

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPEAL NO. 10 OF 2011

[Arising out of High Court at Kampala Civil Appeal No. 29 of 2009 (Musoke- Kibuuka,J.), itself arising out Grade I Court of Chief Magistrate's Court, Nakawa, [Civil Suit No. 1177 of2007]

Lubanga Jamada:..... Appellant

VERSUS

Dr. Ddumba Edward :..... Respondent

Coram: Hon. Mr. Justice Remmy Kasule, JA

Hon. Justice Solomy Balungi Bossa, JA

Hon. Justice Professor Lilian Tibatemwa-Ekirikubinza,JA

JUDGMENT OF REMMY KASULE, JUSTICE OF APPEAL

The appellant originally successfully sued the respondent in the Grade 1 Court, Nakawa Chief Magistrates Court for defamation to the effect that the respondent: had asserted and **it had been** published that the appellant **was** insane in **the** Daily Monitor Newspapers of 22.07.07, and 21.10.07 as **well as the** Bukedde **Newspaper** of 28.09.07. The Grade I Court found **that the appellant** had been defamed and awarded him general damages of shs. 20 million payable by the respondent.

The Respondent appealed to the High Court (Musoke-Kibuuka, J.) and the said Court allowed the appeal, set aside the Judgment of the Grade I Court and appellant was ordered to pay the costs of the appeal and those in the Magistrate's Court. The appellant then lodged this appeal to this Court.

The grounds of appeal are:

1. The learned trial Judge erred in law and in fact when he held that the words “mentally ill” were not defamatory of the appellant, capable of lowering him in the eyes of reasonable thinking members of the society.

2. The learned trial Judge erred in law and fact when he based on the appellant’s transfer to Masaka, his rejection from there, the Internal Probe Committee, reference of the appellant’s case to Permanent Secretary, Ministry of Health and dispatch of the appellant to Butabika Hospital to justify his finding that the words uttered by the Respondent about the appellant were not defamatory of the appellant.

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3. The learned trial Judge erred in law and fact when he held that the alleged defamatory words were prompted by the appellant himself, who had used the same during his interview with Chris Obore at Butabika Hospital much earlier before the Respondent used them.

4. The learned trial Judge erred in law and fact when he held that the Respondent uttered the alleged defamatory words while carrying out his public duty of defending Mulago Hospital, thereby coming to a wrong conclusion that the Attorney General should have been sued”.

At the hearing of this appeal learned Counsel Lubega Robert represented the appellant, while Counsel Kasozi Joseph was for the respondent.

Consideration of Ground 1.

Submissions of appellant’s Counsel

Counsel submitted that the High Court Judge on the first appeal through his personal (Judge) opinionated reasoning, not based on the evidence before him, defined the words “mentally ill” basing on his personal sentiments and convictions, to mean a natural trend of life as the word "illness" per se does not defame anybody in the absence of extrinsic evidence showing injurious meaning or effect.

In doing this the Judge was in error as he regarded what was essentially “orbiter dictum” to be “ratio decidendi” for his decision. It was also wrong of the trial Judge to assert that such extrinsic evidence was necessary when the appellant’s claim was based on a libel (permanent written defamation) and not slander (oral defamation). It was enough fact that the respondent had written letters that were circulated around Mulago Hospital and had also caused publication in the newspapers upon which the suit was based. What mattered is what the right thinking members of society thought about the appellant after

reading the publications and not the fanciful theories of the learned Judge. Counsel prayed for the ground to be allowed.

Submissions of Counsel for Respondent

Counsel submitted that regarding ground 1 and the rest of the grounds of appeal, that the appeal offended sections 72 and 74 of the Civil Procedure Act as, being a second appeal, it is not restricted to grounds of law only.

Specifically with regard to ground 1 Counsel reasoned that the appellate High Court Judge, being the appellate Judge of first instance, was entitled to evaluate the evidence adduced at trial and to draw his own inferences and conclusions therefrom. Under Section 56 of the Evidence Act, he was entitled to take judicial notice of the fact that it is normal for human beings to get sick, even mentally sick, and for one to be stated to be sick is not defamatory on its own, unless extrinsic evidence is brought to show the injurious effect of such words. Counsel prayed that this ground be dishallowed.

Grounds 2 and 3:

These grounds were argued together Submissions of Counsel for appellant

Counsel referred to the statement in the newspaper alleged to have been made by the respondent of the appellant to the effect that:

He has a mental illness which is still being investigated at Butabika Hospital” as showing that the respondent declared the appellant to be mentally sick before the official position of Dr. Tom S. Onen of Butabika Hospital who examined the appellant, had been known. Therefore respondent had pre-determined motives against the appellant.

This conduct of the respondent lowered the appellant’s reputation in the eyes of the right thinking members of the community. The learned Judge ought to have found that malice had been established against the respondent.

The learned Judge was also wrong to hold that the respondent was vindicated from defaming the appellant simply because the appellant had himself described himself as mentally sick in an interview with Chris Obore the Monitor newspaper reporter when they met at Butabika Hospital. By evaluating the evidence that way the Judge acted on his own theories and personal convictions thus causing a miscarriage of justice. These two grounds ought therefore to be allowed.

Submissions of respondent’s Counsel

Counsel still maintained these two grounds not to be of law and thus wrong in law.

The respondent, Counsel submitted, made the statement he made of the appellant because the appellant's problems as regards his mental status had been of long standing and therefore it was not necessary for the respondent to first have prior findings before making the statement that he made. Counsel called upon Court to find that the respondent was in a way defending himself and Mulago hospital, of which he was employed at the material time, as the Executive Director. Counsel called upon Court to dismiss both grounds.

Ground 4

Submissions of appellant's Counsel

It was submitted that Section 3(1)(a) of the Government

Proceedings Act did not apply to the respondent for he (respondent) was not, at the material time, spokesperson of the Ministry of Health and/or Mulago Hospital. He was not acting on behalf of the Government when, the alleged defamation is said to have been made. The respondent acted as an individual in his own. Personal capacity and he is thus personally accountable for his actions;

Being a doctor, the respondent's utterances about the appellant reported by the newspapers that:-

He has a mental illness which is still being investigated at Butabika Hospital" was believed by the right thinking members of the community who read the newspaper article and this lowered the appellant's reputation in their eyes. The doctrine of vicarious liability is not applicable in the case of the respondent. Ground 4 therefore ought to be allowed.

