

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL SUIT NUMBER 216 OF 2003

PATRICK MAKUMBI :::::::::::::::::::::::::::::: PLAINTIFF

VERSUS

1. THE NEW VISION PRINTING
AND PUBLISHING CORPORATION }
2. THE EDITOR, BUKEDDE NEWSPAPER } ::::: DEFENDANTS

BEFORE: AG. JUDGE REMMY K. KASULE

JUDGMENT:

The Plaintiff sued both Defendants claiming damages, a permanent injunction and publication of an apology in respect of an alleged defamation of two “Bukedde” newspaper articles published of the plaintiff on 9th and 10th December, 2002.

The first Defendant is a statutory corporation, and is printer and publisher of the “Bukedde” newspaper, a Luganda daily.

The second Defendant is employed by the first Defendant as an editor of the said newspaper.

The Bukedde Newspaper article of 9th December 2002 is here below reproduced in Luganda:

“Col. Kayanja agudde ku nfo y’abazigu e Seeta n’attako omu.....

ABASERIKALE ba Wembley abaduumirwa Col. Elly Kayanja baazinze ekitundu

ky'e Seeta okumpi ne Mukono ne bakola ekikwekweto fululabiswa ekyasattizza abatuuze mwe battidde omuzigu omu ne bayoola n'abantu munaana okuli n'omusumba w'abalokole.

Bino byabaddewo mu kiro ekyakeesezza olunaku lw'eggulo aba Wembley bwe baazinzeko ekibuga ky'e Seeta n'ebyalo ebiriraanyewo okuva ku ssaawa nga 8.00 ez'ekiro ne bakeesa nga obudde bakwata abantu abagambibwa okuba abazigu n'ababbi.

Ekikwekweto kino ekyatokoteddemu n'amasasi agasse Ssalongo Ben Mayengo eyabadde anoonyezebwa gwe baakubidde mu mmotoka y'obuyonjo Toyota Carib nnamba UAE 958K oluvanyuma lw'okumuyimiriza ku ssaawa nga 9.00 ez'ekiro n'agezaako okubatomera abatuuze abalala baakitegedde obudde bukedde nga balaba bannabwe abakwatiddwa bakunganyiziddwa ku poliisi e Seeta.

Mu baakwatiddwa mulimu omusumba Aron Muwanguzi ow'ekkanisa ya Sayuuni Christian Church erina amatabi e Kyengera ne Mukono ng'ono y'agambibwa okukulira ekibinja ky'abazigu bano.

Omulala agambibwa nti y'omu ku babadde bavujjirira abazigu bano ssente ye yaliko omukungu wa KCC, Mw. Patrick Makumbi aba Wembley gwe baasanze n'ebyuma ebikola bbomu ebibadde bikozezebwa abakwatiddwa mu kibira kyo mu Kiwanga.

Ebyuma bino byasangiddwa nga bikukuliddwa mu yunipooti eri mu kibira wakati era ng'ekibira kino kigambibwa nti Makumbi abadde takkiriza batuuze kusennyamu nku ng'agamba nti kya musambwa era wabaddewo akafo okumpi n'omuti omunene kw'ayiwa ssente z'agamba nti za musambwa okutiisiza ddala abantu.

Abatuuze abasinga beggalidde mu mayumba nga mwe basinziira okulingiza n'amakanisa ne Eklezia tebyajjumbiddwa. Aba bodaboda nabo nga tebakkiriza

kutwala muntu Kiwanga abakwate abasinga gye baggyiddwa.

Abayambi ba Col. Elly Kayanja ab'enjawulo Omulangila Simbwa ne Kalooli baategezezza nti abaakwatiddwa era babadde bategeka n'okuwamba abakungu ba gavumenti omuli omumyuka wa Pulezidenti, Dr. Wandira Kazibwe asula e Dundu mu disitulikiti y'e Mukono ssako omuduumizi wa poliisi Maj. Gen. Katumba Wamala.

