

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
CIVIL SUIT NO. 0413 OF 2005**

**AMOS TWINOMUJUNI :::::::::::::::::::::::::::::::::::PLAINTIFF**

**VERSUS**

1.     **THE ATTORNEY GENERAL**  
2.     **LT. JAMES MWESIGYE**     ::::: } ::::::::::::::: **DEFENDANTS**

**BEFORE: HON. LADY JUSTICE ELIZABETH MUSOKE**

**JUDGEMENT**

The plaintiff, a Justice of the Court of Appeal of Uganda, filed this suit on 24<sup>th</sup> May 2005, claiming general and special damages for slander, libel and defamation occasioned from statements made by the 2<sup>nd</sup> defendant on the 29<sup>th</sup> of June 2004 at a meeting at Rwamucucu Gombolola in Rukiga County. The first defendant was sued in his representative capacity.

According to the plaint, the facts constituting the plaintiff’s cause of action are stated to be as follows:

- a)     On or about the 29<sup>th</sup> of June 2004, the 2<sup>nd</sup> Defendant, who at all material times was the Resident District Commissioner, Kabale, while addressing a gathering in the course of his duties, at Rwamucucu Gombolola in Rukiga County, said that the judges to whom the DP President, Paul Semogerere sues the government and wins, usually share money with Semogerere. The 2<sup>nd</sup> defendant was accompanied by his Deputy Zaina Muwonge, and a reporter

from the Orumuli Newspaper, and the gathering was attended by more than 600 L.Cs, other officials and villagers, among others.

The 2<sup>nd</sup> Defendant's statements which were in Runyankole /Rukiga, were interpreted to mean: -

“Recently five judges of the Court of Appeal and including Justice Amos Twinomujuni hailing from Rukiga, caused the Government to lose a case. In the said case, they held that the referendum determining how Uganda should be governed was wrongly done and therefore the effect of the Referendum that stated that Uganda should be governed under the Movement System of government was wrong and therefore non-existent.

Most of the judges were DP supporters in the previous regimes, and have always wanted DP to rule. Where Semogerere failed to rule, he collaborated with the judges so that he can sue and when the government loses, they have the compensation”.

The above statements were published on the Page 10 of Orumuri Newspaper Volume 15, No. 54 of 5<sup>th</sup> - 7<sup>th</sup> July 2004, under the heading “**Abaramuzi n’enkomba za DP-RDC Mwesigye**”.

The article was interpreted to mean that:

**“The RDC of Kabale, Lt. James Mwesigye on the 29<sup>th</sup> of June 2004, told the LCs of Rwamucucu Gombolola in Rukiga County that the judges to whom the DP President, Paul Semogerere sues the government and wins, usually share money with Semogerere. The RDC said this when he was meeting more than 600 LCs at Rwamucucu”.**

The article went on to state that recently five judges of the Court of appeal and including Justice Amos Twinomujuni hailing from Rukiga, caused the government to lose a case. In the said case they held that the referendum determining how Uganda should be

governed was wrongly done and therefore the effect of the referendum that stated Uganda should be governed under the Movement system was wrong and therefore non-existent.

The article further stated that most of the judges were DP supporters in the previous regime, who have always wanted DP to rule. Where Semogerere failed, he collaborated with the judges so that he could sue and when the government lost, they would share the compensation.

The article stated that the RDC was accompanied by his Deputy Zaina Muwonge, and was received by the L.C 3 Chairman, Rwamucucu, one Besigye Kyerere, who thanked the RDC for the wise counsel to the people of Rwamucucu and Rukiga as a whole.

