

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA, AT KAMPALA

CIVIL SUIT NO. 86 OF 1996

1. DAVID ETUKET)

2. JANE ETUKET)..... PLAINTIFFS

VS

THE NEW VISION PRINTING AND PUBLISHING

CORPORATION.....DEFENDANT

BEFORE: THE HON. MR. JUSTICE V. F. MUSOKE—KIBUUKA

JUDGMENT

The two plaintiffs are husband and wife. They filed this action against the defendant alleging defamation. They sought from this court orders enabling them to recover, in the case of the first plaintiff, special, general and punitive or exemplary damages, and, in the case of the second plaintiff, general and punitive or exemplary damages.

The background to the institution of this suit is quite short but rather unusual.

The first plaintiff is a high ranking Foreign Service officer employed in the Public Service of the Republic of Uganda. He holds the rank of Counsellor. He and his wife were posted in New York at Uganda's Permanent Mission at the United Nations between 1986 and 1994, where he served in various capacities and at different ranks. He also came into close contact with the highest dignitaries within the diplomatic corps not only of the United Nations Organization but internationally. He was a member of various Uganda delegations to different international conferences in many parts of the world. At the United Nations Organization in New York, he was Chairman

of the General Assembly's Committee on Contributions. His wife, while in New York, was employed by the Permanent mission of the republic of Botswana to the United Nations for three years. Exhibit P.11.

The couple who had returned to Uganda, owned and were using motor vehicle Toyota camry, Registration No.UPS 942.The registration card is Exhibit P2.

On Friday,18th August,1995 the headline of the New vision Newspaper read, "ITONGWA SUSPECTS NETTED IN LUWERO" Just below the headline, the story run:

Police on Wednesday arrested six members of renegade NRM Major Itongwa's National Democratic Alliance (NDA) who were on their way to what police said was a secret meeting in Luwero .The six men driving in a white Toyota saloon car,UPS 942,were arrested at Katikamu,about 37 miles North of Kampala, along the Kampala-Gulu highway.

The car they were traveling in is at Luwero Police Station.

On the day on which the story came out in the new vision newspaper, the first plaintiff was in Nairobi attending a conference as a delegate of Uganda government. He was telephoned by his brother who informed him of the story. The plaintiff had to abandon the conference and return to Kampala immediately in order to find the best way to handle the extraordinary situation.

The second plaintiff who had driven their Toyota Camry,UPS 942 to her place of work at Muyenga that very morning was stuck in shock and embarrassment.She could not drive the car home and she could not leave the office until her husband arrived from Nairobi .She had frantically attempted to speak to some one in the New vision office but without much success .The first plaintiff drove it to the central police station in Kampala where he obtained a letter of clearance, Exhibit p.4 from the Regional CID.officer,Central regional to the effect motor vehicle Reg.No.UPS 942.Totoka camry, white saloon, Engine No.3S-038885 and chasis No.SUZI-076353 is not a subject of police inquiry as reported in New vision of 18th August,1995

Even then, the couple had to park their vehicle at home for well over one week as they were too scared to drive it around town.

The first plaintiff then contacted the then corporation secretary of the New vision corporation, Mr. Patrick Kiggundu and asked him that the New vision publishes a correction and an apology. Mr. Kiggundu and asked him that the New vision publishes a correction and an apology. Mr. Kiggundu promised to handle the situation with speed and urgency. However nothing appears to have been done by the defendant in that regard.

To aggravate the situation, on Wednesday 23rd August 1995 another article appeared on page 3 of the New vision publication of that day. It bore the following heading “Woman claims rebel car plate.” The more relevant parts of the article ran as below:

Mrs. Janet Etuket of Muyenga near Kampala, claims to own a car, registration No. UPS 942, yesterday went to police and asked for escorts.

Etuket said she felt unsafe after press reports that six suspected rebels driving in a vehicle with similar registration numbers had been arrested in Luwero.

The panic stricken lady who telephoned the New vision yesterday at mid day, said the registration numbers UPS 942 was that of her car. She said she was “shocked” to see yesterday’s lead story in the New Vision

The suspects arrested at Katikamu about 36 miles North of Kampala along the Kampala-Gulu highway were traveling in White Toyota saloon car, UPS 942. The car was at Luwero police station.”

