

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL SUIT NO.488/98

REV.MATHEW ODONG & 4 OTHERS.....PLAINTIFF.

VERSUS

ATTORNEY GENERAL & 3 OTHERS..... DEFENDANT

BEFORE: THE HON. MR. JUSTICE P. MUGAMBA

JUDGMENT.

The five plaintiffs were Catholic priests serving in the Archdiocese of Gulu. Sadly, one of them, Rev. Fr. Dr. Vincent E. Okot Obura has since departed this life. This action is against the four defendants jointly and severally. Besides the Attorney General, no other defendant entered a defence of any sort. An interlocutory judgment was accordingly entered against the three defendants. When hearing commenced the defence filed by the Attorney General was struck out because it offended against the requirements of Order 6 rule 1 of the Civil Procedure Rules. In consequence hearing proceeded ex parte.

A press conference addressed by Colonel James Kazini then Commander of the Fourth Division, UPDF and Lt. Shaban Bantariza then Public Relations Officer, Fourth Division, UPDF appears to be the genesis of this action. The press conference attracted many other people from the locality of the Gulu Municipality. Apart from the press conference which was recorded on tape and played on Radio Uganda and Radio Freedom, a local FM station, there was a press release. Both the press conference and the press release named the five plaintiffs amongst the eight people who were collaborating with the Lords Resistance Army of Joseph Kony as co-coordinators. They were said to have been part of the group that planned the abduction of girls from Aboke School and to have been involved in activities in Kitgum and elsewhere during the previous year. Rebels who had surrendered to UPDF were said to have identified those named and police, after I was informed, had finished its investigations. The defendants had made it known, that they were innocent, to the Commander and to others in

authority but no apology was drawn and no retraction of the allegations was made. Hence this action.

The plaintiffs pray for general damages for libel, slander and defamation, punitive/aggravated damages, interest on both general damages and punitive/aggravated damages at the rate of 26% from the date of filing this suit till payment in full and costs of the suit.

It was an undertaking on the part of Counsel for the plaintiff to file written submissions but for reasons best known to himself he defaulted. As issues were not framed prior to this hearing I consider them to be:-

1. Whether the plaintiffs were defamed?
2. Whether the defendants are liable?
3. What relief if any is available?

Concerning the first issue, four witnesses were called on behalf of the plaintiffs to prove that the plaintiffs were defamed. The four witnesses were Rev. Msgr Matthew Odong (PW1), Rev. Fr. Matthew Okun Lagoro (PW2), Rev. Fr. Isaias Okelo P'Ogik (PW3) and Ms Innocent Florence Grace Aloyo (PW4). In the main, those of the plaintiffs who testified related how they had come to learn of the words spoken at the press conference, on Radio Uganda, on Radio Freedom, those in The New Vision, in Rupiny and in the Monitor. They tendered in exhibit copy of the Rupiny of the week May 21 -May 27, 1997 as exhibit P1. The translation from the Lwo contained in Rupiny into English was received as exhibit P2. Exhibit P3 was copy of The New Vision of 17th May 1997. While the copy of The New Vision contained the story generally it did not name any of the plaintiffs. Exhibit P4 was a press release by the plaintiffs denying the allegations. It was dated 15th August 1997. Exhibit P5 was a recorded cassette of the news item on Radio Freedom together with its transcription in Lwo, after translation, by PW4. Each of the plaintiffs who testified stated that he was defamed and each expressed what he felt after he learnt of the offensive statements. They stated that the statements made them feel like cheats and criminals who were unworthy of their vocation as priests. It is true that the publication of words defamatory of the plaintiff gives rise to a prima facie cause of action. The law presumes in the plaintiff's favour that the words are false, unless and until the defendant proves the contrary. See Gantley on Libel and Slander (8th edition) para 5 at page 6. Nevertheless the same authority at paragraph 19, page 13 states that

