation.

20 It is defamatory if it lowers the claimant in the estimation of right thinking members of society, it tends to bring him into hatred, contempt or ridicule and causes him to be shunned and avoided.

The reasonable person is the standard for determining the above feelings.

A statement can be defamatory in its natural meaning or by innuendo. In the instant  
25 case the plaintiffs pleaded the article was defamatory in its natural meaning.

**Gatley on Libel and Scandal**, cited by counsel for the plaintiff, is instructive on this point.

According to Gatley, where the words complained of are defamatory in their natural meaning the plaintiff need prove nothing more than their publication in

5 which case the defendant needs to prove that from the circumstances of pu  
Winfield & Jolowicz, blication, they were not defamatory when understood by  
reasonable persons.

10 *'The reasonable person is a layman not a lawyer and the judge must put  
himself or herself in the position of someone who may be guilty of a certain  
amount of loose thinking and who may not reflect fully and carefully upon a  
newspaper story or a television program.'* Page 361.

15 Winfield & Jolowicz, Sweet & Maxwell 19<sup>th</sup> edition page 360 gives the basic  
elements for the tort of defamation to be complete. A defamatory statement  
refers to the claimant; is communicated to at least one other person other than the  
claimant; and causes damage to the claimant.

The article had the heading ' my deputy has a gun'. Other relevant part of the  
article are reproduced below:

20 *'Mutekanga said Kigongo and Kavuma pretend to be protecting the  
community but when it comes to night they start threatening the people by  
knocking on their doors and when the local residents open up their doors  
they fabricate charges against them and take them to police and extort  
money'*

25 Extorting money by threats is a criminal offence contry to section 291 of the  
Penal Code Act and in its natural meaning, the article implied Kiging and  
Kavuma are criminal minded.

ASP Kalooli Isabirye is referred to in the following terms:

*'After asking the local residents whether they want to change local council  
leaders , all of them refused , the RCC Jackie Kemigisha asked the*

5        *chairperson and his deputy to respect one another. She told them there will  
be no change in their leadership including the area OC Kalooli Isabirye  
(who is accused of conniving with the deputy chairperson and secretary for  
defence to terrorize the community)'.*

10        The article is therefore defamatory per se for alluding to criminal intents of the  
three plaintiffs.

Issue No: 2 Whether the statements made by the 4<sup>th</sup> defendant during the  
village meeting held on 17<sup>th</sup> May 2015 are defamatory.

15        The defamation complained of is at two levels; libel because of the article in  
Bukedde newspaper and slander, the words uttered by the 4<sup>th</sup> defendant which he  
admits.

I will start with the words uttered at the meeting by the 4<sup>th</sup> defendant that the  
plaintiffs carried guns which they used to terrorize the residents.

20        The common law principle is slander is not actionable per se except where it is  
implied the plaintiff has committed a crime punishable by imprisonment or where  
the plaintiff is a professional and he or she is disparaged as a professional or  
holder of an office.

25        The statement that Kavuma and Kigongo carried guns implied they were in  
unlawful possession of guns contrary to section 3 of the Firearms Act Cap 299, an  
offence they were subsequently investigated for and cleared. The offence carries a  
maximum penalty of ten imprisonment.

With respect to ASP Isabirye, he was entitled to carry a gun but the allegation he  
was using it to terrorize residents meant he was aiding Kavuma and Kigongo in  
the extortion of money by threats which is contrary to section 291 of the Penal  
Code.

**Issue No. 3: Whether the defendants have any defences**

Mutekanga's defense is that these utterances were made during a routine village meeting and therefore privileged.

10 Counsel for the defendants cited section 113 of the Local Government Act Cap 243 in defense of the 4<sup>th</sup> defendant. Section 173 thereof prescribes that any act or thing done or omitted to be done in good faith in the execution of duty exempts that person from civil liability .

15 Although the 4<sup>th</sup> defendant was executing his duties when he called the meeting, in a village setting, where mob mentality may take over anytime, it is dangerous to accuse a member of the community for being a criminal let alone its defamatory effect.

Indeed if a mob had taken over this meeting and crimes committed in the process, the 4<sup>th</sup> defendant would not have escaped liability. The real threat of violence was alluded to by Mayi Nabayunga 1<sup>st</sup> defendant in her article in Bukedde newspaper.

