

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**CIVIL SUIT NO. 237 OF 2006**

**RICHARD OSCAR OKUMU–WENGI :::::::::::::::::::::::::::::: PLAINTIFF**

**VERSUS**

**VIMISH GANDESHA :::::::::::::::::::::::::::::: DEFENDANT**

**BEFORE: HON. JUSTICE ELDAD MWANGUSYA**

**JUDGMENT:**

The Plaintiff herein, is a sitting Judge of the High Court of Uganda. He sued the Defendant for general and aggravated damages for libel, a permanent injunction restraining the Defendant from publishing and/or writing false and malicious statements against him, interest and costs.

The facts constituting the cause of action are stated in paragraphs 4, 5, 6, and 7 of the Plaintiff which are reproduced hereunder.

“4. The facts constituting the cause of action arose as follows:-

- (a) The Defendant is the son of a deceased Lawyer, Himatlal Gandesha of M/S Gandesha and Co. Advocates of whose estate the Defendant and his mother Saroj Gandesha are beneficiaries of and or administrators.
- (b) The said Gandesha & Co. Advocates in July, 2003 became Lawyers handling the matters concerning the execution and/or enforcement of the Judgment and decree already entered in H.C.C.S No. 516 of 2001 between

M/S Transroad Limited and Attorney General of Uganda. The previous Advocates were M/S Sebalu and Lule Advocates who secured Judgment and decree in the case which was before the Plaintiff as High Court Judge;

- (c) In the course of successfully seeking payments under the said Decree, the said Gandesha and Co. Advocates filed several Court documents and/or applications in Court which are dealt with and disposed off by the Plaintiff;
- (d) During the hearing and after disposal of the matters and or applications arising out of the said H.C.C.S No. 516 of 2001 the Defendant deliberately published of and about the Plaintiff Judge the following defamatory matters that have published in the Monitor Newspapers:-

“.....Mr. Vimish told Sunday Monitor last week that the Judge even forged proceedings in order to alter the order of payment agreed upon without any application having been made or hearing held.....”

“.....Vimish, 35, claims that since his coming to Uganda early this year, he and his mother Saroj Gandesha, 60, have been harassed to give a bribe by or on behalf of Charamia to the Judge who handled the case.....”

“.....Vimish claims that the Judge has since April been trying to set up a meeting with him as he wanted me to settle his claim for payment of his services in the Transroad case.....”

A Photostat copy of the article titled, “**Judge named in bribery scandal**” in the Monitor Newspaper of 19<sup>th</sup> December, 2004 is enclosed herewith and marked as annexure “A”.

5. By the said words in their natural and ordinary meaning the Defendant was understood to mean that the Plaintiff:-

- (a) Corruptly demanded a bribe from the Defendant in dealing with H.C.C.S No. 516 of 2001 whereas not;
  - (b) Forged an application to oppress the Defendant whereas not;
  - (c) Committed the offences of forgery c/s 349 of the Penal Code Act and bribery Contrary to S.5 of the Prevention of Corruption Act whereas not;
  - (d) Conspired to cheat the Defendant's family, harassed the Defendant and his mother and set up a meeting with him ostensibly to settle the claim for a bride whereas not;
  - (e) Is unfit to be a Judge and to discharge his duties as a Judge whereas not.
6. The Plaintiff shall aver that the said words are false and defamatory and by reason of the above the Plaintiff has been injured in his credit, character and reputation and has been brought with public scandal, odium and contempt.
7. Unless restrained by this Honourable Court the Defendant threatens and intends to continue the Publications of the same or similar against the Plaintiff.
8. "..... The Defendant was served with a summons to file a defence by way of Substituted Service. The summons were published in the New Vision Newspaper of Friday May 19<sup>th</sup> 2006. The Defendant failed to file a defence and the Court, by an application dated 8<sup>th</sup> June 2006 entered an Interlocutory Judgment in favour of the Plaintiff under order 9 Rule 6 of Civil Procedure Rules. The Judgment was entered on the 12<sup>th</sup> day of June 2006 and the Suit was set down for hearing on the 30<sup>th</sup> day of June 2006.

