

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**CIVIL SUIT No. 862 OF 2001**

JOSEPH KIMBOWA LUTAAYA ::::::::::::::::::::::::::::::: PLAINTIFF

- VERSUS -

FRANCIS TUMUHEIRWE ::::::::::::::::::::::::::::::: DEFENDANT

**BEFORE: HON. MR. JUSTICE RUBBY AWERI OPIO**

**J U D G M E N T:-**

The plaintiff sued the defendant for defamation claiming the following reliefs:-

- (a) General damages.
- (b) Exemplary damages.
- (c) An apology.
- (d) An injunction.
- (e) Costs of the suit.

The facts giving rise to the plaintiff's cause of action are as follows:-

The plaintiff's wife used to work as Financial Controller National Bureau of Statistics. The first defendant was a Commissioner in the Ministry of Finance and Planning Board Member of the National Bureau of Statistics. In the exercise of her duties the plaintiff's wife ran into some trouble, which resulted, into her suspension by the Board.

On or about 20<sup>th</sup> August 2001 the first defendant wrote a memo to the Permanent Secretary to the Treasury explaining the reasons why the plaintiff's wife had been suspended. In that memo the 1<sup>st</sup> defendant alleged inter alia that the plaintiff while still working with the Standard Chartered Bank connived with his wife to steal shs.50,000,000/= (fifty million) and was as a result dismissed from the Bank while his wife was dismissed from USAID.

The relevant parts of the memo complained of are contained in paragraph 4 of the plaint:-

***“E On a wider note, I have information that the Financial Controller in question used to work for USAID sometime ago, at the same time, as her husband worked for Standard Chartered Bank. She connived with her husband to steal shs.50,000,000/= from USAID. She and her husband were dismissed from USAID and Standard Chartered Bank respectively”.***

The plaintiff claimed that he was the husband of Getrude Lutaaya, the Financial Controller of National Bureau of Statistics who was currently on suspension and he was a former employee of Standard Chartered Bank and therefore he was the husband to whom the words in the memo referred.

The innuendo averred by the plaintiff is in paragraph 6 of the plaint are:-

- (a) That the plaintiff a thief who attempted to steal funds belonging to USAID, and therefore a Criminal;
- (b) That the plaintiff is a dishonest untrustworthy and a fraudulent person who should be shunned and/or avoided and is unfit to hold any position of trust, including the one he now holds;
- (c) That the plaintiff is an opportunist and treacherous.

The plaintiff claimed that all allegations contained in the above memo were completely false, malicious and defamatory in that it branded him as a Criminal and unfit to be employed in any position of trust or in any position consonant with his training. The plaintiff averred further that in consequence of the above allegations as a reputable accountant in a reputable bank, he suffered great public ridicule, contempt, hatred and odium. He has been shunned and avoided. His reputation has been seriously damaged and he has suffered distress and embarrassment entitling him to damages.

The first defendant in his written statement of defence, raised the defence that:-

- (i) He did not defame or publish or cause to be published any matter defamatory of the plaintiff, alternatively;
- (ii) The contents of the documents were privileged communication;
- (iii) He acted in his capacity as a public servant in good faith in public interest and not personally liable.

The first defendant by third party proceedings had the Attorney General added as second defendant on the grounds that he wrote the memo complained of in his capacity as a public servant in the course of his employment.

The issues to be determined are as follows:-

- (1) Whether or not the words complained of are defamatory of the plaintiff and whether the first defendant published the words complained of;
- (2) Whether the second defendant is liable for the acts of the first defendant;
- (3) Whether the defendant have any defences;
- (4) Whether damages are payable to the plaintiff if so what quantum?

In order to prove his case the plaintiff called four (4) witnesses including himself.

