THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL SUIT NO 92 OF 2003

1. CHRIS COTTON
2. KARITAS KARISIMBI……..…….. PLAINTIFFS

VERSUS

1. THE PEPPER PUBLICATIONS LTD.
2. RICHARD TUSIIME……..……DEFENDANTS

BEFORE HON. MR. JUSTICE GIDEON TINYINONDI

JUDGEMENT:

The Plaintiffs sued the Defendants for libel based on four publications. The plaint reads:-

"1. The 1st Plaintiff is an adult male of sound mind and Programmes Director at Capital FM Radio, and the 2nd Plaintiff is an adult female of sound mind and a Radio Presenter at Capital FM Radio, whose address of service for purposes of this suit shall be C/o Odere & Nalyanya Advocates, 3rd Floor Impala House, 13/15 Kimathi Avenue, P. O. Box 22490, Kampala.

2. The 1st Defendant is a Publishing Company for the Red Pepper Newspaper and the 2nd Defendant its Editor-in-Chief, upon whom the Plaintiff's advocate undertakes to effect service of court process.

3. The Plaintiff's claim against the Defendants jointly and severally for falsely and maliciously publishing articles defamatory of the Plaintiffs, where they seek general damages for libel, interest and costs.

4. The Plaintiffs' cause of action arose as follows: -

(a) In the Red Pepper issue of 25 – 30 October 2002 at page 8 in an Article published the following words, (Annexture "A"):

"……...DJ Ronnie resigned his job on Thursday last week after a heated argument with a certain manager over matters to do with loving Karitas Karisimbi's long twin towers.

Karitas formerly of WBS TV has caused a thigh frenzy among some male staff at Capital FM …

From the moment Karitas joined Capital the chemistry between her and Ronnie has been boiling vigorously till a manager (names withheld) also started dating her.

*Because of Ronnie and Karitas' flings this unnamed manager started framing Ronnie and reporting him to Mr. William Pike (Managing Director) over concocted offences. "Tempers had been brewing rapidly until last Thursday when they reached volcanic proportions and erupted. Ronnie and the manager exchanged hot words punctuated with so many F**K Us before all staff members. They reached a point of flexing and held one another's collar before staffers intervened." a snoop said. .."*

(b) In the Red Pepper issue of 1 – 7 November 2002 at page 1 in an Article entitled "**Karitas Seen Smooching her Mzungu Boss Chris @ Wagadugu Bar. Oh My! Snoops Say, She sometimes give him a BLOW JOB"** (Annexture **"B"**).

Then at page 3 the defendants again published and/or caused to be published the following words:

"It's A Bum Deal! Karitas seen smooching her Mzungu boss Chris.

Snoops can now sensationally confirm that Capital FM's DJ Karitas Karisimbi and the Station's Programmes Director Chris Cotton are massively romantically linked. Snoops said last week that Karitas' long twin towers had caused a thigh frenzy at the

station leading to the resignation of DJ Ronnie after losing the love battle for Karitas to a manager (now positively identified as Mr. Cotton). …..…

They had a goodtime and by and by, left for Mateos Bar just above Nandos for a romantic outing. "Before they burnt rubber in Cotton's silver green Toyota Sprinter, they took off some valuable time to kiss-deeply while seated in the car and you could see from the window that they were having a nice time," an eye witness said…."

(c) In the Red Pepper issue of 24 – 30 January 2003 at page 13 the defendants again published and/or caused to be published the following Article, (Annexture "**C**"):

"*Karitas Karisimbi the WBS TV star and* ***now a novice*** *at Capital FM is shamed after her Nigerian boyfriend is arrested on suspicion of drug dealing. The boss Chris Cotton throw tantrums at Pepper managers and it is later learnt it is to shield his love for the gorgeous honey ….*

Thigh Frenzy! Red Pepper's 3 a.m. crew sensationally reveals that Capital FM DJ Ronnie resigned his job from the station after a heated argument with a Chris Cotton over matters to do with Karitas Karisimbi's long twin towers."

(d) In the Red Pepper issue of January 17 – 23, 2003 at page 8 in an Article entitled **"Cotton, Karitas in Sucking Festival in Dubai"** the defendants published and/or caused to be published the following words (Annexture "**D"**):

"Chris Cotton the Programs Director of Capital Radio handed nascent present Karitas Karisimbi a big new years present in form of G-strings and several pairs of hipsters. Snoops say that the two-some was in Dubai last weekend for a holiday and took time off to do shopping after staging a massive sucking festival in which they both sucked dry buckets of yoghurt, ice cream and juices to stave off the nagging heat of the United Arab Emirates desert. The steamy couple is back into the country."