Submissions of Counsel for the respondent

It was submitted that Section 3(a) of the Government

Proceedings Act protected the respondent as he was sued as Director of Mulago Hospital. As Chief Administrator he spoke what he spoke on behalf of Mulago Hospital. The Government was vicariously liable on the facts of the case for the alleged tort, if any, committed by the respondent. Counsel relied on the case of **Lutaaya vs Attorney General [2004] 2 EA 155 (SC)**. Counsel prayed that this ground be too dismissed.

Resolution of the grounds of appeal

This is a second appeal. The Jurisdiction to entertain such an appeal is conferred and prescribed

by statute. In **Supreme Court (Uganda) Civil Appeal No. 31 of 2013: Beatrice Kobusingye v Fiona Nyakana**, it was held that **Section 72(1) (formerly S.74(1) of the Civil Procedure Act** governs and provides the jurisdictional basis for second civil appeals to this Court. The Section provides, as far as it is relevant to this point, that:

“72. Second Appeal (1) an appeal shall lie to the Court of Appeal from every decree passed in appeal by the High Court, or any of the following grounds, namely that

- (a) the decision is contrary to law or some usage having the force of law,**
- (b) the decision has failed to determine some material issue of law or usage having the force of law,**
- (c) a substantial error or defect in the procedure provided by this Act or by any other law for the time being in force, has occurred which may possibly have produced error or defect in the decision of the case upon the merits”.**

Section 74 of the same act prevents any second appeal to lie to the Court of Appeal except on the grounds set out in Section 72.

It follows therefore that the grounds of appeal in case of a second civil appeal to this Court must be those of law and not grounds of fact or mixed law and fact. Accordingly part IV which consists of Rules 75 up to 102 of the Judicature (Court of Appeal) Rules, SI 13- 10 that: govern the procedure of Civil Appeals to the Court of Appeal must be applied and interpreted in accordance with and in strict compliance with Sections 72 and 74 of the Civil Procedure Act as far as second civil appeals to the Court of Appeal are concerned. In particular Rule 86 of the said Rules which provides for the contents of the Memorandum of Appeal in an appeal that is civil in nature must be applied in strict compliance with the said Sections 72 and 74 of the Civil Procedure Act.

It is necessary to point out that while Rule 86 provides for the contents of the Memorandum of Appeal in a Civil Appeal, whether

first or second Civil Appeal, Rule 66(2) caters for the contents of a Memorandum of Appeal in a Criminal Appeal. The substantive law the contents in a Memorandum of Appeal in a second Civil Appeal must comply with is Sections 72 and 74 of the Civil Procedure Act, while, as regards a second Criminal Appeal, the substantive law to be complied with is Section 45 of the Criminal Procedure Code Act. It is to this Section that Rule 66(2) must conform with as to the contents of a Memorandum of Appeal in a second Criminal Appeal.

The above distinction is necessary because in KOBUSINGYE VS NYAKANA SCCA 5/04: [2005] EA 110, possibly inadvertently, the Court appears to have indicated that Rule 66(2) [then 65(2)] of the Rules of this Court regulates the formulation of the grounds of appeal in both Criminal and Civil Appeals, whether first or second appeals. The true position in law is that, in the Court of Appeal, Rule 86 regulates the contents of the Memorandum of Appeal in Civil Appeals while Rule 66(2) deals with contents of a Memorandum of Appeal in Criminal Appeals only.

Rule 66(2) States:

“The Memorandum of Appeal shall set forth concisely and under distinct heads numbered consecutively, without argument or narrative, the grounds of objection to the decision appealed against, specifying, in the case of a first appeal, the points of law or fact or mixed law and fact and, in the case of a second appeal, the points of law, or mixed law and fact, which are alleged to have been wrongly decided, and in a third appeal the matters of law of great public or general importance wrongly decided”.

Rule 86(1) on the other hand provides:

“A Memorandum of appeal shall set forth concisely and under distinct heads, without argument or narrative, the grounds of objection to the decision appealed against, specifying the points which are alleged to have been wrongly decided, and the nature of the order which it is proposed to ask the Court to make”.

Rule 86(1) does not have in its body the words found in Rule 66(2) that:

**“.....in the case of a second appeal, the points of law,
Or mixed law and fact, which are alleged to have been wrongly decided ”**

The impression given by the words reproduced above of Rule 66(2) is that the Rule makes allowance for a Memorandum of Appeal in a second appeal to be based on grounds of mixed law

and fact.

Such an impression is wrong in law. The substantive law governing second appeals in criminal matters is Section 45(1) of the Criminal procedure Code Act, Cap. 116. It provides:

“45 second appeals

(1) Either party to an appeal from a Magistrate’s Court may appeal against the decision of the High Court in its appellate jurisdiction to the court of appeal on a matter of law not including severity of sentence, but not on a matter of fact or mixed fact and law.’

Rule 66(2) of the Rules of this Court being a subsidiary legislation, cannot override a provision of the substantive law, in this case, Section 45 of the Criminal Procedure Act.

Were it to be held that Rule 66(2) also applies to second Civil Appeals, which in law is not the case, then the said Rule 66(2) being a subsidiary legislation cannot override Sections 72(1) and 74 of the Civil Procedure Act, Cap 71, the substantive law governing second appeals of a civil nature to this Court.

Recourse cannot also be had to Rule 32(2) of the Rules of this Court which provides that:-

“32(1).....

(2) On any second appeal form a decision of the High Court acting in the exercise of its appellate jurisdiction, the Court shall have power to appraise the inferences of fact drawn by the trial Court, but shall not have discretion to hear additional evidence”.

First, as is the case with Rules 66(2) and 86(1), this Rule [i.e. 32(1)] being a subsidiary legislation must be interpreted and applied in compliance with and subject to the substantive **law** which is Sections 72(1) and; 74 of the Civil Procedure Act, in the case of a second civil appeal to this Court, and Section 45(1) of the Criminal Procedure Code Act, in the case of a second criminal appeal to this Court. The substantive law, whether civil or criminal, enjoins that the grounds of appeal in a second appeal must

be on points of law.

Second, the Rule provides no more and no less than that, in a second appeal, whether civil or criminal, the second appellate Court has power to consider the facts of the case as well as inferences there from as might have been drawn by the trial Court, where appropriate, in determining a point of law, namely whether the relevant law was rightly identified and applied or whether the law was wrongly applied in arriving at the decision that was arrived at.