Aba Wembley baagambye nti bakwatiddwa n'ebiwandiiko ebiraga bwe balina enkolagana ne Col. Kyakabaale ne Col. Mande abayeekela gavumenti.

The English translation of the above article agreed upon by parties at the hearing is:-

“Col. Kayanja has discovered a hideout for thieves in Seeta and has killed one of them. He has arrested 8. They were planning to kidnap two Government officials.”

Soldiers of Wembley commanded by Col. Kayanja besieged the area of Seeta near Mukono and carried out an immense operation that left the residents scattered and one notorious person was killed and 8 others were arrested including a Pastor.

These events took place on the night of 7/12/03 when the Wembley operatives besieged the town of Seeta and neighbouring villages from 8:00 p.m. till morning arresting people alleged to be rebels and robbers.

The operation, which had a lot of gunfire, killed Ssalongo Ben Mayengo who was being pursued and was shot while in a Toyota Carib Reg. No. UAE 958K after being stopped at 9.00p.m and he tried to run over the operatives. The other residents of the area learnt of this operation in the morning when they saw their fellow residents who had been arrested and gathered at Seeta Police Station.

Among these arrested is Pastor Aron Muwanguzi of Zion Christian Church, which has branches in Kyengeru and Mukono who is alleged to be the leader of this group.

Another person who is said to be among those giving financial support to these rebels is former Town Clerk of KCC Mr. Patrick Makumbi whom Wembley Officials found with machines used for manufacturing bombs, which were being used in his forest in Kiwanga. These machines were found hidden in a uniport, it is also alleged that Makumbi never allowed the residents to collect firewood from the forest saying that the forest had spirits, there was also a place near a big tree in the forest where he poured money which he said was for the spirits, all this was done to scare people.

Others arrested were one Emmanuel Matovu the in charge of security in Kiwanga, Solomon Kayemba, Edward Kakembo, Okwir Richard, Rebecca Kasoma, Shamim Nalwanga and Justine Nagujja.

Most residents locked themselves in their houses from where they looked on. Both Anglican and Catholic Churches were poorly attended. Motorcyclists were declining to take people to Kiwanga from where most of the arrested people hail.

The special assistants to Col. Kayanja, Prince John Simbwa and Kaloli said that the arrested people had been plotting to kidnap Government Officials including the Vice President Dr. Wandira Kazibwe who resides in Dundu in Mukono District plus the Inspector General of Police Major General Katumba Wamala.

Wembley operatives said that they had found those they had arrested with documents indicating that they had dealings with Col. Kyakabaale and Col. Mande both of whom are rebels.

The other Luganda of article of “Bukedde” of 10th December, 2002, is as hereunder:

“Aba Wembley banafuuza amakanisa g’ebiwempe”

BYA ANGEL LUBOWA

Aba Wembley bategeka kuzinda makanisa ga balokole oluvanyuma lw’okusanga ebitabo

ebiyigiriza okutega bbomu mu nnyumba y'omusumba w'ekanisa e Seeta gwe baayodde ne banne nga balina n'ebiyuma ebikola bbomu.

Aba Wembley bategezeza nti mu nnyumba y'omusumba w'ekanisa ya Sayuuni Christian Church e Seeta Mw. Aron Muwanguzi esangibwa mu Ntinda zooni baazudeyo ebitabo ebiyigiriza okutega bbomu ekyongedde okubalaga nti n'amakanisa amalala gandiba nga g'enyigira mu byobuzigu.

Omutabaganya w'ekikwekweto kya Wembley Omulangila John Ssimbwa n'omuyambi wa Col. Kayanja Mw. Kalooli baategezeza nti eky'okuzuula ebitabo ebiyigiriza okukola bbomu ew'omusumba kigenda okubawaliriza okuyingira mu makanisa g'ebiwempe amalala agamerukawo.

Baagambye nti waliwo nolukalala lw'abantu omuli n'abasuubuzi abamannya mu Kampala olwazuuliddwa ewa Muwanguzi ssaako abantu abalala abagambibwa okukolagana n'eyaliko omukungu wa KCC, Patrick Makumbi nanyini kibira omwazuuliddwa yunipooti omwabadde ebyuma ebikola bbomu n'obuganga.