5. These false publications were understood to mean that the defendants were:

(a) persons of loose moral integrity;

(b) persons of lewd character;

(c) persons of violent character;

(d) irresponsible and bad managers;

(e) gluttons.

6. The said publications with a wide readership lowered the defendants in the estimation of ordinary members of the public and he vast listeners of Capital FM Radio, and put the defendants to low public esteem, embarrassment, odium and ridicule.

7. The Plaintiff shall contend that the repeated relentless nature of the publications are indicative of and motivated by malice and sensationalism and for reward at the expense of the plaintiffs.

8. Notice of intention to sue was communicated to the defendants who ignored it.

9. The publication arose in Kampala in the jurisdiction of this Court."

In their Written Statement of Defence the Defendants replied: -

"1. At or before the hearing of this suit, the defendants shall jointly and severally raise a preliminary objection to the effect that they are wrongly sued and that the 1st Defendant does not exist in law while the 2nd Defendant is not the Editor in Chief of the non-existent 1st Defendant. The plaintiffs have therefore sued the wrong Defendants and the Defendants shall pray that the plaint be struck off with costs.

2. Paragraph 1 of the plaint is admitted. For purposes of this suit, the address for the 1st and 2nd Defendants shall be c/o Mutabingwa & Co. Advocates, Plot 4 Wilson Road, Ivory Plaza, 3rd Floor Room 8, P. O. Box 26538, Kampala.

3. Paragraph 2 of the plaint is denied and the Defendants shall contend that the plaintiffs have sued wrong parties.

4. The Defendants deny the contents of paragraph 3 of the plaint and shall put the plaintiffs to strict proof thereof.

5. The Defendants deny the contents of paragraph 4 (a), (b), (c) of the plaint and in further reply thereto, the Defendants shall contend that the alleged defamatory statements are true, are not malicious were published in good faith and is not defamatory. The Defendants shall contend further that the story was published without actual malice whatsoever and without gross negligence and that they were privileged to publish them.

6. Paragraphs 5(a), (b), (c), (d) and (e) of the plaint are denied and in further reply thereto, the Defendants shall contend that the innuendos suggested by the Plaintiffs therein are false and are farfetched.

7. Paragraphs 6 and 7 of the plaint are denied in toto and the Defendants shall put the Plaintiffs to strict proof thereof.

8. The contents of paragraph 8 of the plaint are denied.

9. Save for the jurisdiction of this Honourable Court, the Defendants deny the contents of paragraph 9 of the plaint and aver that the plaint does not disclose a cause of action against the Defendants."

The following were the agreed issues: -

"1. Whether the publications are false.
2. Whether the stories were maliciously published.
3. Whether the articles were defamatory.
4. Whether the Plaintiffs suffered any damage.
5. Remedies."

PW1, CHRIS COTTON, testified as follows:

He was a Manager of Programme Broadcasting with Capital Radio. He had been recruited as a programme director in 2001. Previously he worked as a programme director for 12 years in New Zealand.

He held a diploma and an advanced diploma of the New Zealand Broadcasting. He was aware the 1st Defendant enjoyed wide readership. He was, together with the 2nd Plaintiff, suing the Defendants for publishing a number of defamatory articles about himself and the 2nd Plaintiff. These articles were damaging both personally and professionally.

The articles of 25/10/2002, admitted evidence as exhibit "P1", alleged he was involved in fights with another staff, Ronnie Sempangi, over a relationship with a work colleague (the 2nd Plaintiff). That the two had to be physically separated by other staff. The publication went on to allege that the 1st Plaintiff then framed Ronnie Sempangi so as to have him removed from the radio station. That as a result Ronnie Sempangi resigned his position from the Station. That the said article also spoke of the two Plaintiffs' behaviour during social outings and made reference to their mood situations. The witness further testified that these contents were not true because he never engaged Ronnie Sempangi in altercations, let alone, a physical brawl; he never framed Ronnie Sempangi; he and the 2nd Plaintiff never conducted themselves in a lewd manner.

PW1 further testified to the second article of the very next issue, dated 01/11/02 (exhibit "P2"), which gave details of the Plaintiffs' social events and lewd conduct. It alleged a number of improper and unprofessional activities at their work-place. He testified that the contents of exhibit "P2" were false.

PW1 further testified that these publications caused him tremendous professional and personal damage. Personally they were traumatic and humiliating. People believe what they read and they tend to change their attitude negatively if they read such articles. It is hard to conduct any social activity after such a publication. This constant criticism of one's conduct and character removes one from one's acquaintances. People distance themselves from you. Professionally there is loss of personal respect from colleagues, business associates, clients the business community. Staff would lose their credibility of his training management and information regarding their professional conduct.

