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**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**(CIVIL DIVISION)**  
**CIVIL SUIT NO. 409 OF 2019**

**BRIGADE DISTILLERS LTD:..... PLAINTIFF**

10

**VERSUS**

**VISION GROUP OF COMPANIES (BUKEDDE TV):..... DEFENDANT**

**BEFORE: HON. JUSTICE ESTA NAMBAYO**

**RULING**

15 The Plaintiff, Brigade Distillers Ltd, filed this suit against the defendant on grounds of defamation. The plaintiff seeks for a permanent injunction restraining the defendant from further broad casts of the defamatory statement, a public apology, general and exemplary damages, interest and costs of the suit against the defendant.

20 The grounds of the Plaintiff’s claim are that on the 3<sup>rd</sup> of July, 2019 in its bulletin aired on Bukedde TV (Agataliko Mutuntu), the Defendant alleged that the Plaintiff company failed to pay its workers’ wages. The same bulletin was aired on the Defendant’s social media and YouTube channels resulting in the Plaintiff’s sales to drastically drop as its consumers turned to other liquor brands, hence this suit.

25 **Representation**

Learned Counsel Kiiza Hakim appeared for the Plaintiff while Learned Counsel Ntende Kenneth was for the Defendant. When the matter came up for hearing, Counsel for the Defendant raised a preliminary objection on grounds that the Plaintiff

does not disclose a cause of action in defamation. Counsel were directed to file their  
30 written submissions to which they complied to.

**Submissions for the defendant on the preliminary objection.**

In his submission, Counsel for the defendant relied on Order 7 Rule 1 (e) of the Civil  
Procedure Rules which stipulates that every plaint must contain facts from which the  
cause of action arose. He relied on the cases *of Katende Dirisa -v- David Buryo*  
35 *and 6 others, HCCS No.81 of 2013 and John Kizito -v- The Red Pepper*  
*Publication Limited, HCCS No.624 of 2016 and Nkalubo -v- Kibirige [1973] EA*  
*102*, where it was held that;

*"In all writs of libel the actual words complained of must be set out in the plaint.  
This is not a mere technicality because justice can only be done if the Defendants*  
40 *know exactly what words are complained of so that they can prepare a proper*  
*defence."*

Referring to paragraph 4 of the instant Plaint, Counsel contended that the Plaintiff  
only gives an account of what they perceived from the News segment rather than  
what was broadcasted. Counsel explained that the words complained of should have  
45 been stated in the plaint in Luganda followed by their English translation. That in  
this case, paragraph 4 and 5 of the plaint just narrate the implication of the  
impugned news. Counsel referred to Article 6 of the 1995 Constitution of Uganda  
and Section 88 of the Civil Procedure Act that provide that English is the official  
language of Uganda and Court respectively. He also relied on the case of *Nkalubo -*  
50 *v- Kibirige [1973] EA 102*, where court held that where the publication is in  
Luganda, those words should appear in Luganda in the plaint followed by a literal  
translation in English. That in this case, the plaint neither reflects the words  
complained of in Luganda nor the English translation.

In reply, Counsel for the Plaintiff relied on Order 7 Rule 1 (e) of the CPR and the  
55 case of *Cooke -v- Gull LR 8e.p 116 and Read -v- Brown 11 QBD P.31*, where a  
cause of action is defined as every fact which is material to be proved to enable the  
Plaintiff succeed or every fact which if denied, the Plaintiff must prove in order to  
obtain judgment, and; the case of *Tororo Cement Co. Ltd -v- Fronkina  
International Ltd, CA No.21 of 2001* which lays down the elements to show that  
60 there exists a cause of action. Counsel submitted that in the instant case, paragraph  
4 of the Plaint recaptures the bulletin that was aired on Bukedde TV as "*Abba  
Brigade Distillers Balemeredwa Okusasula Abakozi Abazimba*" and argued that  
the words complained of were clearly stated and followed up with a tape recording.

Counsel submitted that in the case of *Nkalubo -v- Kibirige (supra)* cited by Counsel  
65 for the Defendant, the Plaintiff neither reproduced the actual words complained of  
nor attached a copy of the letter that was alleged to contain the libelous material,  
just as in the case of *Katende Dirisa Bury (supra)*, unlike in this case. He prayed  
that the preliminary objection be over ruled so that the matter is heard on its merits.

### **Analysis:**

70 **Order 7 Rule 1 (e) of the CPR** provides that the plaint shall contain the facts  
constituting the cause of action and when it arose.

In cases of defamation, the actual words complained of must be set out in the plaint  
verbatim, failure to do so leaves the plaint with no cause of action. (See *Collins -v-  
Jones [1955]1 QB 564*.) In the instant case, paragraph 4 (c) of the plaint captures  
75 the phrase "*Abba Brigade Distillers Balemeredwa Okusasula Abakozi Abazimba*"  
as the words complained of, appearing in Luganda.

**Article 6 of the Constitution** provides as follows;

(1) *the official language of Uganda shall be English.*

80 (2) –

(3) *Subject to this article, any other language may be used as a medium of instruction in schools or other educational institutions or for legislative, administrative or judicial purposes as Parliament may by law prescribe.*

Under **Section 88 of the Civil Procedure Act, it is provided that;**

85 1. *The language of all courts shall be English.*

2. *Evidence in all courts shall be recorded in English.*

3. *Written applications to the courts shall be in English.*

**In De Souza -v- Zenith Printing Works, Kenya C.C 149 OF 1959**, cited with approval in the case of **Nkalubo –v- Kibirige Civil Appeal No. 32 of 1973(EA)**,  
90 court noted that;

*“the particular words complained of should have appeared in the plaint in that language, followed by a literal translation into English.”*

In the instant case, the Plaintiff set out the words complained of in Luganda in paragraph 4 of his plaint without its English translation.

95 Without leave to amend the paragraph so as to include the English translation, I find that the paragraph with the alleged defamatory words is defective and it is hereby struck out. This now leaves the plaint without the alleged defamatory words, disclosing no cause of action.

100 Under Order 7 rule 11 (a) of the CPR, a Plaint that discloses no cause of action must be rejected. In the circumstances, this plaint is rejected for disclosing no cause of action. The preliminary objection is upheld and the suit is dismissed with costs.

I so order.

**Dated, signed and delivered by mail at Kampala, this 19<sup>th</sup> day of July, 2022**

105 **Esta Nambayo**

**JUDGE**

**19<sup>th</sup> /7/2022**