There is therefore nothing in this Rule (i.e. 32(2)) vesting jurisdiction in the appellate Court entertaining a second appeal from a decision of the High Court, acting in the exercise of its appellate jurisdiction, to entertain an appeal based on grounds of fact or mixed fact and law. That jurisdiction is conferred by Sections 72(1) and 74 of the Civil Procedure Act in case of a second civil appeal, and Section 45(1) of the Criminal Procedure Code Act, in case of a second criminal appeal.

The correct position of the law therefore is that Rule 66(2) regulates the contents of a memorandum of appeal in criminal appeals, both first and second, while Rule 86 regulates the contents of a memorandum of appeal in civil appeals, both first and second. The application of Rule 66(2) must be in strict compliance with Section 45(1) of the Criminal Procedure Code Act, while that of Rule 86 must be in strict compliance with Sections 72(1) and 74 of the Civil Procedure Act. Both the stated Civil Procedure Act and Criminal Procedure Code Act provisions mandatorily provide that second appeals, whether civil or criminal, must be based upon grounds of law and not of facts or mixed law and fact.

The above position has been held by both the Supreme Court and Court of Appeal to be the correct position of the law in a number of Court decisions. The Supreme Court (Uganda) in *MITWALO MAGYENGO VS MEDADI MUTYABA*, SCCA 11/96 (25.03.98), which was a second appeal of a civil nature involving a dispute over kibanja land, held that Section 74(1) [now Section 72(1)] of the Civil Procedure Act precludes second appeals that are not based on grounds of points of law, but are rather based on findings of fact or mixed law and fact.

In ***Kobusingye vs Nyakaana (Supra)***, the Supreme Court (Uganda) considered in detail Sections 74(1) and 75 [now 72(1) and 74] of the Civil Procedure Act and held that the same applied to

Civil Proceedings before the Court of Appeal and vested in court jurisdiction as regards second appeals of a civil nature.

. The Supreme Court clearly asserted in that case that second appeals to the Court of Appeal had to be on points of law and not on matters of fact or mixed law and fact.

The Court of Appeal in Criminal Appeal No. 67 of 200S:

Nalukenge Mildred vs Uganda (27.05.2014) (unreported) held:

“A close look at the Memorandum of Appeal clearly indicates that the two grounds of appeal set out earlier in this judgment are in respect of matters of mixed law and fact.

The above provision of law [i.e. S.45(1) of the Criminal Procedure Code Act] specifically prohibits an appeal such as this one based on matters of mixed law and fact”.

Finally, in P.C. Wabwire Anthony vs Uganda, Criminal Appeal

No. 00152 of 2009 (25.03.2015) (unreported) this Court held:

“Our perusal of the Memorandum of Appeal indicates that the two grounds of Appeal raised by the Appellant raise matters of mixed law and fact which renders the Memorandum of Appeal incompetent”.

An appeal on a point of law arises when the Court, whose decision is being appealed against, made a finding on the case before it, but got the relevant law wrong or applied it wrongly in arriving at that finding. The Court reaches a conclusion on the facts, which is outside the range that the said Court would have arrived at, had that Court properly directed itself as to the applicable law.

The error must be as a result of misapplication or misapprehension of the law. A manifest disregard of the law is an error of law. A question of law is about what the correct legal test is, as contrasted with a question of fact, which is concerned with what actually took place between the parties to the dispute. When the issue is whether the facts satisfy the legal test, then a question of mixed law and fact arises.

Where on a second appeal in a Civil Cause, the grounds of appeal are not of law but are of findings of fact or

mixed law and fact, and then such grounds are wrong in law and are either abandoned **by** the appellant or are struck out by Court: See: **Mitwalo Magyengo v Medad Mutyaba, (Supra)**. See also the Kenya case of **MAINA VS MUGIRIA [1983] KLR 78**.

The respondent in his supplementary reply as well as in the submissions of his Counsel to Court submitted that the appellant's appeal offended the provisions of Sections 72 and 74(1) of the Civil Procedure Act as it was based on grounds of fact and/or mixed law and fact. The appellant made no attempt to make any reply to this contention either through his pleadings or submissions of his Counsel.

An examination of the appellant's Memorandum of Appeal shows that the same has four grounds and all the four grounds assert that the High Court appellate Judge erred in law and in fact in reaching the decision that he reached. There is not a single ground that is based on a point of law only. Indeed throughout the submission on each and every ground of appeal, Counsel for appellant submitted that the High Court Judge had erred on matters of fact or those of mixed fact and law.

The main complaint of the appellant in ground 1 is that the learned appellate Judge of the High Court was wrong, while reevaluating the facts of the case to arrive at the conclusion that the words "mentally ill" allegedly uttered by the respondent were not defamatory of the appellant. Essentially this complaint is a question fact as it calls for looking at the evidence adduced at trial as to the circumstances and conditions under which the said, words were uttered and then decide whether, given those circumstances, the words defamed the appellant.

It was not disputed that the learned Judge, as the first appellate court, had powers in law to re-evaluate the evidence adduced at trial, and make his own findings and draw his own conclusions being conscious, of course, that he did not have the opportunity which the trial Court had, to see and judge the demeanor of the witnesses: See: **KIFAMUNTE HENRY V UGANDA: CRIMINAL APPEAL NO. 10 OF 1997: (SC)**, **OKEMO VS REPUBLIC [1972] EA 32** and **PANDYA VS R [1957] EA 336**.

The learned appellate Judge re-evaluated the evidence. He concluded that on the evidence adduced at trial, the actual words allegedly constituting the alleged defamation of the appellant had not been specifically pleaded and had not been clearly brought out **in** the evidence. Further, none of the witnesses of the appellant had asserted that in each ones judgment the reputation of the appellant had been lowered.

The Judge then found as a proved fact, on the basis of the evidence of the appellant himself, that of Dw3(Dr. Ssegane Musisi) and Dw4 (Dr. Onen), that the appellant had been medically examined and had been found to be suffering from a mental or personality disorder and that this problem had been of long standing.