PW2, KARITAS KARISIMBI, (2ND PLAINTIFF) testified as follows:

She was a radio presenter at the Capital Radio for a year and half. She was suing the 1st Defendant who published articles about her that caused her a lot of trauma and humiliation because the articles alleged that she was behaving in a sexually humiliating manner. On 25/10/2002 the 1st Defendant's article

alleged that she and the 1st Plaintiff behaved in a sexually humiliating manner in public during their staff functions. That the articles of 25/10/2002 and 01/11/2002 specifically referred to Pilsner promotion at Wagadugu outside Mateos Bar and Blue Mango which latter place the two Plaintiffs had never visited together. That it was reported they were seen kissing outside Mateos Bar. That it was reported that at Blue Mango she put her foot on the 1st Plaintiff's private parts. That she received a rare beating from the 1st Plaintiff.

The 2nd Plaintiff further testified that the events reported in these articles did not take place. The 1st Plaintiff was her boss who supervised her work. At the time of the publications the two Plaintiffs were dating each other. However, they never publicly conducted themselves lewdly as published. The 2nd Plaintiff also testified that she worked with Ronnie Sempangi on the same programme at Capital Radio. That the publications affected her professionally because people's perception of her had changed. They did not wish to associate with her because of what they read about her. At her place of work, her colleagues looked at her with disrespect and regarded her to be what they had read about her in these publications. That socially she was embarrassed and humiliated to move freely because she would hear people talk. Family-wise, her sickly mother got worse when she read and was told about these articles.

PW3, RONALD SEMPANGI, testified as follows:

The Plaintiffs were his colleagues at Capital Radio where he was a presenter. In October 2003 the 1st Defendant published an article saying that PW3 had exchanged abusive words and fought with the 1st Plaintiff, who was his boss, over the 2nd Plaintiff's "twin towers" in front of staff and that this led to the witness's resignation. That it was not true that he and the 1st Plaintiff exchanged abusive words. That it was not true that he and the 1st Plaintiff fought in front of staff. That it was not true that he resigned his job because of the alleged reasons.

PW3 further testified that the said article misrepresented his background and culture because he could not disrespect his boss. The 1st Plaintiff spoke to him about the article and told him that it had affected him. That in fact it had also affected PW3. They consoled each other agreeing that as long as they knew it was not true they would take it as it was.

In cross-examination PW3 testified as follows:

He joined Capital Radio in December 1998 as a presenter while the 1st and 2nd Plaintiffs joined 2002 and 2002. He resigned August/September 2002 because he wanted to pursue a course in media programming in South Africa. The Plaintiffs were still at Capital Radio. He went to South Africa in March 2003 and completed the course in July 2003. He rejoined the station in September 2003 as a presenter still. He had not applied for leave on leaving. The course was not sponsored by the Station. He resigned instead of applying for leave because he was not sure which school he was going to and the duration of the course. He was not sacked because of the publication or at all. Nor was the 2nd Plaintiff sacked. He did not know if the 1st Plaintiff left as a consequence of the article.

When shown exhibits "D1" of four photographs, he said they were of the Plaintiffs. He did not know where they were taken or in what circumstances. He did not usually go out with them – only once in a while.

PW4, NAGOMA MANWA testified that:

He was a market researcher employed as the General Manager of Consumer Insight. His firm researched in consumer reaction to services. He first met the 1st Plaintiff when the latter gave him a brief in 2002 to do a study of the Luganda/English radio listener ship. The objective of the study included perception of radio stations in Uganda; strength and weakness of the various stations and the presenters and any market gaps in the stations. He first met the 2nd Plaintiff at Capital Radio in 2002. He carried out the study. He used qualitative methodology by involving different people to give their views as to why they use particular products or services. The exercise involved feelings, emotions, and perceptions.

PW4 further testified that the 2nd Plaintiff was his subject of study. At the time she was a presenter at Capital Radio. He had a total of 10 focus groups each group consisting of 8 – 10 people. Each focus group would discuss each subject for 1 – 2 hours. In the case of the 2nd Plaintiff the criteria were on radio listenership habits and ages. The criteria included classes in society. The group would be recruited using a questionnaire.

The witness further testified that with regard to the public they generally disliked her on account of alleged off duty incidences. The public also blamed the 2nd Plaintiff for the departure of DJ Ronald Sempangi, who was at the time popular, on account of the stories the public read. The witness and his

team did not interview any of the 2nd Plaintiff's colleagues at Capital because in their commission the station excluded this as a focus group. The report was received as exhibit "P5".

