

**THE REPUBLIC OF UGANDA**  
**IN THE COURT OF APPEAL AT KAMPALA**  
**CIVIL APPEAL NO. 21 OF 2013**

{Coram: Hon Justice Catherine Bamugemereire JA, Hon. Justice  
Stephen Musota JA, Hon. Justice Muzamiru Mutangula Kibeedi JA}

**BETWEEN**

**THE NEW VISION PRINTING &  
PUBLISHING COMPANY LIMITED ::::::::::::::: APPELLANT**

**VERSUS**

**OPIKA OPOKA ::::::::::::::: RESPONDENT**

[An appeal from the Judgment of the High Court at Kampala before Musoke Kibuuka J  
RIP dated 19th day of December 2012 in Civil Appeal No. 44 of 2016]

**JUDGMENT OF HON. LADY JUSTICE CATHERINE BAMUGEMEREIRE JA**

This is an appeal from the decision of Musoke Kibuka J in a libel, in which he found the Plaintiff in Defamation and accordingly awarded the Respondent UGX 75,000,000/= as General Damages for Slander, and the costs of the suit.

## **Background**

Opika Opoka, the Respondent instituted a Civil Suit against the New Vision Daily newspaper, now the Appellant, seeking damages for a libellous publication by the Appellant in which the New Vision article dated 19<sup>th</sup> May 2005 carried the following libellous information :

### **Otika cited in Treason case trial**

*"The forum for Democratic Change (FDC) Official Louis Otika has been linked to a treason case against two Teso Politicians."*

*Others linked to the case are Opika Opoka and Cols Samson Mande and Anthony Kyakabale. A High Court Criminal Session in Kampala heard that Otika, Mande Kyakabale and Opika held meetings with the accused, Charles Ekemu and Francis Ogwal Olebeto overthrow the Government by force of arms.*

The Appellant did not deny the publication of the impugned story but rather contended that the allegations were justified and made in good faith with no malicious intent. At the hearing, the Appellant called 5 witnesses Mr. Opika Opoka (PW1), Prof. Jack Nyeko Pen Mogi (PW2). Mr. Paineto Babinga (PW3), Mrs. Natalie Opika Opoka (PW4) and Benjamin Nelson Otto (PW5). The Appellant called 1 witness, Mr. John Kakande.

The Trial Judge, Musoke Kibuuka J delivered Judgment on the 10<sup>th</sup> day of December 2012 in favour of the Respondent and Judgment was entered against the Appellant for a sum UGX 75,000, 000 being general damages attracting

interest at a rate of 8% per annum from the date of judgment till payment in full plus costs.

The Appellant being aggrieved and dissatisfied with the Judgment and Orders of the Learned Trial Judge appeals to this court upon the grounds that:

- i. The Learned Trial Judge erred in law and in fact in failing to properly evaluate the evidence and therefore came to the wrong decision that the article complained of referred to the Respondent.
- ii. The Learned Trial Judge erred in law and in fact in failing to properly evaluate evidence and therefore came to a wrong conclusion that the publication complained of defamed the Respondent.
- iii. The Learned Trial Judge erred in law and fact when he shifted the burden of proving the identity of the person referred to in the article complained of to the Appellant.
- iv. The Learned Trial Judge erred in law in the award of damages.

The Appellant seeks the determination of the following issues at the hearing of this Appeal:

- a) Whether the article complained of referred to the Respondent
- b) Whether the article complained of defamed the Respondent

- c) Whether the burden of proving the identity of the person referred to in the article lies with the defendant in an action of defamation
- d) Whether the Learned Judge erred in law in the award of damages.

### **Legal Representations**

Learned Counsel, Thomas Ocaya, Kiryowa Kiwanuka, and Edwin Karugire of Kiwanuka & Karugire Advocates appeared for the Appellant. Neither the Respondent nor his counsel, Mr. Charles Darlton Opwonya of Opwonya and Co. Advocates were in Court.