However, two days afterwards on Friday, 25th August 1995, the New vision, on Page 5, published a letter written to the defendant by Messers Emoru & co. Advocates, P.O. Box 3155, Kampala on behalf of the plaintiffs. The letter was headed please don’t associate us with rebels. The last paragraph read, “ We again demand that you publish a retraction and an apology”

At the bottom of the letter, in smaller characters, there was appended the following sentence:

“Editor: We sincerely apologise for the embarrassment and inconvenience caused to Mr.and Mrs. David Etuket as a result of our story.”

The above publication was followed by a letter addressed to Emoru & co. advocates and signed by Mr.Patrick Kiggundu corporation secretary.

The letter, Exhibit P.7 read in full as set out below:

“Ref: NV/CS/25

Emoru & co. Advocates,

Plot.7 Market street

3rd Floor

Kampala

RE:WITHOUT PREJUDICE:MR & MRS ETUKET

We are in the receipt of your dated 25th August 1995

We are indeed very remorseful to the above couple for the distress which they suffered due to the mix up of the number plates. We did everything possible to correct the record in our subsequent issues. We also understand the police in our subsequent issues. We also understand the police was moved and acted quickly to stabilize the situation.

After due evaluation of all facts at issue, you would be hard stained to prove defamation on behalf of your client. Your client should appreciate, that we did whatever we could and there was no malice whatsoever.

However we admit that there was degree of pain and suffering to which we are willing to make some nominal compensation.

Yours faithfully,

Patrick Kiggundu

CORPORATION SECRETARY”

The suit was filed in this court on 30th June, 1996. The defendant was properly served with summons to enter appearance and subsequently file a defence. But the defendant did neither. On 20th March, 1996, the Registrar of this high court entered an interlocutory judgment in favour of the plaintiffs. The suit was then put before me for formal proof and assessment of damages only.

Whether the publications were defamatory of the two plaintiffs: will start by deciding whether the publications which were made by the defendant were defamatory of the two plaintiffs or any of them.

It must be noted that the publication of 18th August 1995 did not mention the names of any of the two plaintiffs. It merely quoted the number plate of their car referring to it as the car which had been used by persons who were well known to be fighting against and wishing to overturn the government of the Republic of Uganda. That was an act that is treasonable according to the law of Uganda.

The second publication specifically mentioned the second plaintiff by name as Jane Etuket. By obvious implication, and especially as the car in question was registered in the names of the first plaintiff; it may be fair to say that the first plaintiff was as well mentioned.

Defamation by way of libel is that publication which tend to injure a person’s reputation or good name, in the estimation of right thinking members of society generally, or to diminish his or her esteem, respect, good will or confidence in which a person is held or to excite adverse, derogatory or unpleasant feelings or opinion against him or her statements which tend to expose a person to contempt, hatred or ridicule certainly result into injury to that person.

Words which import or attribute a criminal offence or conduct on the part of the person or persons against whom they are written are defamatory per se. That is to say, by themselves and without extrinsic proof, injure the reputation of the person to whom they are applied. see Dr. J. A. Kamanyire vs. Editor of The New vision

Newspaper and The New vision printing and Publishing corporation(1992) 1 KALR.133.Also Halsbury's laws of England ,Fourth Edition,Vol.28, paras,10-12

The plaintiffs do not have the burden of proving falsity or malice in order to establish their cause of action. If the words are defamatory, the law presumes that they are false. It is for the defendant to prove that they are true. Malice in the sense that the wrongful act is done intentionally or recklessly, is also presumed so that the plaintiffs need not prove it.Halsbury laws of England, Fourth Ed.VOL.Vol 28 Per16

Now, having found that the publications in the instant case were defamatory, I will now address the issue of assessment and quantum of the damages.

In paragraph 6 of the plaint, the first plaintiff seeks special damages in the sum of shs.555,000/=.

As a matter of principle, special damages may be awarded to compensate a plaintiff in a libel suit for any readily quantifiable loss sustained as a natural result of the publication of the statement complained of and in accordance with the principles of causation and remoteness as apply to any other tort.Halsbury laws of England (supra) par.18. However as a general rule, special damages must always be strictly proved. See John Nagenda vs. Sabana Belgian World Airlines (1992) 1 KALR 13.

The first claim in special damages is shs.350,000/= which the first plaintiff stated was spent by him on hiring alternative transport for 7 days at shs.50,000/= each day owing to the fact that he had to park his car UPS 942 during those 7 days following the defamatory statement by the defendant. The first plaintiff has, in my view not strictly proved that expense. No receipts were produced. No person to whom the money was paid gave evidence in court to that effect .All there is are the words of the plaintiff that he incurred that expense. That does not strictly prove the claim. The amount cannot, therefore, be awarded.

