

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL SUIT NO.900 OF 2000

PATRICK NYAMUTALE..... PLAINTIFF

VERSUS

NABITAKA CATHRINE

SERUNKUMA ROSETTE

ALAM PROTECTION SERVICES}DEFENDANTS

KIGGUNDU SAMUEL

Before: The Hon. Mr. Justice E.S. Lugayizi

RULING

This is a ruling. It arose as a result of a preliminary objection that was raised by Messrs Matovu and Mwesigwa who represented the 1st, 2nd and 4th defendants and the 3rd defendant respectively. However, before Court goes into the details of the objection it will narrate its background, which is as follows. The plaintiff filed the head suit against the four defendants alleging that they conspired and made certain malicious falsehoods, which they disclosed to his employer with the result that he was dismissed from employment. In their WSDs the defendants denied the above claim and the 1st, 2nd and 4th defendants, among other things, gave notice of their intention to raise a preliminary objection with a view to showing that the plaintiff's suit was misconceived and bad in law.

May 2001 when the suit came before Court for a Scheduling Conference Messrs Matovu and Mwesigwa took opportunity to address Court on the preliminary objection referred to above. In essence, Mr. Matovu relied on two grounds for the objection. Firstly, he submitted that the plaintiff does not disclose that the plaintiff had a right that was violated and the 1st, 2nd and 4th defendants were liable. He cited the case of **Auto Garage and Others .v. Motokov (1971) EA**

514 in support of that submission. That aside, he also pointed out that the torts named injurious falsehood and conspiracy to injure someone in his trade are not causes of action known to our law. He therefore explained that the plaintiff should have done better than he did if, he founded his causes of action in defamation. Secondly, and in the alternative Mr. Matovu submitted that the plaintiffs suit was res judicata. He pointed out that the plaintiff sued Population Service International in High Court Civil Suit No.1124 of 1999, among other things, for wrongful dismissal. That suit was finally disposed of under a consent judgment. However, the head suit that was also filed by the plaintiff is against the employees or agents of the defendant in High Court Civil Suit No. 1124 of 1999. It substantially raises the same issues that were finally dealt with or should have, through the exercise of due diligence, been finally dealt with in High Court Civil Suit No. 1124 of 1999. For that reason, Mr. Matovu argued that the head suit is barred under section 7 of the CPA.. He cited the case of **Kamunye and others v Pioneer General Insurance Ltd (1971) E.A. 267** in support of his submission. Finally, he called upon Court to dismiss the suit against the 1st 2nd and 4th defendants on account of any of those two grounds.

Mr. Mwesigwa, counsel for the 3rd defendant associated himself fully with Mr. Matovu's submissions and called upon Court to dismiss the suit against the 3rd defendant.

Mr. Kiryowa, counsel for the plaintiff, vehemently opposed the objection. He submitted that the plaintiff had valid causes of action against the defendants. He had a right to carry on his trade. The defendants violated that right when they conspired and published injurious falsehoods against him. Those falsehoods resulted in his dismissal from employment. Consequently, the defendants were liable for the results of their actions. Mr. Kiryowa relied on **Auto Garage and others v Motokov (supra); and a number of English authorities that included Ratcliffe v Evans C. A. 524; and Pratt and others v British Medical Association and others 1 K. B. 244** for that submission. Secondly, Mr. Kiryowa submitted that the matters in the present suit are not res judicata. In his view, High Court Civil Suit No. 1124 of 1999 centered on a contract of employment that was between the plaintiff and P. S. I.; and the defendants in the head suit were not privy to that contract. Consequently, the subject matter of the head suit that is totally different could not have been disposed of in the earlier suit. All in all, Mr. Kiryowa called upon Court to over-rule the defendants' preliminary objection.

Court will dispose of the above two grounds of objection in the order in which they were argued by counsel.

With regard to whether the plaint discloses a cause of action, Court has this to say. As counsel rightly submitted according to the case of Auto Garage .v. Motokov (supra) there are three prerequisites for the existence of a cause of action; and they are as follows,

1) that the plaintiff enjoyed a right;

2) that right was violated; and

3) that the defendant is liable.

The important question to ask now, is whether the plaint in the head suit embodies the above three prerequisites? There is material in that plaint, which shows that before the head suit was filed the plaintiff was employed by P. S. I. There is further material in the said plaint to show that P. S. I. terminated the plaintiff's employment when the defendants brought to its attention certain facts, which the plaintiff alleges were false; and that is why he thinks the defendants are liable. As a result of the foregoing, Court thinks that the plaint in the head suit adequately meets the prerequisites for the existence of causes of action in respect of the torts of malicious falsehood and conspiracy to injure some one in his trade. After reaching that conclusion, it follows that we cannot turn back and say that our law does not know the said causes of action. In the circumstances, the first ground of objection has failed. With regard to the second ground of objection, in the case of Kamunve v Pioneer Assurance Ltd (supra) Sheridan (J) (as he then was) put the test whether or not a suit is barred by res judicata in the following words, at page 265 of his judgment,

“The test ...seems to me...- is the plaintiff in the second suit trying to bring before court, in another way and in the form of a new cause of action, a transaction which he has already put before a court of competent jurisdiction in earlier proceedings and which has been adjudicated upon. If so, the plea of res judicata applies not only to points

upon which the first court was actually required to adjudicate but to every point which properly belonged to the subject of litigation and which the parties exercising reasonable diligence, might have brought forward at the time...”

Can we say from the above that the plaintiff in the head suit brought before Court in another way and in the form of a new cause of action, a transaction which he had already put before a court of competent jurisdiction earlier on and which was adjudicated upon? Firstly, although the defendants in the two suits in question seem to be different, the truth of the matter is that they are one and the same. Indeed, the plaintiff sued the defendants in the head suit on account that as employees or agents of P. S. I. they wrote a confidential report about him that resulted in his dismissal. It seems therefore, that the defendants wrote that report in the course of their employment. Consequently when the plaintiff sued them for what they did in their official capacity, he was indirectly targeting their employer. At the end of the day if they lost the suit, it is most unlikely that they will effectively dip their hands in their pockets to pay. Obviously, their employer (P.S.I.) will have to foot the bill. Any reasonable employer would do just that. Secondly, although Court agrees that one of the causes of action in High Court Civil Suit No. 1124 of 1999 was breach of contract of employment and the defendants were not parties thereto, that suit consisted of other causes of actions. Some of those other causes of action were malicious prosecution, and loss of opportunities. In Court’s opinion, a number of important issues like malice, falsehoods, and financial loss, that were conclusively dealt with under the consent judgment in High Court Civil Suit No.1124 of 1999 are, indeed, the same matters that are yet to be disposed of in the head suit. In fact, Court can dare say, that while High Court Civil Suit No.1124 of 1999 is no more and was completely put to rest sometime ago, presently, its ghost continues to lurk around and to haunt the defendants and P. S. I. in the form of the head suit. In addition to the foregoing one can also say, that if the plaintiff had exercised reasonable diligence in suing the defendant in High Court Civil suit No. 1124 of 1999, he would have included the present causes of action in the head suit, for that is where they rightly belonged. For those reasons, res judicata must apply to the head suit that is hereby barred and dismissed. It is further ordered that bear the costs of this suit.

E.S LUGAYIZI

JUDGE

11 - 6 - 2001