Paragraphs 6, 7, 8 and 9 of the plaint stated as follows:

6. ***The above allegations were, and are false, slanderous and defamatory of the Plaintiff as they have exposed him to ridicule, odium and contempt and lowered his reputation as a Justice of the Court of Appeal, in the eyes of right-thinking members of society, members of the Civil Service and in particular in the Ministry of Justice and Constitutional Affairs, local and international Judicial bodies.***
7. ***The allegations are outrageous, malicious and defamatory because the 2<sup>nd</sup> Defendant knew very well that the above very serious allegations were being made against a Senior Judge in the Judiciary, yet he was comfortable to utter the same at a large public gathering.***
8. ***The said words were and are in their natural and ordinary meaning highly defamatory of the Plaintiff.***

9. *Alternatively, but without prejudice to the foregoing, by the said words, the Defendants jointly and/or severally meant and/or were understood to mean that the Plaintiff: -*

- a) *Is a corrupt and dishonest judicial officer/judge.*
- b) *Is not fit to hold the office he holds.*
- c) *Is an unethical Judge.*
- d) *Judges cases not according to his oath.*
- e) *Corruptly receives money from litigants as gratification for giving judgements in their favour.*

The plaintiff made the following prayers:-

- a) *General damages*
- b) *Exemplary and/or punitive damages for outrageous, reckless, false and malicious utterances.*
- c) *A permanent injunction against the 2<sup>nd</sup> Defendant restraining him from any future outrageous utterances against the plaintiff.*
- d) *Interest on (a) and (b) and costs at a rate of 25% p.a. from the date of judgement till payment in full.*
- e) *Costs.*

The Attorney General filed a Written Statement of Defence on behalf of both defendants, denying any knowledge of allegations of defamation against the plaintiff. Paragraph 4,5,7,8 and 9 of the Written Statement of Defence were as follows:

- 4. The defendants deny any knowledge of the contents of paragraphs 5, 7, 8, and 9 of the plaint and that at the hearing the plaintiff shall be put to strict proof of the allegations contained therein.
- 5. The 2<sup>nd</sup> defendant also denied that he mentioned any defamatory statement against the plaintiff.

7. The defendants deny any existence of a cause of action against them.
8. In the alternative, but without prejudice to the foregoing, the defendants shall at the hearing aver and contend that if there was any cause of action, which is denied, then it should have been the newspaper liable.
9. The defendants accordingly deny liability in damages and /or costs as pleaded inclusive of all prayers as set out in the plaint.

During a scheduling conference held on 30/5/2007, the following facts were agreed upon by the parties:

1. There was a meeting of the L.Cs at which the second defendant was present on the 29/6/2004 at Rwamucucu Sub-county Headquarters.
2. The second defendant addressed this meeting in his capacity as the Resident District Commissioner.
3. The plaintiff is a Justice of the Court of Appeal.

The agreed issues were as follows:-

- a) Whether the 2<sup>nd</sup> defendant in his address to the L.Cs on the 29/6/2004 made any reference to the plaintiff.
- b) If so, whether it was defamatory of the plaintiff.
- c) Remedies available to the parties.

When the case first came up for hearing, Ms. Kiryabwire for the defendants, stated that she could not proceed because their original case file was missing, and, secondly, she was leaving the Ministry for another assignment. A date was set for the next hearing, but on the due date, nobody showed up for the defendants. Since the hearing date had been fixed in the presence of the defendants' representative, the court decided to proceed with the hearing of the case *ex parte*.

In support of the plaintiff's case evidence was led from three witnesses. The first of these witnesses was Professor John Muhumuza, PW1, who stated that he was a Professor at the Faculty of Agriculture, Makerere University, and a Munyankole by tribe, who was aware of a weekly publication called Orumuli. During the week of 5<sup>th</sup> - 7<sup>th</sup> July, he was in the staff Common Room when a friend of his drew his attention to an article in that week's Orumuli publication which cited the name of his friend, Amos Twinomujuni, whom he had known since 1948. PW1 stated that he held the plaintiff in high esteem, and called him Honorable Justice all the time. When he read the article, he found reference to the plaintiff as one of the judges who were "enkomba" meaning "diehards" of DP, who did not agree with the results of the referendum, and who deliberately decide cases in favour of DP, and then share the proceeds. PW1 found this extremely alarming and disturbing, so he rang the plaintiff.