### **Legal arguments**

#### **Issue No. 1**

#### **Whether the article complained of referred to the Respondent.**

Learned Counsel for the Appellant submitted that the article complained of never referred to the Respondent. He relied on *Winfield and Jolowicz, Tort*,<sup>1</sup> which states that the Plaintiff must prove that the impugned statement refers to or identifies him.

Ocaya, Learned Counsel for the Appellant argued that the Respondent testified at the Trial, notably during cross examination that he was baptized Hector Simon and that he is a registered voter registered as Opika Opoka

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<sup>1</sup> *Winfield and Jolowicz On Tort*, 17<sup>th</sup> Edition) At Page 515-34 Para 12-18

Hector Simon. The Appellant by this cross examination of the Plaintiff adduced sufficient evidence to prove, that there are other people, who go by the name Opika Opoka.

Counsel for the Appellant submitted further that Natalie Opika Opoka, the Respondent's wife (PW4) identified from a voters' register over 4 different people with the name Opika Opoka. She further testified that: *"On 19<sup>th</sup> May 2005 my children were already working. They had already completed their studies."* The Appellant's argument was that the Respondent could not confirm, as had been shown, that he was the only person who was capable of being referred to in the article.

Learned Counsel noted that the Appellant testified on exhibit P2 as follows:

*"This came out before the Article I complained of. Here they refer to Opoka the rebel. I was not referred to in this article. There was an NRA rebel called Opoka. That is about what the article said."*

Counsel for the Appellant averred that the Respondent was very alive to the fact that there was in fact a rebel called Opoka. This however did not deter him from pressing for vindication since the insinuation was that he too was a rebel.

## **Issue No. 2**

**Whether the article complained of defamed the Respondent.**

Counsel submitted that *the Learned Trial Judge erred in law and in fact in failing to properly evaluate evidence and therefore came to a wrong conclusion that the publication complained of defamed the Respondent.*

Counsel argued that the article complained of was not defamatory of the Respondent. There was no evidence that the Respondent was lowered in any way in the estimation of right – thinking members of society.

He relied on the case of Astaire v. Campling (1996) 1 WLR 32 at page 41, Where Diplock LJ stated that for a publication to be defamatory,

“... the statement must itself contain, whether expressly or by implication, a statement of fact or expression of opinion which would lower the Plaintiff in the estimation of a reasonable reader who had knowledge of such facts...” “There was no evidence that the article was disparaging or injurious to the Respondent in his office, profession, calling and trade or business.”

Counsel for the Appellant contended that the Plaintiff testified during cross examination that he was still Chairman of Gulu University Council. He relied on the testimony of the Respondent to the effect that the article had not even affected his office as the Chairman Gulu University neither did he lose that job because of the publication. And again, none of the witnesses produced by the Respondent believed the article was true as concerning the Respondent.

Counsel for the Appellant relied on the case of Francis Lukooya Mukoome and Anor v The Editor in Chief Bukedde Newspaper & Another (Civil Suit No. 351 of 2007) where it was held that, “defamation is an injury to one’s

reputation and reputation is what other people think about a man and not what a man thinks about himself.”

Counsel for the Appellants contended that the Respondent in cross examination testified that he was the one who told his friend and his wife that he is not a rebel. According to counsel, this shows that the friend before being told this statement did not perceive the Respondent as such.

### **Issue No. 3**

**Whether the burden of proving the identity of the person referred to in the article lies with the defendant in an action of defamation.**

Counsel submitted that the Learned Trial Judge erred in law and in fact when he shifted the burden of proving the identity of the person referred to in the article complained of to the Appellant.

He contended that under section 103 of the Evidence Act, Cap 6, “The burden of proof as to any particular fact lies on that person who wished the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.” The Plaintiff alleged that the publication did refer to him but failed to adduce cogent evidence to prove this.