The appellate Judge, also found that the respondent himself had, while at Butabika Hospital for medical examination of his mental condition, held a press conference with a reporter of the Monitor Newspaper whereby he himself (appellant) introduced the issue of his mental condition to this newspaper reporter by complaining that his employer, Mulago Hospital Administration, was persecuting him by falsely alleging that he was mentally sick and thus causing him to be confined at Butabika Mental Hospital. It is after the holding of that press conference that the reporter, one Chris Obore, of the Monitor Newspaper, communicated by telephone to the appellant who was, at that material time serving as Executive Director thus the head of administration of Mulago Hospital, to get the version of Mulago Hospital Administration about what the appellant had complained about. It is in answer to that call, that the respondent replied to the said newspaper reporter to the effect that the appellant had a problem of mental illness which was still being investigated at Butabika hospital.

The Judge found as a fact, on review of all the evidence, that, given those circumstances, the natural and ordinary meaning that a reasonable person would understand of the words **“mad” or “mentally ill”**, without more, is that:

“For a human being, being ill, whether physically or mentally or psychologically, is simply part of the natural trend of life.

illness per se does not defame anybody.....[It] is a natural event in the span of life”.

The appellate Judge thus concluded on the basis of the evidence as a whole adduced at trial that the respondent succeeded on the defence of justification.

Given the fact that the appellate Judge reached the conclusion he reached basing on re-evaluation of matters of fact by- considering all the evidence that was before him, ground 1 must fail as it is based on questioning facts, or mixed facts and law and not a point of law.

Grounds 2 and 3 are also worded and were submitted upon entirely as matters of fact. Whether or not the respondent declared the appellant to be suffering from a mental illness before Dw4 (Dr. Onen) who examined the appellant at Butabika Hospital had issued the official report about the appellant, and whether or not this amounted to existence of a pre-determined motive in the respondent against the appellant are all issues of fact. The appellate Judge on re-evaluating all the evidence concluded

that improper motive on the part of the respondent had not been proved and further, that given the circumstances of the case as borne out by the evidence that was adduced, it was irrelevant whether or not whether the appellant was actuated by improper motive when he said that the appellant was suffering from mental illness.

The Judge, having appreciated the fact that it was the appellant who had first communicated to the reporter, of the Monitor Newspaper, complaining that his employer, Mulago Hospital administration, was mistreating him by referring him to Butabika Hospital so that his mental condition is medically examined, found as a fact that the respondent, as the then Executive Director of Mulago Hospital, was justified to communicate with, the said reporter. This is because it was necessary that the respondent explains the matters relating to the mental condition. of the appellant, since it is those matters that had led the appellant to be admitted at Butabika Mental Hospital. These, too, were matters of fact and not points of law, and as such grounds 2 and 3 based on facts and/or mixed law and facts are incompetent and both must fail.

In ground 4, the appellant questioned the appellate Judge's finding of fact that, given the facts of the case as brought out by the evidence adduced at trial, the respondent uttered the words complained of in the course of and within the scope of his employment as Executive Director of Mulago Hospital, at the material time.

The above set of facts was so found by the appellate Judge on re-evaluating the whole evidence adduced at trial. This evidence was to the effect that the respondent was Executive Director of Mulago Hospital at the material time and that he stated the words alleged to be defamatory in answer to what the appellant had stated by complaining to the press, that is the Monitor Newspaper, that he was being persecuted by his employer, Mulago Hospital Administrators, by referring him to Butabika Hospital for examination on the allegation that he was suffering from some mental illness or disorder;. This was purely a finding of fact. ?

The issue of law and fact that arose is whether having found as a fact that the respondent in the course of and within the scope of his employment as Executive Director, Mulago Hospital Section 3(l)(a) of the Government Proceedings Act, Cap.77 makes the Government of Uganda liable in tort. The Section provides:

“3. Liability of the Government in tort.

(1) Subject to this Act and Section 4 of the Law Reform (Miscellaneous Provisions) Act, the Government shall be subject to all those liabilities in tort to which, if it were a private person of full age and capacity, it would be subject

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(a) in respect of torts committed by its servants or agents”.

It follows therefore that once it had been established as a fact that the respondent uttered the words that are said to constitute defamation of the appellant, in the course of and within the scope of his employment as Executive Director, Mulago Hospital, that the Government was liable for the said alleged defamation. This issue was one of mixed fact and law and not solely of a point of law. Accordingly ground 4 is also incompetent.

All the four grounds of appeal having been found not to have been, based on points of law only, but rather on matters of fact (grounds 1,2 and 3) and matter of mixed law and fact (ground 4) this appeal must fail.

Before taking leave of this appeal, I, too, like the appellate Judge observed in the first appeal, find that the plaintiff in **Civil Suit No.**

1177 of 2007 filed in the Chief Magistrate’s Court at Nakawa, did not comply with the law in that it did not state and give particulars

of the exact words that constituted the libel that the appellant complained of. In **NKALUBO V. KIBIRIGE [1973] EA, SPRY, VP,**

held with the concurrence of the rest of the Court members that:

"This is a gravely defective pleading. In all suits for libel the actual words complained of must be set out in the plaint. It was said by Lord Coleridge C.J., in HARRIS V WARRE (1879), 4 C.P.D. 125 at p. 128:

* *

“In libel and slander the very words complained of are the facts on which the action is grounded. It is not the fact of the defendant having used defamatory expressions, but the fact of his having used those defamatory expressions alleged, which is the fact on which the case depends”.

..... 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”.

The plaint, upon which the appellant’s claim was founded, paragraph 4(a) thereof, the appellant pleaded:

"That on the 22nd July 2007 a glaring headline appeared on the front page of the Daily Monitor depicting the nature of defamation and blackmail by Defendant against me for which I am seeking redress (copy of the said Daily Monitor issue is hereby attached and marked Annexure “A”).

It is noted that the words of the headline of that newspaper complained of were:

“Blackmail: Workers, Spouses use Butabika Mental Hospital to fix rivals. Mulago staff gives testimony”.

No other words are indicated in the plaint from this newspaper article as having been uttered by the respondent of and about the appellant and being defamatory of the appellant.

* *

In paragraph 4(b) of the Plaintiff the appellant refers and attaches a copy of another article in another newspaper, the Bukedde Newspaper of 28th September, 2007, a Luganda language daily “**highlighting the torture and injustice metted out**” by the respondent upon the defendant. There is no English translation of that article from Luganda into English that was attached to the plaintiff or was produced at trial. There is no indication in the plaintiff as to what words in that newspaper defamed the appellant.

Annexure “C” to the plaintiff, according to paragraph 4(c) of the plaintiff is a ‘ **related article in form of a letter from a concerned citizen**’ in the Sunday Monitor newspaper of October 21st 2007.