In cross-examination PW4 testified as follows:

He did not have a copy of the brief the 1st Plaintiff had given him. The brief did not expressly or implicitly of a matter pending before court. He interviewed about 100 (in the focus groups). The 2nd Plaintiff was part of the witness's interviews in each focus group. The names of the people were not in the report because market researcher ethics did not allow PW4's team to disclose these names. It was a matter of confidence. PW4's team's choice of the focus group was dictated by the client giving the ages, numbers and class. The classes involved were A B, C_1, C_2 and D. AB consisted of the affluent, well-educated, and had professional jobs like lawyers, lecturers and so on.

Group C_1 were mid-level like managers and foremen. Group C_2 were junior managers of organizations and small businesses. Group D comprised of manual workers. The team did not interview unskilled people rurals. The study was restricted to Kampala. No one was interviewed from Owino market.

PW5, BRENDA NANYONJO testified as hereunder:

She was 27 years old and Manager of Zipper Models and Miss Uganda Ltd. She was a graduate of Makerere University Kampala. She was friends with the Plaintiffs. She had been friends with the 2nd Plaintiff for seven years. She met the 1st Plaintiff in 2000. She had read the 1st Defendant's articles now the subject of the suit. She repeated the contents. Her reaction was shock because the story was a stranger to the Plaintiffs as she knew them. They were the type who would not kiss and fondle in public. She did not know the 1st Plaintiff to be given to fighting. After reading the articles she started distancing herself from the two because she did not wish to be associated with the acts alleged about them.

In cross-examination PW5 testified that though the 2nd Plaintiff was still her friend PW5 no longer went out with her because of the stories in the articles. They were only using telephones to communicate. The 2nd Plaintiff had asked her to testify in this case. She knew the Plaintiffs were dating. Her shock was the allegation they were said to kiss and fondle in public.

When shown a "New Vision" article of 07/11/2002 she testified that it was about dress while the one in the 1st Defendant was about kissing and fondling in public. She testified that usually there is a dress code for a function in one's invitation. In the "New Vision" article (exhibit "D2") the 2nd Plaintiff was the master of ceremonies. PW5 did not see any problem with the dress. She knew the 1st Plaintiff left the country and the 2nd Plaintiff was now dating another person. She knew the 2nd Plaintiff got promoted in her job. The 2nd Plaintiff was not pregnant.

With the above evidence the Plaintiffs closed their case.

DW1, INNOCENT NAHABWE testified as follows:

He was a photojournalist and employed by the 1st Plaintiff. He had seen the Plaintiffs on a couple of occasions during the course of his duties. When shown exhibit "P1" he testified it was true he saw the Plaintiffs at Wagadugu Bar. On that day there was a promotion at the Bar and he had gone to cover it. He saw the Plaintiffs coming and holding hands. They sat together in the crowd. As the function progressed he saw them laughing and kissing. He kept taking their pictures in but none were they actually kissing. Eventually they moved out. He stalked them. They entered their car, kissed again and drove off. He testified that the 2nd Plaintiff's denial that they kissed in the Bar and car was not true.

DW2 further testified that he also saw the Plaintiffs at Steak Out along Lumumba Avenue in company of their friends. The Plaintiffs came in together and sat on the same table. They had someone he would call a bouncer. When he tried to take pictures of the Plaintiffs, the bouncer grabbed his camera. However, he had managed to take some pictures. [The witness then plunged into hearsay which I will reproduce now].

DW1 further stated that he relied on unnamed people at the Plaintiff's place of work to inform him that the Plaintiffs had an affair to buttress this wild hearsay at Steak Out in company of other friends. They sat at the same table. They had someone DW1 thought was a bouncer. When DW1 tried to take the Plaintiff's pictures that person grabbed his camera. At the same time the 2nd Plaintiff yelled at DW1 telling him to leave them alone.

DW1 stated and testified that people at Capital Radio had informed him that the Plaintiffs were having an affair and that they had seen the Plaintiffs behaving in an intimate manner suggestive of a close relationship in public. DW1 tendered four photographs (exhibit "D1 (a)") and testified that he took them at Wagadugu and instructed someone to write at their back.