The plaintiff testified as PW1 and stated that he was currently a manager with Allied Bank which he joined in 1997. Before joining the Allied Bank he used to work with Standard Chartered Bank between 1984 – 1985. where he used to hold the position of Personal Credit Officer. He testified that he left that bank when his services were terminated on 6<sup>th</sup> October 1995 whereupon he received his full terminal benefits (Exh.P1). Thereafter he was given certificate of service. He testified that sometime later he received a memo written by the first defendant addressed to the Permanent Secretary to Treasury. On reading the memo he found that the same touched on him and his wife. By that time his wife had been suspended from Uganda Bureau of Statistics as Finance Controller. That suspension was reported to the Inspector General of Government for investigations, where it was found to be unfair because she had no case to answer. The plaintiff testified further said memo implicated him and his wife of defrauding shs.50,000,000,000/= from

Standard Chartered Bank when he was by then working. He stated that the above allegation in the memo was false, malicious and damaging to his reputation and profession in the banking industry for which he was entitled to damages. He stated that as a result of the publication he got hurt and lost confidence as it painted him as a thief.

Beatrice Rossette Nsubuga (Mrs) PW2 testified that she used to work together with the plaintiff in Standard Chartered Bank before he was terminated. She told court that she used to be the plaintiff's manager. She testified that the plaintiff left the bank normally when his services were terminated after being honoured with Certificate of Service. She denied the allegation that the plaintiff connived to steal Shs.50,000,000/= from the bank and that if that happened, the plaintiff would have been fired without being given Certificate of Service.

Gertrude Lutaaya Kuteesa PW3 testified she was the plaintiff's wife and that she used to work National Bureau of Statistics as Financial Controller before she left in August 2001 under unfair circumstances. She testified that when she went to work on Monday 26<sup>th</sup> March 2001, she found a second lock on the door to her office. She then wrote a letter to her head of Department to inquire why her office had been locked. However before his response, she received a letter suspending her from duty, which letter had been signed by the Chairman Board Committee for staff and Management (Exhibit P3). In that letter it was alleged that the audit report for period ending 31<sup>st</sup> December 2000 had revealed that she had failed to adhere to procedures for making payment which had been laid down by the Board. The suspension was to pave way for investigations. She reported the matter to the Inspector General of Government on the ground of victimization. The Inspector General of Government took up the matter and gave her audience whereupon investigations, it was concluded that the allegations against her were wrong and she recommended reinstatement. After that report, she was summoned by the Minister of State for Finance who convinced her that the environment was not good for her there and advised that she should agree to compensation instead of reinstatement. Because she did not want to go to a hostile environment. She got her package and left the job. She testified that the irregularities which the first defendant labelled against her for suspension were not proved against her.

She denied trying to steal shs.50,000,000/= from USAID. She admitted that the plaintiff used to work for Standard Chartered Bank but denied tried to steal shs.50 million fro USAID. She concluded that the memo (exhibit P2) which the first defendant wrote against them was malicious, not true and that it was written to justify their unlawful act of suspending her without giving her audience.

Lastly Beyanga PW4 testified that in 2001-2002 he overheard that the plaintiff had connived with his wife to steal shs.50,000,000/= from Standard Chartered Bank where he used to work and that since that time people have been commenting on that issue that the plaintiff had problems of theft of money.

The defendants chose not to call witnesses. It was only the first defendant who filed written submissions in his defence.

I now turn to the issues for determination and the first one is whether the defendant published the said words complained of are defamatory of the plaintiff and whether the first defendant published the words complained of. The test which has been laid down in **Godfrey Ssejjoba Vs Rwabigonyi [1977] HCB 37** in determining whether a statement is defamatory or not is whether the defamatory statement has a tendency to injure the reputation of the person to whom it refers, by lowering him in the estimation of the right thinking members of the society generally and in particular to cause him to be regarded with feelings of hatred, contempt, ridicule, fear and disesteem: A statement which injures a person in his reputation in his office profession or trade has been held to be defamatory. See **Blaze Babigumira and Hanns Besigye HCCS No. 744 of 1992** (Byamugisha J as she then was).

In the instant case it was contended by the plaintiff that the memo in question is defamatory of his because it imputed criminal acts on his part. The words complained of read as follows:-

The 2<sup>nd</sup> issue is whether the said words contained in the memo is admissible:-

The defendant alleged in his written statement of defence that the annexure was not admissible in evidence. The defendant did not assign any reasons why the same was inadmissible. The plaintiff on his part contended that the same was admissible under Section 63 of the Evidence Act. In the absence of any evidence I am inclined to maintain that the said memo is admissible in evidence under Section 63 of the Evidence Act.

