THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CIVIL APPEAL NO. 0170 OF 2022

1. **MONITOR PUBLICATIONS LIMITED**
   A NATION MEDIA GROUP
2. **THE MANAGING DIRECTOR**
   MONITOR PUBLICATIONS LTD
3. **THE MANAGING EDITOR/EXECUTIVE EDITOR/EDITOR-IN-CHIEF, THE MONITOR PUBLICATIONS**
4. **THE EDITOR, SUNDAY MONITOR**
   A PUBLICATION OF THE MONITOR PUBLICATIONS LIMITED
5. **ANDREW BAGALA::APPELLANTS**

VERSUS

PIUS BIGIRIMANA::RESPONDENT

(Appeal and Cross-Appeal from the decision of the High Court of Uganda at Kampala (Civil Division) before Sekaana, J. dated 10th December, 2021 in Civil Suit No. 0612 of 2017)

CORAM: HON. LADY JUSTICE ELIZABETH MUSOKE, JA
HON. MR. JUSTICE MUZAMIRU MUTANGULA KIBEEDI, JA
HON. MR. JUSTICE CHRISTOPHER GASHIRABAKE, JA

JUDGMENT OF ELIZABETH MUSOKE, JA

This appeal and cross-appeal arise from the decision of the High Court (Sekaana, J) in a suit for defamation filed by the respondent against the appellants.

Background

The respondent is a high ranking Public Officer currently serving as the Permanent Secretary/Secretary to the Judiciary. He previously served as Permanent Secretary in the Ministry of Gender, Labour and Social Development and before that in the Office of the Prime Minister. The 1st appellant is a publisher of the Daily Monitor, Saturday Monitor and Sunday

Monitor newspapers ("Monitor Newspapers"). The 2nd appellant is the Managing Director of the 1st appellant. The 3rd appellant is the Editor in Chief of the Monitor Newspapers. The 4th appellant is the Editor of the Sunday Monitor Newspaper. The 5th appellant, was at all material times, a journalist who often authored articles in the Sunday Monitor Newspaper.

By a plaint dated 8th December, 2017, the respondent sued the appellants for defamation in relation to a story published in the Sunday Monitor of November, 2017, which he alleged contained defamatory statements against him. The respondent claimed that the story and other stories earlier published in several Monitor Newspapers constituted a scheme to publish defamatory statements about him. He sought the award of general, exemplary and punitive damages, as vindication for the defamatory stories, with interest and costs of the suit.

On 20th November, 2020, the respondent filed an amended plaint, in which he more fully set out the allegations in relation to the other defamatory stories in addition to the story of 8th November, 2017. The additional stories, which were 14 in total, were contained in several issues of the Monitor Newspapers published on several dates between 2012 and 2015. He prayed for general damages of Ug. Shs. 1,000,000,000/= (One Billion Uganda Shillings), exemplary damages of Ug. Shs. 900,000,000/= (Nine Hundred Million Uganda Shillings, an order compelling the appellants to publish an apology for the defamatory stories, a permanent injunction restraining further publication of the defamatory stories, interest on the damages and costs of the suit.

The appellants, in their joint Amended Written Statement of Defence, denied that the stories were false or defamatory, and contended that the stories did not carry the meaning ascribed to them by the respondent. Furthermore, the appellants raised the defence of qualified privilege in relation to thirteen of the stories, the defence of justification for the fourteenth story, and the defence of fair comment in relation to the fifteenth story.

After considering the evidence, the learned trial Judge, in his judgment found that all the fifteen stories were defamatory against the respondent. He also

rejected the respective defences of qualified privilege, fair comment and justification raised by the appellants (although he only expressly addressed the defence of qualified privilege). The learned trial Judge awarded the respondent a sum of Ug. Shs. 350,000,000/= as general damages and Ug. Shs. 100,000,000/= as exemplary damages for acombined sum of Ug. Shs. 450,000,000/=, with interest at 10% from the date of his judgment till payment in full. The learned trial Judge also ordered the 1st respondent to publish an apology to the respondent. He also made an order of permanent injunction to restrain the appellants from writing defamatory stories against the respondent. He also awarded costs of the suit to the appellant.

The appellants were dissatisfied with the decision of the learned trial Judge, and now appeal to this Court, on the following grounds:

"1. **The learned trial Judge erred in law in holding that the different causes of action that were introduced by the amendment of the respondent's plaint filed on November, 2020 in respect of particular publications of 14th October, 2012, 4th December, 2012, 28th December, 2012, 29th December, 2012, 21st February, 2013, 2nd November, 2012, 7th November, 2012, 9th November, 2012, 16th November, 2012, 30th November, 2012, 7th March, 2012, 7th March, 2013, 26th March, 2013 and 10th March, 2013 were not barred by limitation.**

2. **The learned trial Judge failed to properly evaluate evidence of each impugned publication separately thereby making an omnibus finding of liability against the appellants which constituted an error in principle.**

3. **In failing to consider and evaluate evidence adduced in respect of each publication complained of separately, the learned trial Judge erred in law in generally rejecting the defence of qualified privilege without reference to the particular publications in respect of which it was raised.**

4. **The learned trial Judge erred in law in failing to consider the defences of justification and fair comment in respect of publications in reference to which they were raised.**

5. **The learned trial Judge awarded excessive damages which award constituted an error in principle."**

The appellants prayed that this Court allows the appeal and sets aside the judgment and orders of the High Court, and grants them the costs of the appeal and in the High Court.

The respondent opposed the appeal. He also cross-appealed against part of the Judgment of the High Court on the following grounds:

"1. **That the award of Ug. Shs. 350,000,000/= (Three hundred, Fifty Million Shillings Only) was not sufficient compensation for the damage caused to the cross appellant/respondent's reputation and for the distress and humiliation that the defamatory publications had on his dignity as a Permanent Secretary and was not commensurate to the extent of the damage done to him.**

2. **That the award of Ug. Shs. 100,000,000/= (One Hundred Million Shillings Only) as exemplary/punitive damages awarded is not sufficient enough to serve as punishment to the appellants and to deter them from repeating the same defamatory publications."**

The respondent prayed that this Court allows the cross appeals and revises the respective awards to Ug. Shs. 450,000,000/= for general damages and Ug. Shs. 150,000,000/= for exemplary damages. He also prayed for the costs of the cross appeal.

The appellants opposed the cross appeal.

Representation

At the hearing, Mr. James Nangwala and Mr. Brian Kajubi, both learned counsel, appeared for the appellants. Mr. Godfrey Himbaza and Mr. Ssebumpenje Twalhat, also, both learned counsel, appeared for the respondent.

The parties rely on written submissions filed with leave of Court.

Appellants' written submissions

Counsel for the appellants argued each ground independently in ascending order.

Ground 1

Counsel submitted that the learned trial Judge erred in finding that the respective causes of action based on the fourteen publications referred to in ground 1, that were introduced in the respondent's amended plaint filed on 20th November, 2020, were not barred by limitation. He contended that the learned trial Judge's finding was based on a misconception that the amended plaint merely gave further and better particulars of causes of action that had already been sufficiently set out in the initial plaint. Counsel submitted that the initial plaint did not sufficiently set out facts establishing a cause of action in regard to each of the fourteen publications. Counsel submitted, citing the case of **Nkalubo vs. Kibirige [1973] 1 EA 103**, that pleadings in defamation actions are sufficient only if they fully set out the alleged defamatory statements. He also cited a passage at page 260 of the text book **Gatley on Libel and Slander in Civil Actions, 4th Ed that:**

> **"In a libel the words used are the material facts and must therefore be set out in the statement of claim; it is not enough to describe their substance, purport or effect. The law requires the very words of libel to be set out in the declaration in order that the court may judge whether they constitute a ground of action – "whether they are libel or not". In libel you must declare upon the words; it is not sufficient to state their substance.**

Counsel contended that as the defamatory statements in the fourteen relevant publications were not set out in the initial plaint, the correct deduction should have been that the respondent had not pleaded the same. He could not therefore claim to be giving further and better particulars in the amended plaint but rather was introducing new causes of action.

Counsel submitted that the new causes of action in regard to the fourteen publications were barred at the time of their filing. He referred to **Section 3 (1) (a)** of the **Limitation Act, Cap. 80** that provides that all actions in

tort are barred upon expiry of 6 years from the date the cause of action accrued. He pointed out that all the impugned publications were published at least 8 years before the filing of the amended plaint, and were therefore time barred. Counsel submitted that the trial Court had no power to enlarge the time laid down by a statute for bringing a cause of action as was held in the case of **Makula International Ltd vs. Nsubuga [1982] HCB 11**.

Counsel further submitted that it was immaterial that the appellants did not plead the issue on limitation of the appellants' causes of action, as a point of law need not be pleaded for it to be considered. In counsel's view, when the point on limitation was raised in the appellants' submissions, the learned trial Judge was obligated to consider it and resolve it in the appellants' favour. Counsel urged this Court to find that the learned trial Judge had erred when he found that the limitation could not be considered since it had not pleaded by the appellants. He cited the case of **Mugyenzi vs. Uganda Electricity Generation Co. Ltd, Court of Appeal Civil Appeal No. 167 of 2018** (supra) in support of his submissions. In that case it was held that:

> **"One is not precluded from raising a question of law simply because it was not pleaded. Limitation is both a question fact and law and ought to be pleaded, unless of course the facts are not in issue."**

Counsel concluded that the learned trial Judge had reached erroneous findings on the issue of whether the fourteen publications were time barred. He submitted that ground 1 of the appeal ought to succeed.

Ground 2

Counsel submitted that the learned trial Judge erred in law in considering the stories together and making an omnibus finding that all the stories were defamatory and were intended to tilt public opinion against the respondent. He contended that a judge faced with a defamation case concerning various defamatory stories is expected to assess the words in each story independently before making appropriate conclusions on each story. According to counsel, it was therefore erroneous that the learned trial Judge reached an omnibus conclusion for all the stories.

Counsel submitted that without prejudice to the above submission, this Court should reappraise the evidence as a first appellate Court is expected to do, and conclude that the defence of qualified privilege that the appellants raised in respect of all the alleged defamatory publications should have succeeded. He submitted that ground 2 of the appeal should also succeed.

Ground 3

Counsel faulted the learned trial Judge for failing to consider the defences of qualified privilege, fair comment and justification that the appellants raised against the respondent's claims. He contended that the learned trial Judge ignored to consider defence counsel's submissions in support of the case for the appellants. The submissions were based on the UK House of Lords case of **Jameel vs. Wall Street Journal [2006] UKHL 44**, the authoritative textbook of **Gatley on Libel and Slander (supra)** and the applicable **Principles II and XXVI** of the **National Objectives and Directive Principles of State Policy**, and according to counsel should have led to the upholding of the defences of qualified privilege, fair comment and justification pleaded by the appellants.

Counsel further faulted the learned trial Judge for overlooking the fact that the appellants published the relevant publications in performance of their constitutional duty to combat corruption.

Furthermore, counsel submitted that the learned trial Judge erred when he ignored the principles in the Jameel case (supra) and instead applied principles set out in the case of **Reynolds vs. Times Newspaper Ltd [1999] 4 All ER 609,** yet the former case overruled the latter case and departed from its principles. In addition, according to counsel, the learned trial Judge did not apply the defence of qualified privilege to the relevant stories and merely concluded that they were false. In counsel's view, the learned trial Judge was bent on finding the appellants liable.

Counsel further submitted that the learned trial Judge based his decision to reject the qualified privilege not on the law but on sentimental views such as where he stated that:

"Therefore, Parliament should never be used to defame personalities and no justification can ever be made for statements not made in execution of their mandate as people's representatives especially interviews in "corridors" or "parking areas" or "canteen" of Parliament or any other idle talk related to Parliament work."

Counsel contended that the alleged defamatory publications focused on Parliamentary proceedings that probed the loss, through corruption, of taxpayers' money to the tune of Ug. Shs. 50,000,000,000/=. The money was intended to be channeled to beneficiaries in Northern Uganda, through the Office of the Prime Minister at a time when the respondent was the Accounting Officer. To counsel, it was therefore necessary to probe whether the respondent was by action or inaction liable for the loss of the money, and the appellants had done that in the relevant publications. Counsel further submitted that the fact that the respondent was found complicit by Parliament and the Auditor General in the loss of the relevant monies was sufficient to save the appellants from liability for the relevant publications.

Counsel submitted that ground 3 should also succeed.