In cross-examination DW1 testified that he is a photojournalist by practice but not by profession. He had practiced it for five years. He used a digital camera and an ordinary 30 mm zoom lens which pulls pictures closer. When there is no intervening object you need a distance of only 50 metres most of the time. At Wagadugu Bar he did not capture the Plaintiffs kissing because by the time he readied the camera, they had finished. Secondly, it was night time and harder to take a picture with a zoom. Thirdly, people were moving about. Furthermore he did not take a snap while they were kissing in the car because it was difficult to do it as the journalists' security on the streets at night is not guaranteed. He is not a security analyst but Wagadugu Bar was in the neighbourhood of the Plaintiff's workplace, they knew him and loathed his taking of their pictures. Yet again he could not take the snap because the car windows were closed and the picture could not come out after using a flash.

When shown exhibit "D1" (a) and (b)" DW1 testified that he took these photographs at the Sheraton Hotel. There was a big gathering but he managed to capture the Plaintiffs. It did not strike him as strange that every time he allegedly saw the Plaintiffs kissing he could not capture them. It was because they took a short time to kiss.

DW2, ARINAITWE RUGYENDO testified that he was a 1st Defendant. He knew the Plaintiffs. When shown exhibit "P1 (a)" he stated that it was a true story to the best of his knowledge because it took place at Capital Radio. That at that time he was a news editor of the 1st Defendant. He received information that the three people mentioned in the exhibit (Karitas, Chris, Cotton and Ronnie) were involved in a scuffle over Karitas. As a practice he directed his reporters to go to Capital Radio and find out more. What they reported back is what was published in the exhibit. He confirmed from his reporters that the workers at Capital Radio did not want their identities disclosed. They (DW2 and his reporters) confirmed that Chris Cotton and Ronald had a conflict over Karitas because Chris Cotton was interested in cultivating a love affair with Karitas.

When referred to exhibit "P1 (b)" DW1 testified that they reported this incident because as a newspaper it was newsworthy in that for a boss and junior to have a date was out of the ordinary. The Defendants obtained this information from their contact among the Capital F. M workers. The article was newsworthy especially because DJ Ronnie had resigned from his job and a number of workers had not been amused. DW1 had not spoken to Ronnie. When he was referred to exhibit "P1 (a)" again, DW1 testified that he established the truth about Ronnie's resignation when he listened to a music program Ronnie presented on Sanyu F. M radio between 10.00 a.m. and 12 noon.

During cross-examination DW1 testified that the workers at Capital F. M sought protection from the Defendants not to be identified because Chris Cotton who was their boss could have caused their dismissal. The Defendants obliged them. When referred to exhibit "P2" the witness testified that he was aware the Plaintiffs had sued in respect of the article. That as a news editor of the 1st Defendant he had verified these facts through his reporters and DW1 who went to Wagadugu Bar. He had never seen Karitas and Cotton smooching and he had never seen Karitas do a "blow job" on Cotton. Furthermore he had never witnessed Karitas rubbing her leg against Cotton's "weapon of mass destruction."

DW3, KARANJA NJOROGE, testified as follows:

He was a General Manager of Sanyu F. M. He joined it in 2001. He knew Ronnie Sempangi who had approached him for a job at Sanyu F. M. in March 2003. They employed Ronald Sempangi as a D.J weekend presenter between 11.00 – 12.00 p.m. He worked there till early May.

DW4, DENNIS SABITI, testified that:

He was a reporter for the 1st Defendant and knew DW2 who was the Deputy Editor of the 1st Defendant. DW2 assigned him to go to Capital F. M to confirm a rumour that Ronald Sempangi had quit his job at the station. He went there and contacted his snoops who confirmed the facts about Ronald Sempangi. He asked why Ronald Sempangi had resigned after quarreling with his boss, the 1st Plaintiff. DW4 took back this story to his boss.

Both Counsel filed written submissions. I will not reproduce them here because they are on the court record. I will only refer to them where I consider it necessary. I now turn to the issues.

The evidence regarding the first issue included that of the Plaintiffs and PW3. In a nutshell their evidence is that the contents of all the articles complained of (exhibits "P1" and "P2") were not true.

For their part the Defendants called DW1. Inter alia he testified he was a photojournalist by practice and employed by the 1st Defendant. He continues –

"…I was not able to take the shot of their (Plaintiffs) actual act of kissing."

This was when he was shown exhibit "P1". In cross-examination DW1 offered several woolly excuses. DW1 preferred four photographs taken, allegedly, at the Wagadugu bar. For me they evoke no emotions and they prove nothing to support the defence case of truth.

DW2 cut a worse figure than DW1. When shown exhibit "P1 (a)" he testified: -

"This is a true story to the best of my knowledge ….. I received information that there was a problem at Capital Radio about the three people named in the story …. As our practice I directed my reporters to find out more …… I can confirm that what they reported back to me is what was published … The workers at Capital Radio did not want to be mentioned …. We reported this because as a newspaper it was news for a boss and junior to have a date ….."