Counsel contended further that the Learned Trial Judge incorrectly held that the defendant failed to discharge its burden to adduce sufficient evidence to prove that the publication did not refer to the plaintiff. The Learned Trial Judge therefore erred in law and fact when he shifted the burden of proving the identity of the person referred to in the article complained of to the Appellant.

Counsel relied on the case of Francis Lukooya Mukoome and Another v The Editor in Chief Bukedde Newspaper 7 Others (Civil Suit No. 351 of 2007) which held that,

“The general rule is that the burden of proof lies on the party who asserts the affirmative of the issue or question in dispute. When that party adduces evidence sufficient to raise a presumption that what he is asserting is true, he is said to shift the burden of proof: that is, his allegation is presumed to be true, unless his opponent adduces evidence to rebut that presumption.”

Counsel contended that the onus is on a party to prove a positive assertion and not a negative assertion. It therefore means that, the burden of proof lies upon him who asserts the affirmative of an issue and not upon him who denies, since from the nature of things he who denies a fact can hardly produce any proof (*Jovelyn Bamgahare v Attorney General S.C. Civil Appeal No. 28 of 1993* and *Maria Ciabaitaru M'mairanyi and Others v Blue Shield Insurance Company Limited, 2000 (2005) (EA 280)*).

#### **Issue No. 4**

#### **Whether the Learned Judge erred in law in the award of damages.**

Learned Counsel for the Appellant submitted that the award of UGX 75,000,000 general damages awarded by the Trial Judge, was excessive, wholly unjustifiable and an improper exercise of discretion.

Counsel for the Appellant contended that the Respondent was not entitled to the remedies sought. The damages for defamation are for injury to reputation.

He cited *Winfield & Jolowicz On Tort*<sup>2</sup> where it is stated that in case of defamation, the Plaintiff is entitled to prove that he suffered damage, i.e. actual, or pecuniary, However this is usually satisfied by proof of a general loss of business where the loss is in its very nature intended or is reasonably likely to produce and actually does produce in the ordinary course of things such loss.

According to Counsel for the Appellant, the Respondent did not prove that he suffered any actual or pecuniary loss of business or profession. Secondly, the quantum of damages awarded was exorbitant and completely out of the range awarded by Ugandan courts in defamation cases. The Learned Trial Judge therefore erred in law in awarding damages.

Counsel further observed that when court is to make an award for damages it is trite that in doing so it should use comparative awards and make a basis for the particular award. That the award of UGX 75,000,000 as general damages in the case with no comparative reasoning for the award. This was arbitrary and excessive in the circumstances more so for a decision made in 2012.

Finally Counsel for the Appellant prayed that this court finds that since the Plaintiff did not adduce any evidence to show that his profession or trade and skill with the various institutions were terminated due to the publications and how he suffered damages on his reputation apart from his testimony which

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<sup>2</sup> *Winfield and Jolowicz on Tort* at Page 606 Para 12-71

was probably in his mind decline to grant general damages and if it finds in the alternative, then a minimal grant is sufficient to compensate for the damage caused on the Plaintiff's reputation.

The Appellant prayed that;

- a) This appeal be allowed setting aside the decision of the Honourable Trial Judge of the High Court and the decree of the High Court.
- b) The Respondent pays for the costs of this appeal and in the court below.

### **Evaluation of the Court**

I have considered the submissions of the Appellant. They essentially touch on evaluation of evidence. The Law on the duty of this Court as a first appellate court is well settled. It is to re-examine, re-appraise and re-evaluate the evidence on record and come to its own decision where need be. In so doing, it subjects the evidence on record to a fresh and exhaustive scrutiny bearing in mind that it neither saw nor heard the witnesses first hand. (See Banco Arabe Espanol vs Bank of Uganda Supreme Court Civil Appeal NO. 8 of 2001).

Furthermore, under Section 101 of the Evidence Act, the burden of proof lies on the party who asserts the affirmative of the issue or question in dispute. And the standard of proof in civil cases is on a balance of probabilities.