“Tulabula abantu abatinkiza n'amakanisa gebiwempe okusooka okwetegereza nga tebanageegattako kubanga agamu g'abantu bakyamu,” Kalooli bwe yategezeza n'agattako nti entegeka zikolebwa okugekenneenya.

Aba Wembley era bategezeza nti abantu omunaana abasunsudwa mu balala abasoba mu 18 be baakutte mu kikwekweto kye Seeta batandise okubuuzibwa akana n'akataano ku by'obuyeeekera bye bagambibwa okuba nga babadde beetabamu.

Baagambye nti obujulizi obwakazuuka okuva mu Kiwanga okumpi ne Seeta mu kibira

kya Makumbi bwoleka nti abadde alina ekibinja ky'abazigu baabadde atendeka ne Muwanguzi mu by'okutega bbomu.

Abamu ku bagambibwa okuba abazigu ababadde batendekedwa Makumbi ne Muwanguzi balonkomye mu Wembley nti babadde basomesebwa mu kkanisa emisana ate bwe buwungeera ne bagenda mu kibira ekiwanga okuyigirizibwa ebyobuzigu.

Baayongeddeko nti babadde babagumya nti waliyo bannaabwe abali mu nsiko nti bbo omulimu gwe bagenda okukola gwa kutega bbomu mu Kampala, okuwamba abakungu ba Gavumenti basobole okusaba omusingo gw'ensimbi n'okunyaga banka.

Naye Muwanguzi bwe yabadde ku poliisi e Seeta ku Ssande yawakanyiza eby'okutendeka abatega bbomu n'agamba nti aba Wembley be bamusindikira abantu okumuyingizaamu ekirowoozo ky'okuyeequera Gavumenti ekyamuwaliriza okutegeeza ku b'obuyinza e Mukono abamuwa obuyinza okutuula mu nkiko z'okuvuunika Gavumenti basobole okukwata abazenyigiramu.

Its English translation is:-

“Wembley officials will mount a search on papyrus made churches.”

Wembley operatives are planning to go to churches of born again Christians and search them after finding books on how to make bombs in a house belonging to a pastor of a church in Seeta who was arrested with others after they were found with machines for making bombs.

The Wembley operatives said they found books teaching how to make bombs in a house belonging to pastor Aron Muwanguzi of Zion Christian Church in Seeta which is located in Ntinda Zone and that this had continued to show that other Churches of born again Christians might also be involved in rebel activities.

The coordinator of Operation Wembley Prince John Ssimbwa and the assistant to Col. Kayanja, Mr. Kalooli said that the discovery of these books at the pastor's home was going to force them to enter papyrus churches that had sprouted.

They said that there is a list of people including prominent business men in Kampala which was discovered at Muwanguzi's place plus other people believed to be collaborating with Mr. Patric Makumbi, formerly an officer in KCC, who is the owner of the forest where the uniport containing machines for making the bombs was discovered.

We advise people who are excited about these papyrus churches to first be sure about them before they associate or join them because some of them have 'wrong' people. Kalooli added that plans are underway to critically analyse them.

Wembley also notified us that the eight people short listed from more than eighteen who were arrested were being interrogated in relation to rebel activities in which they are said to have been involved.

They said the evidence received from near Seeta in Makumbi's forest indicates that Makumbi and Muwanguzi had some rebels they were training to plant bombs.

Some of the suspects rebels who have been trained by Makumbi and Muwanguzi said that they were being taught in Church during the day and when it comes to night they proceed to the forest where they are trained in rebel activities.

They added that they were being assured that their colleagues were in the bush and that their tasks were to plant bombs in Kampala, kidnap Government Officials in order to get ransoms and to rob banks.

But Muwanguzi while at the Police Station in Seeta on Sunday denied the allegations of him training people to plant bombs saying that the Wembley operatives sent him people to put in him the idea of carrying out rebel activities against Government which

prompted him to report the same to the authorities in Mukono who authorised him to hold meetings of subversive elements in order to apprehend those who were participating in the same.

