

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**(CIVIL DIVISION)**  
**CIVIL SUIT NO. 46 OF 2016**

**MUSA KIVUMBI ::: PLAINTIFF**

**VERSUS**

- 1. NEW VISION PRINTING & PUBLISHING COMPANY LIMITED**
- 2. BARBARA KAIJA, THE EDITOR IN CHIEF**  
**THE NEW VISION NEWSPAPER ::: DEFENDANTS**

**BEFORE: LADY JUSTICE LYDIA MUGAMBE**

**JUDGMENT**

**A) Introduction**

1. The Plaintiff’s claim against the Defendants jointly and/or severally is for aggravated/exemplary and general damages for libel; a permanent injunction restraining the Defendants jointly and severally or their agents, from further writing, printing or publishing any defamatory, malicious and unfounded words against the Plaintiff; interest from the date of judgment till payment in full, costs of the suit and any other alternative remedy as the court deems fit.
  
2. The Plaintiff claims that in the New vision newspaper of 5<sup>th</sup> October 2015, at page 11 an article titled “Umeme warns over imposters”, the Defendants jointly and severally

maliciously published and/or caused to be published of the Plaintiff the following words; “... speaking to the press after the arrest of Musa Kivumbi who was trying to extort sh.500, 000 from a customer at Sseguku, Wakiso, Umeme’s integrity manager, Moses Kasakya said many people continue to lose their money to imposters. He allegedly asked for money from a customer in Sseguku to replace a meter box that had been taken by Umeme over an outstanding bill ... Kivumbi is being detained at Jinja road police station and will be presented in court this week over fraud ... Kasakya warned Umeme’s contractors to get rid of individuals tarnishing its reputation by cheating unsuspecting customers.”

3. At the time of publication by the Defendants, the Plaintiff was and is still employed as a field officer with debt masters & recovery trust, a firm contracted by Umeme ltd to recover outstanding electricity dues from its customers. He never extorted or attempted to extort money from Umeme’s customer as alleged or at all. He has never been held or arraigned in any court on charges of fraud. The words complained of are therefore utterly false, malicious, unfounded and defamatory and were deliberately published and calculated to lower the Plaintiff’s high esteem in the eyes of the right thinking members of the general public, his colleagues, family and peers. The article clearly and by necessary innuendo libeled and defamed the Plaintiff in so far as it was understood by right thinking members of society to mean that the Plaintiff is a fraudster, a thief, an extortionist, unfit to be employed by his current employer or any other for that matter and ought to be shunned but society in general. The words were published by the Defendant and circulated in their newspaper, which has a wide readership both locally and internationally and is circulated on the internet via the Defendants website. The Defendants jointly and/or severally caused the printing of the said words in a bid to procure financial benefit at his expense.
4. In their written statement of defence, the Defendants deny the Plaintiff’s claims. They admit that the said article was run in the said newspaper but deny inferences/allegations of defaming the Plaintiff. They aver that the article touched on a matter of public interest and the Defendants dutifully published the same. The article was correct and justified in

as far as the contents therein were professionally published based on evidence from accurate and reliable sources. The Plaintiff was never defamed by the article nor was his reputation and/or personality injured. The Plaintiff's demand for an apology in the circumstances was misconceived and would therefore not arise.

5. The Plaintiff is represented by Mr. Denis Owor of M/s. Muhebwe & Owor Advocates & Solicitors and the Defendant is represented by Mr. Jude Lubega from the Legal Department of the Defendant.
6. The parties proceeded by witness statements in lieu of examination in chief. The Plaintiff called three witnesses. He testified as PW1, Mr. Mugabi Richard, the operations manager of Debt Masters Recovery Trust testified as PW2 and Mr. Swaibu Waluswa a field officer employed by Debt Masters Recovery Trust testified as PW3. The Defendants called two witnesses. Mr. Moses Kasakya, the former integrity manager at Umeme was DW1 and Mr. Benjamin Ahimbisibwe, a former Umeme security and investigations officer was DW2.
7. PW1 testified that on 29<sup>th</sup> September 2015, he was assigned a task of tracing a location of an overdue account in the names of Mr. Kibuule Abbas in the Seguku area (feeder 18). He noticed an electricity meter which did not have a seal. He called a colleague, one engineer Ibra Mutesasira who had the mandate to retrieve defective meters. Mutesasira came and together they entered the home of Mr. Juma Binahe. They found a maid, who gave them Mr. Binahe's number. He called Mr. Binahe to inform him that they were taking the meter which Mr. Mutesasira did. On 1<sup>st</sup> October 2015, while passing by Mr. Binahe's home to follow up on his previous assignment, the maid informed PW1 that Ms. Sarah Nassali, the wife to Mr. Binahe wanted to see him. When he entered the compound, Ms Nassali asked him whether he was Ibra, the Umeme person who had confiscated their meter to which he replied and said no. Ms. Nassali locked the gate with him inside.