When referred to exhibit "P1 (b)" DW2 testified, inter alia,

"We got this information from our contact at Radio Capital …. In this particular case Ronnie had resigned from the job …. I did not speak to Ronnie." {Emphasis is mine}

It is my considered view hat the so-called contact was a smokescreen intended to hoodwink the court. Unfortunately DW2 did not succeed in this. There was no such contact in existence. If he existed, why was he not brought to court to testify? If the alleged contact existed but was protected by some immunity from giving evidence in court, why was that immunity not invoked? Add to all this, no reason was given for DW2's failure to speak to Ronnie. Ronnie's evidence gives the lie to DW2's evidence in good measure.

In cross-examination DW2 testified inter alia,

"As the news Editor of the "Red Pepper" I verified these facts …. I did not see Karitas and Cotton smooching. My reporters did……I verified the facts from one of my photographers … Innocent Nahabwe."

As I have already shown Nahabwe (DW1)'s evidence has no trace of truth. When DW2 testified that he verified the truth of the allegations in the article from DW1, I view him as a reckless editor whose recklessness goes only to show that he published what he knew to be false. {See: "GATLEY ON LIBEL & SLANDER" (8TH Edition) Paragraph 774}

In further cross-examination DW2 testified: -

"Blowjob is a form of oral sex …. I have never seen Karitas perform it. As for the rubbing of the leg against the weapon of mass destruction – I have never witnessed Karitas do it." {Emphasis is mine}

DW4 was shown exhibit "P1 (a)" and testified, inter alia:
"My editor-in-chief assigned me to go to Capital F. M to confirm the rumour that Ronnie Sempangi had quit his job there … I went there and contacted my snoops. They confirmed that fact. They said Ronnie Sempangi had left after quarrelling with his boss, Chris Cotton over Karitas …"{Emphasis is mine}

The so-called "snoops" were neither named/identified nor called to confirm DW3's evidence. I was not told why the Defendant failed/neglected/refused to summon them. I have already summarized PW3's evidence regarding the reasons he temporarily left Capital Radio. He denied ever quarrelling or fighting with the 1st Plaintiff over the 2nd Plaintiff. His evidence was not alluded to in cross-examination nor contradicted by any other defence evidence.

In his submissions on this issue defence Counsel argued that PW2's testimony did not address other publications mentioned in the plaint; that she did not deny that her Nigerian boyfriend was arrested carrying drugs; that the Plaintiffs nothing about the 3rd and 4th articles; that none of the Plaintiffs denied

the publication in exhibit "P1 (b)"; that they were seen in Dubai where the 1st Plaintiff gave gifts to the 2nd Plaintiff.

It is true that in paragraph 4 (c) and (d) of the Plaint the 2nd Plaintiff complained about the 1st Defendant's article about her Nigerian boyfriend being "arrested on suspicion of drug dealing" and the two Plaintiffs visit to Dubai, respectively. My considered opinion is that if the Plaintiffs complained of these articles as well as those in exhibits "P1" and "P2" and they called evidence concerning exhibits "P1" and "P2" only the court will consider and decide the Plaintiff's claim on the evidence available. The court will not be concerned with an article which the Plaintiffs opt not to call evidence upon. Nor is the Plaintiffs' silence about the article they have chosen to abandon disentitle them from judgment on the article they have elected to lead evidence on. The articles, in my view, are severable. I therefore answer this issue in the affirmative.

I prefer now to tackle issue number (c) before I address issue number (b). As for the definition of a defamatory statement I rely on"GATLEY" (ante) Paragraph 31 and ***Alstaire Vs Campling: [1966] 1WLR 34 At Page 41*** where Diplock L. J stated: -

> "A statement does not give rise to a cause of action against its publisher merely because it causes damage to the plaintiff. The statement must be false and it must be defamatory of the Plaintiff, that is to say, the statement must itself contain, whether expressly or by implication, statement of fact or expression of opinion which would lower the Plaintiff in the estimation of a reasonable reader Who had knowledge of such other facts, not contained in the statement, as the reader might reasonably be expected to posses."

In paragraph 115 of "GATLEY" (ante) it is stated: -

> "Where the words complained of are defamatory in their natural and ordinary meaning the Plaintiff need prove nothing more than their publication. The onus will then lie on the Defendants to prove from the circumstances in which the words were used, or from the manner of their publication …….or other facts known to all those to whom the words were published, that the words would not be understood by reasonable men to convey the importation suggested by the mere consideration of the words themselves……."