Whether the said words were defamatory of the plaintiff:-

*“E. On a wide note, I have information that the Financial Controller in question used to work for USAID sometime ago at the same time as her husband worked for Standard Chartered Bank. She (the Financial Controller) connived with her husband to steal shs.50 million from USAID. She and her husband were dismissed from USAID and standard Chartered Bank respectively”.*

In **Odongkara Vs Astles [1970] EA 377**

Further for the above words to amount to defamation, there must have been publication i.e. the text must have been communicated to a third person: See **Spry on Civil law of defamation in East Africa.**

In the instant case, the act of publication was proved by the fact that the publication was copied to the Minister of State for Planning and Economic Development.

As to whether the words were defamatory the plaintiff alleged that the statement meant that he was a thief who had attempted to steal shs.50 million belonging to USAID and therefore a Criminal, that he was a dishonest and untrustworthy and a fraudulent person and that he was a treacherous person.

Where the words complained of impute the commission of a criminal offence, they are admissible per See: **Blaze Babigumira and Hanns Besigye** (supra). In that case Byamugisha, J. (as she then was) observed that allegations are defamatory of the plaintiff if they impute the commission of a criminal offence which he would be liable to imprisonment under the laws of Uganda. She cited with approval the case of **Odongkara Vs Astles [1970] EA 377** where it was held that allegations are defamatory of the plaintiff if they impute the commission of a criminal offence which he would be liable to imprisonment under the Laws of Uganda. In that case it was further 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”.***

In the instant case it is very clear that the words uttered imputed that the plaintiff was a thief, a fraudster, and therefore a criminal. The defence did not concede that the natural meaning of the words complained of were defamatory because they convey naturally and ordinarily that the plaintiff was a fraudulent person. It was further conceded that the first defendant was the one who had published the words complained of.

The second issue is whether the second defendant is liable for the acts of the first defendant first defendant. In answer to the above issue the first defendant averred in his written statement of defence inter alia that the words complained of were privileged communication made on a privileged occasion and in good faith and in the course of his employment as a public servant hence he was not personally liable. The second defendant on his part contended that in publishing or causing the publishing of the alleged words, the first defendant was not doing so with the authority of the second defendant nor in the course of his employment. Therefore the second defendant could not be held liable for the unlawful and unauthorized acts together with the alleged damage occasioned to the plaintiff by way of third party.

The law is that an employer is in general terms liable for the acts of his employees or agents while in the course of the employer’s business or within the scope of employment. This liability

lies on whether the acts are for the benefit of the employee. That is a general principal of law and the test is whether or not the employee or agent was acting in the course of his authority or whether or not the employee was going about the business of his employer at the time, the damage was done to the plaintiff. **Muwonge Vs Attorney General 1967 EA 17.**

In short, the wrong of the servant or agent must be the natural result of his carrying out his master's duties: See **Enoch Nkunda Vs Attorney General [1980] HCB 118.**

In the above case the plaintiff happened to see his sub-county Chief treat a schoolgirl in such a manner that made him believe that the Chief intended to ravish her. He reported the incident to police and the chief was arrest. Subsequently, the County Chief called a meeting to be addressed by the second defendant, an Assistant District Commissioner of the area. the plaintiff was called to attend so as to testify to the incident. While the plaintiff was narrating the story, the second defendant addressed the plaintiff using a defamatory language and ordered his arrest whereupon he was detained by police of five days. Upon his release the plaintiff wrote to the Attorney General complaining and giving notice of intention to sue him for damages. When the second defendant heard of this he ordered for the plaintiff's arrest again. He was arrested and taken to the second defendant's office who rebuked him using defamatory words.

The plaintiff was then detained by police for 21 days. During the detention he was assaulted several times and his reading glasses were broken. He was sleeping on the floor and the cell was smelling. During the day he was made to carry heavy stones and crates of beer. Eventually he lost his job as an office manager at sawmills.

The court held that the second defendant was acting in the course of his employment on the two occasions in question. All his actions were netted out in his capacity as an Assistant District Commissioner of the area. It was no defence that having been on bad terms with the plaintiff the second defendant may have been acting for his own behalf or out of personal revenge.