The Plaintiff's contention is that the above two articles amounted to libel statements against him as the words thereof meant and were understood to mean that he was a rebel; or was collaborating with the rebels by actually supplying them with weapons and ammunition.

On 7th January 2003, Plaintiff's Counsel demanded of the second defendant to write and publish an apology, but second defendant only summoned Plaintiff to the Kampala Bukedde newspaper offices, for Plaintiff to give his side of the story. No apology was given or published. None has ever been given.

Plaintiff, contending that, he had been injured and subjected to mental torture and emotional stress by the articles, sued for damages.

Both defendants denied the Plaintiff's claim. According to them, the publication was justified, a fair comment, privileged and was on a matter of public importance. The Plaintiff had been arrested by security operatives on suspicion of treason and had been detained for a while and later released.

At conferencing, parties to the suit agreed that the defendants edited and published the articles in question; and that, at the material time, plaintiff had been arrested by security operatives on suspicion of treason.

The agreed upon issues are:-

1. Whether the articles published by the defendants defamed the Plaintiff;
2. Whether the Plaintiff suffered any damage as a result of the publication.

3. What remedies are available to the parties?

As to the first issue, a statement is defamatory of one, when it tends to lower one, in the estimation of right thinking members of society generally or causes such a one to be shunned and/or, avoided; or exposes one to hatred, contempt or the same indicates or conveys an imputation that is disparaging or injurious to one in one's office, profession, calling, trade or business: See: **GATLEY ON LIBEL AND SLANDER, 8th Edition: Paragraph 31**. See also: **SSENJOBA VS RWEBIGONJI [1971] ULR 87**,

A defamatory statement must refer and therefore be defamatory of the plaintiff: **ODONGKARA VS. ASTLES [1970] EA 374**.

It is the general impression of the words of the statement on a right thinking person that has to be considered before determining whether the statement is defamatory or not: **SONKO VS. OKETH [1977] HCB 36**.

Words complained of are defamatory once they impute a commission of a criminal offence: **H.C.C.S No.774 of 1992 BLAZE BABIGUMIRA VS. HANNS BESIGYE**, unreported.

The burden of proof to establish that a statement is defamatory is upon the Plaintiff. Then the burden shifts to the Defendant who has to prove that it is not defamatory: **H.C.C.S No.488 of 98: REX MATTHEW ODONGA & OTHERS VS ATTORNEY GENERAL & THREE OTHERS**, unreported.

In the normal course of things, the law presumes, in the Plaintiff's favour, that the words of the statement are false, unless and until, the defendant proves to the contrary: See **GATLEY ON LIBEL AND SLANDER (supra page 6 paragraph 5)**.

In the article of December 9, 2002, it is reported of the Plaintiff, a former Town Clerk, Kampala City Council, that he was one of those giving financial support to the rebels. Wembley officials

had found him with machines used for manufacturing bombs, and that the same were being used in his forest at Kibanga. The machines had been found hidden in a uniport. The plaintiff is stated to have never allowed the residents to collect fire wood from the forest saying the forest had spirits. There was a spot near a big tree in the forest where he used to pour money claiming that the same is for the spirit. All this was being done to scare away people.

The article in the issue of December 10, 2002, alleges of the plaintiff that the Wembley security operatives had recovered, from Mr. Muwanguzi's place, a list of people including prominent business men in Kampala, plus other people, believed to be collaborating with the Plaintiff, a former officer in Kampala City Council and who is the owner of the forest where the uniport containing machines for making the bombs was discovered. The article further alleges that the operatives had said that the evidence received from near Seeta in the plaintiff's forest indicated that Plaintiff and Muwanguzi had some rebels they were training to plant bombs. Some of the suspects who had been trained by Plaintiff and Muwanguzi stated that they were being taught in Church during the day and when it comes to night they proceed to the forest where they are trained in rebel activities.