Ground 4

Counsel faulted the learned trial Judge for ignoring to consider the defences of justification and fair comment that the appellants raised against the respondent's claims. He pointed out that the defence of justification was raised in respect to the publication of 4th December, 2012 titled **"Bigirimana's Wife acquires Shs 250M Mercedes Benz"**, but was not considered at all in the learned trial Judge's judgment. Counsel submitted that the learned trial Judge erred when he evaluated all evidence including the one concerning this publication in an omnibus fashion. He invited this Court to reappraise the evidence and uphold the defence of justification in relation to the highlighted publication.

It was also submitted that the learned trial Judge erred when he ignored to independently consider and make a specific finding regarding the defence of fair comment that was raised by the appellants in response to the alleged defamatory story published on 5th November, 2017. The story quoted a police officer Grace Akullo as having stated that:

"We have written to PS Bigirimana to record a statement with our detectives to help us understand how the funds were used but up to now he has refused. How can we fast-track the investigations when people who claim to be whistleblowers don't want to cooperate?"

In counsel's view the above publication amounted to fair comment, which, as defined in the cases of **Mukoome and Another vs. The Editor in Chief of Bukedde Newspaper and Others (not citation provided)** was defined as any honest expression of opinion on a matter of public interest, however exaggerated. Counsel further referred to a statement in the textbook, **Duncan and Neil on Defamation, 3rd Edition at page 131** that the law does not require the defendant to satisfy the Court that his comment was objectively right but only that the comment was one that he was entitled to make. Counsel urged this Court to reappraise the evidence and find that the publication of 5th November, 2017 constituted fair comment.

Ground 5

Counsel submitted that the amount of Ug. Shs. 450,000,000/= that was awarded to the respondent as damages was outrageous and was most likely based on a wrong principle of law, and exceeded the amount of damage suffered by the respondent.

It was also submitted that the amount awarded was not in accordance with amounts awarded by the courts as damages in previous defamation cases. He referred to the case of **Red Pepper Publications Ltd and Another vs. Retired Chief Justice Wambuzi, Court of Appeal Civil Appeal No. 128 of 2017 (unreported)** which discussed appropriate amounts of damages in defamation cases, and contended that the amount awarded in this case exceeded the amount considered appropriate in that case. In that case, the Court found an award of Ug. Shs. 375,000,000/= for defamation of a Retired Chief Justice as excessive. Counsel contended that the respondent's reputation did not reach the level of that of a Retired Chief Justice.

Counsel further submitted that the manner of the apology that the learned trial Judge ordered the appellants to publish, "with equal publicity as the impugned defamatory publications for a period of two weeks at least 2 times a week" was oppressive and unprecedented and ought to be set aside. Counsel also submitted that the permanent injunction to restrain further defamatory publications should not have been made since all publications are deemed proper unless a Court deems them defamatory.

Counsel submitted that ground 5 should also succeed.

Respondent's submissions

Counsel for the respondent also argued the grounds independently in ascending order.

Ground 1

Counsel submitted that the learned trial Judge was right when he held that the claims regarding the fourteen publications more fully set out in the amended plaint were not time barred. Counsel contended that the respondent had, in his original plaint, claimed that the appellants had on several occasions between 2012 and 2015 published defamatory stories about him. Further, that although the respondent did not more fully set out the defamatory stories in the original plaint, he did just that in the amended plaint. In counsel's view, since the respondent referred to defamatory stories written between 2012 and 2015, he sufficiently pleaded those actions in the original plaint, and thus the amended plaint only served to substantiate his earlier claims. This was the case for all the publications referred to in ground 1 of the appeal. Counsel contended that the time for filing of the original plaint should be taken as the time when the action in relation to the fourteen publications was filed, and since the limitation period had not begun to run at the time of filing of the original plaint, the causes of action in respect to those publications were filed in time.

Furthermore, counsel submitted that the plaint was amended following an application by the respondent which was not opposed by the appellants.

Thus, the failure to oppose that application, in counsel's view estopped the appellants from raising it in their submissions and in this appeal.

Counsel submitted that ground 1 of the appeal should fail.

Ground 2

Counsel submitted that the learned trial Judge had at pages 25 to 44 of his judgment considered all the publications independently, contrary to the submissions for the appellant. Counsel submitted that the learned trial Judge was alive to the principles on the law of defamation and applied them in the present case. He urged this Court to uphold the learned trial Judge's findings.

Ground 3

Counsel submitted that the learned trial Judge was right in finding that the defence of qualified privilege was not available in respect of the defamatory publications. Counsel referred to several cases for the principles on qualified privilege, including the cases of **Adam vs. Ward [1917] AC 509; Reynolds vs. Times Newspaper Ltd 1 [2001] AC 127, 205 and Whiteley vs. Adams (1863) 15 CB 392, 414** for the principles on the defence of qualified privilege. He submitted that the defence was not available because: 1) the appellants failed to carry out adequate investigations to establish the truth before publishing the stories; 2) failed to reach out to the respondent to get his side of the story before publication; 3) the sources of the stories were mostly MPs aggressive against the respondent; 4) the stories related to closed door meetings which the appellants did not attend; 5) the appellants continued to publish their stories even when the Auditor General stated the corrupt persons; 6) the continued false publications were evidence of malice.

With regard to the submission for the appellants that the publications arose from Parliamentary proceedings, counsel submitted that this was not the case.

Counsel also contended that in some respects, the appellants' submissions were based on failure to read the stories as a whole.

Furthermore, counsel noted the contention by the appellants that they published the stories in exercise of their constitutional duty to expose and combat corruption. He however contended that exercising that duty had to also take into account the need to respect the reputation of others and to respect due process. Counsel submitted that the appellants were wrong to make premature accusations against the respondent and also wrong not to apologise when the respondent was cleared and other persons in the Office of the Prime Minister found guilty of corruption that led to loss of the money.

Counsel submitted that ground 3 must also fail.

Ground 4

Counsel submitted that the learned trial Judge cannot be faulted for not considering the defence of justification as the same was not pleaded by the appellants and neither did they lead evidence to prove it at the trial. Counsel cited the cases of **Interfreight Forwarders (U) Ltd vs. East African Development Bank, Supreme Court Civil Appeal No. 33 of 1992; and Monday vs Attorney General, Supreme Court Civil Appeal No. 16 of 2010 (both unreported)** for the proposition that the Court should not consider a case not set up in a party's pleadings.

It was further submitted that in any case, assuming the appellants pleaded the justification, they had not adduced sufficient evidence, that is, to a standard beyond reasonable doubt to prove the defence. Counsel referred to the case of **Monitor Publications Ltd vs. Assimwe, Supreme Court Civil Appeal No. 16 of 2013 (unreported) where Tumwesigye, JSC** held to the effect that a plea of justification where the defamatory statements impute commission of a criminal offence, must be as required in criminal cases. Counsel pointed out the defamatory publications portrayed the respondent as having committed corruption and therefore they had not satisfied the high standard of proof.

Counsel submitted that in any case, the defamatory stories were full of falsehoods thus negating the defence of justification. The respondent had never bought a car for his wife as alleged in one of the stories.

Counsel also submitted that the defence of fair comment was also not pleaded and the learned trial Judge therefore rightly ignored it.

Counsel submitted that ground 4 must also fail.

Ground 5

Counsel submitted that the amount of Ug. Shs. 450,000,000/= awarded as damages to the respondent was not excessive as contended by the appellants. In counsel's view, the amount awarded was inadequate considering the damage that the defamatory stories inflicted on the respondent, leaving members of the public to question the respondent's character and to shun him. Counsel submitted that as Justice Musoke, JA held in the case of **Red Pepper and Another vs. Rtd Chief Justice Wambuzi, Court of Appeal Civil Appeal No. 128 of 2017,** a successful plaintiff in a defamation case is entitled to an award of compensatory damages that will compensate him for the damage to his reputation, vindicate his name and take account of the distress, hurt and humiliation which the defamatory publication has caused, and the Court should take into account the gravity of the libel, where the libel touches more closely on the plaintiff's personal integrity and professional reputation, the damages should reflect that. Further, that Justice Musoke, JA also rightly considered in the **Red Pepper Case (supra)** that the successful plaintiff will also be entitled to exemplary damages where the defendant acted in contumelious disregard of the plaintiff's right to a good reputation. In counsel's view, the appellants acted in a manner that justified an award of a higher amount of damages than was awarded by the learned trial Judge. He submitted that ground 5 should also fail.

Appellants' submissions in rejoinder

In rejoinder to the submissions on ground 1, counsel for the appellants submitted that the respondent did not challenge the submission that in cases of libel, a cause of action is only made out when the actual words complained of are spelled out in the plaint. As this was not the case with the original plaint, counsel submitted that only one cause of action was set out in the original plaint, that is, the one regarding the publication of 5th November,

2017. In counsel's view, all other publications were introduced for the first time in the amended plaint and were time barred.

In all other respects, counsel reiterated his earlier submissions.

Resolution of the Appeal

I have carefully studied the Court Record, and considered the submissions of counsel for both sides and the law and authorities cited in support thereof. I have also considered other relevant authorities that were not cited.

This is a first appeal and cross appeal, both arising from a decision of the High Court in exercise of its original jurisdiction. It is now well-established that on such appeals, this Court will pursuant to **Rule 30 (1) (1)** of the **Judicature (Court of Appeal Rules) Directions, S.I 13-10,** reappraise the evidence and draw inferences of fact. It is also well-established that this Court has a duty to reconsider all materials on record and come up with its own conclusions on all matters of law and fact. **See: Kifamunte vs. Uganda, Supreme Court Criminal Appeal No. 10 of 1997 (unreported).** I shall bear the above duties in mind as I proceed to determine this appeal.

I shall deal with each of ground 1, 2, 3 and 4 independently. Ground 5 will be considered jointly with the cross appeal.

Ground 1

The main contention for the appellants in ground 1 is that several of the alleged defamatory stories, introduced in the respondent's amended plaint of 20th November, 2020 concerned new causes of action, that had not been included in the original plaint, and which at the time of their introduction were barred by limitation. Counsel for the appellants contended that the learned trial Judge should have struck out the action in respect to the fourteen publications introduced in the amended plaint of 20th November, 2020.

Counsel for the respondent replied that the amended plaint did not introduce new causes of action but merely substantiated on claims that had already

been mentioned in the original plaint. He further submitted that all claims including those more fully set out in the amended plaint should be taken as having been filed at the time of filing the original plaint. In the alternative, counsel for the respondent submitted that as the appellants did not object to the application to amend the original plaint, the issue on the validity of the amendments was thereby settled and could not be resurrected later.

It will be noted that a trial Court has the general power to allow amendment of proceedings where it is necessary, in the interests of justice, to do so. **Section 100** of the **Civil Procedure Act, Cap. 71**:

> **"100. General power to amend.**
>
> **The court may at any time, and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any proceeding in a suit; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on such proceeding."**

Order 6 Rule 19 of the **Civil Procedure Rules S.I 71-1 (CPR)**, on amendment of pleadings provided as follows:

> **"19. Amendment of pleadings.**
>
> **The court may, at any stage of the proceedings, allow either party to alter or amend his or her pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties."**

Furthermore, **Order 6 Rule 7** of the **CPR** allows a party, by way of amendment, to introduce a new claim that the party did not set out in the original pleading. The Rule provides:

> **"7. Departure from previous pleadings.**
>
> **No pleading shall, not being a petition or application, except by way of amendment, raise any new ground of claim or contain any allegation of fact inconsistent with the previous pleadings of the party pleading that pleading."**

The dispute in ground 1 concerns whether the respondent's amended plaint introduced any new claims; and if so whether the respondent could introduce such new claims, since they were time barred at the time of filing the amended plaint. The claim in the respondent's original plaint was framed as follows:

> **"The plaintiff brings this action against the defendants jointly and severally seeking that they be condemned in, among other reliefs, general and exemplary damages, injunctive orders and costs for their false, irresponsible, careless, reckless, odious, malicious, unprofessional and defamatory story about/against him carried on page 5 of the Sunday Monitor of November 5th, 2017 under the headline "Money, drugs eat up Police Force", a publication made with intent and purpose of visiting contempt, ridicule, maltreatment, disdain, disesteem and damage unto his person thereby lowering his esteem in the minds and perception of right thinking members of society."**

The respondent further pleaded in his original plaint as follows:

> **"The facts that gave rise to the plaintiff's cause of action are that;**
>
> **a) The defendants have, on many occasions, in particular, between the year 2012 and 2015, made spiteful, malicious, odious, unprofessional and defamatory publications about and against the plaintiff in the Daily Monitor, the Saturday Monitor as well as the Sunday Monitor. For the period herein referred to, the particular stories the plaintiff could lay his hands and sight on, are (42) in number accounting for the editions of;**
>
> **i. 9/05/2012**
> **ii. 19/08/2012**
> **iii. 14/10/2012**
> **iv. 25/10/2012**
> **v. 26/10/2012**
> **vi. 29/10/2012**
> **vii. 30/10/2012**
> **viii. 31/10/2012**
> **ix. 1/11/2012**
> **x. 2/11/2012**
> **xi. 5/11/2012**
> **xii. 6/11/2012**

xiii. **7/11/2012**
xiv. **9/11/2012**
xv. **9/11/2012**
xvi. **16/11/2012**
xvii. **30/11/2012**
xviii. **1/12/2012**
xix. **8/12/2012**
xx. **28/12/2012**
xxi. **29/12/2012**
xxii. **6/02/2013**
xxiii. **15/02/2013**
xxiv. **21/02/2013**
xxv. **25/02/2013**
xxvi. **4/03/2013**
xxvii. **7/03/2013**
xxviii. **8/03/2013**
xxix. **10/03/2013**
xxx. **13/03/2013**
xxxi. **21/03/2013**
xxxii. **26/03/2013**
xxxiii. **9/06/2013**
xxxiv. **11/06/2013**
xxxv. **20/06/2013**
xxxvi. **28/07/2013**
xxxvii. **28/07/2013**
xxxviii. **29/07/2013**
xxxix. **31/08/2014**
xl. **2/08/2015**
xli. **07/11/2015 and**
xlii. **13/11/2015**

Wherein the defendants painted the plaintiff as an embattled civil servant who made illicit expenditure on OPM funds, a person who thrives on state house's pampering and patronage, obstructs police investigations and above all, a liar."