At the scheduling conference three matters were agreed by Counsel for both parties.
Two of them were:

a) the articles complained of were published by the Defendants.

b) the articles referred to the Plaintiffs.

The role of the court at this stage is laid down in ***Morgan Vs Odhams Press: [1970] 820 CA*** *where it is stated: -*

"It was well settled that the question whether the words complained of are capable of conveying a defamatory meaning is a question of law and, is therefore, one calling for the decision o the Court."

and ***Shah Vs Uganda Argus: [1971] EA 362 At 3***65D where Yonds, J stated:

"Of course I am not bound to accept the evidence or opinions expressed by witnesses and must form my own opinion and make my own finding as to whether or not the newspaper article was defamatory of the Plaintiff, but having listened to the evidence and bearing in mind that I must consider the position of the reader of the article (who might be reasonably expected to possess knowledge that the Plaintiff….) I have come to the conclusion and so find that the newspaper article was defamatory of the Plaintiff." {Emphasis is mine}

In deciding whether or not the statement is defamatory, the ***Court must first consider*** what meaning the words would convey to the ordinary man {See: ***Rubber Improvement Ltd Vs Daily Telegraph Ltd., Rubber Improvement Ltd. Vs Associated Newspapers Ltd. (1964) AC 234 at 258.}*** Having determined the meaning, *the test* is whether, under the circumstances in which the words were published, a reasonable man to whom the publication was made would be likely to understand it in a defamatory sense. {See: ***Capital & Counties Bank Ltd Vs George Henry & Sons: (1982) 7 App. CAS. 741 At 745}***

This approach was earlier stated in ***Tolley Vs J. B. Fry & Sons Ltd.: (1930) IKB*** *Where Scrutton, J. said this:*

"The Judge has to decide whether the publication complained of is capable of being understood by reasonable people as bearing the meaning alleged or a defamatory meaning. He is not to decide what its meaning is but what it is capable of bearing to reasonable people."

Further, decided cases indicate that *the meaning of words for the purpose of the law of defamatory is not a question of legal construction* since laymen will read into words an implication more freely than a lawyer. *The meaning is that which the words would convey to ordinary persons.* The Court must not put a strained or unlikely construction upon the words. {See: ***Rubber Improvement Ltd. Vs Daily Telegraph Ltd., Rubber Improvement Ltd. Vs Associated Newspapers Ltd.: (1964) AC 234 at 258}.***

In paragraph 51 of "GATLEY" (ante) it is stated: -

"Any imputation of conduct considered by right thinking persons to be immoral is necessarily defamatory."

In paragraph 57 of "GATLEY" (ante) it is stated: -

"Any imputation which may tend to injure a man's reputation in…employment ….profession, calling or office carried or held by him is defamatory."

Need I add paragraph 60 of "GATLEY" (ante)?

In his submission's Counsel for the Plaintiffs re-iterates that the Plaintiffs held the articles complained of to convey the meanings that: -

a) they were persons of loose moral integrity;
b) they were persons of lewd character;
c) they were persons of violent character;
d) they were irresponsible and bad managers.

With the aforementioned background of the law, with the evidence of the Plaintiffs and PW3 and PW5 I find, without "any strained or unlikely construction", that the Plaintiffs have discharged the burden of proof {see: "GATLEY" (ante) paragraph 74} that the words in these articles were capable of bearing to an ordinary person the meanings attributed to them by the Plaintiffs through their Counsel's submissions already referred to. I answer issue number (c) in the affirmative.

Issue number (b) as framed was:

"Whether the publications were actuated by malice."

The Plaintiffs pleaded this in paragraph 7 of their plaint, while the Defendants replied in paragraph 5 of the Written Statement of Defence.

In paragraph 765 of "GATLEY" (ante) it is stated: -

"Actual malice does not necessarily mean personal spite or ill will. Malice in the actual sense may exist even though there be no desire for vengeance in the ordinary sense. Any indirect motive other than a sense of duty is what the law calls malice."

In ***Fountain Vs Boodle (1842) 3 Q B* 5** it was held that: -

"Mere falsehood is certainly no disproof of bona fides. ….But proof that the Defendant knew that the statement was false or that he had no genuine belief in its truth when he made it would usually be conclusive evidence of malice."