The issue to resolve here is whether the wrong of the first defendant was a natural result of his carrying out his master's duties. To me the answer is no. to me his duties were limited to the

officers who were under his supervision as a Commissioner and a member of the Board in question. he did not have to drag the plaintiff in the affairs of the Board. Moreover he was under obligation to furnish correct information to his Permanent Secretary. The bank where the plaintiff was alleged to have attempted to steal the money and USAID where the wife was alleged to have attempted to steal from were public institutions. It would have been prudent for first defendant to check on the correctness of those obligations before the publication. For the above reasons I conclude that the publications were made maliciously, want only and recklessly. It was done without authority and outside the scope of his employment. In such situation the Attorney General should not be held liable. It is the plaintiff to carry his own cross in this matter. So I hold him personally liable.

The third issue is whether the defendants have any defence.

The first defendant contended that the words complained of were privileged communication made on a privileged occasion and in good faith. The legal principle underlying the defence of qualified privilege was recently restated by Byamugisha J (as she then was) in **Blaze Babigumira Vs Hanns Besigye (supra)** and she had this to say:

*“The legal; principal underlying the defence of qualified privilege based on reciprocity of interest appear to be clear, at least on the authorities which are available. In the case of Hunt Vs Great Northern Railway Co [1891] 2 QB189 the court said –*

*“A privileged occasion arises if the communication is of such a nature that it would be fairly said that those who made it had an interest in making such a communication and such a communication and those to whom it has made had a corresponding interest in having it made to them. When those two things co-exist, the occasion is a privileged one.”*

In the **Mangat Vs Sharma [1968] ea 620, 629** at page 626 the court said:-

***“The authorities are, I think clear on the principle that a privileged occasion arises where the defendant has an interest in making the communication to the third person and the third person has a corresponding interest in receiving it.”***

The pleas of qualified privilege if successful would exonerate the defendant from liability of the libel complained of. However, this plea is unavailable to the defendant if it is proved that he was actuated by malice. The principles in this regard were concretized in the following excerpt when he said:-

***“These authorities in my view, clearly established that a person making communication on a privileged occasion is not restricted to the use of such language merely as is reasonably necessary to protect the interest or discharge the duty which is the foundation of his privilege, but that, on the contrary he will be protected, even though his language should be violent or excessively strong if having regard to all the circumstances of the case, he might have honestly and on reasonable grounds believed that what he wrote or said was true and necessary for the purposes of his vindication, though in fact it was not so.”***

I am highly persuaded by the above clear exposition of the law relating to qualified privilege in defamation. It was the contention of the first defendant that the communication which he made to the Permanent Secretary/Secretary to Treasury and copied to the Minister of State for Finance and Economic development was written in compliance to a request by the Director Economic Affairs Ministry of Finance. The first defendant contended that as a Commissioner in the above ministry and his writing was made to his superiors over a matter of interest not only to the ministry but generally to the Republic of Uganda, it was privileged. The same was also privileged because as a public servant, the first defendant had a legal, moral or social duty to make the communication in issue.

The defence of qualified privilege as seen from the authorities cited above is premised on two limbs first there must be reciprocity of interest and secondly it must be made without malice.

In the instant case there was no interest or duty on the first defendant to report on the plaintiff and the Director Economic Affairs had no corresponding interest or duty in receiving a report on the plaintiff who was no an employee of the National Bureau of Statistics. However as a Board Member of the Bureau, the first defendant did have a duty in reporting about the plaintiff's wife in her capacity as an employee of the Bureau and the Director Economic Affairs had a corresponding duty and interest in receiving that report because she was an employee of that ministry. That duty or interest did not cover the plaintiff who was a stranger to the organization, however important the subject matter was. Moreover the statement was found out to be false and reckless. In the premises I find that due to lack of reciprocity of interest the above communication was not privileged. Furthermore the first defendant did not have any legal, moral or social duty to make the communication which turned out to be false and reckless, and which he could not substantiate. The only logical conclusion is that he was actuated by malice and illwill. Hence the defence of privilege could not be open to him in law.