The original plaint therefore made one specific claim regarding an article written on 5th November, 2017 and several general claims about certain allegedly defamatory newspaper stories written about the respondent on several dates between 2012 and 2015. Those claims were too vague and could not found a cause of action for defamation, as properly pleading such

claims requires that the allegedly defamatory story are set out in the pleadings. Therefore, as rightly argued by counsel for the appellants, the defamatory stories that were more fully set out in the amended plaint constituted new causes of action, since the original plaint is deemed to have only set out one allegedly defamatory story.

Was it permissible for the respondent to introduce those new claims in the amended plaint? **Order 6 Rule 7**, is to the effect that a person may introduce new claims in an amended plaint. The remaining question to be decided is whether amendments made to introduce new claims at a time when the limitation period for filing those claims has expired is permissible. On this point, counsel for the respondent submitted that such amendments are permissible as they are deemed to have been filed at the date of filing of the original claim. My considered view is that the CPR does not expressly prohibit amendments to introduce new claims which at the time of the amendment are time barred. In the case of **Life Insurance Corporation of India vs. Sanjeev Private Builders Ltd and Another, Civil Appeal No. 5909 of 2022**, the Supreme Court of India, while considering a similar question, quoted from an earlier decision in **Pankaja & Anr. v. Yellappa (dead) by lrs. & Ors., (2004) 6 SCC 415**, where it was held that:

> **"In Pankaja & Anr. v. Yellappa (dead) by lrs. & Ors., (2004) 6 SCC 415, this Court held that it was in the discretion of the court to allow an application under Order VI Rule 17 of the CPC seeking amendment of the plaint even where the relief sought to be added by amendment was allegedly barred by limitation. The Court noticed that there was no absolute rule that the amendment in such a case should not be allowed. It was pointed out that the court's discretion in this regard depends on the facts and circumstances of the case and has to be exercised on a judicial evaluation thereof. It would be apposite to notice the observations of this Court in this pronouncement in extenso.**
>
> **...**
>
> **The law in this regard is also quite clear and consistent that there is no absolute rule that in every case where a relief is barred because of limitation an amendment should not be allowed. Discretion in such cases depends on the facts and circumstances of the case. The jurisdiction to allow or not allow an amendment being discretionary, the same will**

have to be exercised on a judicious evaluation of the facts and circumstances in which the amendment is sought. If the granting of an amendment really subserves the ultimate cause of justice and avoids further litigation the same should be allowed. There can be no straitjacket formula for allowing or disallowing an amendment of pleadings. Each case depends on the factual background of that case."

The provisions of the Indian Civil Procedure Rules under consideration in the above case are similar to the those in the Uganda CPR. The principle is therefore that the decision whether to allow an amendment is at the discretion of the trial Court. The trial Court may allow an amendment even where the amended plaint will introduce a new claim that is time barred at the time of the amendment, if the circumstances of the case and the interests of justice justify doing so. This principle was enunciated in the old case of **Weldon vs. Neal (9) (1887), 19 Q.B.D. 394** (per Lord Esher) where it was held that:

"We must act on the settled rule of practice, which is that amendments are not admissible when they prejudice the rights of the opposite party as existing at the date of such amendments. If an amendment were allowed setting up a cause of action, which, if the writ were issued in respect thereof at the date of the amendment, would be barred by the Statute of Limitations, it would be allowing the plaintiff to take advantage of her former writ to defeat the statute and taking away an existing right from the defendant, a proceeding which, as a general rule, would be, in my opinion, improper and unjust.

Under very peculiar circumstances the Court might perhaps have power to allow such an amendment, but certainly as a general rule it will not do so. (Emphasis added.)

This case comes within that rule of practice, and there are no peculiar circumstances of any sort to constitute it an exception to such rule. For these reasons I think the order of the Divisional Court was right and should be affirmed."

In the present case, the circumstances were such that the appellants did not object to the filing of the amended plaint and instead stated that they did not wish to oppose the appellants. The appellants, were in my view, and as rightly submitted by counsel for the respondent estopped from thereafter contending that the amendment was invalid. It was at the stage when the

respondent applied to amend his plaint that the appellants should have raised the objection that the amended plaint should have been rejected on grounds that it set out new causes of action that were barred by limitation. Moreover, as there had been mention in the original plaint of other potentially defamatory stories written by the appellants about the respondent, the appellants suffered no injustice from the amendment.

I would therefore uphold all the new claims set out in the respondent's amended plaint. Ground 1 of the appeal must therefore fail.

Ground 2

The contention for the appellants in ground 2 is that the learned trial Judge erred in making an omnibus resolution of all the alleged defamatory stories. My view after reading the judgment of the learned trial Judge is that he dealt with all, if not most of the defamatory stories. How he dealt with them is a question of style, for which he cannot be criticized. Whether or not he reached conclusions supported by the evidence will be considered in my analysis on grounds 3 and 4. Ground 2 of the appeal must also fail.

Ground 3

Ground 3 calls for the examination of the defence of qualified privilege as understood at common law. In the case of **Jameel and Others vs. Wall Street Journal Europe Sprl [2006] UKHL 44**, Lord Scott discussed the development of the principles of the defence of qualified privilege. He stated that:

> **"I have found it instructive to remind myself of the reason why qualified privilege emerged from the case law of the 19th Century as a defence in defamation actions. The reason was given by Parke B in Toogood v Spyring 1 CM & R 181,149 ER1045. Parke B was explaining why there were "cases where the occasion of the publication affords a defence in the absence of express malice." He said this (at 193):**
>
> > **In general, an action lies for the malicious publication of statements which are false in fact, and injurious to the character of another (within the well-known limits as to verbal slander), and the law considers such publication as malicious, unless it is fairly**

made by a person in the discharge of some public or private duty, whether legal or moral, or in the conduct of his own affairs, in matters where his interest is concerned. In such cases, the occasion prevents the inference of malice, which the law draws from unauthorised communications, and affords a qualified defence depending upon the absence of actual malice. If fairly warranted by any reasonable occasion or exigency, and honestly made, such communications are protected for the common convenience and welfare of society; and the law has not restricted the right to make them within any narrow limits."

Lord Scott also considered the further development to the defence of qualified privilege set out in the early 20th century case of **Adam vs. Ward [1917] AC 309,** which he believed placed rigid limits for the application of the defence. He noted:

"In Adam v Ward [1917] AC 309 Lord Atkinson said, at 334, that

"A privileged occasion is .... an occasion where the person who makes a 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."

Lord Scott however noted that the test in Adam vs. Ward was soon replaced by more flexible tests articulated most notably in the UK House of Lords case of **Reynolds vs Times Newspaper Ltd and Others [1999] 4 ALLER 609 (per Lord Nicholls)**. The principles in that decision, were not overruled but received further elucidation in the **Jameel case (supra)**. It is therefore important to make it clear that the submissions of counsel for the appellants that the Jameel case overruled the principles in the Reynolds case are incorrect. The Reynolds principles remained part of the common law and were only abolished upon enactment of the **UK Defamation Act, 2013** which replaced them with a statutory test.

The Jameel case elucidated the principles on qualified privilege. Lord Bingham noted as follows:

"The necessary pre-condition of reliance on qualified privilege in this context is that the matter published should be one of public interest. In

the present case the subject matter of the article complained of was of undoubted public interest. But that is not always, perhaps not usually, so. It has been repeatedly and rightly said that what engages the interest of the public may not be material which engages the public interest.

Qualified privilege as a live issue only arises where a statement is defamatory and untrue. It was in this context, and assuming the matter to be one of public interest, that Lord Nicholls proposed (at p 202) a test of responsible journalism, a test repeated in Bonnick v Morris [2003] 1 AC 300, 309. The rationale of this test is, as I understand, that there is no duty to publish and the public have no interest to read material which the publisher has not taken reasonable steps to verify. As Lord Hobhouse observed with characteristic pungency (p 238), "No public interest is served by publishing or communicating misinformation". But the publisher is protected if he has taken such steps as a responsible journalist would take to try and ensure that what is published is accurate and fit for publication.

Lord Nicholls (at p 205) listed certain matters which might be taken into account in deciding whether the test of responsible journalism was satisfied. He intended these as pointers which might be more or less indicative, depending on the circumstances of a particular case, and not, I feel sure, as a series of hurdles to be negotiated by a publisher before he could successfully rely on qualified privilege."

Lord Hoffman commented that the "Reynolds privilege" is "a different jurisprudential creature from the traditional form of privilege from which it sprang," and that it might more appropriately be called the Reynolds public interest defence rather than privilege. Lord Hoffman further stated that the defence would only apply where; 1) the subject matter of the published article was a matter of public interest; and 2) If the publication, including the defamatory statement, passes the public interest test, the inquiry then shifts to whether the steps taken to gather and publish the information were responsible and fair. The burden lies on the defendant to prove that the alleged defamatory publication passes the highlighted criteria.

I shall, in performance of the duty imposed on this Court on first appeals, to reappraise the evidence and come up with its own conclusions proceed to consider whether the relevant allegedly defamatory stories satisfied the

conditions necessary to be protected by the defence of qualified privilege. I noted that the respondent alleged, in his amended plaint, that the appellants published forty-four alleged defamatory stories. It appears that the claims regarding thirty-nine of those stories were abandoned, with the respondent maintaining his claims for only fifteen stories. The defence of qualified privilege was pleaded with regard to thirteen stories. The appellants sought to apply other defences to the remaining two stories, and the claims on those stories will be dealt with while resolving ground 4.

I observe that in accordance with the principles articulated in the **Jameel case (supra)**, a defendant who raises the defence of qualified privilege effectively admits that the alleged defamatory statements were false. The defendant raises the defence not to assert that the statements were true, but to assert that the statements were privileged and should not attract liability. The defendant bears the burden to prove the elements of the defence of qualified privileged. The question to be considered is whether the appellants led evidence to prove their allegations. In answering that question, I noted that the appellants were obligated to prove that the defence applied to each of the thirteen stories they sought to apply it as a defence.

However, it will be noted that the appellants only called two witnesses, of which only DW1 Yasin Mugerwa tried to offer an explanation on the circumstances of publication of some of the thirteen stories. DW1 testified about only four of the thirteen stories. This means that there was no evidence regarding nine of the stories, and thus the defence of qualified privilege could not be successfully applied to those stories. I have set out the eleven stories in issue below:

> "[1] **PE5B – POLICE TO QUESTION BIGIRIMANA TODAY, published on 28th December, 2012**
>
> **This follows several attempts to have him quizzed but only for top government officials to block the police.**
>
> **The police will today question Permanent Secretary Pius Bigirimana over the massive fraud in the office of the Prime Minister.**

It is the first time that Mr. Bigirimana will be questioned over his role in the fraud in which more than Shs 50 billion meant for the poor residents in war affected parts of northern Uganda was stolen by OPM officials.

Senior government officials blocked previous attempts by the police to interview Mr. Bigirimana. Sources told this newspaper that detectives from the Criminal Investigations and Intelligence Directorate wrote to Mr. Bigirimana yesterday inviting him to speak to them about the matter.

