



SOZI & PARTNERS

Advocate

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RDS/CV/017/2022

1st February, 2022

The Manager Legal & Compliance,
New Vision Printing & Publishing Company Ltd.,
Plot 19/21 First Street, Industrial Area,
P.O. Box 9815,
Kampala.

Dear Madam,

**RE: CHIEF MAGISTRATES COURT OF MENGO CIVIL SUIT NO.1452/2014
BRIAN MAJWEGA & ANOR. VS. THE NEW VISION & 2 ORS.**

The above-captioned matter in which we represented you refers. Reference is also made to ours of **31st January, 2022** referenced **RDS/CV/014/2022** by which we informed you of the delivery of Judgment in the captioned suit.

We are in receipt of a copy of the Judgment and have carefully perused the same.

We are of the opinion that the trial court did not properly apply the law on defamation to the evidence on record and that an appeal against the decision of the trial court would be warranted.

A copy of the Judgment is herewith attached for your record.

We reverently await your further instructions on the matter.

Yours faithfully,

SOZI & PARTNERS ADVOCATES

THE REPUBLIC OF UGANDA
IN THE CHIEF MAGISTRATES COURT OF KAMPALA AT
MENGO

CIVIL SUIT NO.1452 OF 2014

1. BRAIN MAJWEGA
2. MUGALU STEVEN SSEBADUKA PLAINTIFFS

VERSUS

1. THE NEW VISION PRINTING & PUBLISHING COMPANY LTD
2. THE EDITOR BUKEDDE NEWS PAPER
3. HUSSEIN BUKENYA DEFENDANTS

JUDGMENT

⁹
BEFORE: H/W NASAMBU ESTHER REBECCA.A
CHIEF MAGISTRATE

The plaintiffs through their counsel Omongole & Co. Advocates jointly and severally sued the defendants, The Bukedde News Paper, The Editor Bukedde News Paper and Hussein Bukenya for defamation. It is alleged that the defendants wrote and caused to be published an open article to the general public which article carried false and defamatory words about the Plaintiffs.

In a rather detailed plaint the plaintiff contended that these articles depicted the 1st plaintiff as disrespectful, not

trusted, not morally upright, not in good terms with each other as one family.

They further contended that the defendants should be held liable for libel and the plaintiffs be awarded damages, an injunction and costs of the suit and any other remedy that court may deem fit.

The defendants denied liability and claimed fair and accurate reporting of facts and alternatively argued that the article consisted of allegations of fact and in so far as they were subsequently true and justified. The defendant also contended that the publications complained of were not defamatory as such and did not bear any innuendo apart from honest and fair intention of the words used. All the publications were admitted and exhibited

ISSUES

1. Whether the Articles published on the **23rd April 2014** by the defendants in its ordinary and natural meaning was defamatory to the plaintiffs?
2. Whether the words complained of were published on occasion of qualified privilege?
3. What remedies are available to the parties?

PLAINTIFFS EXHIBITS

1. The article in Bukedde Newspaper dated 23rd April 2014
2. The English translation of the Article
3. The Newspaper article in Bukedde dated 14th April 2014
4. Notice of intention to sue

1. The article in Bukedde Newspaper dated 23rd April 2014
2. Letter from KCCA Club
3. Correspondences from club officials
4. Other newspaper articles
5. Police Report.

During the trial the plaintiff called 3 witnesses including the plaintiffs themselves while the defendant also called 3 witnesses.

RESOLUTION

- 1. Whether the Articles published on the 23rd April 2014 by the defendants in its ordinary and natural meaning was defamatory to the plaintiffs?**

Counsel for the plaintiff cited the Black's law dictionary 9th Edition pages 479 and 480 to define what defamation consists of publication of a false and defamatory statement concerning another person without lawful justification. He went ahead to rely on the case of **Atiku Joel v the Editor in chief of the Red Pepper Publications and 2 others HCCS No. 28 of 2014** and also the Halsbury Laws of England 4th Edition volume 28 paragraph 16

Counsel relied on the PW2's witness statement at paragraph 2 to 27 which stated that that Brian Majwega is his nephew who went to Zana Standard for A level and a very talented and well-mannered professional footballer who was noticed and bought by KCCA FC from Simba FC.

He joined from Azam FC and also plays for the Uganda National Team the Cranes.

In regards to the 2nd plaintiff identified as his elder brother and father to the 1st plaintiff. He testified that sometime in April while training for Kyetume county Bukenya approached him and did an interview on him asking him questions relating to the team he was training and his family affairs which he answered.

That later on 23rd April 2014 he was called by Didas informing him about the Bukedde Article concerning Majwega made by Bukenya a man who had interviewed him while at Kyagwe training.

That he went and bought Newspaper and was surprised and annoyed when he read an article titled **"Majwega Annemye"**

He went ahead to testify that the entire article was false because his interview had no questions about Brian Majwega and had not said any of the words the article claimed to state.