PW1 further testified that he was very concerned about the comments his colleagues in the staff room made on reading the article. Such comments were, like "bibaawo", meaning these things happen; and "these judges are like any other human being", meaning that they are not ethical, are of very low moral values, and some not fit to hold the high offices they held. PW1 perceived that some of these judges are promoted without any distinction. However, having known the process the plaintiff had gone through to reach the level at which he was, PW1 felt sad that the Justice was now a laughing stock in the University Staff Room.

PW2, Katabazi James Mitabiro, who resides in Rwamucucu, Rukiga County, Kabale District, testified that he was a farmer doing small business and a retired Saza Chief in Kabale District, and is regarded as an elder of the area.

PW2 testified further that he knew the plaintiff as a former Director, Law Development Centre; a former Deputy Director, Directorate of Public Prosecutions; and currently a Justice of the Court of Appeal. Like the plaintiff, PW2 came from Rukiga County, and only separated sub-counties.

He further testified that he had all along respected the plaintiff as a man of integrity but presently, he regarded him as a dangerous man, a cheat, a fraud, a crook, and a traitor after listening to what the RDC, Lt James Mwesigye, had to say about the plaintiff on the 29<sup>th</sup> June 2004 at Rushebeya, Katojo Parish. On 26<sup>th</sup> June 2004, PW2 was at home in Katojo Parish when he received two letters from the vice chairman, LC1 of the area. Both letters were inviting him to attend a meeting to be addressed by the RDC, Kabale, Mr. James Mwesigye, on 29<sup>th</sup> June, 2004. PW2 was invited as an elder and resident of the area. All L.C. members of the area, elders, women groups, departmental heads, and religious leaders attended. PW2 estimated the attendance to be between 5000 - 8000 people.

PW2 testified further that the RDC, who was accompanied by his assistant, among others, addressed the gathering in a mixture of English and Runyankole/Rukiga, and referred to the plaintiff. The RDC further said that many judges of the High Court are DP and UPC diehards. For this reason, DP President, Semogerere takes NRM government to court where he is awarded a lot of money which he shares out with these judges.

PW2 quoted the RDC as saying that five judges, including Amos Twinomujuni, son of Kasambya soil, decided a case against government holding that the previous referendum was void and that the government after the referendum was illegitimate. The RDC is said to have stated further that Semogerere and the judges, led by the plaintiff, sit on a round

table where Semogerere is advised to bring cases against the government, and the judges decide against the government and award a lot of money which they share.

PW2 further heard the RDC stating that the President would replace these judges with cadres who would ensure that government does not lose cases. He singled out Amos Twinomujuni, the plaintiff, as the first to be replaced. PW2 later saw a Newspaper article on the RDC's address in Orumuli. He identified the same in court.

PW2 later gave an account of what had transpired to the plaintiff, both on telephone, and when he met him at Nsambya, and the plaintiff was shocked by the revelation. PW2's attitude of the plaintiff had changed since then, and he felt that such a person did not deserve to hold such a high office. Even the villagers had started ridiculing the plaintiff whenever he comes home. They use a certain sign "nimutinzi" meaning: "you will die like that, you are cursed".

The last witness was the plaintiff himself, PW3, who testified that he was 63 years old, and a Judge of the Court of Appeal/Constitutional Court of Uganda, who started serving in Uganda Courts as a Magistrate Grade I, and was promoted to Chief Magistrate. In 1981, he was transferred from the Judiciary to Ministry of Justice and appointed Deputy Director of Public Prosecutions for 4 years and was then appointed Acting Director Public Prosecutions. When the National Resistance Movement came into power, he was seconded to Law Development Centre, and appointed Director of that Centre. He was transferred from Law Development Centre to President's office in 1995 and appointed Director for Special Programmes. In 1997, he was appointed in the present position.

Apart from being a Justice of Appeal, PW3 had performed numerous responsibilities. For example, he was currently the Deputy Chairman of the Judicial Training Committee, the organization responsible for training of all judicial officers in Uganda, was a member of Disciplinary Committee of Mbarara University, and also the Chairman, Board of Trustees, Kabale University. At the material time in 2004, PW3 was a Judge of the Court of Appeal/Constitutional Court.