Sources told this newspaper that Mr. Bigirimana's interrogation was supposed to take place at CIID headquarters but will now take place at his Postel House Office in Kampala after Inspector General of Police Kale Kayihura intervened on his behalf.

Police have so far interviews more than 72 officials in both the OPM and Ministry of Finance in relation to the investigations over the last five months. None of the 72 officials have been interviewed in their offices.

...

Although Mr. Bigirimana says he is the whistle blower in this matter, several workmates, MPS and an Audit report by the Auditor General point to his knowledge and involvement in approving many payments. Investigations continue.

[2] Exhibit PE5W – Bigirimana refuses to meet detectives PE5W, published on 29th December, 2012

Not available. Permanent Secretary in the OPM tells police he is not ready to record a statement over fraud in his office, asks them to contact him mid-january.

Permanent Secretary Pius Bigirimana yesterday refused to be interrogated by police detectives investigating a multi-billion-shilling fraud in the office of the Prime Minister.

A team of about five detectives went to Mr. Bigirimana's office at Postel House in Kampala on Friday morning intending to interrogate him over the matter.

However, sources close to the investigation told the Saturday Monitor that the detectives were recalled before speaking to Mr. Bigirimana and informed that he told senior police officers that he was not ready to be interrogated.

Sources told this newspaper that the permanent secretary told them that he would be ready to speak to them in mid-january.

Yesterday was supposed to be the first time Mr. Bigirimana was facing the police to assist them in their investigations which started more than five months ago.

Detectives had intended to question Mr. Bigirimana over his role in the fraud, in which more than Shs 50 billion meant for poor residents in war-affected parts of northern Uganda was stolen by OPM officials.

Senior Government officials have blocked previous attempts by the police to interview Mr. Bigirimana. Detectives from the Criminal Investigations and Intelligence Directorate had written to Mr. Bigirimana on Thursday inviting him to speak to them."

[3] Exhibit PE5BB – OPM inquest hits new set back, published on 21st February, 2013

...appearing in Court last week as the main state witness and complainant in a forgery case against Mr. Kazinda, Mr. Bigirimana denied a statement that the prosecution produced and attributed to him. The disputed statement later disappeared from the court registry under unclear circumstances."

[4] Exhibit PE5T – Government remains undecided on calls to suspend Bigirimana

Buying time. Days after Parliament asked government to interdict Mr. Bigirimana over the alleged graft scam in the Office of the Prime Minister, government says the executive will give its position later.

Government yesterday refused to commit itself to a definite course of action to be taken against the embattled Permanent Secretary in the Office of the Prime Minister, Mr. Pius Bigirimana.

Four days after Parliament over-whelmingly voted on a motion to compel government to interdict Mr. Bigirimana over the alleged theft of billions of shillings meant for Karamoja and northern Uganda, government said the Executive will give its position later.

Mr. Bigirimana has been quoted by the media saying he was still carrying on his daily routines and that he is being victimized since he is the one who blew the whistle on the theft of the billions.

The Permanent Secretary refused to speak to this newspaper yesterday.

"I have nothing to comment", he told the Daily Monitor on phone yesterday.

The stolen billions were intended for the post-war reconstruction in northern Uganda and were mainly donations from donors channeled through OPM under its Peace, Recovery and Development Programme (PRDP).

As accounting officer at the OPM, Mr. Bigirimana has been held personally liable in particular instances of the reported fraud by the Auditor General. However, Prime Minister Amama Mbabazi last Monday indicated that there is no evidence linking the permanent secretary to the crimes.

Under fire for what MPs consider is dragging its feet over Mr. Bigirimana, the government has also been at pains to explain why Mr. Jimmy Lwamafa, the former Permanent Secretary in the Ministry of Public Service was quickly suspended amid an ongoing interrogation into how Shs 169 billion was fraudulently lost to suspected 'ghost' pensioners.

[5] Exhibit PE5H – Bigirimana contradicts himself on purchase of ministers' cars, published on 30th November, 2012

Events of the past few days suggest that Mr. Pius Bigirimana, Permanent Secretary to the OPM may have lied when he publicly refuted reports that money was diverted from the Northern Uganda Peace Recovery Development Programme to buy cars for Ministers.

[6] Exhibit PE5CC – OPM OFFICIALS SURVIVE LYNCHING, published 7th March, 2013

Officials working in the Office of the Prime Minister survived lynching by a mob in northern Uganda and in Kiryandongo area where government resettled Bududa landslide survivors.

Public Accounts Committee Chairman Kassiano Wadri, who returned from northern Uganda on Tuesday with a group of law makers, and officials from the OPM told the daily monitor that residents in Gulu, Zombo, Lamwo, Kitgum, Nwoya and Zombo wanted to lynch the officials, accusing them of stealing their money.

...

In Zombo, Mr. Wadri said the residents led by the district chairperson Mr. Emmy Kakura named OPM Permanent Secretary Pius Bigirimana in a cement scam. They said Mr. Bigirimana went with Police to Zombo and took away 1,000 bags of cement. Mr. Wadri said at an appropriate time, the committee will ask the PS to respond.

"Defending self"

But when contacted yesterday, Mr. Bigirimana said, it's a lie to say I went to Zombo to take away cement. I only went there once and I was on my supervisory mission. That cement they are talking about was for the construction of a school.

Mr. Bigirimana remains in office months after Parliament resolved that he be suspended because of the scandal at OPM. He has also recently been handed additional duties to monitor other Ministries and Departments by President Museveni, whom MPs accuse of protecting more suspects.

[7] Exhibit PE5GG – Corruption Ledger, published on 10th March, 2013

MPs inspect OPM projects, uncover waste.

MPs in a bid to get down to the nitty gritty in the theft of donor money in the office of the Prime Minister (OPM) are inspecting supposed projects in northern Uganda and Karamoja. They have

apparently managed to uncover ghost projects and some that do not measure up to the expenditure attached to them. Interestingly, Mr. Bigirimana disputes the findings as usual for example a review of the resettlement exercise for Bududa landslide survivors in Kiryandongo found ghost food deliveries and suspicious accounting in agriculture expenditures. Atleast Shs 8.6 billion was lost in the exercise, according to the Auditor General."

[8] Exhibit PE5AA – Denmark warns of aid cut over OPM scandal, published on 26th March, 2013

...

OPM Principal Accountant Geoffrey Kazinda, his middle level colleagues and their alleged accomplices in the finance ministry and central bank were either interdicted or arrested but Permanent Secretary Pius Bigirimana, who is the accounting officer remains in office. Some of his bosses say he blew the whistle on the cash bonanza but there has been no explanation as to why he never prevented it in the first place."

[9] Exhibit PE5E – Janet faces questions over OPM cash saga, published on 9th November, 2012

...

At yesterday's closed-door meeting, MPs also heard that when auditors asked Permanent Secretary Pius Bigirimana to explain why he authorized the suspected spending of Shs 20.1 billion off the Crisis Management Account, he replied: "I thought the money had come from heaven and we started spending it.

In my view, one can easily conclude that the subject matter in each of the above stories was a matter of public interest. The appellants were, in those stories informing the public about investigations into allegations of corruption at the Office of the Prime Minister (OPM) which acts had led to loss of a huge amount of money donated to government to assist in rehabilitation of areas in Northern Uganda that had been ravaged by war. I thus accept the submission of counsel for the appellants that in publishing the relevant stories, the appellants were fulfilling their duty to fight corruption as required of them under **Principle XXVI (iii)** of the **National Objectives and**

Directive Principles of State Policy in the 1995 Constitution, which provides:

> **"(iii) All lawful measures shall be taken to expose, combat and eradicate corruption and abuse or misuse of power by those holding political and other public offices."**

But the analysis does not end on the duty to combat corruption. As counsel for the respondent rightly submitted, there is also need to balance the public interest of fighting corruption with the need to protect the right of others to their good reputation. In the **Reynolds case (supra)**, Lord Nicholls expressed the following views that are relevant to this point:

> **"Reputation is an integral and important part of the dignity of the individual. It also forms the basis of many decisions in a democratic society which are fundamental to its well-being: whom to employ or work for, whom to promote, whom to do business with or to vote for. Once besmirched by an unfounded allegation in a national newspaper, a reputation can be damaged forever, especially if there is no opportunity to vindicate one's reputation. When this happens, society as well as the individual is the loser. For it should not be supposed that protection of reputation is a matter of importance only to the affected individual and his family. Protection of reputation is conducive to the public good. It is in the public interest that the reputation of public figures should not be debased falsely. In the political field, in order to make an informed choice, the electorate needs to be able to identify the good as well as the bad."**

Thus in order to establish the defence of qualified privilege, the appellants were required to adduce evidence to prove that they followed the principles of responsible journalism as articulated in the Jameel case (supra), when they published the eleven stories highlighted above. The appellants did not adduce any such evidence. I would therefore conclude that the defence of qualified privilege could not succeed in relation to any of the nine stories set out above.

I now move on to deal with the four stories in respect to which the appellants adduced evidence in support of the defence of qualified privilege. These stories read as follows:

"[1] **Exhibit PE5X – MPS ORDER GOVERNMENT TO REMOVE BIGIRIMANA, published on 2nd November, 2012**

On Monday, the government indicted 17 senior officials from OPM, Bank of Uganda and Ministry of Finance over theft of donor funds meant for reconstruction of Northern Uganda and Karamoja sub region. However, Mr. Bigirimana was spared on claims that there was no evidence linking him to the theft of the money. State House yesterday also jumped into Bigirimana's defence.

...

In Parliament, the Chairperson of the Greater North Parliamentary Forum Mr. Felix Okot Ogong moved a motion compelling government to conduct a forensic and value for money audit into the Peace Recovery and Development Programe, NUSAF I and NUSAF II projects.

...

The motion also asked Public Accounts Committee to expeditiously handle the Auditor General's report on the scam at OPM and demanded that Prime Minister Mbabazi tables a statement detailing how his staff stole money for the people of northern Uganda and Karamoja. The motion was seconded by Steven Ochora (FDC, Serere).

From that moment on, Mr. Bigirimana's fate was sealed in spite of his reported protestations of innocence and the claim that he blew the whistle on the fraud.

The Auditor General's findings implicating him in the scam swayed MPS, leaving little room for an earlier defence of the official by both State House and the Prime Minister to gain traction.

Mr. Ogong's motion attracted a bipartisan response from members calling for interdiction of Mr. Bigirimana whom they accused of perpetuating the theft of donor funds."

[2] **Exhibit PE5O – MPs give ultimatum over PS Bigirimana, published on 7th November, 2012**

MPs yesterday accused government of pampering suspects in the Office of the Prime Minister who were named in the suspected theft of billions of shillings meant for northern Uganda and Karamoja.

The accusations came against the backdrop of a Monday suggestion by President Museveni that he needed time to consult before interdicting Mr. Pius Bigirimana, the Permanent Secretary at the OPM.

"Even if government decides to protect Bigirimana, the angry spirits of the people whose lips were cut and those who were killed by rebel leader Joseph Kony will not allow him to rest," (Mr. Haruna Kasolo (NRM, Kyotera) said. "Those shielding Bigirimana should know that the ghosts are not sleeping and they will not let him off the hook."

[3] Exhibit PE5F – Auditors close in on Bigirimana in probe, published 14th October, 2012

Audit report: Officers from the Auditor General's office probing alleged misuse of money in the Prime Minister's Office zero down on the ministry's permanent secretary who pleads innocence.

"Auditors target PS Bigirimana in cash probe"

Details emerging from the on-going forensic audit into the allegations of corruption at the Prime Minister's Office have indicated that the Permanent Secretary in the Office of the Prime Minister Mr. Pius Bigirimana, also knew about what was going on in the loss of the funds.

While sources talked to Sunday Monitor on conditions that the specifics on Bigirimana's involvement are left out [at least for now] for fear that the disclosure could jeopardise the on-going investigations, they revealed that Bigirimana's name is expected to feature "prominently" in the report.

"With a case to answer?"

"All I can tell you for now is that the PS has a case to answer," a source said. We are still investigating him and other officials in the Prime Minister's office. But I can assure you when the report

finally comes out; the heads are going to roll. We have found unaccounted for funds and forged accountabilities for advances among other irregularities where tax payers lost money."

[4] Exhibit PE5C – Treasury Officials accuse OPM PS of covering money scam, published on November 16, 2012.

Top bureaucrats from the Treasury department yesterday gave conflicting accounts about who concealed the fraud in the Prime Minister's Office.

They nevertheless still pinned down the Permanent Secretary, Mr. Pius Bigirimana over the suspected cover-up of the scam in which billions in foreign aid was lost.