### **Issue No. 1**

**Whether the article complained of referred to the Respondent.**

The Appellant argued that the defamatory words didn't refer to the Respondent and that he did not discharge the burden required to prove that the words referred to him.

In his decision, the Learned Trial Judge observed;

*In the instant case, the falsity of the publication when related to the plaintiff, is not in dispute. The Plaintiff denied in the plaint that he never engaged in any rebel activities. The Defendant's was claim that the statement did not refer to Opika Opoka, the Plaintiff, but that it referred to another Opika Opoka. It was, certainly the duty of the defendants to adduce evidence to prove that proposition. The burden lay upon them because, in accordance with section 10, of the Evidence Act, the burden of proving any particular fact, lies upon the person who wishes the court to believe its existence in absence of any provision of the law to the contrary. The defendants clearly failed to discharge that burden of proof upon the balance of probabilities. The Plaintiff on the other hand, presented his Degree Certificate from Dar-es-salam University. It shows only one name "Opika Opoka". He*

*claimed that he was the only person in Uganda who bears that name and that the other persons with that name combination were members of his family.*

*DW1, Mr. John Kakande, the News Editor of the first defendant, and the only witness for the defendants, apart from insisting that the publication did not relate to the plaintiff, he could not specifically tell court who the other Opika Opoka referred to in the story was. Secondly, the same witness instead that exhibit P.4, the photograph, published in the New Vision issued of 23<sup>rd</sup> May, 2005, was not intended to disclose the identity of Opika Opoka, who had been referred to in the story published on 19<sup>th</sup> May, 2005, only three days earlier. According to DW1, the intention ...clearly shows that the highlight was not on Dr. Ssekajugo but upon the Plaintiff. The picture was from the archive fitting fairly well with the Plaintiff's situation of a retired civil servant as opposed to Dr. Ssekajugo who was still very active in public life especially in the field of sports. If the defendants wanted to highlight Dr. Ssekajugo, there was no reason why they could not have secured a more recent photograph of him and centering upon him and not upon Opika Opoka*

To succeed in an action of defamation, the plaintiff must prove that the defendant published the words and they are defamatory: he must also identify

himself defamed. No writing whatsoever is to be esteemed a libel unless, in writing, it contemptuously or spitefully, maliciously reflects upon or defames a particular person. The issue is always whether an ordinary rational reader on the streets of Kampala, Uganda would be led to believe on reading such an article that it indeed referred to the plaintiff.

The test to whether the defamatory statement relates to the plaintiff is whether a reasonable person could conclude that the plaintiff should be identified with the person named in the matter complained of as defamatory.

This was succinctly expressed in by Viscount Simon in the case of **Knupffer v London Express News Paper Ltd [1944] AC 116** at 119 where he said:

*“where the Plaintiff is not named, the test which decides whether the words used refer to him is the question whether the words are such as would reasonably lead persons acquainted with the plaintiff to believe that he was the person referred to.”*

The above principle was upheld In **Onama v Uganda Argus [1969] EA 92**, where the Court held that the proper test is whether reasonable people who knew the plaintiff would be led to the conclusion that the report referred to him. The question is not whether anyone did identify the plaintiff but whether persons who were acquainted with the plaintiff could identify him from the words used.

In *Salmon & Huston on the Law of Torts*<sup>3</sup> the learned author's state:

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<sup>3</sup> (19th edition) where (at p 143 para 3.8)

*"It is necessary that the reference to the plaintiff should be express. It may be latent; and it is sufficient in such a case that it should have been understood even by one person, although it remained hidden from others."*

In the case of Morgan v Odhams Press Ltd [1971]2 ALLER 1159, Morgan, the plaintiff claimed that he was libelled in an article which appeared in the issue of the sun 8<sup>th</sup> November 1956. His name Johnny Morgan did not appear in the article and the plaintiff, therefore relied on certain extract evidence which he said would entitle an ordinary reader to understand that the article refereed to him. The question before court was whether the words in the article were capable of being understood by an ordinary sensible reader to refer to the plaintiff. Court held... that it does not matter whether the publisher intended to refer to the plaintiff or not. It doesn't even matter whether he knew of the plaintiff's existence. And it doesn't matter that he did not know or could not have known the facts to connect the statement with the plaintiff.

