

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**(CIVIL DIVISION)**

**CIVIL SUIT NO. 217 OF 2013**

**SAMUEL EJIDRA** ..... **PLAINTIFF**

**VERSUS**

- 1. NEW VISION PRINTING AND PUBLISHING COMPANY LIMITED**
- 2. THE EDITOR IN CHIEF OF NEW VISION NEWSPAPER** ..... **DEFENDANTS**

**BEFORE: LADY JUSTICE LYDIA MUGAMBE**

**JUDGMENT**

**A) Introduction**

1. The Plaintiff’s claim against the Defendants jointly and severally is for general, aggravated, punitive and exemplary damages for defamatory libel, a permanent injunction and costs of the suit.
  
2. The Plaintiff claims that on 2<sup>nd</sup> July 2013, the Defendants jointly and severally published or caused to be published an article on page 8 of the new vision newspaper about the Plaintiff under the headline “Arua clan feud displaces 600.” The said article contained malicious and grossly defamatory statements that imputed and continue to impute fraud and fraudulent acquisition of land on the Plaintiff who is a respectable member of society.

3. The said article was malicious, wanton, grossly reckless and intended to malign the otherwise good reputation of and the person of the Plaintiff for which the Defendants should be ordered to pay damages.
4. In their written statement of defence, the Defendants aver that any such news items published on 2<sup>nd</sup> July 2013 was published on an occasion of qualified privilege as the Defendants have a moral or social duty to communicate to the public various issues arising in society. The article in issue was among others a fair and accurate broadcast of a dispute arising from accusations made against the Plaintiff by members of the community. The news consisted of allegations of fact in so far as they were substantially true and justified and the words complained of did not bear any innuendo and were incapable of bearing meanings defamatory of the Plaintiff as alleged or at all.
5. The Plaintiff is represented by Mr. Renato Kania of M/s. Kania & Alli Advocates & Solicitors and the Defendants are represented by Mr. Tonny Kirabira from the Legal department of New Vision Printing & Publishing Co. Ltd.
6. The issues agreed for resolution at the scheduling conference are:
  - i) Whether the article published by the Defendants on page 8 of the New Vision newspaper of 2<sup>nd</sup> July 2013 is defamatory of the Plaintiff?
  - ii) Whether the Defendants published the article “Arua clan feud displaces 600” on page 8 of the New Vision newspaper on occasion of qualified privilege.
  - iii) Whether the article was a fair and accurate broadcast of a dispute arising from accusations made against the Plaintiff by members of the community.
  - iv) Whether the defence of justification is available to the Defendants.
  - v) Remedies available.

**B) Law**

7. In **Black's Law Dictionary 8<sup>th</sup> Edition** 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.

8. 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 v. Bidco Uganda Limited HCCS No. 715 of 2005** where Bamwine J (as he then was), relied on **Sim v. Stretch [1936] 2 ALL ER 123 A.C**, where Lord Atkins 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 v. John Jaramoji Oloya HCCS No. 114 of 2009.
9. In **Adam v. Ward [1917] AC 309 at 334, Lord Atkinson** held that “a privileged occasion is, in reference to qualified privilege, an occasion where the person who makes the communication has an interest or a duty, legal, social or moral, to make it to the person to whom it is made, and the person to whom it is so made has a corresponding interest or duty to receive it. This reciprocity is essential.”
10. In **Rev. Stephen Besigye v. Hon. Amama Mbabazi HCCS No. 104 of 2002**, it was held that “for a defence of qualified privilege to succeed, the statements must be shown to have been made honestly and without any indirect or improper motive which in law is referred to as malice. A statement is malicious when it is made for some purpose other than the one for which the law confers the privilege of making it. In proper cases of qualified privilege the defendant is protected even if his language was violent or excessively strong, having regard to all the circumstances, he might honestly and on reasonable grounds have believed that what he said was true and necessary for his purpose even though in fact it was not so.” See **Kimber v. Press Association (1873) 1 QB 65**.

11. In **Dr. Specioza Wandera Naigaga Kazibwe v. The Independent Publications Ltd & Ors HCCS No. 105 of 2010**, it was held that “to succeed in the defence of fair comment, the Defendant must show that the word (or nature of words) are a comment and not a statement of fact, that there is a basis of fact (which is true) for the comment complained of and that the comment is of the fact of legitimate public interest. Per **Ntagoba Vs Editor in Chief of the New Vision News Paper & Anor [2004] 2 EA, Godfrey Amanyire Vs The New Vision [1999] KALR**. I also agree with **Salmon & Heuston’s The Law of Torts 21st Ed at page 181** that it is essential to the plea of fair hearing comment that the matter must appear on the face of it to be a comment and not a statement of fact.”
12. In **Blaze Babigumira v. Hanns Besigye HCCS NO 744 OF 1992** (un reported) it was held, that “the defence of justification means that the Defendant is contending that the words complained of were true. The burden of proof is on the Defendant to prove that in fact these words were true.”

### **C) Analysis**

13. I have carefully considered all the pleadings and submissions of all the parties. It is clearly demonstrated to my satisfaction that at the Opia Parish security meeting of 5<sup>th</sup> July 2013, the Plaintiff was accused by the residents of grabbing people’s land together with some district leaders. The first Defendant newspaper ran this story in its publication of 2<sup>nd</sup> July 2013. The story was titled “Arua clan feud displaces 600.” Having looked at the meeting minutes and the newspaper article, I find that the story was published in an accurate, unbiased and fair manner. I therefore have no basis to say that the publication was malicious or defamatory.
14. Considering that land grabbing is an issue of public interest around the country, the published article highlighting this problem in Arua district was justified. The first Defendant as a national newspaper had a duty to publish a story of this nature and the public which is the recipient needed to know the information on land grabbing which it contained because land grabbing is a serious vice in the country. The publication is therefore also protected under qualified privilege as enumerated above.

15. Based on the above, I am disinclined to consider that in having this story published, the writer, the second Defendant or any agent at the first Defendant was acting maliciously or sensationally to the prejudice of the Plaintiff in any way.

16. Accordingly issue 1 is resolved in the negative and issues 2,3 and 4 are resolved in the affirmative. The Plaintiff's suit is dismissed with costs for the Defendants.

I so order.

Lydia Mugambe  
Judge  
17<sup>th</sup> May 2019