Towards the beginning of July 2004, PW3 got a call from PW2, Mr. Katabazi, whom he had known for over 40 years, who informed him of what had transpired at a meeting called by the 2<sup>nd</sup> defendant, Lt. James Mwesigye, which he attended at Rushebeya, close to his home.

On 25/6/2004, the Constitutional Court delivered a judgement in Constitutional Petition 3 of 2000. PW3 was one of the 5 Judges who presided over that case and he delivered the lead judgement.

PW3 testified further that PW2 reported to him that a meeting convened by the 2<sup>nd</sup> defendant had taken place at Rushebeya on 29/6/2004, in which more than 600 LCs, elders, members of NRM had attended. The 2<sup>nd</sup> defendant had addressed them mainly on the judgement delivered on 26/6/2004, condemning the Judges of the Court of Appeal, and that PW3 has been singled out by name as one of the Judges currently engaged in sabotaging Uganda Government and engaged in acts of corruption by conniving with litigants to induce them to file suits and then award them huge amounts in costs and compensation which they would proceed to share with the litigants. According to PW2, the 2<sup>nd</sup> defendant specifically mentioned Paul Semogerere, leader of DP, as one of the litigants with whom the Judges colluded in order to award huge compensation and share proceeds. PW3 planned to meet PW2 to get more details.

Before they could meet, PW3 received a call from Prof. Muhumuza (PW1) who had been his colleague for long and a friend. PW1 informed PW3 that he had read an article in Orumuli Newspaper which had shocked him regarding the way PW3 conducted cases and the way he was sabotaging the Government of Uganda. On reading the Orumuli, PW3 was shocked given that he had never met Lt. James Mwesigye, although he knew a man of that name as RDC, Kabale. And when he later met and interviewed PW2 who confirmed that what was in Orumuli was part of what the RDC told the gathering. PW3 then passed on the copy of Orumuli to his lawyer, Mr. B. Babigumira.

PW3 further testified that he found a few shocking things. He was alleged to be “enkomba” (a stanch) DP man, yet he had never belonged to DP, and was not a stanch member of the DP, or any other party, as for the last 35 years had been a committed civil servant.

Secondly, PW3 was shocked that he was stated to be among the Judges who wanted DP to rule but since they failed to rule through the ballot box, they had devised unconstitutional means of asking the litigants to file constitutional petitions against government so that government loses cases and in the process, they would benefit financially as they share compensation money especially with Semogerere. It was extremely shocking because in his long career, he had never done such a terrible thing.

He felt an untamable person not fit to hold any of the offices he had held and, specifically, it made him feel unworthy of conducting the office of Judge because it is unimaginable that a Judge can solicit for litigants to file suits so that he can judge in their favour and share compensation. The article made PW3 look a dishonest person, a corrupt person, a person who doesn't respect his oath of office, and generally unworthy to be of any respect in society which was very painful to him. The Orumuli Newspaper agreed to settle out of court.

PW3 lamented that the second defendant chose to go to PW3's county where he happened to be the only judge, and among the few Bakiga judges. Whenever PW3 met any Mukiga who knew him, he had to ask if he read Orumuli about himself and his judges, and that these words coming from a representative of His Excellency in the District were believed by many people as gospel truth except a few who knew PW3 better.

PW3 then sought for appropriate remedies for his injured name and reputation, as per the complaint, damage to his reputation and name which had become very known in the county.

He felt he deserved to be compensated by the 2<sup>nd</sup> Defendant, RDC, and Uganda Government because clearly the 2<sup>nd</sup> Defendant was on official duty.

As already stated the defendants called no evidence. The plaintiff's evidence was therefore unchallenged. I shall now tackle the issues as agreed by the parties in the same order

The first issue agreed to by the parties is whether the second defendant in his address to the LC's on the 29/6/2006 made any reference to the plaintiff.

It is necessary for me to set out in *extenso* of the publication of the statement of the second defendant as carried by the Orumuli Newspaper as interpreted by Makerere University Institute of languages and presented to this court as Exhibit PD2.

