

record. Court, satisfied that defendant had been served allowed plaintiff's prayer to proceed with the hearing in absence of the defendant. Even after the hearing of the case, court ordered that written submissions of plaintiff be served upon Defendant. This was done: Again Defendant took no action in the case.

Four issues were framed:

1. Whether the statements complained of were defamatory of the plaintiff.
2. Whether the said statements were made by the defendant.
3. Whether the statements complained of are privileged.
4. Whether the plaintiff is entitled to the remedies prayed for.

As to whether the statements complained of were defamatory of the plaintiff, plaintiff testified that on 01.10.2003 at about 7.30 p.m. at Bomah Hotel, Kitgum, Defendant came where plaintiff was seated with Mr. Louis Odongo, an advocate in private practice, and other friends of plaintiff, and loudly stated:-

“ For you Louis Odongo I can greet you.

But for this man (i.e. plaintiff)

I am not going to greet him”

Plaintiff then asked the defendant why? Defendant replied:-

“Because you are a corrupt Chief Magistrate, a rebel collaborator. We thought you were coming here to do work, but now you are collecting money and taking it to Sudan to arm Kony rebels.”

Defendant went on talking aloud that plaintiff had been partisan in handling cases against Kitgum District Local Government.

It was because of the plaintiff's presence in the region that there is a high rate of crime in Kitgum District.

Defendant then stated that if he is still the Resident District Commissioner, he will ensure that plaintiff loses his job. Defendant asserted that he had already written and taken action against the plaintiff to the President through the Attorney General. Therefore soon the plaintiff was to be arrested,, prosecuted and would lose his job.

The evidence of plaintiff is that by the said words Defendant meant of the plaintiff to be:-

- i). that he had committed treason against the Republic of Uganda.
- ii). that he was a member of the internationally listed terrorist

- organization, the Lord's Resistance Army: LRA;
- iii). that he was a criminal;
 - iv). that he had breached his ethics as a judicial officer and therefore
Was not fit to hold office of Chief Magistrate, or any other judicial
office.
 - v). that he was going to be arrested, prosecuted and dismissed from
service.

Defamatory statement is one which tends to lower a person in the estimation of right thinking members of society generally or to cause him to be shunned or avoided or to expose him to hatred, contempt or ridicule or to convey an imputation on that person disparaging or injurious to that person in his/her office, profession, calling, trade or business: *See Gatley on Libel and Slander: 8th Edition Para 31.*

To be actionable, the offending statement must not only cause damages to plaintiff: it must also be false and defamatory of the plaintiff in that it must contain expressly or by implication, a statement of fact or expression of opinion that lowers the plaintiff's reputation in the estimation of a reasonable person hearing (or reading) it who had knowledge of such other facts, not contained in the statement as that person might reasonably be expected to possess: *See: ASTAIRE vs CAMPLING (1966) WLR 34 at p.41.*

The plaintiff bears the burden to prove that the words complained of are defamatory. Where the said words are defamatory in their natural and ordinary meaning, the plaintiff may only prove their utterance or publication.

Once plaintiff has discharged the burden that the words are defamatory, then the defendant has to show, from the circumstances in which the words were used or from the manner of their utterance or publication or other facts known to those who received the words, that the said words would not be understood by reasonable people to convey the defamatory meaning claimed by the mere consideration of the words themselves. *See JEREMIAH HERBERT NTABGOBA VS The Editor in Chief, The New Vision NEWSPAPER & ANOTHER: HC.C.S. at Kampala No. 113 of 2003: Tinyinondi J. unreported.*

Plaintiff testified that he was the least person to be suspected of what the defendant stated of him. He had served in the Judiciary since 1993 without a clean record, he was now being ruined at the prime of his life. The defendant instead of protecting the integrity of the Judiciary

by virtue of his office, was instead disparaging the institution by harassing, insulting and isolating plaintiff from his colleagues and the public who get the services of the judiciary.

Plaintiff was supported in his evidence by his witness, PW2, Louis Odongo, an advocate in private practice.

Defence offered no evidence to contradict the evidence of plaintiff and his witness.

It is the duty of this court to make a finding on its own whether the offending words are defamatory. See *Shah vs Uganda* (1971) EA 362 at 365.

Having considered the evidence adduced as well as the ordinary meaning of the words the subject of the plaintiff, this court finds that the same were defamatory of the plaintiff.

The second issue is whether the defamatory statements were made by the Defendant.

The evidence of the plaintiff and that of his witness is that they saw and heard the defendant whom they had known for a very long time and was a public figure in Kitgum make these statements.

This evidence was not in any way contradicted by the defendant.