The last issue is whether damages are payable to the plaintiff and if so what quantum.

It is trite law that the imputation of commission of a criminal offence is actionable *per se* without any need of proving damage on the part of the plaintiff: See **Babigumira and Hanns Besigye** (supra).

In the instant case there was imputation that the plaintiff together with his wife were involved in an attempt to defraud shs.50 million from USAID through Standard Chartered Bank where the plaintiff was working. The above publication was not denied.

Notwithstanding the above the plaintiff led evidence to prove that he had suffered damages as a result of the above publication still hurts him up-to-date.

It had resulted in his loss of confidence as people were still talking about it where he was currently working. Banking industry where the plaintiff works values good reputation. By alleging that the plaintiff was a fraudulent person was a very serious invocation to the reputation of the plaintiff. Accordingly I find that the plaintiff had proved that he had suffered damages as a result of the said defamatory publication.

What is the quantum of damages? The plaintiff pleaded for general and exemplary damages and apology. I will start with exemplary or punitive damages. The principles to be considered in awarding punitive or exemplary damages in actions for libel were set out in the case of **Davies Vs Shah [1957] EA** where it was held that the relevant consideration in awarding these damages was the conduct of the defendant and his persistence in repeating the libels complained of.

In the instant case the publication was made only once and there was no repetition of the same. The first defendant appeared to be remorseful by not making attempts to substantiate his allegations. Such conduct would not justify punitive damages.

As for general damages, for libel the principle is that the plaintiff is entitled to damages for his injured feelings, injured reputation in profession or trade:-

See **Babigumira and Hanns Besigye (supra)**.

The plaintiff contended that by calling him dishonest and fraudulent, his feelings were hurt and that he lost confidence in himself as a trained accountant with a reputable bank. In **MC Cavey Vs Associated Newspapers [1965] 2 DB 86** Lord Pearson had this to say:-

*“The natural grief and distress which he may have felt at having been spoken of in defamatory terms and any kind of high handed, oppressive insulting or contumelious behaviour which increases the mental pain and suffering to the plaintiff’s pride and self-confidence: those are proper elements to be taken into account.”*

In applying the above principles to Babigumira’s case, Byamugisha (J) as she then was said this:-

*The compensation payable would therefore range from actual pain and suffering to loss of dignity and humiliation to annoyance and irritation. There is of course no hard and fast rules to prove that the plaintiff’s feelings have been injured. This is inferred as the natural and foreseeable consequence of the content of the statement, its*

*publication and other aspects of the defendant's conduct. The quality of the plaintiff's reputation before the defamation and the absence of apology are relevant consideration. The court has to take into account the extent of publication of the statement the greater the likelihood or substantial loss."*

In this case there was no doubt that the plaintiff's feelings were hurt by the defamatory statement made against his reputation. It might have caused him annoyance and irritation as he was depicted as a thief and a fraudster. He testified that the self-confidence as a trained accountant. There is no doubt that the allegations have remained a stigma in his reputation.

For the above reasons the plaintiff should be compensated for his injured feelings and anxiety. The plaintiff proposed an award of shs.25 million as adequate compensation. That figure is on a very high side. I do agree that the plaintiff was seriously injured in his reputation and feelings as possibility of loosing his job was at stake. He could have got aggravated irritation because his reputation was dragged in official matters relating to his spouse. However, the evidence on record clearly shows that the publication did not capture a wide publicity. For the above reasons I would consider the sum of shs.10,000,000/= (ten million) adequate compensation by way of general damages.

Judgment is therefore entered in favour of the plaintiff against the defendant on the sum of shs.10,000,000/= (ten million) by way of damages for defamation. The plaintiff is entitled to costs of this suit an interest on the above sum at court rate from the date of this judgment until payment in full.

**RUBBY AWERI OPIO**

**J U D G E**

**6/10/2005.**

**7/10/2005:-**

Mr Turyakira present for the plaintiff.

Plaintiff present.

Mr Kwesiga absent but he sent a lawyer who is not enrolled.

The judgment read in Chambers as in open Court.

**PAUL WOLIMBWA GADENYA**

**AG. ASSISTANT REGISTRAR**

**7/10/2005.**