That the statements made were *Ssitawa KCCA kitaawe mutenda bwamawale MBOGO BYAGAMBA KU MAJWEGA*

nkoze bulikisoboka ne bazadde bange ne bamutuzza naye akyaganyi okukyusa mmutumira buli muntu ge ndowowoza nti amussaamu ekitibwa naye tukyali awo Manyi asobola okuterera singa ayiga okuwuliriza . Waliwo lwe mmubulira nga ndaba buli kimu akireka awo teyeefirayo olwo ne nsoberwa

Twazanyanga omupiira ne Mugaru naye tetugobwangako mutimu lwampisa era simanyi Majwega gyagye mize egyo

Mbogo bagamba nti nze nvaako enneyisa ye ekitali kitufu kuba sijagala era enkola bubi nyo

Nina Mutabwa

In English translation the said words read as follows

"I have done everything possible together with my fellow elders to advise him but he has not changed his morals"

"I have sent to him several people I thought he respects but all in vain. I know he can change only if he learns to listen, there are times when I talk to him then he under looks everything which discourages me"

"We used to play football with Mugalu we have never been terminated because of indiscipline and I wonder where Majwega copied such manners"

"Some people even go ahead and accuse me of being the root cause of Majwega's behavior which is not true because I also have another son who plays with Simba Football Club because I have another son who plays with Simba Football Club but I have never got any complaint about him"

Counsel cited the case of **AK Oils & Fats (U) v Bidco Uganda Ltd HCCS No. 715 of 2005** to determine whether a statement is capable of giving defamatory meaning

In their joint written submission Counsel for the Defendants submitted that the plaintiffs failed to adduce evidence before court to show that the publication complained of had in any way lowered their reputation from any level at which it stood before the publication.

Counsel for the defendants attacked the testimony of PW1 submitting that nowhere in the entire record of his evidence did not state the language of the article that was itself abusive or derogatory in nature. That paragraph 27 of his witness statement stated that he was interviewed about his career and

family. He denied having been asked about Majwega and that was attributed to him in the interview by the journalist and he however did not say that any of it in its ordinary language was foul or derogatory. Counsel submitted that he manifested himself as someone capable of going back on his own words or denying them altogether.

Counsel for the defendants submitted that PW2 only had one complaint that his picture had been used in the article whilst the story was neither about him nor the interview done by him.

Counsel for the defendants cited S.102 of the Evidence Act of Uganda which provided that the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given.

In all civil matters the onus rests on the plaintiff who must adduce evidence to prove his or her case on a balance of probabilities if she is to obtain the relief sought refer to **Section 101-103 of the Evidence Act cap 43 Laws of Uganda. Also see Lord Denning in Miller v Minister of Pensions (1947)2 ALL ER 372 at page 373**

That the statements made by the defendants were intended to attack the reputation of the plaintiff.

I have considered the submissions of the parties. This Court holds the opinion that *"Every man or woman is entitled to have his or her reputation preserved and inviolate."*

A man's or woman's reputation is his or her property. Depending upon perception of that man or woman, reputation is more valuable to him or her than any other property. Reputation is the state of being held in high esteem

and honour or the general estimation that the public has for a person. Reputation depends on opinion, and opinion is the main basis of communication of thoughts and information amongst humans. In simpler words, reputation is nothing but enjoyment of good opinion on the part of others. So, the right to have reputation involves right to have reputation inviolate or intact.

Defamation is the publication of a statement which has a tendency to injure the reputation of the person to whom it refers by lowering him or her in the estimation of the right thinking members of the society generally and in particular to cause him or her to be regarded with feelings of hatred, ridicule, fear, dislike/ disesteem or which tends to make them sham/ avoid that person as per the case of **John Nagenda v The Editor of the Monitor Publications SCCA 5/1994 (unreported)**.

Defamation can be in many forms. It can be in words written or spoken or it can be through pictures or cartoons among others.

For defamation, the plaintiff must prove the following elements:

1. The defendant made a statement about the plaintiff to another.
2. The statement was injurious to the plaintiff's reputation in the eyes of the right thinking members of society.
3. The statement was false.
4. That the plaintiff is a public figure, or was involved in some newsworthy event or some other event that engaged the public interest, then the defendant must have made the false statement intentionally or with reckless disregard of the plaintiff's rights.

5. There are no applicable privileges or defenses.

In Black's Law Dictionary 8th Edition a defamatory statement means one that tends to injure the reputation of a person referred to in it. The statement is likely to lower that person in the estimation of reasonable people and in particular to cause that person to be regarded with feelings of hatred, contempt, ridicule, fear or dislike.

The test used to determine whether a statement is capable of giving defamatory meaning was discussed in the case of **A.K. Oils & Fats (U) Ltd Vs Bidco Uganda Limited HCCS No. 715 of 2005** where Bamwine J (as he then was) relied on **Sim vs Stretch [1936] 2 ALL ER 123 A.C**, where Lord Atkin held that the conventional phrase **"exposing the plaintiff to hatred, ridicule and contempt"** *is probably too narrow. The question is complicated by having to consider the person and class of persons whose reaction to the publication is the test of the wrongful character of the words used. He proposed in that case the test: "would the words tend to lower the plaintiff in the estimation of the right thinking members of society generally?"* This position has been adopted with approval in Uganda in **Honourable Justice Peter Onega Vs John Jaramoji Oloya HCCS No. 114 of 2009.**

In this case this court is satisfied on a balance of probabilities that the statements complained of are defamatory because the plaintiffs being professional footballers and coaches who have played and coached for both local football clubs and the National team the Uganda cranes.