The second category of special damages claimed by the plaintiff is shs.180,000/= which states was the cost of an air ticket on Uganda Airlines when he had to abruptly leave the conference at Nairobi following the publication of the statement complained

about in the New vision issue of 18th August 1995. The air ticket and boarding pass (photocopies) were tendered in evidence as Exhibit P.3.

While the boarding pass was from Nairobi to Entebbe, the air ticket was not. Infact, the air ticket shows that it was not a one way ticket purchase in Nairobi but in Kampala. The issuing agent was Uganda Travel Bureau which has its office in Kampala. The amount indicated on the ticket is not US \$ 120 as the first plaintiff testified but it is US \$ 236 for both legs of the trip. The first plaintiff was a civil servant entitled to an air ticket when on government trips. There is no evidence suggesting that he had gone to Nairobi on private business.

In the circumstances, therefore, it is not possible for this court to regard the first plaintiff's claim in this particular regard as strictly proved. It is accordingly rejected.

The last item in respect of special damages is shs.25000/=Like the claim in respect of car hire for the seven days, this claim too is not backed up by any evidence which would render it strictly prove it.

Accordingly, I award no special damages.

General damages need no specific proof. The quantum of general damages is a matter which fall within the discretion of the court taking into account the facts and circumstances of the plaintiff in society. It has also to consider the estimation the defamed was previously being held by right thinking members of society after the publication of the article.

The position of the law is that once a person has been libeled without any lawful justification, as indeed, appears to me to be the case in the instant case, the law presumes that some damage will flow from the ordinary case of events from the mere invasion of his or her right to his reputation. Such damage is known as "general damage" Thus, a plaintiff who has proved libel is entitled to at least nominal damages. If the plaintiff proves that he or she suffered any anxiety, annoyance, pain, embarrassment,etc then the award of general damages may be increased from the level of nominal damages to "aggravated damages" which is a mere increase in the compensatory damages.

However, in order to recover a substantial sum of money as “aggravated damages” it is imperative that a plaintiff in a defamation action proves to the satisfaction of the court that he or she suffered reduction in his or her reputation or esteem in as far as the right thinking members of society were concerned.

In order to prove that reduction of reputation or esteem, the plaintiff must adduce evidence from either his or her colleagues or from any member of society who knew the plaintiff before the publication of the statement complained of and who read the article. The court can then judge as to how the right thinking members of society regarded the plaintiff following the publication of the article. The plaintiff’s own evidence alone cannot prove that important element of defamation which is also so crucial in the determination of the quantum of general damages. Odongkara v Bob Astles (1970) E.A 374.

It is certainly not enough for the plaintiff, as is the case in the instant case, to merely show that the words complained of imputed a criminal offence and were, therefore actionable per se. It is not sufficient to lead evidence merely to show that the New vision has a wide circulation both nationally and internationally and is read through the internet. It is also not enough, perhaps not even absolutely necessary to prove that the plaintiffs were known widely both nationally and internationally in the diplomatic circles or otherwise. Evidence must be lead to show the effect of the publication on those who so highly knew or regarded the plaintiff. Unfortunately this was not done by the plaintiffs in the instant case.

This important element of defamation and how it affects the quantum of general damages that a plaintiff can recover, was very well articulated in two recent cases of this court. One is Dr.Ruhakana Rugunda v Teddy sseezi cheeye and another, (1992-1993) HCB 185. The other is Eriab Wavamunno v Teddy Sseezi Cheeye, (1992-1993) HCB 173

In both those decisions, the court emphasized the principle that the determination of general damages is to be based upon the reputation of the plan tiff, the extent of the publication, the effect of the publication on the right thinking members of the society and that the publication must be one that is capable of lowering the person’s reputation and esteem in the eyes of the right thinking members of the society and that

the publication must be one that is capable of lowering the person's reputation and esteem in the eyes of the right thinking members of society.

In Eriab Wavamunno's case the defendant had published a story to the effect that the plaintiff an eminent businessman of both local and international repute, had gone to a café, drunk tea and some beer on different occasions, all worth some 5,700/= but failed to pay for them. The plaintiff did not lead evidence showing the effect of the publication on those who read it .The court therefore awarded the plaintiff nominal general damages in the sum of shs. 500,000/=. The court, however, remarked that had the plaintiff proved the effect of the publication on those who read it, he would have recovered shs.3, 000,000/= as general damages.