Accountant General Gustavio Bwoch told the Public Accounts Committee which is investigating the scam that the former Principal Internal Auditor Shaban Wejula who had detected the fraud in OPM was removed on orders from above. But the Deputy Treasury Secretary Mr. Keith Muhakanizi said OPM Permanent Secretary Pius Bigirimana was the architect of his removal.

"It was Mr. Bigirimana who told me that this officer was demanding bribes from him and I told him to put it in writing," Mr. Muhakanizi said. "I must admit as a born again that Mr. Bigirimana rang me on this matter and in the process Prof. Apollo Nsibambi also called me [and said] your officers were disturbing the accounting officer.

..."

Mr. Yasin Mugerwa, the journalist who authored the above articles testified as to the steps taken to ensure that the principles of responsible journalism were followed in the publication of the four highlighted articles. Before re-evaluating Mr. Mugerwa's evidence, it is worth reiterating some of the principles applied in assessing responsible journalism. Lord Hoffman's guidance in the **Jameel case (supra)**, was that responsible journalism should be assessed using three criteria, namely: 1) the steps taken to verify the story; 2) the opportunity to the plaintiff to comment on the story; and 3) the propriety of the publication in light of all circumstances of the case. Lord Bingham considered that the factors highlighted by Lord Nicholls in the

Reynolds case (supra) should apply to guide in assessing responsible journalism. The factors laid down by Lord Nicholls were as follows:

> **"1. The seriousness of the allegation. The more serious the charge, the more the public is misinformed and the individual harmed, if the allegation is not true.**
>
> **2. The nature of the information, and the extent to which the subject-matter is a matter of public concern.**
>
> **3. The source of the information. Some informants have no direct knowledge of the events. Some have their own axes to grind, or are being paid for their stories.**
>
> **4. The steps taken to verify the information.**
>
> **5. The status of the information. The allegation may have already been the subject of an investigation which commands respect.**
>
> **6. The urgency of the matter. News is often a perishable commodity.**
>
> **7. Whether comment was sought from the plaintiff. He may have information others do not possess or have not disclosed. An approach to the plaintiff will not always be necessary.**
>
> **8. Whether the article contained the gist of the plaintiff's side of the story.**
>
> **9. The tone of the article. A newspaper can raise queries or call for an investigation. It need not adopt allegations as statements of fact.**
>
> **10. The circumstances of the publication, including the timing."**

Mr. Mugerwa testified that he was a journalist employed by the 1st appellant and covering Parliament at the relevant time. He testified that he obtained information from various sources at Parliament before publishing the stories. In this regard he stated that:

> **"In November, 2012, a special investigation report by the Office of the Auditor General on allegations of financial impropriety in the OPM was tabled before Parliament. The Speaker referred it to the Public Accounts Committee (PAC) chaired by Nathan Nandala Mafabi (FDC, Budadiri West).**

Several closed door meetings of the donor community, auditors, cabinet, ruling party caucus as well as the PAC discussed the OPM scandal. As a journalist covering the story of such public interest, I always followed those closed door meetings as well as the special audit through sources.

He further testified:

"Before stories are published by the Daily Monitor, they go through a sieving process. First of all, the stories must be approved by the News Editor and other editorial managers. After which, the reporters are tasked to make thorough investigations pertaining to the allegations affecting an individual or institution prior to publication.

DW2 further testified that:

"I contacted and interviewed several persons who I was aware had full knowledge of the subject story including officials from the Office of the Auditor General and Criminal Intelligence Department.

I also interviewed MPs on the Public Accounts Committee (PAC) who conducted the inquiry into the theft of donor funds in the Office of the Prime Minister. The MPs interviewed several witnesses including ministers, auditors and technocrats in Finance, OPM and Bank of Uganda. The MPs also came across several documents and some were shared with Daily Monitor to support the stories we published in the newspaper.

In relation to the story contained in Exhibit PE5X titled "MPs order Gov't to remove Bigirimana," DW1 testified that he wrote the story after attending a Parliamentary sitting in which MPs made comments about the respondent. For the stories contained in Exhibit PE5F and PE5O, DW1 testified that he wrote it after speaking to sources who were MPs that attended the Public Accounts Committee closed door meeting. DW1 testified that the story was verified by several MPs who attended the meeting. In my view, DW1 took all reasonable steps to verify the contents of the stories by speaking with sources, some of whom were MPs and others whom were persons working in the Office of the Auditor General.

However, as the respondent contended in his amended plaint, some of the statements contained in the stories that DW1 authored made serious

allegations concerning the respondent's characters. For example, Exhibit PE5X contained a statement that:

> **"From that moment on, Mr. Bigirimana's fate was sealed in spite of his reported protestations of innocence and the claim that he blew the whistle on the fraud.**
>
> **...**
>
> **Mr. Ogong's motion attracted a bipartisan response from members calling for interdiction of Mr. Bigirimana whom they accused of perpetuating the theft of donor funds."**

Furthermore, Exhibit PE5O contained a statement that:

> **"MPs yesterday accused government of pampering suspects in the Office of the Prime Minister who were named in the suspected theft of billions of shillings meant for northern Uganda and Karamoja.**
>
> **The accusations came against the backdrop of a Monday suggestion by President Museveni that he needed time to consult before interdicting Mr. Pius Bigirimana, the Permanent Secretary at the OPM.**
>
> **"Even if government decides to protect Bigirimana, the angry spirits of the people whose lips were cut and those who were killed by rebel leader Joseph Kony will not allow him to rest," (Mr. Haruna Kasolo (NRM, Kyotera) said. "Those shielding Bigirimana should know that the ghosts are not sleeping and they will not let him off the hook."**

Exhibit PE5F contained a statement that:

> **"Details emerging from the on-going forensic audit into allegations of corruption at the Prime Minister's Office have indicated that the Permanent Secretary in the Office of the Prime Minister, Mr. Pius Bigirimana, also knew about what was going on in the loss of public funds."**

Exhibit PE5C contained a story that the respondent had caused the firing of Mr. Shaban Wejula, an internal auditor at OPM who had discovered the fraud that led to loss of money. The story stated that the respondent had fired Mr. Wejula so as to cover up his involvement in the theft of the money.

It is clear that the four stories contained grave imputations that the respondent was complicit in the theft of money in the OPM scandal. This has proved not to be the case as several other persons were charged and convicted of the corruption in relation to the theft of that money. The grave allegations contained in the above stories, required, the author of the story to give the respondent an opportunity to comment on the allegations and for the author to record any comments from the respondent in the published stories. This was not done, despite claims by DW1 during cross examination that he contacted the respondent for comments. Below is an excerpt from the cross examination of DW1:

> **"Q: You did not visit the officers that were being talked about before you published these stories, right?**
>
> **A: At one time, I visited the PS to give his story because of what was happening in Parliament. As I told you one of our objectives is to balance and I published his side of the story.**
>
> **Q: Mr. Yasin Mugerwa, can you show us in your statement where you say that you interviewed the plaintiff?**
>
> **A: My statement did not capture everything I know about the case."**

In my view, DW1's assertion that he contacted the respondent for a comment can be disregarded since it was not indicated in the statement that constituted his evidence in chief. I would therefore conclude that the respondent was never contacted to comment on the relevant stories before they were published and this constituted a breach of the principles of responsible journalism. Accordingly, the defence of qualified privilege could not be applied to the stories authored by DW1. In conclusion, for the reasons given above, the appellants' defence of qualified privilege was, in relation to all the thirteen defamatory stories covered in this ground, rightly rejected by the learned trial Judge. Ground 3 of the appeal must also fail.

Ground 4

This ground calls for an examination of the defences of justification and fair comment as applied in defamation cases. The legal test for a defence of justification is whether the defendant can prove that the allegation made in

the words complained of is "substantially true" **See: England and Wales High Court case of Begg vs. British Broadcasting Corporation [2016] EWHC 2688 (QB) quoting from Rothschild vs Associated Newspapers [2013] EMLR 18 at [24]- [26]).**

In the present case, the appellants pleaded justification in relation to the respondent's claim concerning the story set out in Exhibit PE5A, which reads:

"Exhibit PE5A – Bigirimana's wife acquires new benz, published on 4th December, 2012

Just weeks after 12 European countries suspended budget support to Uganda until 2015, Parliament has taken an interest in a report that the wife of one of the embattled senior civil servants in the Office of the Prime Minister acquired a brand new $100,000 (Shs 250 Million) luxury car which was paid for in cash.

A yet to be identified individual paid the money in five months for a four-wheel drive Mercedes Benz now registered in the names of Ms Elizabeth Bigirimana.

Ms. Bigirimana, the wife of the Permanent Secretary to the OPM Mr. Pius Bigirimana, works as an administrator at the Uganda Broadcasting Corporation (UBC).

"Payments in cash"

Documents seen by the Saturday Monitor indicate that between June 1, 2010 and November 11, 2010, three payments were made into a Spear Motors' bank account for a blue station wagon, ML Mercedes Benz model 2010, registration number UAP 555H.

Mr. Bigirimana is in the eye of the storm in which according to a special audit by the Auditor General, over 50bn has gone missing under his watch.

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Bank details seen by this newspaper also indicate that the initial down payment of $30,000 (Shs 81m) was made to spear motors on June 1, 2010 for the vehicle.

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All the payments were in US Dollars and in cash. By December 9, 2010, the vehicle had been fully registered in Ms. Bigirimana's name."

The respondent pleaded, in relation to the above story, as follows:

"The plaintiff shall aver and contend that the said story was false, portrayed him as a thief who is using public funds for self-aggrandizement and yet:

a) The truth is that the plaintiff's wife had brought the vehicle herself using her own savings and paid for it in instalments stretched over a period of 5 months.

b) The plaintiff had no connection with his wife's private affairs at all, as she handled the transaction herself and had the car delivered to her and registered into her names upon completion of payment.

c) The funds that procured the said vehicle were not in any way connected to missing OPM funds."

I note that, as counsel for the appellants rightly pointed out, the learned trial Judge did not deal with this story, in his judgment. Therefore, I will proceed to reappraise the evidence. In my view, the stories have to be understood in so far as they affected the respondent, and not his wife. The meaning of the story was that the respondent had given his wife money (got from stolen OPM funds) to buy the relevant vehicle. As such, the burden lay on the appellants, who pleaded justification, to prove that the respondent took stolen money and bought the vehicle for his wife. They failed to discharge that burden. I would therefore hold that the defence of justification could not succeed.

With regard to the defence of fair comment, the appellants pleaded the defence in relation to the story set out in Exhibit PE5, which is set out below:

> **"Exhibit PE5UU – Money, Drugs eat up Police Force, published on 5th November, 2017**
>
> **But Ms. Akullo's attempt to move further against corruption suffered a blow when officials in the Ministries fought back. For example, Mr. Pius Bigirimana, the then Permanent Secretary in the OPM who has since been transferred to the Minister of Gender, Labour and Social Development again as Permanent Secretary declined to record a statement with the police about the cases in the OPM. Ms Akullo and her CID team were rendered helpless...Ms. Akullo's response was that she could not proceed without senior officers in the OPM recording statements. We have written to PS Bigirimana to record statement with our detectives to help us understand how the funds were used but up to now, he has refused, how can we fast tract the investigations when people who claim to be whistleblowers don't want to cooperate."**

The defence of fair comment was explained in the case of **Slim and Others vs. Daily Telegraph and Another [1968] 1 All ER 497**. In that case, Lord Denning stated that the defence was available where the alleged defamatory statement was made by an honest man, not actuated by malice, expressing his genuine opinion on a subject of public interest, no matter that his words conveyed derogatory imputations: no matter that his opinion was wrong or exaggerated or prejudiced; and no matter that it was badly expressed so that other people read all sorts of innuendoes into it. Fair

comment applies where the alleged defamatory statement is a comment and not a statement of fact. In determining one way or the other, I have had regard to the following observations in the **Begg case (supra)**:

> **"The approach the Court should take when determining whether the words complained of are fact or opinion was summarised in Yeo v. Times Newspapers Ltd [2015] 1 WLR 971 as follows (at [88] and [89]):**
>
> **(1) The statement must be recognisable as comment, as distinct from an imputation of fact (see Gatley on Libel and Slander, 12th edition, para 12.7).**
>
> **(2) Comment is "something which is or can reasonably be inferred to be a deduction, inference, conclusion, criticism, remark, observation, etc." (Branson v. Bower [2001] EMLR 15 [26])**
>
> **(3) The ultimate determinant is how the words would strike the ordinary reasonable reader (Grech v. Odhams Press [1958] 2 QB 275, 313). The subject-matter and context of the words may be an important indicator of whether they are fact or comment (British Chiropractic Association v. Singh [2011] 1 WLR 133 [26], [31]).**
>
> **(4) Some statements which are by their nature and appearance comment are nevertheless treated as statements of fact where, for instance, a comment implies that a claimant has done something (i.e. engaged in dishonourable conduct) but does not indicate what that something is (Myerson v. Smith's Weekly Publishing Co. Ltd (1923) 24 SR (NSW) 20, 26 per Ferguson J)."**

I will now proceed to apply the highlighted principles to the present case. My view is that the story contained in Exhibit PE5UU was a statement of fact and not an opinion. The story alleged that the respondent had on several occasions refused to attend the police to record statements about the corruption scandal. The respondent denied that this was the case and adduced evidence of PW1 Komumburuga, a police officer, who testified that the respondent had cooperated with police whenever called upon. As the relevant story contained a statement of facts, the defence of fair comment could not apply.