The allegations about the plaintiff in the two articles clearly impute of him to be involved in committing treason, misprision of treason; planning murders, abductions and kidnappings; or being an accessory to the same. These are heinous crimes under the Penal Code Act, Cap 120, some carrying a mandatory sentence of death. The articles thus portray the Plaintiff as a criminal.

On the first issue therefore, Court finds that the words in the two articles were defamatory of the plaintiff in their natural and ordinary meaning.

The second framed issue is whether the Plaintiff suffered any damage as a result of the defamation.

Plaintiff's evidence is that he is aged 57 years, a graduate of Makerere University, was Town

Clerk, Kampala City Council, 1989-1994, Director, Project Implementation Unit, Ministry of Education, Uganda Government; and Administrator East Timor, under United Nations employment. He is currently a businessman and proprietor of a recreation facility in Kiwanga, Mukono District. He is a family person with a wife and children.

On reading the two “Bukedde” newspaper articles, Plaintiff stated that he and his family were destabilised and worried. Relatives and friends shunned him, more so as he had expected many of them to come and welcome him on his recent return from East Timor. He lost public esteem. The public shunned his recreation facility. He was traumatised. Chances of his being further employed diminished. According to him, he became merely a shadow of himself.

On demanding an apology, the Defendants at a meeting with him at their offices, promised to publish his side of the story. They never did so. Instead on 06.02.03, the Bukedde newspaper published his photograph without his full version of the story or an apology.

Plaintiff called Dr. Colin Sentongo, as a witness. He, the witness, is former Chairman, Makerere University Business School and is now an education consultant. He is a childhood acquaintance of the Plaintiff. The witness was shocked at reading the story concerning the Plaintiff whose character he regarded very highly. He concluded that Plaintiff’s reputation had been tarnished.

Mr. Angel Lubowa testified for defence. He is a journalist who was sent by the Defendants to cover the operation of the Wembley Security Operatives, and in the process he wrote and compiled the articles complained of. He maintained the contents of the articles were true. He had sought confirmation of the truth of the contents of the articles from the Plaintiff, but without much success, until eight months later, when Plaintiff denied being involved in the alleged acts.

PW2 Simbwa John also testified for defence, that he was in charge of the operation of the Wembley Operatives that gave rise to the newspaper articles. The information he had was that Plaintiff was a rebel collaborator. He is the one who supplied to DW1 Angel Lubowa, the information the subject of the newspaper articles complained of.

DW1 and DW2 did not state or explain to Court what was the source of the information and why they believed the information that the Plaintiff was a rebel collaborator was true. They did not also justify why they found it necessary to have the allegations of the Plaintiff being a rebel collaborator published in the Bukedde newspaper, and then seek to establish their truth from the Plaintiff after the publication had been done.

In an action for defamation, justification as a defence, fails if words not proved to be true, do materially injure the Plaintiff's reputation. See **Halsbury's laws of England: 3rd Edition, Volume 24 page 47.**

While the Defendants have established that it was true to report that the Plaintiff had been arrested and questioned by state operatives at the material time, the Defendants have not established as to the truth that the Plaintiff was a rebel, was training rebels in bomb making, was financing rebels or that he had been found with bomb making materials.

These falsehoods were the matters reported, about the Plaintiff, in the two articles.

Therefore the plea of Justification fails by reason of the falsehood of the said allegations against the Plaintiff.

The defendants also rely on the pleas of fair comment, privileged occasion and that the publication was on a matter of great public importance to justify their contention that the Plaintiff did not suffer any damage; or if he did, he is not entitled to any compensation by reason thereof.

As to the plea of fair comment, a statement that is based on falsehoods cannot constitute fair comment. The defendants thus cannot take protection under the plea of fair comment as what they published of the plaintiff was false.

Whether the publication was on a privileged occasion, Court finds that it was not. A privileged

occasion arises if a communication is of such a nature that it could be fairly said that those who made it had an interest in making the same, and those to whom it was made had a corresponding interest in having it made to them: See:- **Hunt Vs. Great Northern Railway Co. [1987] 2 QB 189.**

The defendants were not under any duty to make such a false communication, and the public had no corresponding interest in having a falsehood communicated to them. This plea also fails.