8. He was suddenly surrounded by three men who identified themselves as Benjamin Okot, Benjamin Ahimbisibwe and Benson Atuha, who were investigators from Umeme. He was told that he was being arrested for soliciting and receiving a bribe from a customer. He was manhandled, searched and bundled into their car. He was not found in possession of any money or property that did not belong to him. He was taken to Umeme offices at Lugogo where he was searched again, questioned and recorded a statement. He was then driven to Jinja road police where he was detained until 5<sup>th</sup> October 2015 when he was produced at the Entebbe Chief Magistrates court at Kajjansi and charged with the offence of tampering with electrical installations and released on bail. He attended court until 12<sup>th</sup> January 2016 when an officer from Umeme informed court that he had instructions to withdraw the charges against him and was discharged by court. The Plaintiff read the story while at Jinja road police station and was anguished, hurt, embarrassed knowing that his family, friends, colleagues, employer and workmates would or had probably read the story which depicted him as a fraudster, a thief, an extortionist and should be avoided. His good friend and colleague Mr. Swaibu Waluswa found him at Kajjansi while at court and told him that he was disappointed by what he had read about him and turned down his request to stand as his surety.
  
9. In cross examination, he testified that on 29<sup>th</sup> September 2015, he was working at Busabala road, feeder 48. While there his boss Mr. Ssemanda Lincoln told him to go and find Mr. Kibuule's account which who had a debt of Ug. shs. 1,700,000/= (Uganda shillings one million seven hundred thousand). He instructed him to go to this customer at feeder 18, transformer 20 on Entebbe road. Although Mr. Binahe's meter was taken, he still had power supply. The next day when he went to this home as a follow up, he was arrested. Ever since the story run, his relationship with his employer has not been good though he was still employed. In re-examination, he testified that his bosses had told him that after reading the story, they do not trust him well until court decides.
  
10. PW2 testified that indeed PW1 worked as a field officer for three years and he was PW1's boss. He read the article and understood the words in the article to mean that PW1 was a thief, a crook, a fraudster, an extortionist, and unfit to be employed by his

employer. He knew PW1 to be a trustworthy, honest, hardworking, friendly and a very resourceful person. He was therefore very disappointed and shocked by the conduct attributed to PW1. He had given PW1 the benefit of the doubt and hopes that he will clear his name though he had ensured that he is assigned less work to reduce his interactions with Umeme's customers. He continued to have reservations about PW1's character as he believed that a prominent newspaper like the first Defendant can never publish a baseless nonfactual story about someone.

11. In cross examination, PW2 testified that PW1 did not report to him directly anymore and that he was no longer his immediate supervisor though at the time of arrest he was reporting to him. He was informed informally of PW1's arrest by Mr. Ssekandi Ronald who was with PW1 at the time of arrest. They did not have problems with PW1 at work and they trust him. PW1 was arrested at Seguku Kitale village which is feeder 18 just as Mr. Kibuule who was a difficult debtor. In re-examination, he testified that he has reservations about PW1 after the article and has given him less work until court clears him.

12. PW3 testified that PW1 was a fellow employee he knew as trustworthy and honest. He understood the words in the article to mean that PW1 was a thief, a crook, a fraudster, an extortionist, and unfit to be employed by his employer and ought to be avoided by society. On reading the article he tried to reach PW1 by phone but could not. He went to his home where his wife informed him that PW1 was being held at Jinja road police station. When he went there, PW1 had already been taken to court as he was disturbed by the events in the article, wanted to express his disappointment and also hear his side of the story. He talked to PW1 but did not believe what he was saying because he believed that a prominent newspaper like the first Defendant can never publish a baseless nonfactual story about someone. He even turned down his request to stand surety for him as he did not want to be associated with PW1's dishonest and crooked ways. He no longer associates with PW1 as he freely did before the incident.

