

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MBARARA

HCT -05-CV-CS-0081-2013

KATENDE DIRISA:::PLAINTIFF

VERSUS

DAVID BURYO & 6 OTHERS:::::::::::::::::::::::::::::::::DEFENDANTS

BEFORE: HON JUSTICE JOYCE KAVUMA

RULING

- [1] This ruling arises from the preliminary objection raised by counsel for the 6th and 7th defendants to the effect that the plaint does not disclose a cause of action and should be struck off with costs under Order 6 rule 30 of CPR which empowers court to strike out a pleading that does not disclose a cause of action.
- [2] Counsel for defendants submitted that the actual words complained of were not set out in the plaint. He relied on the case of Nkalubo Vs Kibirige EALR Page 102 where it was held that the actual words complained of must be set out in the plaint. She further submitted that this is not a mere technicality because justice can only be done if the defendant knows exactly what words are complained of, so that he can prepare his defence. For this proposition she relied on the cases of Harris V Warre (1879) 4 CPD 125 at Page 128 and Eliasaph Kakwateki v Editor Orumuri HCCS 461 of 2004. She concluded her submissions by stating that the plaint ought to be struck out with costs to the 6th and 7th defendants.

- [3] In reply counsel for the plaintiff submitted that to determine whether a plaintiff discloses a cause of action, the court must look at only the plaintiff and annexures thereto. He cited the case of Sande Godfrey V Kanyije James & 2 Others Civil Suit No. 375 of 2016 in support of his proposition. Counsel submitted that the decision of Eliasaph Kakwateki (*Supra*) is distinguishable from the instant one. He submitted that in *Eliasaph Kakwateki case* the words complained of were reproduced in the plaintiff in Runyankole Rukiga language but without any English translation attached and court could not discern the words thereof because they were not in the language of Court.
- [4] He further submitted that the case of Nkalubo v Kibirige (*supra*) relied on by counsel for the defendant is also distinguishable in that the plaintiff neither reproduced the actual words complained of in the main body of the plaintiff nor attached the copy of the letter that was alleged to contain the words complained of. He concluded his submissions by stating that in the instant case the words complained of are in the annexed newspaper extract together with the translations of the words complained of in the English language. Counsel for the plaintiff prayed that the preliminary objection by the 6th and 7th defendants be dismissed with costs to the plaintiff.
- [5] In brief rejoinder counsel for the 6th and 7th defendants reiterated her earlier submissions and further stated that the law does not make reference to annexures being an alternative to the above mandatory dictate of the law. In conclusion she submitted that without stating the words complained of in the plaintiff, renders it incurable defective and should be dismissed.

Consideration

- [6] I have considered the preliminary objection raised by counsel for the 6th and 7th defendants and the response by counsel for the plaintiff together with submissions made by both counsel on the matter.

Order 7 rule 11(a) of CPR provides that a plaint shall be rejected where it does not disclose a cause of action. In Karaka Vs Turwomwe CA No. 5 of 1975 Lubogo J held that "*In an action for defamation the plaint must contain among other averments the allegation of publication and reference to the plaintiff, the words complained of and the defamatory meaning.*"

It has been held that the question of whether the plaint discloses a cause of action is determined by a perusal of the plaint and attachments thereon and with the assumption that the facts so pleaded or implied in the plaint are true. See the case of Attorney General Vs. Oluoch (1972) EA.392

In an action for defamation, the actual words complained of, and not merely their substance must be set out verbatim in the statement of claim. See Halsbury's Laws of England 4th Edition Volume 28 Page 89 Para 172. See also the case of Capital and Counties Bank Ltd V George Henty & Sons (1882) 7 AC 741 at 771. It is not enough to set out their substance or effect. See the case Harris V Warre 1879 4 C.P.D 125 at 127.

- [7] Gatley on Libel and Slander 8th Edition 1981 Sweet & Maxwell London by Phillip Lewis Page 437 Para 1061. The learned author states that "*The statement of the claim must contain a concise statement of the*

material facts on which the plaintiff relies but not the evidence by which they are to be proved. Further that the material facts are the publication by the defendant, the words published, that were published of the plaintiff...." (Emphasis mine)

In the instant case it was admitted by counsel for the plaintiff that the words complained of were not stated in the plaint however he submitted that in consideration whether a plaint discloses a cause of action one has to look at the plaint and annexures thereon. I agree with counsel for the plaintiff to that extent. One of the attachments to the plaint is the alleged defamatory article published by the 7th defendant.

- [8] In my opinion in a claim for defamation unlike other claims every word complained of must be stated in the plaint verbatim as required by law. I am fortified by the decision of Kizito Vs. The Red Pepper Publication Limited Civil Suit No. 624 of 2016 where Justice Stephen Musota (as he then was) held that it is a principle of law that in an action for defamation the basis of the cause of action are the words used. The words used are therefore the material facts on which an action for defamation is based. The words used whether verbal or written must be set out in the particulars of claim. It is not sufficient to state the substance purpose or effect of the words used. The actual words must be pleaded. Justice Stephen Musota went on to state that annexing the publication complained of as submitted by the plaintiff does not cure the irregularity because in a claim for defamation every word or article complained of must be reproduced in the plaint verbatim. (Emphasis mine).
- [9] I am further persuaded by the learned author in Gatley on Libel and Slander (Supra) that the statement of the claim must contain a concise

statement of the material facts on which the plaintiff relies but not the evidence by which they are to be proved.

Consequently, I will uphold the objection by counsel for the 6th and 7th defendants that the plaint as presented does not disclose a cause of action in defamation. The plaint is accordingly struck off under Order 7 Rule 11 (a) of the Civil Procedure Rules with costs to the defendants.

Dated signed and delivered on this.....5th day ofDecember.....2019


Joyce Kavuma

Judge