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***ORUMURI July, 5-7 2004 Kabale/Kisoro “A”***  
***Judges are staunch D.P supporters –RDC Mwesigye***  
***They have always shared money with Semogerere***  
***Rwamucuucu***

***Prick Murangira***  
***The RDC of Kabale, Lt. James Mwesigye on 29.6.2006 told the LC officials***  
***Rwamucuucu sub-county in Rukiga, that High Court Judges where Mr. Paul***  
***Semogerere, the DP President goes regularly for litigation, and the court rule against***  
***the government, share the money with Semogerere.***

*The RDC revealed this during a meeting with over 600 LC officials at Rwamucuucu.*

*Recently, five judges of the Constitutional Court including Justice Twinomujuni who hails for Rukiga, ruled against the government, arguing that the 2000 Referendum meant to determine the political system that was to be followed to govern Uganda, was conducted irregularly and that the outcome that Uganda be governed under the Movement political system, is null and void.*

*Mwesigye said that the majority of the judges on the bench were, during the rule of past regimes, supporters of DP, and have always wished the party to rule. But because that has failed, and Semogerere has also failed to rule the country, he has kept in close cooperation with those judges so that he can keep going to them for litigation, they rule against the government and when the government pays costs of the suit awarded, they share it.*

*The RDC was accompanied by his deputy Zaina Muwonge, and was received by the LC111 chairman of Rwamucuucu Mr. Besigye Kyerere, who thanked the RDC for the advice he gave to the people of Rwamucuucu and the entire Rukiga.”*

The defendants, in their Written Statement of Defence, made a general denial of the allegations by the plaintiff, and in Orumuri News Paper that the 2<sup>nd</sup> defendant made any reference to the plaintiff as alleged. The defence never showed up for the hearing hence no evidence was adduced to support their denials.

On the other hand the plaintiff produced a copy of the Orumuli News Paper containing the article complained of, and its translation, showing that the address by the 2<sup>nd</sup> defendant clearly made reference to the plaintiff. PW2 also testified that during his address to the LCs and others on the 29<sup>th</sup> June 2004, the 2<sup>nd</sup> defendant made reference to the plaintiff by name and reference to the area from where he hailed, saying that the plaintiff was one of judges who not only decided a referendum case against government

but also colluded with Semogerere to decide cases in his favour and share proceeds. This was during his address to the LC's and other people on the 29/6/2004.

The above evidence was not controverted. PW2 appeared a credible witness. I therefore believe his testimony. The report in the Orumuri also states that the 2<sup>nd</sup> defendant made reference to the plaintiff in his address to the LC's, on the 29/6/2004. The plaintiff is the only judge who bears the name of Amos Twinomujuni.

The first issue is, therefore, answered in the affirmative.

The second issue was whether any reference to the plaintiff was defamatory of the plaintiff.

A look at the law relating to defamation/libel is pertinent. According to **Gatley on Libel and Slander, 8<sup>th</sup> Edition at page 15 paragraph 31:**

*“The gist of the tort of Libel and slander is the publication of a matter (usually words) conveying a defamatory imputation. A defamatory imputation is one to a man's discredit, or which tends to lower him in the estimation of others, or to expose him to hatred, contempt or 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 people generally. To be defamatory an imputation need have no actual effect on a person's reputation; the law looks only to its tendency”.*

The question whether the words complained of are capable of conveying defamatory meaning is a question calling for the decision of court. (See **Morgan Vs Odhams Press (1970) ALL ER Page 544.**)

In **Onama Vs Uganda Argus (1969) EA 92** the Court of Appeal held in deciding the question of identity, the proper test is whether reasonable people who knew the appellant would be led to the conclusion that that the report referred to him.

“The law recognizes in every man a right to have the estimation in which he stands in the opinion of others unaffected by false statements to his credit. **Scott Vs Sampson (1882) 8 QBD at page 503.**

Bearing in mind the above principles of law, the question which I must now answer is whether the words complained of by plaintiff could or might be regarded as defamatory by a reasonable person of normal intelligence who has knowledge of the circumstances; and whether the statements complained of can, on a plain, ordinary and grammatical construction bear the meaning attributed to them by the plaintiff.