I would therefore conclude that the defences of justification and fair comment could not succeed. Ground 4 of the appeal, must also fail.

Ground 5 and the Cross Appeal

I will consider ground 5 of the appellants' appeal and the respondent's appeal jointly, as they all relate to the quantum of damages awarded to the respondent.

The contention for the appellants in ground 5, is that the combined sum of Ug. Shs. 450,000,000/= awarded to the respondent as damages was excessive in the circumstances. The respondent replied that the sum was inadequate in the circumstances of the present case. He also cross-appealed to have the amount awarded as damages enhanced.

I begin by noting that an appellate Court may only interfere with an award of damages by the trial Court in exceptional circumstances. This proposition was articulated by the Supreme Court in its decision in **Crown Beverages vs. Sendu, Civil Appeal No. 01 of 2005 (per Oder, JSC)** as follows:

> **"the principle that an appellate court will not interfere with the award of damages by a trial court unless the trial court acted upon wrong principle of law or the amount awarded is so high or so low as to make it an entirely erroneous estimate of the damages to which the plaintiff was entitled equally applies to the instant case."**

As I stated in my judgment in the case of **Red Pepper Publications and Another vs. Rtd Chief Justice Wambuzi, Civil Appeal No. 0128 of 2017 (unreported)**, the amount of damages awarded in defamation cases must be reasonable. In determining whether the damages are reasonable, the Court will consider all circumstances of the case. For compensatory/general damages, the Court will bear in mind that compensatory/general damages in defamation cases are awarded to vindicate a successful plaintiff for the damage to his reputation caused by the defamatory statements and to offer him a consolation. As Lord Hailsham stated in **Broome v Cassell & Co Ltd [1972] AC 1027**, the successful plaintiff in a defamation case must be able to point at the sum awarded as damages and convince a bystander of the baselessness of the charge.

Counsel for the appellants submitted that the Court should set aside the sum awarded as damages because in the **Rtd Chief Justice Wambuzi case (supra)** where the plaintiff had a better reputation than the respondent, this Court set aside a sum of Ug. Shs. 325,000,000/= awarded as compensatory damages and substituted a sum of Ug. Shs. 150,000,000/=. In my view, the facts of that case, are distinguishable as counsel for the respondent explains. The claim in that case concerned one defamatory publication while the present case concerns 15 different defamatory publications, published over a space of 3 years. The sum of Ug. Shs. 350,000,000/= was therefore adequate and I would maintain it. I would not enhance the amount awarded as in my view, the sum is substantial enough to vindicate the respondent's damaged reputation.

I would also not interfere with the award of Ug. Shs. 100,000,000/= as exemplary damages. As I explained in my judgment in the Rtd Chief Justice Wambuzi case (supra), exemplary damages are awarded to punish the defendant where he/she, in publishing the defamatory statements, acted in contumelious disregard of the plaintiff's rights. I find that the appellants in publishing the fifteen defamatory stories about the respondent for a prolonged period of 3 years acted in disregard of his rights and their actions warranted punishment. However, in my view, the sum of Ug. Shs. 100,000,000/= awarded by the learned trial Judge is adequate. I would not enhance it.

Ground 5 of the appeal and the cross-appeal must, for the above reasons, fail.

I noted that counsel for the appellants, in his submissions on ground 5, challenged the grant of a permanent injunction and the order for the appellants to issue an apology to the respondent. However, it should be noted that ground 5 challenged the award of damages and not the orders on the permanent injunction or the apology. Counsel for the respondent did not address the said appellants' arguments. I would have ordinarily, not considered the submissions but I think the interests of justice require me to do so.

The learned trial Judge ordered the 1st appellant to publish an apology to the respondent. The terms of the order were that:

> **"In regards to the order directing the publication of an apology, the 1st defendant is ordered to publish an apology to be published with equal publicity as the impugned defamatory publications for a period of two weeks at least two times a week."**

I accept the submissions of counsel for the appellants that the order for a forced apology was oppressive and disproportionate. Since the respondent has been vindicated by substantial damages, the appellants do not have to be compelled to publish an apology. I would set aside the order directing the 1st appellant to publish an apology to the respondent.

In relation to the permanent injunction order, the learned trial Judge made the following order:

> **"As held in the case of Hon. Rebecca Kadaga vs. Richard Tumusiime and 2 Others, HCCS No. 56 of 2013, this Court also issues a permanent injunction restraining the defendants jointly or severally by themselves, their agents and assignees from publishing further defamatory statements about the plaintiff.**

Counsel for the appellants submitted that the order of permanent injunction should not have been made as all statements are deemed to be bonafide until a Court finds them to be defamatory. The submissions in that regard are true. However, it should be noted that the permanent injunction only restrains the publication of defamatory stories against the respondent. The learned trial Judge's order should not be interpreted as censuring the appellants from writing about the respondent, a public servant whose actions in exercise of his duties require serious public scrutiny. The appellants may continue writing about the appellant, while being mindful that they will be held liable should they publish defamatory material.

In conclusion, all grounds of appeal having failed, I would dismiss the appeal and uphold the judgment and orders of the learned trial Judge save the order for the 1st appellant to publish an apology to the respondent, which is set aside. I would also dismiss the cross-appeal. I would award the respondent

¾ of the costs of the appeal, which in my estimation is the total of the costs of the appeal, less the costs of the cross-appeal.

Since only Gashirabake, JA agrees, the Court, by majority decision (Kibeedi, JA dissenting in part), dismisses the appeal, but modifies one of the orders made by the learned trial Judge in the manner stated in this judgment.

It is so ordered.

Dated at Kampala this ..... 05th ..... day of..... January .....2023.

.....

Elizabeth Musoke

Justice of Appeal

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

[Coram: Elizabeth Musoke, Muzamiru M. Kibeedi & Christopher Gashirabake, JJA]

CIVIL APPEAL NO. 0170 OF 2022

1. **MONITOR PUBLICATIONS LIMITED A NATION MEDIA GROUP**]
2. **THE MANAGING DIRECTOR MONITOR PUBLICATIONS LTD**]
3. **THE MANAGING EDITOR/EXECUTIVE EDITOR OR EDITOR-IN-CHIEF, THE MONITOR PUBLICATIONS**]
4. **THE EDITOR, SUNDAY MONITOR, A PUBLICATION OF THE MONITOR PUBLICATIONS LIMITED**]
5. **ANDREW BAGALA**] :::::::::::::::::::::::::::::: **APPELLANTS**

VERSUS

PIUS BIGIRIMANA :: **RESPONDENT**

(Appeal and Cross-Appeal from the decision of the High Court of Uganda at Kampala (Civil Division) before Sekaana, J. dated 10th December 2021 in Civil Suit No. 0612 of 2017)

JUDGMENT OF MUZAMIRU MUTANGULA KIBEEDI, JA

I have had the advantage of reading in draft the judgment prepared by my learned sister, Musoke, JA which sets out the background facts to this appeal and cross-appeal, the grounds of the appeal and cross-appeal, and the submissions of the respective parties. I gratefully adopt the same and, as such, will directly proceed to resolve the substance of the grounds raised by the appeal and cross-appeal.

Ground One - Publications barred by limitation

The issue of limitation of the additional causes of actions arising from the thirteen publications set out in the Amended Plaint arose from ground one of the appeal which was couched as follows:

> *"The learned trial Judge erred in law in holding that the different causes of action that were introduced by the amendment of the respondent's plaint filed on 20th November, 2020 in*

respect of particular publications of 14th October, 2012, 4th December, 2012, 28th December, 2012, 29th December, 2012, 21st February, 2013, 2nd November, 2012, 7th November, 2012, 9th November, 2012, 16th November, 2012, 30th November, 2012, 7th March, 2012, 7th March, 2013, 26th March, 2013 and 10th March, 2013 were not barred by limitation."

There is no doubt that an action for defamation should be commenced by an aggrieved party within six years from the date on which the cause of action arose. This is by virtue of Section 3(1)(a) of the Limitation Act, Cap. 80 which bars actions in tort from being instituted in courts of law after the expiration of six years from the date on which the cause of action arose. Therefore, resolution of whether the 13 publications set out in ground one were time barred revolves around establishment of the date upon which the appellant's claim in defamation in respect of the said thirteen publications can be stated to have been instituted. The appellant's case is that the applicable date is the 20th of November 2020 when the respondent's Counsel filed the amended plaint which set out the detailed particulars of the alleged defamatory words. On the other hand, the respondent contends that the applicable date is the 08th of December 2017 when the original plaint was filed by the respondent's Counsel.

I agree with the position of the law as stated by my learned Sister, Musoke, JA that founding a claim in defamation requires that the allegedly defamatory story be set out *verbatim*. The same position is stated in **Bullen and Leake and Jacob's *Precedents of Pleadings***,12th edition, Sweet and Maxwell, London, 1975 at page 626 thus:

"The libel must be set out verbatim in the Statement of Claim; it is not enough to set out its substance or effect as 'the precise words of the document are themselves material'...Where the defamatory matter arises out of a long article or 'feature' in a newspaper, the plaintiff must set forth in his Statement of Claim the particular passages referring to him of which he complains and the respects in which such passages are alleged to be defamatory (DDSA Pharmaceuticals Ltd. V. Times Newspaper Ltd. [1973] I Q.B.21, C.A); and if the part complained of is not clearly severable from the rest of a single publication, the whole publication must be set forth in the Statement of Claim, even though the defendants may be entitled to plead justification or fair comment in respect of the other parts of the publication(S. & K. Holdings Ltd. V. Throgmorton Publications Ltd. [1972] 1 W.L.R. 1036)... "

Likewise, **Gatley on Libel and Slander in Civil Actions, 4th Ed, Sweet and Maxwell, London, at page 260** re-states the same position thus:

> *"In a libel the words used are the material facts and must therefore be set out in the statement of claim; it is not enough to describe their substance, purport or effect. The law requires the very words of libel to be set out in the declaration in order that the court may judge whether they constitute a ground of action – "whether they are libel or not". In libel you must declare upon the words; it is not sufficient to state their substance."*

A review of the original plaint filed by the respondent's Counsel on 08th December 2017 confirms the findings of my learned Sister, Musoke, JA that with the exception of the specific claim regarding the article published by the appellants on 5th November, 2017, the respondent's pleadings in respect of the allegedly defamatory stories published by the appellants about the respondent between 2012 and 2015 were too general and too vague to found a cause of action in defamation. It was not until the respondent's Counsel filed the amended plaint on 20th November 2020, which set out the specific words complained of, that the respondent can be said to have succeeded in founding a cause of action in respect of thereof. As such, I agree with the holding of my learned sister, Musoke, JA, that the defamatory stories that were more fully set out in the amended plaint constituted new causes of action, since the original plaint is deemed to have only set out one allegedly defamatory story.

Upon finding that the amended plaint created new causes of action, in my view it automatically follows that the date when the amended plaint was filed in court namely, the 20th November 2020, is the date applicable when computing whether the said new causes of action were time barred or not. Applying that date to the publications set out in ground one of the appeal, I would hold that the respondent's claims in respect of the thirteen claims set out in ground one of the appeal were time barred for having been properly instituted by way of the Amended Plaint filed in the trial court after the expiry of the prescribed period of 6 years. I would accordingly allow ground one of the appeal.

The effect of this holding is that the trial court's jurisdiction was limited to consideration and disposal of the respondent's claim regarding the article published by the appellants on 5th November, 2017 only.

Grounds 2 and 3 - Separate evaluation of each publication and the corresponding defence of qualified privilege.

The gist of the appellant's complaint in grounds two and three was that the trial judge failed to evaluate the respondent's evidence and the appellant's defence of qualified privilege in respect of each impugned publication separately.