It is true that newspapers in east Africa have a duty to keep the general public informed of matters of public concern or interest: See: **SHAH VS UGANDA ARGUS [1972] EA 80**, such a duty however, must not be carried out at the expense of reporting what is factually incorrect. In this case public importance did not in any way justify the reporting of falsehoods against the Plaintiff.

The second issue is thus answered that the Plaintiff suffered damage as a result of the publication.

As to the remedies available to the parties, which is the third issue, the Plaintiff having succeeded on the first and second issues is entitled to general damages.

In assessing the damages Court considers the motive and conduct of the defendant. Malice, if proved to have motivated the defendant in publishing the article, aggravates, and lack of it, lessens the damages. The standing of the Plaintiff in society has also to be considered. A high status in society attracts higher damages than a low status. The size of the circulation of the defamation is also relevant. Damages are more when circulations is large and smaller when circulation is restricted. **HERALD VS. MACGREGOR [1929] 4 CLR 268.**

The nature of the accusation against the Plaintiff also affects the damages awardable. Accusations of commission of serious crimes or gross misconduct demand for heavy damages, while mild, not highly offensive allegations will attract less sums of damages.

A sincere, well timed and prominently published apology will lessen damages, while the refusal to render an apology in case of a false defamation will call for greater damages.

In this case, Plaintiff has not established that defendants were motivated by malice to cause the publication.

The Plaintiff has however proved that he is of a high status in society and that the allegations published of him were of a very serious nature. It is also established that no apology was published, though some attempt was made to let Plaintiff state something about the allegations.

There was no direct evidence as to the circulation of the “Bukedde” newspaper; a luganda daily language newspaper, thus with circulation restricted to those who can read and understand Luganda.

In **Eriab Wavamunno Vs. Teddy Ssezi Cheeye [1992-93] HCB 137**, general damages of shs.3,000,000/= were assessed for a defamation of a prominent businessman of local and international repute, to the effect that he had gone to a Café, drunk tea and beer, on different occasions, worth shs. 5,700/= but failed to pay for the same. Court did not order these damages to be paid to Plaintiff in the suit as he failed to lead evidence as to the effect of the publication upon those who read it.

A sum of shs.2,000,000/= general damages was awarded in **H.C.C.S No. 27/97; Major Godfrey Segawa Vs. Editor, the Crusader Newspaper: [1998] 1 KALR 1**. The defamation was that Plaintiff, an army officer, had commanded his forces to destroy food crops of ninety families of ordinary people. Defendant refused to offer an apology. The defamation was admitted at the trial.

The **Uganda Supreme Court in Richard Kayijuka and 2 others Vs. Teddy Seezi Cheeye : [1995] II KALR 30**, where the defamation was that the Plaintiffs, were corrupt criminals and thieves who transacted in dubious businesses, confirmed general damages of shs. 4,800,000/= to

second Plaintiff, a director in a company, and shs.2,500,000/= to third plaintiff, a company.

This Court awarded shs.6,000,000/= to one who had been a third Deputy Prime Minister and previous Attorney General, and who had a political career spanning 30 years, for a serious defamation in **Kakyama Mayanja Vs. Mulengera Newspaper: H.C.C.S No. 490 of 1990.**

A sum of shs.4,500,000/= general damages was awarded in **H.C.C.S. No. 459 of 1990: WANUME KIBEDI VS FAD**, for a serious defamation against Plaintiff: a former foreign Minister and Uganda's permanent representative to the United Nations.

On the evidence adduced, and having considered all relevant aspects of this case, and bearing in mind the Court awards referred to, the Court awards to the Plaintiff general damages of shs.3,000,000/=; plus interest thereon at the Court rate from the date of Judgment till payment in full.

The plaintiff is also awarded the costs of the suit.

Remmy K. Kasule

Ag. Judge

25th August 2006