According to the plaintiff, the words complained of were and are in their ordinary meaning highly defamatory of the plaintiff. **Gatley on Slander and Libel** (supra) states on page 114 paragraph 115 that

***“Where 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 defendant to prove from the circumstances in which the words were used, or from the manner of their publication, that the words would not be understood by reasonable men to convey the imputation suggested by the mere consideration of the words themselves”.***

The plaintiff denied the truth of the offending statements both in the pleadings, and in his testimony. In the pleadings, it is averred that the defendants severally and jointly by the said words meant and/or were understood to mean that the plaintiff was: -

- a) a corrupt and dishonest man,
- b) not fit to hold the office he holds,
- c) an unethical judge,
- d) judges’ cases not according to his oath,

- e) Corruptly receives money from litigants as gratification for giving judgements in their favour.

PW1, Professor Muhumuza, testified that:

*“What I perceived was based on what some members of staff were saying on reading the article. I remember they said that ‘bibaawo’, ‘these judges are like any other human being’, meaning that these judges are not ethical, are of very low moral values, and some are not fit to hold these offices. Further, that they are fake. To me it meant that some are promoted without any distinction, not to mention the promotions. It hurts me even further because I know the process Justice Twinomujuni has gone through to reach the level at which he is. The Judge was a laughing stock in the Staff Common Room. I walked out because some of these people knew he was my friend”.*

PWII James Katabazi had this to say;

*“The RDC’s words made me regard Justice Twinomujuni as a fraud, cheat, a crook and a traitor who shouldn’t be a Judge. A man of that nature should not be a Judge”.*

And as seen from the Plaintiff’s testimony above, he pointed out the following;

*“A few shocking things - I was alleged to be “enkomba”- a staunch DP man. I have never belonged to DP and I am not a staunch member of the DP, or any other party, since for the last 35 years I have been a committed to civil servant.*

*The second thing that shocked me was that I was among the people who wanted DP to rule but since they failed to rule through the ballot box, we decided to devise unconstitutional means of asking the litigant to file constitutional petitions against government so that government loses cases and in the process, we benefit financially as we share compensation money especially with Semogerere. It was extremely shocking to me because in my long career, I had never done such a terrible thing”.*

Before this incident, James Katabazi, PWII, and Professor John Muhumuza, PWI, testified on oath that they held the plaintiff in very high esteem. There is neither averment nor evidence to the contrary from the Defendant.

The plaintiff did plead that in their natural meaning, the words uttered by the said defendant were defamatory to him. I have read the translation of the statements complained of, and the testimony of the witnesses who testified. I have found that the words complained of bear the meaning attributed to it by the plaintiff. I believe that a reasonable right thinking ordinary person who listened to the address, and also the reasonable right thinking person who read the offending article in the Orumuli Newspaper, would regard and understand the statements complained of to mean that the plaintiff was a corrupt, unethical and dishonest judicial officer/judge who is not fit to hold the office he holds, who judges cases not in accordance with his oath, and who corruptly receives money from litigants as gratification for giving judgments in their favour.

In the newspaper excerpt, the name of the plaintiff was mentioned as being one of the judges who judged a referendum case against the government. This statement on its own was true. However, in the same breath, and following immediately after the mention of the plaintiff's name, the second defendant uttered the words which were complained of as being defamatory. To the reasonable, ordinary and right thinking person, who was listening or who read the newspaper article, all that was said was meant to refer to the plaintiff. This is more so when the statements were made in the plaintiff's area of origin.

Further, **Gatley on Libel and Slander (supra) Page 59 paragraph 58**, states:

***“It is defamatory to impute to a man in any office, any corrupt, dishonest, or fraudulent conduct or other misconduct or inefficiency, in it, or any unfitness or want of ability to discharge his duties, and this is so whether the office be public or private”.***

The plaintiff holds a very high office of a Justice of the Court of Appeal. The statements complained of depicted him as dishonest, corrupt and unethical, and he was defamed before people who otherwise held him in high esteem.