20 The best option would have been to inform the police authorities about the alleged conduct and let the authorities carry out investigations. The concerns of residents ought to have been raised in general terms without naming names and then left the police to do its work. If this had happened, the plaintiffs would not have succeeded in an action for defamation because the police would be doing  
25 their duty to check possible crime.

I therefore find the 4<sup>th</sup> defendant liable for slander against the three plaintiffs.

With respect to the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants, these only reported what transpired at the meeting.

5 They are entitled to the defense of fair comment as they reported the facts as they happened.

Lady Justice Lydia Mugambe in the case of **Katusiime Justus v The New Vision Publishing Corporation & 3 Ors Civil Suit No. 218 of 2010** on page 4 of her judgement stated that fair comment is another defence in defamation and the word  
10 “fair” embraces the meaning of honesty, relevance and free from malice and improper motive.

I did not see any ill intentions from the author as the article also quoted the Plaintiffs speaking at the meeting and making certain allegations against the 4<sup>th</sup> defendant and therefore it was a fair article.

15 The Plaintiffs in their sworn witness statements asserted they attended the meeting which was called by the 4<sup>th</sup> Defendant and that in the said meeting the defendant made an allegation that the Plaintiffs carried guns, it is erroneous for the plaintiffs to therefore say that they were shocked by the content in the article saying they carried guns which was a reiteration of what they already heard in the meeting.

20 The 1<sup>st</sup> Defendant in her sworn witness statement asserted that there were security concerns about rampant crimes within Kisaasi, Ttuba Zone in Nakawa Division at the beginning of 2015 and she got a tip from a security operative about the said meeting which she attended, and heard the said allegations and also interviewed other people about them.

25 She also took pictures of the said event and the same were produced in court as evidence. She testified that before making the report, she verified the information with the District Police Officer Seguya Rogers who confirmed that the plaintiffs would be arrested over the said allegations.



5 The Editor of Bukedde Newspaper, Paul Kaddu, also in his sworn witness statement corroborated the 1<sup>st</sup> Defendant's statement when he asserted that she verified the said report and also submitted photographic evidence from the said meeting and concluded in para 11 of his sworn witness statement that the publication was a true account of what was said in the meeting.

10 Furthermore that the said meeting was a council meeting to which various local and territorial leaders including head police operatives were present and therefore the nature of the meeting was already public and therefore the matters arising therefrom were of public interest .

15 Marunda Sam, DW3 also the Secretary of Development in his statement and on cross examination testified how allegations had existed prior to the calling of the meeting and how several people approached him with similar allegations about the plaintiffs and hence the meeting was called to address the said issues.

Annexure "D" and "E" of the letter from the Chairperson LC Grace Sebugwawo confirms that the publication was a reflection of the events in the meeting.

20 in summary, the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendant reported what transpired and they are entitled to the defence of fair comment.

In the premises, the suit as against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants is dismissed.

### **Remedies**

25 Since the Plaintiffs did not adduce any evidence from any right thinking member of society as to the extent of the reputational damage, they will be entitled to nominal damages only. Moreover ASP Isabirye was not demoted; and Kigongo and Kavuma retained their positions on the LC executive as Vice chairperson and defense secretary respectively.

5 I will award a sum of 1,000,000/ to each plaintiff as nominal damages for the slander by the 4<sup>th</sup> defendant.

In the premises I make the following orders:

1. The suit against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants is dismissed with no order as to costs .
- 10 2. A sum of 1,000,000/ is awarded as nominal damages to each plaintiff to be paid by the 4<sup>th</sup> defendant.
3. Costs of the suit to be paid by the 4<sup>th</sup> defendant.

DATED AT KAMPALA THIS 27<sup>TH</sup> DAY OF NOVEMBER 2018

  
HON. LADY JUSTICE H. WOLAYO

15 **Legal representation**

Byamugisha, Lubega, Ochieng & Co. Advocates for the plaintiffs

Legal department New Vision Printing & Publishing Co. Ltd for the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendant

Stanley Omony & Co. Advocates for the 4<sup>th</sup> defendant

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