No words are pleaded in the plaintiff form this news paper as being defamatory of the plaintiff.

On the whole, nowhere in the plaintiff is it indicated as to which exact words the appellant complained of in those publications attached to the plaintiff as constituting the defamation, the subject of the appellant's complaint.

The appellate Judge in the High Court was thus justified to hold that the plaintiff filed in the trial Court by the appellant did not comply with an important procedural requirement. It was wrong in law of the trial Magistrate to proceed on such a defective plaintiff. It is appreciated that the appellant represented himself at trial in the Magistrate’s Court. That however is no excuse for not complying with a fundamental principle of pleading as to what constitutes a cause of action in a plaintiff.

In conclusion all the grounds of appeal having been found by me to be incompetent by reason of being wrong in law, I come to the conclusion that this appeal must fail. I strike out the same. I uphold the judgment of the High Court in **Civil Appeal No. 29 of 2009**.

Since Hon. Justice Solomy Balungi Bossa, JA, is also of the holding that the appellant’s appeal must fail, it is hereby order that this appeal be and is hereby struck out for being incompetent in law. The High Court Judgment in Civil Appeal No. 29 of 2009 is hereby upheld. The respondent is awarded the costs of this appeal, those in the High Court and those in the Grade I Magistrate’s Court, Nakawa.

It is so ordered.

Dated this 4th Day of **January 2016**.

HON. JUSTICE REMMY KASULE

JUSTICE OF APPEAL

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**THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CIVIL APPEAL NO. 10 OF 2011**

**LUBANGA JAMADA.....APPELLANT
VERSES.**

**DR. DDUMBA EDWARD,
DIRECTOR, MULAGO HOSPITAL.....RESPONDENT**

CORAM:

HON. JUSTICE REMMY KASULE, JA

HON. JUSTICE SOLOMY BALUNGI BOSSA, JA

HON. JUSTICE PROFESSOR LILIAN EKIRIKUBINZA TIBATEMWA, JA

JUDGMENT OF HONORABLE JUSTICE SOLOMY BBOSSA

I have had the benefit of reading in draft both judgments written by my brother Hon. Justices Remmy K Kasule and sister Professor Lilian E Tibatemwa, JA. I agree with Hon. Justice Kasule that this appeal should fail, for the reasons he has given in his judgment.

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I have nothing useful to add.

Dated this December, 18,2015.

Signed:

Solomy Balungi Bbossa

Justice of Appeal

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA (COA) AT KAMPALA

CIVIL APPEAL NO. 10 OF 2011

* *

(ARISING FROM CIVIL APPEAL NO.29 OF 2009 HOLDEN AT THE HIGHCOURT OF UGANDA)
(itself arising out of Civil Suit No. 117 of 2007)

BETWEEN

LUBANGA JAMADA

APPELLANT

VS

DR.DDUMBA EDWARD ::::::::::::::::::::::::::::::::::::::: *RESPONDENT*

CORAM : HON. MR JUSTICE REMMY KASULE, JA

HON.LADY JUSTICE SOLOMY BALUNGI BOSSA, JA

HON. JUSTICE PROF. LILLIAN EKIRIKUBINZA TIBATEMWA,

JA.

JUDGMENT OF HON. PROF. LILLIAN EKIRIKUBINZA TIBATEMWA, JUSTICE OF APPEAL.

I have read the judgment of the court drafted by my brother, Hon. Justice Remmy Kasule but I respectfully dissent from the analysis and the decision reached therein.

I note that this is a second appeal from the decision of the High Court at Kampala delivered by Hon. Mr. Justice V.F.Musoke-Kibuuka on the 27th October 2010 at 9.00 a.m wherein the Hon. Judge reversed the decision of the lower court dated 30/4/2009 vide civil suit No.1177/2007 by Her Worship Agnes Nabafu - Magistrate Grade 1 at Nakawa Court in a suit for general damages for defamation.

The brief background to this appeal is that: the appellant worked with Mulago Hospital for over 15 years from 1994 to 2009. In 2009, the respondent who was the Director of Mulago Hospital at the time wrote letters stating that the appellant was mad. The respondent was quoted in the Daily Monitor Newspaper dated 2nd July 2007 stating that the appellant was mentally ill. The appellant subsequently sued the respondent for defamation in the Chief Magistrate's Court which found in the appellant's favour and awarded him general damages of Ushs. 20,000,000/=. The respondent appealed to the High Court which overturned the decision of the Chief Magistrate's Court hence this present appeal.

The appellant in his Memorandum of Appeal raised the following four grounds:

1. The Learned appellate Judge erred in law and in fact when he held that the words "mentally ill"

* *

were not defamatory of the Appellant, capable of lowering him in the eyes of reasonable thinking members of society.

2. The Learned appellate Judge erred in law and in fact when he based on the Appellant's transfer, probe and dispatch to Butabika Hospital to justify his finding that the words uttered by the Respondent about the Appellant were not defamatory of the Appellant.
3. The Learned appellate Judge erred in law and fact when he held that the alleged defamatory words were prompted by the Appellant himself, who had used the same during his interview with Chris Obore at Butabika Hospital much earlier before the Respondent used them.
4. The Learned appellate Judge erred in Law and fact when he held that the Respondent uttered the alleged defamatory words while carrying out his public duty of defending Mulago Hospital thereby, coming to a wrong conclusion that the Attorney General should have been sued.

The appellant prayed that this Court allows his appeal and that the judgment for the respondent against the appellant in the High Court be set aside and the respondent pays the costs of this Appeal and in the Court below.

Both Counsel for the appellant and the respondent filed written submissions on the above grounds. Each ground was argued separately save for grounds 2 and 3 which were argued in tandem. This Court shall proceed to address the grounds as raised and argued in the written submissions of both parties.

Ground 1

On ground 1, it was submitted for the appellant that a statement is said to be defamatory if it lowers the person in the eyes of reasonable thinking men. Counsel for the appellant relied on the reknown case of **ODONGOKARA V ASTLES [1970] EA 374**. Counsel for the appellant further submitted that this being libel, there was no need for the appellant to adduce extrinsic evidence to show the injurious meaning or effect of the words "mentally ill" used by the respondent; that the Learned appellate Judge should have relied on the **ODONGOKARA CASE** (supra) and not have based his decision on opinionated reasoning not based either on law or evidence available before him. ,

In addition to this ground, it was further argued that the Judge did not consider the law and its elements on defamation in coming to his conclusion and instead based his judgment on baseless claims that the appellant's transfer to Masaka as well as his dispatch to Butabika Hospital were for his own good.