I agree with the findings of my learned sister, Musoke, JA that ground 2 has no basis as it simply relates to style of writing adopted by the trial court.

With regard to the appellant's defence of qualified privilege, I agree with the position of the law as discussed by my learned sister, Musoke, JA. For purposes of emphasis, there is no doubt in my mind that the subject matter of the impugned publications was a matter of public importance. The investigations by the office of the Auditor General, the Criminal Investigations Department of the Uganda Police and the Public Accounts Committee of Parliament (PAC) into the mismanagement of approximately Ugx 50,000,000,000/= (Uganda Shillings Fifty Billion only) by the Office of the Prime Minister of Uganda meant for the Peace, Recovery and Development Program in Northern Uganda was a matter of great public interest. The public was entitled to know the position of the respondent in the whole saga since he was the Permanent Secretary and Accounting Officer in the office of the Prime Minister at the time. As such, by the appellants making publications in respect the said matter of public interest they were discharging their constitutional mandate to expose and contribute towards the fight against corruption and misuse of public offices. This is in accordance with Principle XXVI (iii) of the National Objectives and Directive Principles of State Policy in the Constitution of the Republic of Uganda, 1995 which provides:

"(iii) All lawful measures shall be taken to expose, combat and eradicate corruption and abuse or misuse of power by those holding political and other public offices."

The appellants were also exercising their freedom of expression and of the media which is one of the fundamental human rights guaranteed by Article 29 (1) of the Constitution of the Republic of Uganda, 1995.

In the exercise of the freedom of the media and the duty to expose corruption, the appellant had to exercise "responsible journalism" in order to ensure that not only was the public fed on information which was substantially true but also the reputation of the public officers involved is not unfairly tarnished. This is my understanding of the defence of "qualified privilege" as espoused by the House of Lords of the United Kingdom in ***Jameel and Others vs. Wall Street Journal Europe Sprl [2006] UKHL 44***. A key component of responsible journalism in the context of the dispute before us is verification of information that the appellants received and giving the respondent an opportunity to respond to it. This was especially so where the information was not part of the official reports of the Auditor General or Police or the official proceedings of PAC or Parliament itself.

I have examined the impugned publications. With the exception of Exhibit PE5T and Exhibit PE5CC – OPM OFFICIALS SURVIVE LYNCHING, published on 7th March, 2013, the rest of the publications did not indicate any effort on the part of the appellants to get a response from the respondent about the subject matter of the respective publications. This fell below the standard expected of responsible journalism.

I agree with the finding of my learned sister, Musoke, JA that the appellants failed to prove their defence of qualified privilege. I would accordingly disallow ground 3.

Ground 4 – Defences of Justification and Fair Comment

The defence of justification was raised by the appellant in respect of the respondent's claim concerning the story published on 04th December 2012 and set out in Exhibit PE5A, thus:

"Exhibit PE5A – Bigirimana's wife acquires new benz, published on 4th December, 2012

Just weeks after 12 European countries suspended budget support to Uganda until 2015, Parliament has taken an interest in a report that the wife of one of the embattled senior civil servants in the Office of the Prime Minister acquired a brand new $100,000 (Shs 250 Million) luxury car which was paid for in cash.

A yet to be identified individual paid the money in five months for a four-wheel drive Mercedes Benz now registered in the names of Ms Elizabeth Bigirimana.

Ms. Bigirimana, the wife of the Permanent Secretary to the OPM Mr. Pius Bigirimana, works as an administrator at the Uganda Broadcasting Corporation (UBC).

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Sixteen days later on June 17, 2010, another payment of $50,000 (Shs 135 million) was made. Four months later on November 25, 2010, a final payment of $20,000 (Shs 54 million) was also made to the same motor vehicle dealer.

All the payments were in US Dollars and in cash. By December 9, 2010, the vehicle had been fully registered in Ms. Bigirimana's name."

In the circumstances above, the appellant upon raising the defence of "justification" had the burden to prove that the words complained of were "substantially true". The respondent having admitted in his pleadings that indeed it was true that his wife did acquire the vehicle in question, the appellant had no duty to prove that fact. The admission thus left the appellant with only the burden to prove the "suspicious" payments made for the vehicle as claimed by the appellants in the impugned publication.

I have perused the record of proceedings before the lower court. One would have expected the appellant to adduce the evidence of the "bank details" which the appellants claim to have seen in order for them to prove who made the three payments for the vehicle and where the moneys used to pay came from. But this was not done. The appellant had the option of invoking the Evidence (Bankers' Books) Act, Cap. 7 and Order 10 of the Civil Procedure Rules on Interrogatories, discovery and inspection of documents in order to get the relevant documents, which it had referred to in the impugned article, produced in court by the relevant bank(s) or Spear Motors company, but they did not make use of the law. As such, the appellants failed to prove the truthfulness of the critical aspects of the impugned publication which the defence of "justification" required them to do.

Accordingly, I would agree with my learned sister, Musoke, JA that the defence of justification failed.

I likewise agree with the finding of my learned sister, Musoke, JA that the appellants' defence of fair comment in respect of the publication of **"Exhibit PE5UU –** *Money, Drugs eat up Police Force",* published on 5th November, 2017 would fail.

Accordingly, I would disallow ground 4 of the appeal.

Damages Awarded -

The complaints about the amounts awarded as damages to the respondent was contained in ground 5 of the appeal and the respondent's cross-appeal. It is the appellant's case that the total

award of the sum of Ugx 450,000,000/= to the respondent as damages was excessive. On the other hand, the respondent claims that the award was low and ought to be raised to Ugx 600,000,000/=.

My starting point of analysis of the complaint in ground 5 and the cross appeal is my earlier finding under ground one that all the contested publications were time barred save the publication of 5th November 2017 titled "*Money, Drugs eat up Police Force*" which was exhibited before the trial court as ***"Exhibit PE5UU".*** The import of that finding is that in my view the trial court's jurisdiction in assessing the quantum of damages was restricted to consideration of the injury arising from the publication of 5th November 2017 only.

From the record of appeal, the factors taken into account by the trial court in awarding the respondent the sum of Ugx 350 Million as general damages were:- the fact that the defamatory statements were made in several publications, the damage caused on the plaintiff's reputation, the distress and humiliation the defamatory statements had on the dignity as a Permanent Secretary and the damage to his reputation which was far reaching in Uganda and outside.

As for the award of the exemplary damages of Ugx 100,000,000/=, the trial judge stated that the figure was appropriate to punish the appellants and discourage them from publishing any defamatory statements about the respondent in a reckless and negligent manner.

There is no doubt that general damages in defamation suits are intended to compensate the aggrieved party for the damage to his/her reputation, vindicate his/her good name and take account of the distress, hurt and humiliation which the defamatory publication has caused See*:* ***John Vs MGN Ltd [1997] Q.B 586, CA.*** However, the actual extent of injury or damage is a question of fact in each case and the burden was on the respondent to prove it.

In the instant matter, the respondent was at the material time the Permanent Secretary and Accounting Officer in the Office of the Prime Minister when the defamatory articles started being published. However, the adverse publications did not stop the President from renewing the respondent's contract as Permanent Secretary and deploying him to continue to serve in

Ministries and government bodies where the President deemed him most relevant at any given time. From the Office of the Prime Minister, the respondent was deployed to serve as the Permanent Secretary of the Ministry of Gender. Currently he is still a Permanent Secretary and the Secretary to the Judiciary. His record of service at the level of Permanent Secretary has never been broken at all inspite of the negative publications made by the appellant. To me, that implies that the respondent's reputation in the eyes of the appointing authority was not adversely affected by the publications. The respondent's appointing authority has access to all manner of information from diverse sources including intelligence services which can easily use to verify the truthfulness, or lack of it, of any attacks on the reputation and suitability of the respondent by any publications. As such, the risk of damage of the reputation of the respondent in the eyes of his appointing authority is minimal.

That is not to imply that the respondent's reputation is relevant only in his relationship with his appointing authority. The respondent's reputation is extremely important in the eyes of his family, friends and the general public. But this is closely intertwined with the extent of publication of the defamatory matter and the reading culture of that class of people. It is closely linked with who saw and read the publications. Unfortunately, counsel for the respondent did not do a good job in this aspect. The pleadings as to publication were very general. And no evidence was adduced as to the circulation rates of the defamatory publications, the shelf life of each defamatory publication, the readership in respect of the defamatory publications and the location of the readers. Even the trial judge fell into the same trap of making a critical decision as to damages using generic statements like "*The damage to [the respondent's] reputation was* ***far reaching*** *in Uganda and outside Uganda*". We are living in an information era and there is no excuse as to why the legal profession should continue using generalities that were used by our predecessors when resolving similar disputes. With increasing digitization of the media, it is possible to access statistics as to the number of persons who actually accessed and read a specific article (otherwise termed number of "hits"), their location, date and time. Information is readily available on the circulation rates of the publications in hard copy. Counsel presenting defamation claims before courts of law

in the current era are expected to continuously upgrade themselves in order to match the changing times and reflect the same in their pleadings and evidence.

While testifying about the extent of the injury occasioned by the defamatory publications, the respondent testified that he had suffered damage as a result from the taunts and stress he had had to grapple with at his workplace, his family, the general public and the world at large.

The other evidence as to the extent of the injury was contained in the evidence of Mr. Frank Kanduho Rwabosy. He stated that he was an advocate of the High Court and had known the respondent as his client since 2012. That he had worked closely with the respondent and held him in high esteem on account of his public service ethics and integrity. That his perception of the respondent made a U-turn after reading the numerous defamatory stories published about him by the appellants. The witness also mentioned names of other persons whose perception of the respondent likewise made a U-turn as a result of the impugned publications. These were Hon. Sam Bitangaro and Hon. Frank Tumwebaze. The witness concluded that the publications painted the respondent as an embattled civil servant who made illicit expenditure on OPM funds, a person who thrives on State House pampering and patronage, and who obstructs police investigations and above of all a liar.

In evaluating the credibility of evidence as to injury allegedly suffered by a party, the court should, inter alia, juxtapose the evidence adduced with the usual responses of people in a similar situation in a real life situation. In the case of ***Ambayo Joseph Waigo Vs Aserua Jackline, Civil Appeal No. 100 of 2015***, this court (Musoke, Kibeedi & Gashirabake, JJA) summarised the principle thus:

> *'...one of the tools used to extract the truth from falsehood is ascertaining whether the evidence of a particular witness in respect of any particular fact or set of facts is in conformity with real life experience and collateral circumstances. If the testimony tallies with what happens in real life in the given situation, then the probability is that it is truthful. Where the testimony deviates from what ordinarily happens in real life, then the probability is that it is untruthful unless a reasonable explanation is given to account for the deviation. The above principle is set out in Sarkar's Law of Evidence, 14th Edition, 1993 Reprint, Volume 1, at page 924 – 925 thus:*

"There is no better criterion of the truth, no safer rule for investigating cases of conflicting evidence, where perjury and fraud must exist on the one side or the other, than to consider what facts are beyond dispute, and examine which of the two cases best accords with these facts, according to the ordinary course of human affairs and the usual habits of life. The probability or improbability of the transaction forms a most important consideration in ascertaining the truth of any transaction relied upon [Bunwari V. Hetmarain, 7MIA 148; see Ramgopal V. Gordon Stuart & Co., 14 MIA 453; See Leelamund v. Bassiroonnissa, 16 WR 102]."

Applying the above principle to the evidence of Mr. Frank Kanduho, I am not satisfied that his evidence as to injury is credible. For Mr. Kanduho who had known and closely worked with the respondent to close to ten years to claim that his perception of the person he held in very high esteem made a U-turn on account of the appellant's publications is very simplistic and not in line with the ordinary course of human affairs. Why would Mr. Kanduho all of a sudden start thinking that the publication had a better assessment and understanding of the respondent than his own assessment of the same person which was about ten years? Whereas it is true that a lie repeated several times might sound and appear truthful , in the ordinary course of affairs of persons of Mr. Kanduho's calibre, only those persons who do not know the respondent closely or well will follow "public opinion" blindly in preference to their own individual assessments. Otherwise making a U-turn about someone who you have closely known and worked with on the basis of newspaper publications which are short of the test of responsible journalism is not the usual response of the persons in Mr. Kanduho's class.