Lord Reid stated;

*"It must often happen that a defamatory statement at large does not identify any particular person and that an ordinary member of the public who reads it in its context cannot tell who is refereed to. But readers with special knowledge can and do read it as referring to a particular person."*

In *Gatley on Libel and Slander*<sup>4</sup> the learned author's state:

*"It is not necessary that the words should refer to the plaintiff by name. Provided that the words would be understood by reasonable people to refer to the plaintiff. It is sufficient that he described by his initial letters, or by the first and last letter of his name, or even by asterisks, or blanks, or if he be refereed to under the guise of an allegorical, historical, fictions or fanciful name, or by any description of his peculiarities, or the places which he has visited on his travels, or, indeed if he is not mentioned at all; there need be no peg or pointer for his identification in the words complained of themselves."*

In the instant case, the Respondent argued that the defamatory article referred to himself. He adduced evidence of his Bachelor's Degree Certificate to show that he is Opika Opoka. The Appellants adduced evidence to show that there are several other people with the name, Opoka Opika and that the statement would have referred to any of them. At the trial, the Respondent adduced evidence of people who believed that the article referred to him; his wife for instance was assaulted at the airport, she was checked thoroughly because she was suspected to be carrying guns for her husband.

In the case of Hough v London Express Newspapers Ltd [1940] 3 ALLER 31. The plaintiff was married to a boxing champion who deserted her and their child. The defendant's Newspapers wrote that;

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<sup>4</sup> (8th editiOn) where (at p 123 para 281)

*“Frank Hough’s curly headed wife sees every fight. “I should be in more suspense at home,” she says. “I always get nervous when he gets in the ring, although I know he won’t get hurt. Nothing puts him off his food. He always eats the cooked meal... however late it is when he gets in.”*

The plaintiff’s hair was not curly and she sued for libel alleging that by innuendo, the words meant that she was a dishonest woman falsely representing herself to be and passing as the wife of Frank Houghs and was an unmarried woman who had cohabited with a man and had children by him. Everyone in her neighbourhood talked about the article so much so that the plaintiff had to stay in her house for about a week.

Court held thus:

*It is not necessary that a person publishing a defamatory statement should intend that the statement should refer to the plaintiff. It is sufficient that a reasonable person should refer the statement to the plaintiff. That it is not necessary that the words should be defamatory in their primary sense. They are actionable if the existence of certain circumstances make it reasonable that persons to whom those circumstances are known might understand them in a defamatory sense.*

In the instant case, although the Appellant alleges that there are other people with the name Opika Opoka, the Respondent at the trial adduced evidence to

show that there were ordinary people acquainted with him who interpreted the statement to refer to the Respondent.

Mr. Benjamin Nelson Otto (PW5) stated that when he read the article, he was so frightened that he changed the church he used to attend with the Respondent. In other words, he interpreted the statement to refer to the Respondent.

Prof. Nyako Pen-Mogi Jack, the Vice Chancellor, Gulu University (PW2) also testified that when he saw the article, the council members were frightened. They could not believe how a chairman of the council would be a rebel. That the allegations did cast a dark cloud upon all of them and the university generally. The professor also interpreted the article to refer to the Respondent. In consequence therefore the article designated the plaintiff in such a way as to let those who knew him to understand that he was the person meant.

Lord Guest in Morgan v Odhams Press Ltd (supra) found that it is not justifiable that there must be key pointers in the publication itself referring to the plaintiff. Extrinsic evidence is admissible to connect the plaintiff with the person referred to in the article. The ordinary reader must have rational grounds for his belief that the words refer to the plaintiff. In his view, this requirement is necessary for the purpose of preserving the freedom of speech and preventing newspapers being further liable for torts which they quite unwittingly have committed.