I have already held that the "contacts" and "snoops" alleged by DW1 and DW2 did not in fact exist as far as evidential proof is concerned. I have assigned my reasons for my disbelief. I have further found that DW2 with deliberate recklessness opted to publish hearsay instead of first holding an interview with Ronnie Sempangi. DW2 made no effort to explain away the reasons he chose not to do this. In my considered view and in the absence of any evidence I find that in publishing the articles complained about the Defendant were not prompted by any sense of duty. The evidence reveals DW1 to be a person afflicted with jaundiced images of the anatomy of the 2nd Plaintiff and obsessed with the urge of a Ugandan night-dancer stalking the Plaintiffs and looking for an opportunity to pounce on the Plaintiffs

when and if they might be engaged in their imagined private indiscretions. Unfortunately when DW1 failed in this despicable enterprise he opted to consummate his frustrations in exhibits "P1" and "P2". I answer this issue in the affirmative.

Issue number (d) sought an answer as to whether the Plaintiffs suffered any damage. In ***Walkin Vs Hall: (1868) LR 3 QB At 39*** Blackburn, J. said: -

"Where disparaging words are spoken of a person, and either actual injury has flowed from them or they were spoken of him in the way of his trade, in contemplation of law damage had accrued to the person defamed."

In ***John Vs. Mgn Ltd: (1996) 2 All ER Page 35 At 47*** it was stated: -

"The successful Plaintiff in a defamation action is entitled to recover, as general compensation damages, such sum as will compensate him for the wrong he has suffered. That sum must compensate for the damage to his reputation; vindicate his good name; and take account of the distress, hurt and humiliation which the defamatory publication has caused."

I need not repeat the evidence of both Plaintiffs about the injury and damage they suffered both to their reputation and feelings. I find and hold in the affirmative on this issue.Amongst their prayers the Plaintiffs asked for general damages paragraph 1329 of

In "GATLEY" (ante) it is stated:

"The conduct of the Defendants' case at trial may also be argued in aggravation of damages ….and in court at the trial of the action including the conduct of Counsel…"

It is pertinent that I address this matter. The suit was filed on 18/02/2003. Hearing commenced on 07/10/2003. On 20/01/2004, 23/01/2004 and 03/05/2004 while the hearing was going on the Defendants published articles concerning the Plaintiffs. The Plaintiffs alleged the articles defamed them.

The Plaintiffs applied for a temporary injunction against further publications by the Defendants. I granted the order on 12/05/2004.

On 11/04/2005 before the hearing was completed and before the Defendant gave evidence, the Defendants again published another article about the 2nd Plaintiff. The Plaintiffs Counsel raised the issue in court on 13/05/2005. I reminded the Defendants and their advocates about my order of 12/05/2004 and asked them to restrain themselves.

I revert to the conduct of Defence Counsel during the proceedings.

In cross-examination of PW5 he sprang up a suggestion that the 2nd Plaintiff (who was unmarried) was pregnant. He had not cross-examined the 2nd Plaintiff herself about this.

On 13/05/2005 when the Plaintiffs complained about the Defendants' further defamatory article of 11/04/2005 Defendants' Counsel arrogantly shrugged off the complaint and replied that the Plaintiffs should file a fresh action. I took these matters into consideration.

Counsel for the Plaintiffs proposed Shs. 10m/= for each of the Plaintiff to cover both general and exemplary damages.

I looked at the following cases:

(a) ***G. Wavamunno -Vs- S.T. Cheye: Hccs 651/95*** where the Plaintiff prayed for Shs.50million but was awarded Shs.15 million in general damages.

(b) ***Odongkara –Vs- Astles: [1970] EA 374*** where the Plaintiff was awarded Shs.5 million.

(c) ***A. K. Mayanja –Vs- Editor Of Mulengera Newspaper & 2 Others*** where the Plaintiff was awarded Shs.6 million in general damages and Shs.2 million as aggravated damages.

(d) ***Nekemiya Matembe & Another -Vs- S. T. Cheye & Another: Hccs*** 104/95 where the two Plaintiffs were awarded Shs.11 million each in general damages.

(e) ***Biwott -Vs- Clays Ltd: Hccs 1067 & 1068/99 (Kenya***) where the Plaintiff was awarded Kshs.15 million in compensatory an exemplary damages and a permanent injunction was granted restraining the Defendants from selling and circulating the book complained of.

(f) ***J. H. Ntabgoba Vs. The Editor In Chief Of The New Vision And Another: Hccs. 113/2003.***

(g) ***Hon. Justice Lugayizi Sempa Vs. Teddy Sezi Cheye & Another: Hccs. No. 644/01.***

It is my considered view that the Plaintiff are entitled to an award of Shs.8m/= each.

Accordingly judgment is hereby entered for the Plaintiffs for: -

(a) Shs.8m/= each in general damages; and

(b) Interest at court rate on the above sums from the date of judgment till payment in full; and

(c) Costs of the suit.

Sgd: Gideon Tinyinondi
JUDGE
15/03/2006.