13. In cross examination, he testified that he did not occasionally work with PW1 in the field. He was not at Seguku and did not witness the events. He had known PW1 for four years. He did not know him before 2012 so he would not know if he was dishonest before 2012. He did not find out from Umeme whether the publication was correct. He was testifying because he no longer trusted PW1 and had only given him the benefit of the doubt. He knew Mr. Ssekandi Ronald as a businessman who works with field office and helps with climbing poles in case of anomalies. In re-examination, he stated that he stood by the contents of his witness statement.
  
14. DW1 testified that he was very familiar with the operations of Umeme especially in regard to the campaign and operations that were ongoing at the material time to sensitize the general public on the dangers of illegal power connections, curb power theft and its related fraud and the first Defendant was Umeme's media partner in this campaign. The allegations that the Plaintiff was defamed were not true. Mr. Binahe complained to Umeme's managing director and himself that PW1 was demanding a bribe of Ug. shs.500, 000/= (Uganda shillings five hundred thousand) to fix and cover up an alleged fault discovered with the customer's yaka electricity meter at his residence in Seguku Katale.
  
15. DW1 observed that PW1 had been deployed to follow up on postpaid customers and not prepaid. He instructed the three investigators to follow up on the matter and suggested that marked money be used to trap the suspect at the customer's residence. He handed over a sum of Ug. shs: 100,000/= (Uganda shillings one hundred thousand) in the denominations of twenty thousand notes to one of the investigators called Benjamin Ahimbisibwe. DW1 instructed the said Ahimbisibwe to put the money in a brown envelope prior to handing it over to DW1 for easy identification and proof of the allegation if it existed.
  
16. Later in the afternoon of 1<sup>st</sup> October 2015, the three investigators reported back to office with PW1 as the suspect whom they had trapped and apprehended in Seguku. He was informed by Mr. Ahimbisibwe that during the interrogation of PW2, he confirmed that

PW1 had, without authorization, deviated from his assigned route as feeder 48 Busabala to Seguku where he was arrested for soliciting and receiving a bribe from Ms. Nassali.

17. In liaison with Mr. Stephen Ilungole, the media relations manager at Umeme, they got in touch with the first Defendant's journalists to cover the arrest and most importantly to capture Umeme's strong warning to the public against Umeme imposters and irregular power connections.

18. In cross examination, he testified that his job did not include deploying sub-contractors. He confirmed aspects of the article but did not recall warning Umeme contractors to get rid of individuals tarnishing its name by cheating unsuspecting customers. There are other things in the story which were an interpretation of the writer. His warnings were always to the public and not the contractor. He met Mr. Binahe who had reported solicitation of a bribe but it was not brought to his attention that his meter had been confiscated. He did not inform the press conference that PW1 was going to be charged with fraud.

19. DW2 testified that on 1<sup>st</sup> October 2015 at around 10:00am, he together with two others were deployed by DW1 to go and assist Mr. Binahe who had complained to the managing director - Umeme that PW1 was demanding a bribe of Ug. shs. 500,000/= in order to fix and cover up an alleged fault discovered with his yaka meter. He was given Ug. shs: 100,000/= in twenty thousand denomination in a brown envelope which he marked and passed on to Ms. Nassali after briefing her on the plan to trap PW1. They hid in different places of the home but continued communication over the phone. Ms. Nassali had previously met PW1 when he went to inspect the premises and she identified him. PW1 had also previously negotiated the bribe which he was to receive in person. Upon PW1 pocketing the envelope, they emerged from their hide outs and arrested him. PW2 in his statement recorded by DW2 confirmed that PW1 had deviated from his assigned route plan.

20. In cross examination, he testified that the story was true. He wasn't present when PW1 solicited the bribe from Mr. Binahe. He received a report of meter tampering at Mr. Binahe's home which he did not investigate because it was not within his scope. The meter was recovered at the scene. They recovered a meter query sheet at Mr. Binahe's home that had PW1's telephone number. He was not aware that PW1 was an employee of Debt Masters Recovery Trust or meant to collect debts for prepaid customers. He compiled a report of his search of PW1 on arrest which he gave to DW1. The statements in paragraph 6 of their statement that they set off for Seguku at 11:00am was true. They retrieved money from PW1 at the scene which was tendered as an exhibit for Umeme's prosecution.