In the instant case, three days after the publication of the defamatory statements, the Appellants published a sports article with a picture of the

Respondent captioned *the year was 1991- education and sports Opika Opoka tours Nakivubo stadium*. Indeed this was a sports article, and the Respondent argued that the article was about the Sekajugo. This picture although related with Sekajungo in our view is extrinsic evidence that connected the Respondent with the person referred to in the prior defamatory article.

PW2 testified that:

*"A few days later, the New Vision produced a picture of Mr. Opika Opoka inspecting properties. I thought that if the New Vision has made a mistake about his being a rebel then they would have converted that in the subsequent publication. Pw5 also stated that: when I saw the article, I did not believe the story at the beginning, but when his picture was brought out in the public without an article; I thought the case was very serious."*

The testimony of the Respondent quoted in the caption above proved that the subsequent picture Published by the Appellant was extrinsic evidence that pointed the first article to the Respondent. In the premise therefore, we find that the Trial Judge did not error in finding that the article refereed to the Respondent. This ground therefore fails.

The resolution of this ground also dissolves the issue of the burden of proof. From the above discussed, it is apparent that the Respondent adduced ample evidence to discharge the burden of proof that the article referred to himself.

## Issue No.2

### **Whether the article complained of defamed the Respondent**

Counsel argued that the article complained of was not defamatory of the Respondent.

In a suit for slander, a plaintiff has to prove that the relevant statement is defamatory, but he or she does not have to prove that it was a lie. If a statement is defamatory, the court will simply assume that it was untrue. The test of defamatory nature of a statement is its tendency to excite against the plaintiff the adverse opinions or feeling of other persons.

In **Gatley on Libel and Slander**<sup>5</sup> the learned author's state:

What is defamatory? There is no wholly satisfactory definition of a defamatory imputation.

**'(1) Would the imputation tend to "lower the plaintiff in the estimation of right-thinking members of society generally?"**

**(2) Would the imputation tend to cause others to shun or avoid the plaintiff? (3) Would the words tend to expose the plaintiff to "hatred, contempt and ridicule?"**

The question "what is defamatory?" relates to the nature of the statement made by the defendant; words may be defamatory even if they are believed by no one and even if they are true, though in the latter case they are not of course

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<sup>5</sup> (8th edition) where (at p 5 para 1.5)

actionable. In Ssejjoba Geoffrey v Rev. Rwabigonji Patrick [1977] H.C.B 37 a defamatory statement was defined as one which has a tendency to injure the reputation of the person to whom it refers by lowering him in the estimation of right-thinking members of society generally and in particular to cause him to be regarded with feelings of hatred, contempt, ridicule, fear, dislike and disesteem.

A defamatory utterance therefore is one which imputes conduct or qualities tending to disparage or degrade any person, or to expose a person to contempt, ridicule or public hatred or to prejudice him in the way of his office, profession or trade. It is a statement which tends to lower a person's reputation in the eyes of or the estimation of right thinking members of society generally or which tends to make them shun and avoid that person.

The typical form of defamation is an attack upon the moral character of the plaintiff attributing to him any form of disgraceful conduct such as crime, dishonesty, untruthfulness, trickery, ingratitude or cruelty. The person defamed does not have to prove that the words actually had any of these effects on any particular people or the public in general, only that the statement could tend to have that effect on an ordinary, reasonable listener.

Thus, an attack upon the moral character of the plaintiff attributing to him any form of disgraceful conduct, such as crime, dishonesty, untruthfulness, trickery, ingratitude or cruelty is a form of defamation.

In the case of Sekitoleko Edirisa v Attorney General [1978] HCB 193, allegations in newspaper that the plaintiff was a robber and had been beaten

to death were found to be defamatory. Allegations that impute the commission of a criminal offence which would make the plaintiff liable to imprisonment under the laws of Uganda are as well defamatory (see **Odongkara v Bob Astles** [1970] EA 377).

