

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**(CIVIL DIVISION)**  
**CIVIL SUIT NO. 331 OF 2013**

**CHARLES RWOMUSHANA:.....PLAINTIFF**

**VERSUS**

**THE NEW VISION PRINTING & PUBLISHING CO. LTD:..... DEFENDANT**

**BEFORE: LADY JUSTICE LYDIA MUGAMBE**

**JUDGMENT**

**a) Introduction**

1. The Plaintiff's claim against the Defendant is for general and exemplary damages for defamation, a permanent injunction and costs of the suit.
2. It is the Plaintiff's case that the Defendant in its Sunday Vision dated 15<sup>th</sup> September 2013, published a story where it stated that the plaintiff had "found himself on the wrong side of the law and spent a night in detention" which was untrue in content and meaning. The Plaintiff contends that the article referred to him as being Tom Voltaire Okwalinga a known critic of the Government of Uganda whom the article said was known for posting outrageous comments on social media. The Plaintiff contends that the conduct of the Defendant was malicious and insulting and that being a high ranking civil servant of Uganda at the status of a Resident District Commissioner, the said publication injured his



reputation and character lowering his esteem in the eyes of reasonable persons of ordinary intelligence.

3. The Defendant denies the Plaintiff's claim and argues that the article complained of had fair and accurate reporting. The Defendant also asserts that the article complained of consisted of allegations of facts relating to the status of the Plaintiff and on a matter of public interest and are incapable of bearing any meaning defamatory to the Plaintiff. Further, that the words complained of did not bear any innuendo or otherwise and were incapable of bearing meanings defamatory of the Plaintiff. The Defendants therefore pray that the suit is dismissed with costs.
4. Three issues were agreed for determination at scheduling, viz:
  - a) Whether the article was defamatory
  - b) Whether the Plaintiff is entitled to general, exemplary and/or aggravated damages.
  - c) What remedies are available to the parties

#### **b) The Law**

5. In **Francis Lukooya Mukoome & Anor vs. 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**).
6. 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.

7. 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.
8. 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.
9. 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 **Geoffrey Ssejjoba v. Rev. Patrick Rwabigonji HCCS No. 1 of 1976**.
10. 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.



11. 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 Ntabgoba v. Editor New Vision (2001 – 2005) 2 HCB 209**.
12. 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.
13. Truth may be pleaded as a defence to the whole defamatory statement. In **Chaina 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.
14. 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 the case of **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.

### **c) Analysis**

15. I have read all the pleadings and submissions of the parties. The first issue to resolve is whether the article in issue was defamatory. It is not in dispute that the Respondent newspaper published an article titled "Rwomushana night in jail" in its edition of Sunday September 15<sup>th</sup> 2013 at page 13. This article was tendered as PW1 Exhibit 2 in evidence.
16. In the article, the Plaintiff is said to have found himself on the wrong side of the law and spent a night in detention after security linked him to the anonymous Tom Voltaire Okwalinga (TVO) who is known for posting outrageous comments on social media. The article explains that when the Plaintiff posted on social media that he had finally met TVO at a top city hotel, intelligence quickly moved in and arrested him thinking he might be the one posting as TVO. After spending the night in detention while TVO continued to post on face book, the Plaintiff was set free at 11:00am on Thursday and intelligence "guys" were trying hard to unmask the real TVO.
17. Taking the plain and ordinary meaning of the words in the article, it possibly lowered the stature of the Plaintiff who was an RDC in the estimation of right thinking members of society because it points to him spending a night in jail. Therefore, the article per se was possibly defamatory of the Plaintiff. The next step is to determine whether in the circumstances of this case, it was actually defamatory of the Plaintiff.
18. DW1 testified that he verified the story before publishing it by checking with the police who confirmed that the Plaintiff had been arrested. However, the police told him that arrests like his were not entered in the police diaries, hence the Plaintiff's arrest had no recorded entry at police.



19. It would have been better if the Defendant brought the said police officers with whom he verified the arrest of PW1 in Court. Instead the Plaintiff was his own only witness.

20. In the same way, it would have been best if the Plaintiff had brought to testify and possibly be cross examined, and their veracity tested, the persons who he alleges called him asking about his arrest after the story. These are the people material for a determination of defamation.

21. Be that as it may, the story as published is in tandem with a wholistic reading of the facebook posts between 10<sup>th</sup> September 2013 and 13<sup>th</sup> September 2013, tendered collectively in evidence as DW1 Exhibit 1.

22. These 3 sets of facebook exchange demonstrate the Plaintiff saying he met TVO at a hotel in town; members of the public questioning whether the Plaintiff is not TVO and whether by TVO going missing it is not the Plaintiff who is missing; Bright Anthony alleges that the Plaintiff was arrested and released at 11:00am, Godfrey Kyedza says if the Plaintiff was arrested, he should be left to rest and he can respond at an appropriate time; Deo Tiba Santos informed Innocent (Nowembabazi) that he is not serious when he asks the Plaintiff who is TVO. He then explains that the Plaintiff is suspected to be TVO and that's why he was arrested; Godfrey Kyedza questions whether TVO posted anything while the Plaintiff was allegedly arrested; later on TVO posts explaining that as far as he knows, the Plaintiff is still some sort of prisoner with restrictions as the goons make further investigations; later it appears the Plaintiff presents that he is free at least for now asking folks to ignore Okwalinga as recapped by Deepwells Deepwells; Eventually TVO says if the Plaintiff had not met him at Sophies Kamwokya and posted it on social media, the exchange would not have taken place and he would not have been held by evil chaps for a number of hours for interrogation. The Plaintiff later disassociates himself from TVO.

23. Whether the Plaintiff eventually posts divergently from TVO, compared to how the posts start, it is reasonably deducible on a balance of probabilities that it is reasonably possibly



true that the Plaintiff, because of his posts regarding TVO was arrested for some hours on suspicion that he was the said TVO, but later released.

24. The New Vision article in issue does not say the Plaintiff is TVO but presents this very suspicion which is also expressed by many in the facebook posts addressed above. In the circumstances of this case, I am convinced that the allegations in the article were substantially true and their publication was justified.

25. In the alternative, even if I consider that they were not, taking the circumstances of the case into account, after making the subjective and objective test on fairness, the article was an expression of opinion and assertions of facts devoid of any malice at all. The article was written honestly, it was relevant in so far as TVO's posts concern state involvement in national security and protection of citizens, and I have no basis to infer any improper motive.

26. I am therefore disinclined to make a finding of defamation as presented by the Plaintiff. I therefore have no remedies for the Plaintiff.

27. The suit is accordingly dismissed with costs for the Defendant

I so order.



**LYDIA MUGAMBE**

**JUDGE**

**08/02/2016**