In Dr.Ruhakana Rugunda's case, the plaintiff was a cabinet minister in the government of Uganda and a prominent medical doctor. The publication had suggested that he had received undue grantification from what was called "the Marubeni Jackpot. He failed to lead evidence to show that he had been shunned or his reputation had been disparaged in the thinking of those who read the publication. He was awarded general damages of merely shs.500, 000/= as nominal damages.

In the instant case, both plaintiffs failed to lead evidence showing disparagement of their respective reputation in the eyes of the right thinking members of society. I am satisfied, however that each one of them should recover general damages the quantum of which are above nominal general damages for each one of them as the evidence shows, suffered a lot of anxiety,annoyance,inconvenience and embarrassment. In Exhibit p7, the defendant readily recognized that fact.

M/S Emoru submitted that I award a total of shs.17, 000,000/= to both plaintiffs.Even if each plaintiff had proved the effect of the publication on the right thinking members of his or her society, I would still have found a total of shs.17,000,000/= to be excessive. I would not award that sum of general damages in a case of this kind. I would have considered awarding shs.6, 000,000/= to the first plaintiff and shs. 3,000,000/= to the second plaintiff, as general damages.

In the circumstances, I award shs.2000,000/= to the first plaintiff and shs.1, 000,000/= to the second plaintiff as general damages for reasons which I have already stated above.

The last category of damages being sought is punitive or exemplary damages.

Unlike general damages which are compensatory, punitive or exemplary damages are always meant to punish the defendant for the wrong done to the plaintiff and for acting as a deterrent. Daniel Oboth vs. The New Vision New vision Newspaper, SC CA. No.12/90 reported in 1993 VI KALR 143. Punitive damages are awarded without reference to any proved actual loss suffered by the plaintiff. The conduct of the defendant and his persistence shs.500,000/= as nominal damages.

In the instant case both the plaintiffs failed to lead evidence showing disparagement of their respective reputation in the eyes of the right thinking members of society. I am satisfied however that each one of them should recover general damages the quantum of which are above nominal general damages for each one of them as the evidence shows, suffered a lot of anxiety, annoyance, inconvenience and embarrassment. In Exhibit P7, the defendant readily recognized that fact.

M/S Emoru submitted that I award a total of shs.17, 000,000/= to both plaintiffs. Even if each plaintiff had proved the effect of the publication on the right thinking members of society, I would still have found a total of shs.17, 000,000/= to be too excessive. I would not award that sum of general damages in a case of this kind. I would have considered awarding shs.6, 000,000/= to the first plaintiff and shs.3, 000,000/= to the second plaintiff as general damages.

In the circumstances, I award shs.2, 000,000/= to the first plaintiff and shs.1, 000,000/= to the second plaintiff as general damages for reasons which I have already stated above.

The last category of damages being sought is punitive or exemplary damages.

Unlike general damages which are compensatory, punitive or exemplary damages are always meant to punish the defendant for the wrong done to the plaintiff and for acting as a deterrent. Daniel Oboth vs. The New Vision Newspapers CA. No.12/90

reported in 1993 VI KALR 143. Punitive damages are awarded without reference to any proved actual loss suffered by the plaintiff. The conduct of the defendant and his persistence in repeating the libel complained of are relevant considerations. *Davis v. Shah* (1957) E.A 352.

I have considered those principles of the law in relation to the facts and circumstance of this case. I do not agree with counsel, Mr. Emoru that this is a case which should attract punitive damages. Accordingly, I award none.

I award interest at court's rate to both plaintiffs in respect of general damages from the date of filing of this suit till payment in full.

The plaintiffs will also recover the costs of this suit against the defendant.

In exercising the discretion of this court to award costs of the plaintiffs, I have taken into account the fact that even though in Exhibit P7, the defendant had offered to pay some nominal compensation to both plaintiffs, he did not follow up that offer. He was subsequently served with summons to enter appearance but he chose to merely await the outcome of this suit instead of following up the earlier offer.

In the final result, I enter judgement for both plaintiffs against the defendant. I order the defendant to pay shs. 2,000,000/= and shs.1, 000,000/= to the first and second plaintiffs respectively together with interest at court's rate from the date of filing this suit until payment in full. I also order the defendant to pay the costs of this suit to the plaintiffs.

V.F.Musoke-Kibuuka

Judge

8/9/2000