In reply, the respondent invited this Court to take judicial notice of the fact that, for a human being, illness whether physical, mental or psychological is simply part of the natural trend of life. The respondent relied on **Section 56 (2) of the Evidence Act Cap 6** which stipulates the facts which court must take judicial notice to include: "... matters of public history, literature, science or art, ..."

Counsel for the respondent also submitted that the appeal in general was barred by law under Section 74 (I) of the Civil Procedure Act Cap 71 which provides that: "Subject to section 73, no appeal to the Court of Appeal shall lie except on the grounds mentioned in section 72."

Section 72 provides that:

1. *Except where otherwise expressly provided in this*

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Act or by any other law for the time being in force, an Appeal shall lie to the Court of Appeal from every decree passed in appeal by the High Court, on any of the following grounds, namely that—

(a) The decision is contrary to law or to some usage having the force of law;

(b) The decision has failed to determine some material issue of law or usage having the force of law;

(c) A substantial error or defect in the procedure provided by this Act or by any other law for the time being in force, has occurred which may possibly have produced error or defect in the decision of the case upon the merits.

Counsel relied on the case of **MITWALO MAGYENGO V MEDAD MUTYABA SCCA 11 of 1996** to support his argument that on second appeal, the grounds raised should be of law and not against findings of fact.

The respondent's counsel further argued that the appellate Judge re-evaluated the evidence on record and subjected it to the test as set out in the case of **ODONGOKARA** (supra) and that the words "mad or mentally ill" in their natural and ordinary meaning were not defamatory. That this being so, it was necessary for the Plaintiff to plead an explanatory averment known as an innuendo to prove that the words were defamatory of him.

Analysis

This being a second appeal, I am guided by Rule 32 (2) of the Judicature (Court of Appeal Rules) Directions which provides that:

'On any second appeal from the decision of the High Court acting in exercise of its appellate jurisdiction, the court shall have power to appraise the inferences of fact drawn by the trial court, but shall not have discretion to hear additional evidence.'

Interpretation of this rule was given by the Supreme Court in **KIFAMUNTE HENRY V UGANDA CRIMINAL APPEAL NO. 10 of 1997**, that:

*"... it does not seem to us that except in the clearest of cases, we are required to re-evaluate the evidence like a first Appellate court. On second appeal, it is **sufficient to decide whether the first Appellate court on approaching its task, applied or failed to apply such principle**. This Court will no doubt consider the facts of the appeal to the extent of considering the relevant part of law or mixed law and fact raised on appeal." (Emphasis by this Court)*

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Having thoroughly read the submissions of both counsel, I do not agree with the respondent that this appeal is barred by law for raising findings of fact rather than law. The authority quoted by Counsel is distinguishable from the present appeal. The case of **MITWALO MAGYENGO V MEDADI MUTYABA (supra)** involved a dispute over kibanja land. The trial Chief Magistrate found in favour of the respondent and granted a permanent injunction and damages for trespass against the appellant. The appellant appealed to the High court who agreed with the Chief Magistrate and dismissed the appeal; hence the appeal to the Supreme Court on grounds against, findings of fact in the lower Court. The grounds **interalia** included the following: that the learned Judge failed to find that the appellant was settled on the said land in the kibanja long before the Plaintiff acquired ownership thereof and could therefore not have been a continuing trespasser; ground 6 stated that, the Learned Judge erred in upholding the trial Magistrate's finding that the appellant had all long been a trespasser on the suit land. The Supreme Court held that:

“Section 74 (1) Civil Procedure Act precludes second appeals against findings of fact made by the High Court acting as an appellate court. Therefore the grounds of appeal against findings of fact by the High Court would not be entertained.”

I find that the **MITWALO** case was decided the way it was after the appeal was challenged for raising findings of fact because the issue of physical presence on the land was a question of fact. Thus, in the instant appeal, the grounds in the memorandum of appeal could not be raised without reference to the facts because in determining whether the words “mentally ill” are defamatory, the circumstances (facts) and context' under which the statements were made must necessarily be referred to. In line with the **KIFAMUNTE** case (supra), this Court has had to “ **consider the facts of the** appeal to the extent of considering the relevant part of law or mixed law and fact raised on appeal

I am also fortified in my opinion by Rule 66 (21 of the Judicature (Court of Appeal Rules) Directions which provides that:

*“The memorandum of appeal shall set forth concisely and under distinct heads numbered consecutively without argument or narrative, the grounds of objection to the decision appealed against, specifying, in the case of a first appeal the points of law or fact or mixed law and fact and, **in the case of a second appeal, the point of law , or mixed law and fact, which are alleged to have been wrongly decided ...”***

Therefore, it is my finding that the memorandum of appeal did raise grounds of mixed law and fact and not purely findings of fact as alleged by the respondent. The point of law being whether the words mental illness or mad were defamatory in nature and the point of mixed law and fact being whether the appellant, by being called mentally ill or mad, was defamed.

The instant appeal is thus not barred by law.

On the record, the Learned Judge found that the words "mentally ill" constituting the alleged defamation were never clearly ascertained either in pleadings or the evidence. However, my finding is to the contrary; the evidence of PW2, PW4, PW5,D1,DW3 on the whole denote the fact that the appellant was defamed by the words “mentally ill” as spoken by the respondent.

The gist of a defamatory statement, as rightly submitted by the appellant's counsel, and reiterated by the Learned Appellate Judge, is “if such statement is calculated to lower a person in the estimation of other reasonable persons”. The Learned Judge found that PW2, PW3, PW4's evidence did not in any way show that the present appellant's reputation was lowered by the alleged defamatory words because illness is a natural event in life. With the greatest respect, the Learned Judge misdirected himself on this. Although the

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Learned Judge found that PW1, PW2 and PW3 may not have shunned the present appellant as a mentally ill person, the fact that PW5 in cross-examination testified that he thought that the appellant was actually mad, upon reading the published defamatory words, is enough evidence to show that the appellant was actually defamed.

Indeed **CLERK & LINDSELL ON TORTS, 20th Edition, at page 1416** interalia states that **if the words published have a defamatory tendency, it will suffice even though the imputation is not believed by the person, to whom they are published.** Also, contrary to the Learned Judge's finding that PW1, 2 and 3 did not discredit the Appellant, a careful examination of their respective testimonies on record shows that their opinion of the appellant was affected enough for them to find it necessary to make personal inquiries about the matter by making telephone calls.