The Plaintiff testified at the trial. In his testimony he testified that he was appointed a Judge of the High Court of Uganda in 1998. Prior to his appointment as a Judge he

was employed as a Senior Lecturer in the faculty of Law at Makerere University. Before he joined Makerere University as a Lecturer he had served in several Senior Public Sector Law positions notably in the National Textiles Board where he worked as a Company Secretary and General Manager, the Departed Asians Property Custodian Board where he worked as Executive Secretary of the Board. He has done a lot of work in research and was a co-chairman of the Board of Trustees of the Women and Law in East Africa covering the whole of East Africa covering the whole of East and Central Africa. He was an Advocate of long standing having been enrolled as an Advocate of the High Court in the year 1978. In the Academic World he has corroborated with many institutions in East and Central Africa including Ethiopia. He has visited many American Universities where he has lectured to various audiences. He has published a lot of articles and Books and has been an Editor of the Law Development Centre Law Magazine. He is involved in a number of Networks and is a member of the African Judicial Network. From this background there is absolutely no doubt that the Plaintiff has had a distinguished career as a lawyer and an academician the culmination of which was his appointment as High Court Judge which in itself is no mean achievement.

The Plaintiff further testified that as a High Court Judge he was seized of a Civil Suit No. 516 of 2001 the subject of the Newspaper article. The case was placed before him by the Registrar of the Commercial Division of the High Court in a normal way of assignment and as required he handled the Suit and all the Miscellaneous Applications arising from it till its disposal. According to his testimony he disposed of the case in June 2002 and the execution process took a normal course. Then in 2004 another application was placed before him and it was during the hearing of this application that an application was made for the Plaintiff to step down from the hearing of the application on allegations of bias. He declined to step down and his reasons were outlined in a ruling in Misc. Application No. 903 of 2004 which was exhibited at this trial. No appeal was made against this ruling.

The Plaintiff testified about the article that appeared in the Sunday Vision Newspaper of 19<sup>th</sup> December 2004. In this article there was an allegation that he had demanded for a bribe of \$500,000 while handling Civil Suit No. 516 of 2001 and yet by that time the Suit was not before him as he had long completed it. The allegation was he was

demanding a bribe from the Defendant Vimish Gandesha and his mother Saroj Gandesha and yet none of these alleged Defendants were parties to the Suit that he had handled and disposed of. In the same article there was an allegation that he had forged proceedings without any application having been made or without any hearing. He denied having done anything of the sort because as he had explained in his earlier testimony his handling of suit was in the normal course of his Judicial duties.

In conclusion, the Plaintiff testified that as a result of these unfounded allegations he was extremely disturbed and devastated. His image which he had built throughout his career as a lawyer was damaged and undermined. His family, friends and relatives in the Country and the entire East African Region were shocked and they felt betrayed. All his networking colleagues here and in Europe were shocked. He prayed to Court to find that these allegations were baseless and ill intentioned and that they were made maliciously to destroy him as a Judge. He also prayed for a permanent injunction to prohibit the Defendant and his agents from making or publishing or presenting in any public forum these allegations or similar defamatory statements. He prayed for an appropriate award of general damages considering his status in Society and for costs.

The Plaintiff was the only witness called at the trial and it is from his testimony that this Court is to determine the issue as to whether or not the words uttered by the Defendant and published in the Monitor Newspaper of 19<sup>th</sup> December 2004 concerning the plaintiff were defamatory of the Plaintiff. The second issue was whether the Plaintiff was entitled to the reliefs claimed.

At the conclusion of the Plaintiffs evidence his Counsel requested Court to allow him file written Submissions which the Court did. In his written Submissions, Mr. Omunyokol relied on the Judgment of this Court concerning His Lordship Hon. Justice Sempa Lugayigi a sitting Judge of Court as is the Plaintiff. This was the case of **Hon. Justice Sempa Lugayizi Versus Teddy Sezzi Cheeye** (Civil Suit No. 644 of 2001) Unreported in which His Lordship Justice Tinyinondi considered allegations of corruption levelled against Justice Lugayizi. Similar allegations of corruption are leveled against the Plaintiff. In addition to allegations of corruption the Plaintiff is alleged to have forged a ruling. As to whether these utterances were defamatory of the Plaintiff in the case of Justice Lugayizi already cited His Lordship cited with

approval the following passage from **GATLEY** on Libel and slander 8<sup>th</sup> Edition which defines of defamation.