Imputation of treason is an imputation of a serious criminal offence which carried a death penalty. Treason is the highest betrayal to one's country. When a person is labelled a rebel, the statement is *per se* libellous. For a person in positions of leadership it would portray him as a traitor, not deserving of such leadership.

**Gately on Slander and Libel**<sup>6</sup> states that;

*"Where words complained of are defamatory in their natural and ordinary meaning, the plaintiff need to prove nothing more than their publication. The onus will then lie on the defendant to prove from the circumstances in which the words were used, or from the manner of their publication, that the words would not be understood by reasonable men to convey the imputation suggested by the mere consideration of the words themselves."*

Similarly in the instant case, the allegation that the Respondent was linked to a treason case was defamatory of the plaintiff in so far as it imputed that he is a rebel. It does not matter that he remained the Chairman of the Gulu University, as the Respondents allege.

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<sup>6</sup> (supra) 8th Edition, at page 114 paragraph 115

I am of the view that these words would convey to the ordinary man, in their natural and ordinary meaning, that the Respondent had committed or was at that point in time, committing the offence of Treason which is a capital offence for which he was liable be sentenced to Death. The act of deafaming him of such a high crime was actionable *per se*. In the circumstance therefore, we find no merit in this ground and it fails as well.

#### **Issue No. 4**

#### **Whether the Learned Judge erred in law in the award of damages.**

Counsel for the Appellant contested the award of UGX. 75,000,000/- awarded as general damages by the Trial Judge. In his award, the Trial Judge noted that the principle governing the award of damages was outlined in John v MGN Ltd [1996] 2 ALL ER 35 at 47 where the Court of Appeal of England stated that:

*“The successful plaintiff in a defamation action is entitled to recover, as general compensatory damages, such sum as will compensate him for the wrong he has suffered. That sum must compensate for the damage to his reputation; indicate his good name; and take account of the distress, hurt and humiliation which the defamatory publication caused.”*

A person’s reputation has no actual value, and the sum to be awarded in damages remains at the discretion of which the Court is free to form its own estimate of the harm taking into account all the circumstances; see Khasakhala v Aurali and Others [1995-98]1 E.A. 112.

General damages are to be determined and quantified, depending upon various factors and circumstances. Those factors are

- (i) the gravity of allegation,
- (ii) the size and influence of the circulation,
- (iii) the effect of publication,
- (iv) the extent and nature of claimant's reputation and
- (v) the behaviour of defendant and plaintiff.

In David Kachontori Bashakara v Kirunda Mubarak H.C.Civil Suit No. 62 of 2009, court awarded general damages of UGX 45,000,000/= to a plaintiff whose family and friends had been saddened and scandalized by the utterances of words such as; "corrupt, thief, embezzler, unfit to hold public office" which were uttered in Lusoga and broadcasted in many parts of the country where the language was understood.

In Joseph Kimbowa Lutaaya v Francis Tumuhcirwe H.C. Civil Suit No.862 of 2001, general damages of UGX 10,000,000/= were awarded to a plaintiff, in respect of a defamatory memo written by the defendant to the Permanent Secretary to the Treasury explaining the reasons why the plaintiff's wife had been suspended. In that memo the defendant alleged inter alia that the plaintiff while still working with the Standard Chartered Bank connived with his wife to steal UGX50,000,000/= (fifty million) and was as a result was dismissed from the Bank while his wife was dismissed from USAID.

In Abu Bakr Kakyama Mayanja v Tedi Seezi Cheeye and another, H.C. Civil Suit No. 261 OF 1992, the plaintiff who by then a Minister of Justice and

Constitutional Affairs and Attorney General, was awarded a sum of UGX 2,000,000/= in general damages for libel for an article published by the defendants alleging that he was a confused "third deputy Prime Minister."

Court established that the higher the Plaintiff's social status, the greater is the likely injury to his feelings by a defamatory publication about him and therefore the greater is the amount of damages awardable. The amount is enhanced where the publication is extensive and where the defendant acted maliciously in the publication. In that case, it was found that the circulation of the Newspaper was limited to Kampala, Jinja and few main towns in Western Uganda.