Learned author GATLEY in "LIBEL AND SLANDER" (8th edition) at page 17 paragraph 37 states that:

An imputation or words may be defamatory even though it does not tend to cause others to think worse of the person to whom it refers. If it would tend to cause others to shun or avoid him, or exclude him from the society of his fellow men, it is defamatory.

Although being sick is human and calls for sympathy, I do not accept the respondent's submission that this Court should take judicial notice of the fact that being mentally ill is not defamatory as it is a natural occurrence of life.

I also, with the greatest respect disagree with the Learned Judge's; finding that since "illness" is part of the natural event in the span of life, being referred to as mentally ill would not be defamatory. I am in agreement with **GATLEY (supra)** that words such as mental illness have a tendency to exclude the person alleged to be insane from the society of his fellow men.

It is a known fact that in our society a person considered mad or mentally insane is held in low esteem. Such perception has also found its way in some of the laws of the land with the consequence that a mentally incapacitated or mentally unsound person may not occupy certain positions of office and mental illness is a ground upon which a person can be adjudged incompetent for particular offices or responsibilities.

For example **Article 107 (1) (c) of Uganda's Constitution** provides that mental incapacity can be a ground for removing an individual from a presidential position and **Article 144 (2) (a) of the Constitution** provides that a judicial officer may be removed from office for infirmity of mind. See also **Regulation 88 (d) of Table A of the Second Schedule of the Companies Act No.1 of 2012** which disqualifies an individual from the office of a director if he or she becomes of unsound mind. I also note that mental illness is a ground upon which parental responsibility **may** be taken away from a biological parent as was done in **THE MATTER OF ALOZIOUS AGABA (INFANT) FAMILY CAUSE 259 of 2013**. And under **Section 36 (1), (5) and Section 50 of the Succession Act Cap 139**, only a person of sound mind may by will dispose of his or her property.

Consequently, I find that since being declared mad has many negative legal consequences, it leads one to be shunned not only by members of society but also by the law.

Therefore on ground 1, I find that the words "mental illness" or "insanity" or "mad" were defamatory in nature, lowering the appellant in the eyes of reasonable thinking members of society.

The appeal therefore succeeds on this ground.

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Grounds 2 & 3

It was submitted for the appellant that by declaring him mentally ill to the journalist before the official findings of Doctor Tom.S. Onen to whom the appellant was officially referred for examination at Butabika Hospital showed, the respondent's predetermined motives. That, basing on such evidence, the Learned Judge should have found that there was evidence of malice or the possibility of it.

In reply, the respondent submitted the following: firstly, that the learned appellate Judge looked at the evidence on court record and observed that the respondent's problem had been one of long standing and therefore it was wrong to say that the statement was made before any prior findings. Secondly, that the learned appellate Judge rightly found when evaluating evidence that it was the respondent who had first used the words mentally ill in the interview with the Doctor. Thirdly, that the appellant (current respondent) was only defending the institution and self defence is permissible as expounded in the case of **EL HOARE & OTHERS V ERIC JESSOP [1965] 1 EA 218**.

For both these grounds, the Learned trial Judge found that the evidence relating; to the transfer of the Respondent (now Appellant), the commission of inquiry into the Appellant's work behaviour and ethics, his referral to Butabika hospital did not constitute any probability of malice. He further found that since it was the appellant who first mentioned the defamatory words of mental illness to Doctor Chris Obore at Butabika hospital and not the Respondent, there was no defamation.

Analysis

The law on malice in defamatory imputations is well expounded in **GATLEY ON LIBEL AND SLANDER (supra) at page 5** that «... from the mere publication of defamatory matter, malice is implied, unless the publication was on a privileged occasion.»

The question then to be determined is whether the respondent's words of "mental illness" were mentioned on a privileged occasion and in good faith without being actuated by malice. In **STUART V BELL (1891) 2 OB 341 at p.350**, it was stated that it is for the Judge to determine whether an occasion is privileged and therefore to decide whether the defendant was under the duty to make the communication. Though there is no legal formula or criteria for determining which circumstance is a qualified privilege, guidance is sought from Erle C.J's words in **WHITELEY V ADAMS (1863) 15 C.B. (N.S) P.418** that:

in considering the question whether the occasion was an occasion of privilege, the court will regard the alleged libel and will examine by whom it was published, when, why and in what circumstances it was published, and will see whether these things establish a relation between the parties which gives rise to a social or moral right or duty, and the consideration of these things may involve the consideration of questions of public policy.

A brief recap of the facts on the record is necessary in establishing whether the words were mentioned on privileged occasion. On the record, the defendant (now Respondent) during examination- in -chief testified that "a **journalist called me asking me about mental illness in relation to employment. He asked me whether the Plaintiff had a problem and I told him that he had a mental illness which was still being investigated at Butabika hospital.**" On cross examination, the defendant contradicts his earlier testimony by saying, " **I did not talk to anybody about your mental illness**" It is imperative to note that such

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contradiction was not cleared during re-examination. From the foregoing, it is true that the respondent did mention the words "mental illness" to a journalist in response to an inquiry made by a journalist who later wrote a column in the newspaper of the same. It is noted that the respondent did not say the words in the execution of his public duty by virtue of his office as an Executive director. He was answering inquiries or questions from a lance journalist over the telephone.

It is a well settled principle of law that the defence of qualified privilege in defamation cases arises where the defendant has an interest in making the communication to the 3rd person and the 3rd person has a corresponding interest in receiving it. (**MANGAT V SHARMA [1968] EA at p.626, HUNT V GREAT NOTHERN RAILWAY CO. [1891] 2 QB 189**). The effect of the successful plea of qualified privilege is to exonerate the defendant from liability of the libel complained of. However, this plea is unavailable to the defendant if it is proved that he was actuated by malice. **MANGAT V SHARMA (supra)**.

The mere fact that an inquiry is made about the character or position of another as in this present appeal does not necessarily render the answer privileged. It is pertinent to emphasize here that this defence is not absolute but qualified. **GATLEY ON LIBEL AND SLANDER (supra) at page 455 states that: "It is no part of a man's duty to go into the confessional to every chance person who may choose to ask impertinent questions."** Therefore, it is no defence that the respondent spoke the words upon being asked by a journalist over a telephone conversation or interview.