Paragraph 31 of **GATLEY** states as follows:-

***“The gist of the tort.....is the publication of matter (usually words) conveying defamatory imputation. A defamatory imputation is one to a man’s credit, or one which tends to lower him in the estimation of the others, or to expose him to hatred, contempt, ridicule or to injure his reputation, in his office, trade, or profession or to injure his financial credit. The standard of opinion is that of right thinking persons generally. To be defamatory an imputation need have no actual effect on a person’s reputation; the law looks only to tendency.....”***

From this definition there is no other way of describing allegations of bribery and forgery against a sitting Judge other than that they are defamatory. Both Bribery and Forgery are offences punishable under our criminal Law System. The least the Defendant was expected to do so was to substantiate these allegations and this Suit offered him such opportunity. The easiest of the two allegations to substantiate was to prove the forgery of a ruling because it was a matter of producing such a ruling. Short of that I believe the Plaintiffs testimony that he handled the Suit and the Misc. Applications arising thereunder professionally the unsubstantiated allegations are defamatory.

On the issue of damages the Judgment of Justice Tinyinondi in the case of Justice Sempa Lugayizi cites with approval the Judgment of Lady Justice Mpagi Bahigaine in H.C.C.S No. 651/95 **Gordon Wavumunno Vs Seezi Teddy Cheeye** where it was stated as follows:-

***“I now turn to assess the damages I have to consider the Plaintiff’s position and standing the nature of libel the mode and extent of the publication, the absence of apology or retraction and the whole conduct of the Defendant from the time the articles were published down to the day of Judgment and I think it is pertinent to echo the words of Mackinon L.J. in GROOM Vs CROCKER: 1939 1KB 04 at 231 that “A soiled reputation seems assured of***

*liberal assuagement than a compound fracture” I however do not consider money can assuage a tarnished image..... Reputation of his (man’s) name is much more important. But it may be observed that damages are large because it is impossible to weigh closely the compensation which will compensate a person for an insult offered or the pain of false accusation. It is never possible to track a scandal and know which quarters the poison may reach”.*

I agree with the above statement. The damage a Judge suffers by allegations of corruption and forgery of a ruling is immeasurable and priceless. However in line with award in the case of Justice Sempa Lugayizi the Plaintiff in this case prayed for shs. 15,000,000/= as general which was similar to the award made to Justice Sempa Lugayizi. The Plaintiff also prayed for Shs. 5,000,000/= as aggravated damages for the high handed and malicious attack on the character of the Plaintiff. I have no hesitation whatsoever making these awards considering the standing of a Judge. I wish, however, to point out one distinction between the case of Justice Lugayizi and that of the Plaintiff. While Justice Lugayizi was named in the article the Plaintiff was not under the cover “*name withheld*”. There is no secrecy in hearing and disposal of case and this distinction will be ignored as to me it is immaterial.

According Judgment is herein entered for the Plaintiff for:-

- (i) Shs. 15,000,000/= (Fifteen Million Only) in General damages.
- (ii) Shs. 5,000,000/= (Five Million Only) in aggravated damages.
- (iii) Interest at Court rate, on (i) and (ii) from the date of Judgment till payment in full.
- (iv) Costs of the Suit.
- (v) An order to prevent a repeat of such outrageous allegations against the Plaintiff a permanent injunction restraining the Defendant by himself or by his servants agents or persons acting under his authority from publishing such defamatory matters about the Plaintiff will issue.

**ELDAD MWANGUSYA**

**JUDGE**

**18.12.2006**

Court:

I am currently holding a Criminal High Court Session in Masindi. The Assistant Registrar (Family Division) is directed to deliver this Judgment.

**ELDAD MWANGUSYA**

**JUDGE**

**18.12.2006**

20/12/2006

Court:

Judgment read in open Court

Edward Anguria holding brief for Omunyokol George  
of M/S Omunyokol & Company Advocates present.

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**JOHN O. E. ARUTU**

**AG. ASST. REGISTRAR**

**20.12.2006**