In the instant case, the Trial Judge considered the following before giving his award:

*"The Plaintiff asked for an award of UGX 300.000.000/= as general damages. Court has taken into account the position and standing in society of the plaintiff. It is considered the seriousness of the allegation which amounted to treasonable conduct. Court has also considered the extent of the publication which was almost worldwide given the facility of the internet. Court has also taken into account the reluctance(sic) or refusal of the first defendant to offer any explanation or apology in the circumstances, to the plaintiff and clear the air."*

Where a Trial Court has exercised its discretion to award general damages, an appellate court cannot interfere with the exercise of that discretion unless it

is satisfied that the Trial Court in doing so misdirected itself in a matter of principle and as a result arrived at a wrong decision, or unless it is manifestly excessive and that from the case as a whole that the Trial Court was clearly wrong in the exercise of its discretion arriving at entirely erroneous estimate of damages as to occasion an injustice; see Mbogo and another v Shah [1968] EA 93.

I have reviewed the reasons for the award as stated by the Trial Court and the quantum awarded. I fault the Trial Judge about the amounts and find that the award was excessive. Consequently we award the Respondent Uganda Shillings Forty Five Million UGX 45,000,000 for which reason the fourth ground of appeal succeeds.

In the final result, since all grounds of appeal have failed, the Appeal is hereby dismissed with costs to the Respondent in this Court and in the Courts Below.

Signed this 16<sup>th</sup> Day of March 2021



Hon. Lady Justice Catherine Bamugemereire

Justice of Appeal

# THE REPUBLIC OF UGANDA

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CIVIL APPEAL NO. 21 OF 2013

(Arising from Civil Appeal No. 44 of 2016)

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VERSUS

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CORAM: HON. JUSTICE CATHERINE BAMUGEMEREIRE, JA

HON. MR. JUSTICE STEPHEN MUSOTA, JA

HON. MR. JUSTICE MUZAMIRU MUTANGULA KIBEEDI, JA


## JUDGMENT OF HON. JUSTICE STEPHEN MUSOTA, JA

I had the benefit of reading in draft the ruling of my sister Hon. Justice Catherine Bamugemereire, JA.

I agree with her analysis and conclusions as well as the orders proposed. Whereas where a trial court has exercised its discretion to award general damages, an appellate court can only interfere *inter alia* where the award is manifestly excessive like in the instant case.

Since this appeal substantially succeeded, it ought to be dismissed with costs to the respondent both in this court and the courts below.

Dated at Kampala this.....10<sup>th</sup>.....day of .....March.....2021

  
.....

Stephen Musota

**JUSTICE OF APPEAL**

**THE REPUBLIC OF UGANDA**

**IN THE COURT OF APPEAL OF UGANDA AT KAMPALA**

*(Coram: Catherine Bamugemereire , Stephen Musota & Muzamiru M. Kibeedi, JJA)*

**CIVIL APPEAL NO. 21 OF 2013**

**BETWEEN**

**THE NEW VISION PRINTING &**

**PUBLISHING COMPANY LIMITED ::::::::::::::: APPELLANT**

**VERSUS**

**OPIKA OPOKA :::::::::::::::RESPONDENT**

*[An appeal from the Judgment of the High Court at Kampala (Hon. Mr. Justice Musoke Kibuuka RIP) dated the 19th day of December 2012 in Civil Appeal No. 44 of 2016]*

**JUDGMENT OF MUZAMIRU M. KIBEEEDI, JA**

I have had the advantage of reading in draft the Judgment prepared by my Lord, the Hon. Lady Justice Catherine Bamugemereire, JA. I agree with the reasoning and Orders she has proposed.

Dated at Kampala this 18<sup>th</sup> day of March 2021



**Muzamiru Mutangula Kibeedi**  
**JUSTICE OF APPEAL**