Counsel for the plaintiff, Mr. Blaze Babigumira, submitted that the mere fact that the plaintiff is still a Justice of the Court of Appeal and a member of the Constitutional Court does not affect this case. The law is that for a statement to be defamatory, an imputation need have no actual effect on a person's reputation; the law looks only to its tendency. **(See Gatley on Libel and Slander (Supra)).**

I therefore find and hold that the words complained of were highly defamatory of the plaintiff.

I shall now turn to the last issue which is the remedies available to the plaintiff.

Counsel for the plaintiff informed court that the Orumuli Newspaper was not added to the defendants because the plaintiff had reached a settlement with it before going to court. He, however, did not disclose the amount that they settled for.

Counsel called upon court to take into consideration, while assessing damages, the intentions of the 2<sup>nd</sup> defendant and the wide circulation of Orumuli Newspaper in Kabale District, Western Region, the entire country, and outside Uganda.

Counsel further submitted that the nature of the libel was very serious. Corruption being leveled against a high ranking judicial officer was a very serious offence. The mode of publication and the location of the area where the words were uttered were meant to injure the plaintiff's reputation among people of his birth place. This should attract high damages especially when the allegations were not only false but outrageous and reckless. No apology, or retraction was ever offered. Counsel cited the following authorities and the respective awards made therein:

- 1) **Biwott Vs Clays Ltd (2002) 2 EA 336 (HCK)** where a Minister in the Kenyan Government was awarded compensatory and exemplary damages of 30 million Kenya Shillings for having been portrayed as being involved in the murder of a former Minister. At today's exchange rate this was said to amount to 750 million Uganda shillings.
- 2) **Machira Vs Mwangi (2001)1 EA 110 (HCK)** where the court awarded 10 million Kenya Shillings as compensatory and aggravated damages against the Daily Nation Newspaper which had defamed an advocate. This is stated to be equivalent to 250 million Uganda shillings;
- 3) **Nekemia Matembe and Another Vs Teddy Sezzi Cheeye and Another, Civil Suit No. 1047 of 1995** where the court awarded 11 million shillings to Miria Matembe, who was then a Minister of Government and a Member of Parliament and had been defamed in a Newspaper;
- 4) **Gordon Wavamunno Vs Teddy Szezi Cheeye HCCS No. 651 of 1995**, where the court awarded a businessman suing a paper with limited circulation 15 million shillings in compensatory, exemplary and aggravated damages;
- 5) **Hon. Justice Lugayizi Sempa Vs Teddy Szezi Cheeye and Uganda Confidential Ltd HCCS No. 644 of 2001**, where a puisne judge whose status is lower than that of the plaintiff was awarded 15 million shillings when he sued a newspaper of limited circulation for defamation;  
**and**
- 6) **Ntabgoba Vs the Editor in chief The New Vision and another HCCS No. 113 of 2004**, a principle judge who

was awarded compensatory damages of 30 million shillings inclusive of exemplary damages in 2004.

Counsel prayed for compensatory damages, inclusive of exemplary damages in the sum of 100 Million Shillings.

A plaintiff who has been defamed is entitled to bring an action against the person who published or made the defamatory statements. The Plaintiff may sue one or some of the persons liable to him for the offending words. Where the plaintiff claims from the persons liable to him in instalments, the sums recoverable by subsequent actions can only be limited to the amounts awarded by the first judgment (**See Biwott Vs Clays Ltd (supra)**).

In the instant case therefore, any awards to be made by this court will be limited by the compensation the plaintiff already received from the Newspaper.

Quoting **Scott Vs Sampson (1882) 8 QBD 503**, Counsel submitted that the law recognizes in every man the right to have an estimation in which he stands in the opinion of others, unaffected by false statements to his discredit.