The same can be said about the responses attributed to Hon. Bitangaro and Hon. Frank Tumwebaze. If indeed it is true that their perception of the respondent changed simply on account of the defamatory publications, then they were clearly not persons who knew him personally or well. And it is in the same category that the "general public" likewise falls. Since the "general public" and distant friends and acquaintances don't have the advantage of having personal knowledge and assessment of the respondent's reputation, defamatory publications have a bigger impact in that class of people than in the class of one's close acquaintances and close family members. It is this class of people which, in a real life situation, can easily be influenced by the negative or defamatory publications to form negative perceptions about the respondent. However,

the circulation figures and statistics of hits thus become critical at that stage to prove the degree of publication in order for one to qualify for an award beyond nominal damages since libel imputing crime is actional *perse*.

The other factor that the trial court did not consider are the court awards in decided cases in similar claims. This ensures consistence in court awards and increases public confidence in our court system when litigants are seen to receive similar treatment when faced with similar situations. Counsel for the appellants referred us to the case of ***Red Pepper Publications and Another vs. Rtd Chief Justice Wambuzi, Civil Appeal No. 0128 of 2017 (unreported)***, where this Court set aside a sum of Ug. Shs. 325,000,000/= awarded as compensatory damages and substituted it with a sum of Ug. Shs. 150,000,000/=. In my view, the said case is a good reference point. But allowance must be made to cater for the following distinguishing features: The respondent in the ***Red Pepper*** appeal was a retired Chief Justice and head of the Judiciary of Uganda, whereas the current respondent is a serving Permanent Secretary of the Judiciary who, at the time of the impugned publication, was a Permanent Secretary in the Office of the Prime Minister. Second, the publication against the Retired Chief Justice related to his private life whereas the publications against the current respondent relate to his duties and functions in a public office. In my view, court should be more tolerant of mistakes made while debating and criticizing persons in their officialdom than their private businesses or lives.

The last aspect which the trial court did not consider is the legal and economic context of the country. Judgment of the trial court was rendered in December 2021. The country was just emerging out of the Covid-19 Pandemic and experiencing the post covid-19 effects at both macro and micro-economic levels. And these post covid-19 effects were in the public domain. For instance, the research findings by the Economic Policy Research Centre (EPRC) into the effects of Covid -19 published in its Special Issue No.2 March 2021 stated the effect of Covid – 19 thus:

> *"The Covid-19 outbreak, and the subsequent containment measures have had devastating effects on Uganda's businesses resulting in the economy's general slowdown... Results indicate that the emergence of the covid-19 pandemic and the subsequent measures to contain its spread negatively affected business operations in all sectors of the economy,*

albeit with different magnitude. After the lockdown, businesses faced severe liquidity constraints while re-opening… In addition, access to credit remains a challenge as financial institutions remain pessimistic about the future business environment. Nonetheless, employment in businesses showed signs of recovery, albeit sluggishly, with much slower employment recovery in the service sector." See:- https://eprcug.org/publication/the-plight-of-micro-small-and-medium-enterprises-amidst-covid-19-a-post-lockdown-analysis-based-on-business-climate-survey/?wpdmdl=14056&refresh=-611b744829c031629189192

The media was not immune to the adverse effects of the Covid-19 Pandemic. The impact of the pandemic on the Media could easily be discernable by use of information in the public domain, especially regarding media houses which are listed on the Uganda Securities Exchange. This information is in the public domain because the law requires listed companies to publish their performance.

I have had a casual glance at the performance of the New Vision Printing and Publishing Company which is a listed media company on the Uganda Securities Exchange. The New Vision media family made a loss after tax of Ugx 1 Billion in the financial year ending 30th June, 2021 compared to a profit of Ugx 2.7 Billion in 2020. See: https://www.use.or.ug/uploads/announcements/New%20Vision%20%20 Financial%20 Statements%20June%202021%20Published.pdf

Further, the semi-annual report and financial statements for the half year ending December 31, 2021 indicated that The New Vision media family made a profit after tax of Ugx 396,548,000/= in 2021 as compared to the loss of Ugx 1,373,879,000/= for the same period in 2020. See: https://www.use.or.ug/uploads/announcements/New%20Vision%20Half%20Year%20Financials%20December%202021%20Advert%2017.02.2021.pdf

The improved performance was attributed to the business slowly picking up with the partial opening of the economy from the Covid -19 pandemic which saw the newspaper circulation and commercial printing activities start picking up slowly.

The Report summarized the performance thus:

"Overall turnover grew by 52.54% from last year [2020] mainly as a result of publishing orders for Ministry of Education Home Schooling and Upper Primary textbooks printed and distributed in the period.

Advertising revenue registered a growth of 9.81% while revenue from circulation and commercial printing declined by 12.27% and 9.76% respectively. Television advertising, Radio advertising and Print advertising grew by 14.93, 12.58% and 0.87% respectively from the same period last year.

Cost of sales increased by 62.88% due to cost of printing and distributing Education materials. Administrative expenses reduced by 2.40% due to increased efficiencies."

In the ordinary and simple language, even the media industry in Uganda was not spared of the adverse effects of Covid-19 witnessed by the other categories of businesses in Uganda. Further, that for The New vision, it was returning to some minimal degree of profitability - courtesy of the contracts it received from the Ministry of Education to print, publish and distribute textbooks for the Home-Schooling project and upper primary during the period.

All the above information is available in the public domain. When faced with making decisions which impact on the survival and continuity of business organisations, it is important for the court to be mindful of the general trends in the economy and business if it to play its role meaningfully in the current information era. This is in accordance with Article 126(1) of the Constitution which enjoins courts with adjudicating cases in conformity with ***inter alia*** the aspirations of the people. Court will have abdicated its role in this information era if it were to make decisions which are completely oblivious of the trends and other circumstances prevailing in the country at the macro level - as if it is operating from planet mars.

This should not be interpreted to mean that courts should take over the role of counsel to prove their clients' case. It simply means that when evaluating the evidence before it, court should have the bigger picture and bigger parameters against which to evaluate the specific evidence before it relating to the specific litigants. To be able to execute this mandate, the court must be proactive if it is to play its rightful role in society.

Applying the preceding principle to the instant matter, I am of the view that while court has a duty to make orders which are intended to enforce responsible journalism and to protect the reputation

of individuals by penalising any transgressions appropriately, it should not, in the process of penalising transgressions, make awards whose net effect is to economically kill the media houses and, by extension, reduce the space for media freedom and expression in the country. The post Covid-19 economy is tight for all businesses including media houses. So, court cannot maintain awards of general damages in the immediate aftermath of the Covid-19 Pandemic at the same level as the awards that were made in cases of similar facts when the economic situation was more favourable for business survival. Court needs to engage a balancing act since protection of freedom of the media and individual reputation are equally important in the growth of our young democracy and increasing accountability of public servants. The trial court was not alive to the bigger picture while awarding the respondent the sum of Ugx 450M at the time when the trend in the country at the macro-economic level in general, and the media industry in particular, was of visible economic struggle.

Lastly, I also note that most of the damage suffered by the respondent arose from publication of the defamatory stories by the appellant. I just cannot understand why the same avenue used to damage the reputation of the respondent cannot serve a meaningful purpose when it comes to cleaning the mud thrown at the respondent's reputation by the defamatory publications. There is no doubt that for a professional and in the business world, the biggest asset is the reputation. As such, one would expect that the primary concern of the person aggrieved by the adverse media publicity is cleaning his/her name. Monetary awards, though important, might not necessarily be adequate and effective to clean the soiled reputation. Cleaning the soiled reputation in the digital era is much easier than it was during the previous times. Once the appellant makes an apology approved by the Registrar of this Court and the apology is tagged or otherwise linked to each defamatory publication, it enables anyone who accesses the publication to simultaneously read the apology. Digitized media has a higher shelf life than the print media. To me, this is more effective in cleaning the mud thrown at the respondent's name than the undue focus on money. At the same time, the appellants are enabled to continue operating - but with lessons learnt out of the transgression. It is a win-win for the litigants themselves and the whole cause of increasing the space for media freedom and professionalism.

Upon reviewing the record of the trial court, I have no hesitation in finding that the trial judge did not address his mind to the critical considerations relevant when assessing an appropriate award of damages in the circumstances of the case. As a result, he awarded sums which were very high in the circumstances. One of the instances where an appellate court can interfere with an award of damages of the trial court is where the appellate court is satisfied that the trial judge acted on some wrong principle of law or that the amount awarded was extremely high or so small as to make it, in the judgment of the appellate court, an entirely erroneous estimate of the damages which the litigant is entitled to. See: ***Sembuya Francis Vs Allports Services (U) Limited, Supreme Court Civil Appeal No. 6 of 1999 (Unreported)***.

I am satisfied that the case before this court is a proper case in which the appellate court should interfere with the damages awarded by the High Court.

Taking into account the factors set out herein above, I would reduce the general damages from Ugx 350,000,000/= (Three Hundred Fifty Million Uganda Shillings Only) to Ugx 100,000,000/= (One Hundred Million Uganda Shillings Only) and the exemplary damages from Ugx 100,000,000/= (One Hundred Million Uganda Shillings Only) to Ugx 50,000,000/= (Fifty Million Uganda Shillings Only).

Costs

Since the appeal has succeeded on some grounds and been lost on others, while the respondent has lost on the cross appeal, I would order that each party bears one's cost before this court. But the respondent will have the costs of the High court since he was justified to seek legal action to protect his reputation.

Conclusion

1. I would allow grounds 1 and 5 of the appeal.
2. I would dismiss grounds 2, 3, 4 of the appeal.
3. I would likewise dismiss the cross appeal.

4. I would order the appellant to publish an apology approved by the Registrar of this Court and the apology should be tagged or otherwise linked to each defamatory publication so that anyone who accesses them can read them simultaneously with the apology.

5. The same apology should be published on the front page of one issue of the Daily Monitor newspaper (print media).

6. I would grant the respondent Ugx 100,000,000/= (One Hundred Million Uganda Shillings Only) as general damages and Ugx 50,000,000/= (Fifty Million Uganda Shillings Only) as exemplary damages.

7. I would order each party to bear his/its costs of the appeal and cross-appeal. However, the appellants should bear the costs before the trial court.

Delivered, signed and dated at Kampala this ..... 05th ..... day of ..... January ....., 2023

MUZAMIRU MUTANGULA KIBEEDI
Justice of Appeal

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPEAL NO 0170 OF 2022

1. MONITOR PUBLICATIONS LIMITED
   A NATION MEDIA GROUP
2. THE MANAGING DIRECTOR
   MONITOR PUBLICATIONS LTD.
3. THE MANAGING EDITOR/EXECUTIVE EDITOR/EDITOR-IN-CHIEF, THE MONITOR PUBLICATIONS
4. THE EDITOR, SUNDAY MONITOR
5. ANDREW BAGALA :::APPELLANTS

VERSUS

PIUS BIGIRIMANA::RESPONDENT

(Appeal and Cross-Appeal from the decision of the High Court of Uganda at Kampala (Civil Division) before Sekaana, J. dated 10th December 2021 in Civil Suit No.0612 of 2017)

CORAM: HON. LADY JUSTICE ELIZABETH MUSOKE, JA.
HON. MR. JUSTICE MUZAMIRU MUTANGULA KIBEEDI, JA.
HON. MR. JUSTICE CHRISTOPHER GASHIRABAKE, JA.

JUDGMENT OF CHRISTOPHER GASHIRABAKE, JA

I have had opportunity of reading into draft the judgment of Hon. Justice Elizabeth Musoke, JA. which I entirely concur with. I have at the same time been able to read the comments/draft by my brother, Hon. Justice Muzamiru Mutangula Kibeedi, JA. I slightly differ from him.

We need to support responsible Journalism that is when their positive role will be realized. Errant journalism should not be encouraged. We

owe that to society. They have the capacity to investigate and get the right information about a subject matter but not to go on a wild goose chase hoping to stumble by default on the correct information.
It is not their opinions that matter but the factual position. The stress and anguish they unleash on people must be atoned. After all they earn heftily from such.
They should be checked or else with the resources available to them, that is, time and space they can ruin people's careers and families.
I therefore would like to maintain the trial courts findings in their entirety.
The award to me just fair.
Regarding the claims that were time barred, authorities are cited in the draft judgment to the effect that under exceptional circumstances the court can allow these claims.
The judge allowed the amendments which included claims that were time barred.
I see no reason to fault him. But most importantly the respondents did not oppose the amendments as presented.
The fact that the judge allowed claims that would otherwise have been time barred is acceptable in law and authorities were cited to the satisfaction of court. The appellants had no problem with it and never opposed it. It therefore cannot be to the prejudice of the respondent. Having been accepted by the court it is validated as if it had been made at the time of filing.

Dated at Kampala the ..25th.. day of ..January..2023.

Christopher Gashirabake
JUSTICE OF APPEAL