

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

**MISC.APPLI NO. 423 OF 2008**

**BEN IMMANUEL MISAGGA::::::::::::::::::::::::::::::::: PLAINTIFF**

**VERSUS**

**THE NEW VISION PRINTING AND PUBLISHING**  
**CORPORATION::::::::::::::::::::::::::::::::: DEFENDANTS**

**BEFORE. HON LADY JUSTICE M.S ARACH-AMOKO**

**JUDGEMENT**

The plaintiff is an engineer residing in Kampala. He brought this suit against the defendant seeking general, aggravated, exemplary and/or punitive damages for libel, a permanent injunction restraining the defendant from publishing similar defamatory words against the plaintiff, interest and costs of the suit.

The plaintiff's claim arose from an article published in the New Vision of Saturday, June 7 2003 in the "Have you heard?" column by Timothy Bukumne, under the heading "Nuptials for CBS' Nvangungi" where he wrote:

"SHEILA Nvanungi of CBS is marrying Ben Emmanuel in the last week of August. Ben is the Managing Director of Aquifer International,

which deals in big mineral and construction. He is a shareholder with Jovia Saleh. Meetings take place every Monday with high profile at Madam Saleh's place in Kisementi".

It is the plaintiff's case that these words referred and were understood to refer to him because:-

- (a) The plaintiff is an Engineer by profession and his names in full are Ben Immanuel Misaga.
- (b) The plaintiff has business interest with one Jovia Saleh in a company by the names Aquifer International Agencies Limited dealing in construction.
- (c) The plaintiff is known to a one Sheila Nvanungi of CBS radio station thought in no terms as referred to or in stimulated.

In their natural and ordinary meaning, the said words are defamatory of the plaintiff. The plaintiff has a valid and subsisting marriage under the Marriage Act, Cap 211, and the words depict him as an adulterer and one who is plotting/attempting the offence of bigamy. A copy of the Marriage certificate was attached as "B".

The plaintiff is an Engineer/Businessman, and a law abiding citizen, married with children. By publication of the said words the plaintiff has suffered injury to his reputation, distress and embarrassment.

The plaintiff relied on the following facts to support his claim for exemplary damages.

- a) The article complained of <sup>was</sup> has published in the gossip column of the paper known as "Have you heard" published in every Saturday issue and from which the paper derives extra readership.
- b) No effort was made to verify the story and the primary source would suggest would be anyone responding to the invitation on the same page for the public to "send the stories to the New Vision".
- c) In the premises, the defendant published the said words knowing they were d=false or recklessly, not caring whether they were true or false having calculated that the increased circulation would outweigh any compensation payable to the plaintiff.

The Defendant denied the claim and raised the defence of justification and fair comment.

Three issues were framed for trial at the scheduling conference:

- (1) Whether the statement was true or false
- (2) Whether it is defamatory
- (3) Remedies.

### **Issue No 1**

1) Whether the statement is true or false. In paragraph 5 of the written statement of defence, the defendant pleaded in the alternative, that what was published was entirely true and correct, as admitted in paragraph 5(a),(b) and ) c) of the plaint, and as such the publication is absolutely justified and a fair comment.

As counsel for the plaintiff submitted, the burden of proof in a plea of justification rests squarely on the shoulders of the defendant. The cardinal principle being that, he who alleges, must prove. The defendant did not adduce any evidence although Court gave the defendant several adjournments to enable the defendant to avail its documents and witnesses. In fact the manner in which the defendant's counsel handled the matter lacked a lot of seriousness. That is why Court eventually refused him an adjournment and ordered him to proceed without witnesses.

I therefore agree with Mr. Nsubuga, that the plea of justification must fail. This answers the first issue in the negative.

### **Issue No 2: Whether the statement is defamatory.**

In Capital and Counties Bank [1882]. 7 App Cas 741 at 745, Lord Selborne stated:-

"In constructing the language of an alleged libel two rules must be observed.

- (i) The whole publication must be taken as one because what might be considered defamatory may be nullified by other passages.
- (ii) Words will be taken in the sense that is most natural and obvious, and in which those to whom they are spoken will be sure to understand them. //

The test according to the authorities is whether reasonable men to whom the publication is made would be likely to understand them. (See also. S and K Holdings-Vs-Throgmorton Publications Ltd [1972] W.L.R 1036).

As Manyindo J. said in Ssonko -Vs- Oketcho [1977] HCB 36,  
"It is the general impression of the words to a right thinking person that has to be considered before determining whether words are defamatory or not. //

What then are the imputations contained in this article as a whole. As learned counsel for the plaintiff submitted, and I entirely agree with him, the words complained of, in their natural meaning and evidence was led to prove that the plaintiff is a married man. The plaintiff's counsel and the defendant's counsel Mr Denis Owor actually paid a visit to Christ the King Church during the course of proceedings and viewed the Register of marriages and established



that there was indeed an entry of a marriage between one Misagga and Nakiguli as shown by the marriage certificate Exhibit P2.