This gives Brian Majegwa sensitive reputation which naturally

disrespectful not trusted and not morally upright, not in good terms with other family members and that he was unbearable.

Although the defendants denied liability and claimed fair and accurate reporting of facts and alternatively argued that the article consisted of allegations of fact and in so far as they were subsequently true and justified. The defendant also contended that the publications complained of were not defamatory as such and did not bear any innuendo apart from honest and fair intention of the words used.

In Brian Majwega's evidence to this court the defendants have not proved why they believed these statements not to be defamatory. In my opinion this amounts to failure to prove any defence on the part of the defendants. Media houses and their employees must be careful before they write anything about people. Before they publish allegations they must have the evidence to back up whatever perceptions or opinions they have about another. If this court condones the conduct of the defendants against the plaintiffs then persons of good repute will suffer at the mercy of reckless media houses and their employees.

The defendants were reckless with their publication about the Brian Majwega (plaintiff) and must suffer consequences of that absolute disregard of the effect of their publication. Any right thinking member of society would also avoid working, contracting and also lower his or her estimation of the plaintiff upon hearing or reading the toxic words and statements published by the defendants.

The defendants' attempts to put forward the joint argument of qualified privilege and public interest claiming they had a legal,

moral and social duty to convey to the general public and in which the public had a legitimate interest but this they did not prove.

Whether the words complained of were published on occasion of qualified privilege?

The defence of qualified privilege is only available if the statement is made in good faith without an improper motive. It arises in circumstances where the maker of the statement has a duty/ interest in making the statement to the person to whom it was made and that person has a corresponding duty to receive it. There is reciprocity of interest/ duty between the maker and the receiver of the statement. The duty/interest may be legal or moral. The duty must exist in fact and one must not merely imagine that it exists.

I therefore find that the defendants liable for defamation for the published and order the defendants to make an apology to the plaintiffs.

What remedies are available to the parties?

In the plaint the plaintiffs made many prayers to this Court

Permanent Injunction:

Counsel for the plaintiffs cited **Hon. Rebecca Kadaga v Richard Tusiime & 2 others HCCS No.56 of 2013** Since the defendant has used the media against the plaintiffs it is proper for this court to grant this prayer. I grant the plaintiffs a Permanent Injunction restraining the defendant and her agents

from further publication of defamatory content in relation to this issue.

General damages

The successful party in a defamation suit is entitled to recover general damages such as will compensate him/her for the wrong he/she has suffered. In assessing the appropriate damages for injury to reputation the most important factor is the gravity of the libel, and extent of publication. Damages are aimed at vindicating the plaintiff's reputation and status especially where no apology or retraction is offered.

Regarding this claim, counsel for the plaintiffs prayed for UGX.25, 000,000/= (Twenty five million shillings). I find this sum to be on the high side since general damages are a sum representing the natural consequences of the wrong. In this case, the Newspaper, and the editor was responsible for the publication was also sued.

However since there is no evidence to prove that this has resulted from the wrong. I will consider the social standing of the defendant and decided cases. Most awards range between UGX. 20,000,000/= and UGX.50,000,000/=. See: **Amos Twinomujuni Vs The Attorney General & Lt. James Mwesiye HCCS 0413 of 2005; Honourable Justice Peter Onega Vs John Jaramoji Oloya HCCS No. 114 of 2009; Nyeko Vs Uganda Broadcasting Corporation Company Ltd & Anor CS No. 0044 2013.** In the circumstances of this case i do therefore find the sum of UGX.20,000,000/= to be sufficient to compensate for the damage caused to the plaintiff's reputation and the injury suffered. It is accordingly awarded

Punitive damages:

Since the 3rd defendant insisted that his opinion about the plaintiffs were true and this court found otherwise and the defendants having failed to prove their allegations against the plaintiffs to be true, I find this was reckless and could be repeated. As such the defendant should be punished. I find the sum of UGX.10, 000,000 to be sufficient punitive damages to punish the defendant. The same is awarded.

Costs of the suit:

Costs follow the event and so the plaintiffs have succeeded in this suit are entitled to costs of the application. The plaintiffs shall get the taxed costs of this suit.

Interest:

The plaintiffs asked for an interest of 25%p.a. on damages from the date of judgment until payment in full.

I find the interest of 20% as pleaded to be on the higher side. I therefore grant the plaintiff interest on the general and punitive damages at the rate of 6% per annum from the date of judgment till full payment.

I so order.

Signed

.......... 28/01/2022

NASAMBU ESTHER REBECCA.A

CHIEF MAGISTRATE

27/01/2022