In order to be protected by the defence of privilege, there ought to be a duty and interest to make such statement. In STUART V BELL (supra). Court held that: "statements made where the publisher had a duty to make them or interest in making the statement to the person to whom it was made, that person had a corresponding duty or interest to receive it." In other words, there must be reciprocity of interest or duty.

Tindall J. in **HOLZGEN V WOOLLWRIGHT (1928) T.P.D at page 11** explained the meaning of reciprocity of interest in these words:

reciprocity of interest does not mean that there must be some special relationship between the Defendant and the person to whom he makes the communication. All it means is that interest must exist in the party to whom the communication is made as well as in the party making it."Further, in STUART V BELL (SUPRA) at page 349 court stated that:

«... where privilege is claimed on the ground that there was a duty on the Defendant to make the communication, and an interest in the party to whom it is made, such duty and such interest must have existed in fact. It is not sufficient that the Defendant honestly and reasonably believed that he was under a duty to make the communication or that the person to whom he made it had an interest in the subject-matter.»

In the instant appeal, the respondent did infact have a duty to make such statements to the Permanent Secretary since there was corresponding interest between the two parties by virtue of their managerial roles of the employees at Mulago Hospital; but the fact that he did go ahead to publish such words to a chance journalist who had no corresponding duty or interest in receiving the statement without having conclusive reports of the Doctor who examined the appellant was reckless in nature, tainted with malice or ill motive and does not accord him protection from the defence of privileged occasion. The Appeal Court in **LONDON ASSOCIATION V GREENLANDS LTD [19161] 2 A.C at page 35** held interalia that: **"no**

* *

privilege will attach where the common interest is one which springs from idle gossip or curiosity only.”

Therefore from the foregoing, the defence of qualified privilege fails for the reasons of lack of reciprocity of interest and duty between the respondent and the journalist and it being made recklessly establishes malice.

It is also no defence to say that the appellant was the first to mention! the libelous; statements himself as submitted by the respondent. In this, I am persuaded by **Tindall C.J cited in GATLEY IN LIBEL AND SLANDEH** (supra) that:

11: is quite agreeable that there is a wide distinction between men's telling a ludicrous story of himself, in the private circle of his friends and acquaintances, and the publication of it to the world at large, through the medium of a newspaper.

I am further persuaded by the holding in **COOK V WARD (1830) 4 MOO at page 99** that:

... it was libelous to publish a story in which the Plaintiff was made to look ridiculous, although the Plaintiff had told the story of himself in the first place.

The Common law principles also protect such representations or communication made in fiduciary relationships between a doctor and patient as in the present appeal under the doctrines of confidentiality. The principles of confidentiality in modern medical practice are ethical in order to foster these communications and relationships that are integral to the just operation of society. To use such privileged communication against the maker would be to prejudice them and defeat the aim of law. Therefore, the fact that it was the appellant who first stated the words “mental illness” to the doctor for purposes of seeking diagnosis cannot be used to prejudice him and is thus protected as privileged communication.

Ground 4

In regard to ground 4, the appellant submitted that the respondent is not a Government spokesperson in the ministry of health or Mulago hospital. It would be far-fetched to say that he was acting for and on behalf of Government in a representative capacity in the due course of his employment. His job does not entail being a mouth piece of the government or Mulago hospital. That the remarks made by the respondent were personal remarks and therefore the doctrine of vicarious liability is not applicable in this case. On the other hand, the respondent submitted that he spoke the words in course of employment and was performing a public duty. Therefore, the right party to sue was the Attorney General in accordance with Section 3 (1) (a) of the Government Proceedings Act.

Analysis

Before delving into the submissions on this ground, it is instructive to note that **Order 1 rule 3 of the Civil Procedure Rules S.I 71-1** stipulates that:

All persons may be joined as defendants against whom any right to relief in respect of or arising out of the same act of transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if separate suits were brought against those persons, any common question of law or fact would arise.

* *

The proper interpretation of this rule as I understand it, is that, it gives a Plaintiff the right to sue an unlimited number of persons who she/he perceives to have infringed her/his right. The decision to join the defendants in one suit is however not obligatory. Therefore, the non-joinder of the Attorney General to this suit will not lead to dismissal of the case against the respondent.

I also note that Order 9 of the Civil Procedure Rules provides that:

No suit shall be defeated by reason of the ... non joinder of the parties, and the court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.

So, I shall proceed to determine the rights and interests of the parties in the matter at hand.

The general principle of law is that, an employer is liable for the acts of his employees or agents while in the course of the employer's business or within the scope of employment. The test is whether or not the employee or agent was acting in the course of his authority or whether or not the employee was going about the business of his employer at the time the damage was done to the Plaintiff. (See: **MUWONGE V AG [1967] EA 17**), In **BROWN V CITIZEN'S LIFE COMPANY (1902) 2 NSWLR** at page 212. court held inter alia that: "where an agent or servant, acting within the scope and in the course of his employment, publishes a libel on a privileged occasion, and it is proved that the agent or servant was not actuated by malice, the principal is liable".

Can it therefore be said that the respondent was going about his employer's business when he picked up the telephone to answer a call?

Journalist's inquiry to which he answered defamatory statements that he could not verify? In my opinion it is not so. As per the record, the respondent was given instructions from the Permanent Secretary to have the appellant's mental health and status checked and also conduct a commission of inquiry into his work ethics and behaviour and submit a report to him; the doctors' evidence viz DWI, DWII, DWIII and DWIV all clearly state that their findings were to be handed to the Permanent Secretary upon completion. It cannot therefore be said that the respondent was acting on his employer's (Permanent Secretary) authority when he picked, and answered the journalist's questions. At this point, the respondent was not in course of employment or defending the hospital as a public duty. The respondent cannot therefore be absolved of liability by pleading vicarious liability. I, therefore find that he is personally liable for the defamatory words that he spoke.

For the reasons given herein, I would set aside the judgment of the Learned appellate Judge and affirm the judgment of the Chief Magistrate's Court in the terms stated by that Court.

I would also order the respondent to pay costs to the appellant in this Court, in the High Court and in the Chief Magistrate's Court below.

Dated at Kampala this ...4th January of 2016

HON. JUSTICE PROF. LILLIAN BKIRIKUBINZA TIBATEMWA,

JUSTICE OF APPEAL