21. The issues agreed for resolution at the scheduling conference are:

- i) Whether the article published was defamatory of the Plaintiff.
- ii) Remedies available to the parties.

## **B) The law**

22. In *Zabwe Fredrick v. Orient Bank & Others* SCCA No. 4 of 2006, fraud was defined to denote "an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right. A false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations, or by concealment of that which deceives and is intended to deceive another so that he shall act upon it to his legal injury"

23. In *Francis Lukooya Mukoome & Anor v. Editor in Chief Bukedde Newspaper & 2 others*, Civil Suit No. 351 of 2006, Justice Yorokamu Bamwine defined defamation to be an injury to one's reputation and that reputation is what other people think about a man and not what a man thinks about himself. He further held that in order to determine whether or not the statement is defamatory, the test is whether the words complained of would tend to lower the Plaintiff in the estimation of the right-thinking members of society and



for a statement to be defamatory it must not be true. (See also Gitley on Libel and Slander, 8<sup>th</sup> Edition Para 31).

24. In *David Etuket & Anor v. The New Vision Printing and Publishing Corporation* HCCS No. 86 of 1996, it was held that in order to prove the reduction of reputation or esteem, the Plaintiff must adduce evidence from either his or her colleagues or from any member of the society who knew the Plaintiff before the publication of the statement complained of and who read the article. The Court can then judge how the right-thinking members of society regarded the Plaintiff following the publication of the article.
25. If a defamatory statement is made in writing or some permanent form, the tort of libel is committed. See *Ratcliffe v. Evans* (1892) 2QB 524 at 528. Libel is defined as defamation by written or printed words, pictures, or in any form other than by spoken words or gestures. Libel is therefore a published false statement that is damaging to a person's reputation.
26. In *Halsbury's Laws of England* 4<sup>th</sup> edition, it is explained that in order to constitute libel, the statement must be published and it must be concerning the Plaintiff. The plaintiff can rely only on the defamatory matter contained if he or she is referred to, whether expressly or by implication in the statement in respect of which the action is brought. Where the plaintiff is referred to by name or otherwise clearly identified, the words are actionable even if they were intended to refer to some other person and both the plaintiff and the other person may have a cause of action.
27. Secondly, the plaintiff must prove that the publication was defamatory. Again, there is no complete or comprehensive definition of what constitutes a defamatory statement. However, generally speaking, a statement is defamatory if it tends to lower a plaintiff in the estimation of right thinking members of society generally or if it exposes such person to public hatred, contempt or ridicule or if it causes him to be shunned or avoided as stated by Justice Allen in the case of *Geofrey Ssejjoba v. Rev. Patrick Rwabigonji* HCCS No. 1 of 1976.
28. In *A.K Oils & Fats v. Bidco (U)* HCCS No. 715 of 2005, Justice Yorokamu Bamwine held that in determining whether a word is defamatory the court must first consider what

meaning the word conveys to an ordinary man. The fact that the person to whom the words were published did not believe them to be true is irrelevant and does not affect the right of action. Therefore the words have to be accorded their ordinary and natural meaning. The plaintiff therefore has to prove that indeed the words are defamatory, and once the ordinary meaning has been determined, the court must decide whether the words complained of are defamatory.

29. According to Giltley on libel and slander, 8<sup>th</sup> edition at paras 114 and 115, where the words are defamatory in their ordinary and natural meaning, the plaintiff needs to prove nothing more than their publication. This position was confirmed by Justice Gideon Tinyinondi in *Ntagoba v. Editor New Vision* (2001 – 2005) 2 HCB 209.
30. There are defences in defamation. Justification is a complete defence to an action for the defendant to plead that the statement is true substantially. The Defendant can only plead justification where there is clear and sufficient evidence that the allegation is true.
31. Truth may be pleaded as a defence to the whole defamatory statement. In *China Movat and Voice of Kigezi v. Kyarimpa Enid*, HCCA No. 42 of 2008, Justice Kwesiga held *inter alia*, that the defence of justification means that the Defendant is contending that the words complained of were true. The burden is on the Defendant to prove that the facts in these words were true.
32. Fair comment is another defence in defamation. The word “fair” embraces the meaning of honesty, relevance and free from malice and improper motive. The defence of fair comment was discussed in *Figueredo & 4 others v. The Editor of Sunday Nation & 4 others* (1968) EA 501 to enshrine matters dealing with affairs of the state, affairs of local institutions, books, pictures and works of art, theatres, concerts etc. However fair comment should have the following qualifications:

- i) The matter commented on must be of public interest. Lord Denning (MR) in *London Artists v. Litler* (1969) 2 ALLER stated:

“Whenever a matter is such as to affect people at large, so that they may be legitimately interested in or concerned at, what is going on or what

may happen to them or others, then it is a matter of public interest on which everyone is entitled to make a fair comment. This was quoted with approval in *Rev. Besigye v. Amama Mbabazi HCCS No. 104 of 2002*;

ii) The statement in question must be an expression of opinion and assertion of facts and;

iii) The comment must be fair and not malicious. It must be of facts that are truly stated. Fairness here is tested in two ways i.e. the subjective test and the objective test at the same time. There must be total absence of malice.

33. There is also the defence of privilege available to the Defendants as publishers. In *Adam v. Ward (1917) AC 309 at 334*, Lord Atkinson held that “a privileged occasion is, in reference to qualified privilege, an occasion where the person who makes the communication has an interest or a duty, legal, social or moral, to make it to the person to whom it is made, and the person to whom it is so made has a corresponding interest or duty to receive it. This reciprocity is essential.”

34. In *Holzgen v. Woollwright (1928) T.P.D at page 11* the meaning of reciprocity of interest was explained as “reciprocity of interest does not mean that there must be some special relationship between the Defendant and the person to whom he makes the communication. All it means is that interest must exist in the party to whom the communication is made as well as in the party making it.”

35. In *Stuart v. Bell (1891) 2 QB 341 at 350*, it was stated that it is for the judge to determine whether an occasion is privileged and therefore decide whether the Defendant was under the duty to make the communication.” Though there is no legal formula or criteria for determining which circumstance is qualified privilege, guidance is sought from Erle C.J.’s words in *Whiteley v. Adams (1863) 15 C.B (N.S) P.418* that “in considering the question whether the occasion was an occasion of privilege, the court will regard the alleged libel and will examine by whom it was published, when, why and in what circumstances it was published, and will see whether these things establish a relation between the parties which gives rise to a social or moral right or duty and the consideration of these things

may involve the consideration of questions of public policy.” See *Lubanga Jamada v. Dr. Dduma Edward* CACA No. 10 of 2011.

36. In *Rev. Stephen Besigye v. Hon. Amama Mbabazi*, it was held that “for a defence of qualified privilege to succeed, the statements must be shown to have been made honestly and without any indirect or improper motive which in law is referred to as malice. A statement is malicious when it is made for some purpose other than the one for which the law confers the privilege of making it. In proper cases of qualified privilege the defendant is protected even if his language was violent or excessively strong, having regard to all the circumstances, he might honestly and on reasonable grounds have believed that what he said was true and necessary for his purpose even though in fact it was not so.” See *Kimber v. Press Association* (1873) 1 QB 65.

**C) Analysis.**

37. It is not in dispute that PW1 was arrested by employees of Umeme in charge of fraud investigations. He was implicated in extortion of money from a one Mr. Binahe for bypassing an electricity metre, otherwise known as stealing electricity. This was at a time Umeme was working with the 1<sup>st</sup> Defendant to expose fraud in electricity distribution. As a result, Umeme informed the Defendant who followed up by running the news story in issue that the plaintiff claims to be defamatory.

38. After considering all the evidence and apprising myself of the law on defamation, I am disinclined to consider that this is a proper case for defamation. The vice of metre bypass and other fraud in electricity distribution is rampant, it is therefore in the public interest that the Defendants collaborated to expose it.

39. If the plaintiff feels he was unfairly treated through his arrest and charging in court, he should have considered bringing an action against Umeme and/or the said Mr. Binahe who set the trap and caused his arrest. He also had the option of an action for malicious prosecution against the state.

40. Bringing an action for defamation against the Defendants is to crucify the messenger messengers who acted in the public interest. This was never the intended purpose of defamation. Issues 1 is resolved in the negative.

41. The plaintiff's suit cannot therefore succeed and it is dismissed. However considering that the plaintiff was never prosecuted to determine his guilt or innocence through a competent court, I will not sanction him in costs. Accordingly, each party shall bear its own costs.

I so order.

**LYDIA MUGAMBE**

**JUDGE**

**2<sup>nd</sup> October 2020.**