A look at the principles governing the award of damages is pertinent here. In **John Vs MGN Ltd (1996) 2 ALL ER 35 at 47 the Court of Appeal of England** stated as follows:

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

Compensatory damages in libel are said to be at large, and the process of assessment of damages here is essentially a matter of impression and not addition. (See **Cassell and C. Ltd Vs Broome and another (1972) ALL ER 801 at 825.**

*“In assessing damages, the court has to be governed by all the circumstances of the particular case. One is entitled to take into account the conduct of the plaintiff, his position and standing, the nature of libel, mode and extent of publication, absence and refusal of any retraction or apology, and the whole conduct of the defendant from the time when the libel was published down to the very moment of the verdict. The court may take into consideration the conduct of the defendant before action, after action, and in court at the trial of the action, and also the conduct of his Counsel, who cannot shelter his client by taking responsibility for the conduct of the case. The court should also allow for the sad truth that no apology, retraction or withdrawal can ever be guaranteed completely wipe out the harm it has done or the hurt it has caused.”* (See **Gatley (supra) paragraph 1451).**

In the present case, the 2<sup>nd</sup> defendant clearly portrayed the plaintiff before the eyes of the public which included his own family, relatives, friends, and colleagues that the plaintiff is a corrupt, and an unethical judge who is not fit to hold the high office of a Justice of the Court of Appeal.

The high standing of the plaintiff as a justice of appeal speaks for itself. The 2<sup>nd</sup> defendant chose to address the people/officials of the home area of the plaintiff, where he is a very well known personality who is held in very high esteem. According to the publication in Orumuli, there were around 600 L.Cs, among other people. PW2 who attended the meeting estimated the crowd to have comprised between 5000 - 8000 people. The Orumuli has a sizeable readership in the whole of the Western Region, in Kampala and the rest of Uganda. There has been no apology, or retraction by the defendants of the offending statements, ever since 2005 when the suit was instituted. Further, the conduct of the case by the 1<sup>st</sup> defendant, who also represented the 2<sup>nd</sup> defendant, left a lot to be desired, as they never portrayed any seriousness in defending

the case. Indeed after filing the technical defence, they never bothered to appear on the final date fixed for the hearing despite the case being stood over for two hours, and the Attorney General's representative being reminded to appear.

I also take into account the fact that no amount of damages can undo the harm done to the plaintiff. In fact, it is impossible to track the scandal to know what quarters the poison may reach". (***See Broome Vs Cassell (1972) AC @page 1125***).

The plaintiff also prayed for exemplary and/or punitive damages for outrageous, reckless, false and malicious utterances. It is true that the defendant made false, outrageous, and reckless statements which he or his advocates have failed to justify. There appears to have been no basis for the 2<sup>nd</sup> defendant's imputation of corruption and unethical behaviour on the plaintiff.

I have reviewed the awards made in the authorities cited by Counsel for the plaintiff. The closest to the position of the plaintiff was the Principal Judge, Ntabgoba who was awarded Shs. 30 Million to cover both compensatory and exemplary damages.

I take into account the fact that the retired judge (Ntabgoba) was higher in hierarchy than the plaintiff, that the New Vision Newspaper, the defendant in Ntabgoba's case, has a much wider circulation than the Orumuli, and that the conduct of the defendants in this case, though deplorable, was not as aggravating as the conduct of the defendant and their advocates in Ntabgoba's case.

I also take into account the fact that the value of the shilling has depreciated since 2004 when the award in Ntabgoba's case was made, and the fact that the plaintiff in the present case got some damages from the Newspaper.

In my view a sum of Shs. 20 Million would act as sufficient ***solatium*** to the injured feelings of the plaintiff.

In conclusion, I hereby enter judgment for the plaintiff against the defendants for:

- 1) Compensatory general damages, inclusive of exemplary damages, of Twenty (20) Million shillings jointly and severally against the defendants.
- 2) A permanent injunction against the 2<sup>nd</sup> defendant restraining him from any future defamatory publication against the plaintiff.
- 3) Interest on the amounts in (1) above at court rate from the date of judgment till payment in full.
- 4) Costs of the suit.

Elizabeth Musoke

**JUDGE**

**23/01/2009**