defamation belongs to the class of torts in which the defendant becomes liable to the plaintiff by reason of a transaction with a third party, not for publication to the plaintiff himself. I find for a fact that the words attributed to Col. Kazini and broadcast on Radio Uganda and Radio Freedom and, also, those words published in Rupiny were capable of being defamatory to the plaintiffs. Where the words complained of impute commission of criminal offences by the plaintiff, those words are defamatory. See Blaze Babigumira vs. Hanns Besigye HCCS 744/92 reported in [1993] IV KALR 39. In Odongkara vs. Astles [1970] EA 377 Phadke J held that the exact offence need not be specified, words involving a general charge of criminality will suffice provided they impute some offence for which the plaintiff can be made to suffer corporally by way of punishment. That being the position, and being mindful of the fact that the words complained of were allowed to circulate freely, even to third parties, I am satisfied that the plaintiffs were defamed. See East African Standard vs. Gitau [1970] EA 678.

The second issue is whether the defendants were liable. I note the first defendant was joined in a representation capacity under the Government Proceedings Act. While I acknowledge that Col. Kazini was a military officer I find no basis for holding the Attorney General vicariously liable for what the officer might have had to say at the press conference. I am mindful of the authority in Muwonge vs. Attorney General [1967] EA 17 and others of the cases regarding instances where soldiers on a given mission have done acts that have resulted in the Attorney General being found vicariously liable on account of him acting in the course and scope of their employment. In the instant case I do not believe that it was in Col. Kazini's due course or scope of employment to address a press conference. In any case it is not alleged by the plaintiffs that the plaintiff was so acting rather than on a frolic of his own. See Poland vs. Parr (John) & Sons [1927] 1K.B. 236, 240; I Ilkiw vs. Samuels [1963] 1WLR 991, 997, 1002, 1004. Perhaps it would have been profitable for the plaintiffs to sue the officer himself. In the result I do not find the Attorney General liable. Similarly I do not find The Editor, The New Vision liable. In Construction Engineers & Builders Ltd vs. The New Vision and 3 others HCCS 67/91 reported in [1994] KALR 37 this Court held that a publication even if defamatory, must refer to the plaintiff in order that it is defamatory of him. The New Vision article exhibited did not refer to any of the plaintiffs. That leaves the balance two of the defendants. In Lakidi vs. Lalobo [1971] EA 87, 89B the Court of Appeal for East Africa stated:

‘To render the appellant guilty of libel, it was, in my opinion, necessary for the respondent to prove that the answers represented substantially what the appellant had said and that he had expressly or impliedly, authorized their publication. I would qualify this by saying that, in my opinion, authorization should very readily be implied when a person has agreed to give an interview to a press reporter and that once that fact is established, the onus would shift to the person who alleged that he had authorized publication.’

The circumstances of this case are that Col. Kazini was also not joined in this case and defendants 3 and 4 filed no defence. I find defendant 3 and 4 liable for publication of the libel material published in the relevant copy of Rupiny.

The final issue is what relief is available to the plaintiffs. I have not been assisted by the plaintiffs concerning the question of damages. In Rev. Fr. John Nendegger vs. The Telecast Newspaper & 2 others [1988 – 1990] HCB 155 where the plaintiff was defamed as being a corrupt person this court awarded damages of Shs. 3,000,000/=. In Mangal vs. Sharma [1968] EA 620 the plaintiff was an Advocate practicing law in Dodoma. He sued the defendant who was his client on account of a defamatory letter the client had written to the Commissioner of Lands and to the Bank. The plaintiff was awarded damages of Shs. 1,000/= Court having taken into account the fact that the area of publication was very narrow. In Joshua Wanume Kibedi vs. FAD and Another HCCS No. 69/87 (unreported) a former Foreign Minister was awarded Shs. 4,500,000/=. Taking into account the fact that the plaintiffs have been subjected to anguish and hurt feelings, the pristine nature of their vocation, the parameters to which the offensive words were allowed to spread and the declining value of the Uganda shilling I would consider damages of Shs. 10,000,000/= to each of the plaintiffs meet the ends of justice. I decline to award exemplary/punitive damages as they are inapplicable. The plaintiffs are entitled to costs of this suit and to court’s rate of interest on the damages and costs from the date of judgment until realization in full.

P.Mugamba

Judge

01/03/02