Evidence was also led by the plaintiff and his two close friends, Galiwango Bill Gasasa (PW2), and Edirisa Kasozi (PW3), to the effect that the said marriage subsisted at the material time. The imputation in the publication therefore raises two distinct charges of impropriety to wit:

- a) Adultery C/S 154 of the Penal Code Act, in a sense that he was dating Ms Mvanungi while married,
- b) and being in a subsisting monogamous marriage , he now intends or is attempting to commit the offence of bigamy contrary to the section 153 of the Penal Code Act and section 41 of the ~~M~~ marriage Act (Cap 251)

As pointed out earlier on, no evidence was adduced by the defendant to prove the alleged wedding meetings. The photographs of the Kwanjula ceremony which the Defendants' counsel promised to produce in Court during the scheduling conference were never produced or even mentioned during the trial. The opportunity was given to the defendants' counsel to produce in court a newspaper article which he said would prove that the plaintiff is incapable of being defamed, but he didn't.

All the witnesses testified that they were not aware of any meetings or any intended marriage between the plaintiff and Ms Mvanungi. The plaintiff stated that his wife on reading the article left the home for two months. He was at the material time a very prominent person in the country that is, the managing Director of Aquire International Ltd, and was running for office as the National Coordinator of Sports Club Villa, one of the top football sports clubs in Uganda,. It was election time, and people were saying "engineer is married, again he is marrying Nvanungi. What is the way forward"? Moreover, his wife is a supporter of Sport Club Villa.

At the work place, where he does big business, most of his clients were calling him to ask when the wedding was taking place and why they were missing the meetings because it were said to be a high profile wedding and they are high profile clients including ministers Members of Parliament and even Army Commanders.

The plaintiff also testified that for them Catholic, if the church sees something like that, one would not be allowed to received holy communion unless he goes for confession, his reputation was clearly in doubt and his feelings were injured as a result of the said publication.

In the absence of any evidence to the contrary, court finds that the plaintiff has proved that the article was defamatory. The answer to the 2<sup>nd</sup> issue is accordingly in the affirmative.

### **Issue No. 3 Remedies**

#### **1) General damages for libel**

In actions for libel, the plaintiff is entitled to damages for his injured feelings, injured reputation and also damages for any pecuniary loss he may have suffered. The general principle with regard to damages for injured feelings were set out in the case of MC Carey-vs-Associated Newspaper [1965] 2 Q.B 86 in the following excerpt by Person L.J where he said:

*"The natural grief and distress which he may have felt at having been spoken of in defamatory terms and any kind of high handed, oppressive/ insulting or contumelious behaviour which increases the mental pain and suffering to the plaintiff's pride and self confidence. Those are proper elements to be taken into account"*

The compensation payable would therefore range from actual pain and suffering to loss of dignity and humiliation to annoyance and irritation. There is of course no hard and fast rule to prove that the plaintiff's feelings have been injured. This is referred to as the natural and foreseeable consequence of the content of the statement, its publication and other aspects of the defendant's conduct. The quality of the plaintiff's reputation and the absence of an apology are



relevant consideration. The Court has also to take into account the extent of publication because the wider the publication of the statement, the greater the likelihood of substantial loss. (see: Blaze Babigumira -Vs Hanns Besigye [1993]1V KAL by Byamugisha J, as she then was)

Both counsel have referred me to a number of decisions but as Katutsi J, observed in Rhoda Kalema -Vs-William Pike HCC No 611 of 1993, "each case must be decided on its own merits <sup>though</sup> of course recent decisions are of assistance"

In the instant case, I have no doubt in my mind that the plaintiff's feelings were hurt as a result of the defamatory statement published against him. The plaintiff is a professional engineer, a family person whose esteem was demonstrably injured by the article; he was also a Sports Administrator, who was vying for office as the National Co-ordinator of Villa Sports Club. He spent two months without his wife who had walked out on him and returned to her parents at Gayaza when she read the article. New Vision is a paper with one of the widest circulations in Uganda and internationally now on the internet. Court also takes judicial notice of the fact that due to its importance, a copy of the Newspaper may be shared by several people who thirst for information and news at any one time.

The figure of shs 40 million as general damages proposed by counsel is however too high in the circumstance of these days of the global economic crunch" where big businesses are even collapsing due to bankruptcy. A case in point is the Gateway Television (G.T,V) which closed shop last week due to the raging economic crisis. Besides no basis was given for it. In the circumstances the sum of shs 15 million will suffice. This sum also takes into account the absence of an apology from the defendant.

**(2) Aggravated, Exemplary and punitive damages:**

No case has been made to justify this award. In Riches -Vs- News Group Newspapers [1986]1 QB 256, cited by learned counsel for the plaintiff, it was held that in a claim for aggravated damages, it is necessary to plead and prove that the defendant published the words knowing they were false or reckless as to their truth or falsity, having calculated that the benefit to him would outweigh any compensation payable to the plaintiff. No evidence was led to prove that the defendant published the story knowing it was false. The plaintiff admitted that he knew Ms Nvanungi. The story was therefore not totally out of the blue.

In conclusion, I hereby enter judgment in favour of the plaintiff against the defendant as follows:

- 1) shs 15 million, general damages

- 2) interest on (1) at Court rate from date of judgment till payment in full
- 3) A permanent injunction restraining the defendant from publishing similar defamatory statements against the plaintiff in future.
- 4) Costs of the suit.

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M.S Arach-Amoko 6/2/09

**Judge**

Judgment Delivered in Court  
in the presence of:

1) Mr Richard Nwankpa for  
Pl

2) Mrs Okun for Def

3) Okun d/c

Absent: Plaintiff

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6/2/09