Court therefore holds with regard to the second issue that the statements were made by the defendant.

The third issue is whether the statements complained of are privileged.

The principle of law is that a defamatory statement, though actionable on ordinary occasions, is not actionable when made on a privileged occasion unless malice is proved. See *Munster v Lamb* (1883) 11 QBD 588. See also: *H.M.B Kayondo vs The New Vision Printing & Publishing Corporation & Another* H. C.C.S. No. 137 of 1989.

As regards to verbal statements made by the Defendant of the plaintiff in a bar, a public place and in the presence of the bar customers, court finds such statements as not being covered by any privileged occasion. There was no justification whatsoever for defendant to act as he did.

However as regards the defendant communicating to the Attorney General/Minister of Justice, with copies to Minister in charge of presidency, Minister for Security, court finds that his communication was privileged. As the Resident District Commissioner in the District, the Defendant had a duty to communicate to these offices regarding the accusations against the plaintiff. No malice has been proved on the part of defendant. The Attorney General/Minister of Justice and Constitutional Affairs was communicated to because in the overall Government set up the issues at and concerned Justice and therefore the responsibility of that Ministry. The

Defendant works under the president's office, thus communicating to Minister in charge of Presidency was not out of place. To the extent that matters at issue involved some security considerations, court sees nothing wrong for defendant having copied the communication to the Minister for Security. The investigations carried out by the Judiciary are also privileged by the defendant.

No explanation was given as to why the communication was made to Hon. Henry Okello Oryem. Court therefore finds the communication to him as not being covered by the privilege.

The answer to issue number 3 is that the statements by Defendant against Plaintiff made at Bomah Hotel, Kitgum on 13.10.2003 and are actionable. At about 7.30 p.m. are not privileged. So are those made to Hon. Henry Okello Oryem. However the communications to the Attorney General, Minister of Justice and Constitutional Affairs, Minister in charge of the Presidency, Minister for Security, to the Judiciary as well as the Report of the Judiciary about the allegations are privileged and not actionable.

The fourth issue is whether plaintiff is entitled to the remedies prayed for.

The statements made at Bomah Hotel Bar entitle the plaintiff to recover damages against the defendant.

The plaintiff is a senior judicial officer in the Judiciary at the rank of a Chief Magistrate. He was greatly embarrassed as to his reputation by the statements. No apology has ever been extended to him by the Defendant, even after Defendant was called to Judiciary and informed that the allegations against plaintiff had been investigated and found to be false.

Further, in his written statement of defence, the defendant showed contempt of plaintiff when he pleaded in paragraph 11 thereof that:

: The defendant denies that the plaintiff has any esteem, respect or morals to defend and shall put the plaintiff to strict proof...."

This pleading was made after the Defendant had been told that the investigation of the allegations against the plaintiff had shown that the same were unfounded.

This court in assessing damages takes note of the mode and extent of the publication, the whole conduct of the defendant from the time allegations were made up to the time of the verdict, bearing in mind injury to the feelings, the anxiety and uncertainty undergone mitigation and the absence of an apology. In *Jeremiah Herbert Ntaboga vs The Editor in-chief, the New Vision Newspaper & Another*, the plaintiff, then a principal Judge of the High Court, third in

rank in the Judiciary, was defamed by a newspaper article that alleged that he was carrying out his judicial duties being influenced by corruption. The New Vision Newspaper had at that time a daily circulation of 30,000 copies through out East Africa and has also on internet. The allegations were false and no apology was ever offered

Shs 30,000,000/= was awarded as compensatory inclusive of exemplary damages.
In H.C.C. S. No. 644/2001: Hon. Justice Lugayizi Sempa vs Teddy Seezi Cheye & Another, shs. 15,000,000/= was awarded as general damages to a judge of the High Court.

In the case of the plaintiff, the slander allegations, though outrageous, were not the subject of a wide publications like those in the two cases referred to where publication was through a written word and in newspapers with wide circulation.

The plaintiffs in the two cases were also of a higher status, one a principal judge, third in hierarchy of the Judiciary and the other a High Court Judge. In this case the plaintiff is a long serving Chief Magistrate.

In the circumstances of this case Court awards the plaintiff shs 10,000,000/= compensatory inclusive of exemplary damages.

The judgment is therefore entered for the plaintiff against the defendant for:-

- (i) shs 10,000,000/= compensatory and exemplary damages.
- (ii) Interest on the sum (i) above at the rate of 18 % p.a. from the date of judgment till payment in full.

The plaintiff is also awarded the costs of the suit.

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Remmy K. Kasule

Judge

28th March, 2008