THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(CIVIL DIVISION)

HCT-00-CV-CS-0715-2005

A. K. OILS & FATS (U) LTD ::: PLAINTIFF

VERSUS

BIDCO UGANDA LIMITED::DEFENDANT

BEFORE: THE HONOURABLE MR. JUSTICE YOROKAMU BAMWINE

JUDGMENT:

The plaintiff's claim against the defendant is for general and exemplary damages for libel, interest thereon from the date of judgment till payment in full and a permanent injunction to restrain the defendant from further publication of the libellous advertisement complained of in these proceedings or any other words bearing a similar defamatory meaning and costs of the suit.

From the evidence and admitted facts, the plaintiff is a limited liability company incorporated in Uganda carrying on the business of manufacturing cooking oil. It has done so since 1994. The defendant is also a limited liability company incorporated in Uganda which in or about August 2005 also commenced the business of manufacturing the same product.

On the 13th day of August, 2005, the defendant caused to be published in the New Vision and Daily Monitor newspapers the publications annexed as 'A' and 'B' to the plaint. They were marked EXH. P1 and P2 respectively at the hearing. The plaintiff's product is marketed under a brand name: THREE STAR, and the defendant's: UFUTA. The advertisement is a veiled warning to consumers as to the labelling practices of the plaintiff. It draws the general public's attention to the plaintiff's product packaged in 4.5 kg and 18 kg containers, respectively.

The plaintiff's case is that the publications are grossly erroneous; and that they convey a false impression as to its product. That "Three Star" oil labelling states clearly that the weight given is ***gross weight*** which should be understood by any reasonable consumer to include the

weight of the packaging in which the oil is sold. Accordingly, the plaintiff states that there is no deception or misleading of consumers and no unethical practices of which they should rightly "be aware" as stated in the adverts. Hence the suit that the adverts defamed them.

At the conferencing the following facts were admitted:

1. The plaintiff and the defendant are both manufacturers of edible oils and fats.

2. On 13/08/2005, the defendant caused to be published in the New Vision and Daily Monitor newspapers the impugned advertisement.

The fact of publication is therefore not in issue. The issues are:

1. Whether or not the plaint discloses a cause of action.

2. Whether the publications, Exh. P1 and P2, referred to the plaintiff.

3. Whether the publications, Exh. P1 and P2, were defamatory of the Plaintiff.

4. Whether the plaintiff is entitled to general, exemplary andJor aggravated damages.

Counsel:

Mr. Masembe Kanyerezi, Mr. Ernest Sembatya J — for the plaintiff

Dr. Kalumiya, Mr. Paul Kuteesa — for the defendant

In the course of time, Mr. Peter Kabatsi took over the conduct of the case on behalf of Mr. Kalumiya.

Issue No. 1: ***Whether or not the plaint discloses a cause of action.***

The defendant's argument is that the plaintiffs suit is for an alleged tort of defamation. That the plaint does not disclose a cause of action so far as it does not stipulate the particulars of the falsity, if any, contained in the impugned adverts. This argument is based on 0.6 r.3 of the Civil Procedure Rules which requires that in all cases in which a party relies on any misrepresentation, fraud, breach of trust, wilful default or undue influence, and in all other cases in which particulars may be necessary, the particulars with dates be stated in the pleadings.

I have not found 0.6 r.3 to be of any relevance to this case.

First of all, falsity, a necessary element in defamation cases, is not specifically mentioned in that Rule. Secondly, and this is more important, in considering whether words are capable of a defamatory meaning, one must look, first, at the words themselves; and second, at the circumstances under which they were published. It is trite that the plaintiff does not shoulder the burden of proving falsity or malice in order to establish his cause of action. If the words are defamatory or capable of being so construed, the law presumes that they are false. The burden shifts to the defendant to show that they are true.

See: ***Chris Bakiza vs The Editor — in — Chief of New Vision & Anor HCCS No. 1400 of 2000,*** unreported.

Learned Counsel for the plaintiffs have cited to me ***Halisbury's Laws of England,*** 4th Edition, Vol. 28, paragraph 16. It reads:

"16. Falsity and Malice. In an action for libel or slander it was formerly the practice to allege in the statement of claim that the words were published falsely and maliciously. However, the plaintiff does not have to prove falsity or malice to establish his cause of action. If the words are defamatory, the law presumes that they are false, and It is for the defendant to plead and prove that the words are true. In other words, the onus of proving justification is on the defendant."

I agree with the above legal principle. The statement expresses the current law and practice on the matter in as far as the tort of defamation is concerned. I accordingly do agree with the argument of learned counsel for the plaintiff that in order to found a cause of action in libel, all that the plaintiff has to plead and then prove is that words which refer to the plaintiff and are defamatory of him have been published. This the plaintiff has done. I have therefore found no problem with the pleadings as they are. The plaint discloses a cause of action and 0.6 r.3 of the Civil Procedure Rules has in my view been cited out of context.

I would answer the first issue in the affirmative and I do so.

Issue No. 2: ***Whether the publications Exh. P1 and P2, referred to the plaintiff.***

The impugned publications are in the form of prominent colour adverts. They appeared in New Vision and Daily Monitor Newspaper issues of August 13, 2005.
From the evidence of PW 1 Alykhan Karmali, the Managing Director of the plaintiff Company, the plaintiff produces edible oil which is marketed under the brand name 'Three Star'. This brand of cooking oil is produced by and only by the plaintiff in this country. DW1 Ms Fatima Ali Mohamed, the defendant's Head of Marketing and Sales, also testified that 'Three Star' cooking oil is a known product of the plaintiff. It is the evidence of the plaintiff's witnesses that they could clearly identify in both publications of the label and words ***Three Star*** on top left hand side of the 4.5 kg jerrycan and part of the words ***Three Star*** on the bottom left hand side of the 18 kg jerrycan although the letters 'Sta' which form part of the word 'Star' are slightly blurred. They stated further, in relation to the blurred label, that they

could make out the ***Three Star*** logo without any difficulty.

DW1 Fatima claimed poor sight on her part and stated that although other persons could perhaps identify the words ***Three Star*** on the 4.5 kg product and to some extent on the bottom of the 18 kg jerrycan, she was unable to do so.

I have personally looked at the adverts as I am obliged to do. There is no doubt in my mind that both labels could clearly be identified as the plaintiff's ***Three Star*** oil brand. With the greatest respect to DW1, her evidence on this point is glaringly false and therefore unacceptable. I ought to reject it and I do so.

The labels are in my view clear that one is for ***Three Star*** and the other ***Ufuta*** oils.

In a case of defamation, the plaintiff must plead, and ultimately prove, that the words complained of referred to him.

I have already mentioned that all the plaintiff's witnesses in this case, including the sole witness for the defendant, knew that ***Three Star*** vegetable cooking oil is a product of the plaintiff.

The learned authors of Halisbury's Laws of England, ibid, at paragraph 39 state:

> ***"Where the words do not expressly refer to the plaintiff they may be held to refer to him if ordinary sensible readers with knowledge of special facts could and did understand them to refer to him, such facts are material facts, must be pleaded in the statement of claim and must be proved in evidence in order to connect the plaintiff with the words complained of Such a pleading is often called a 'reference innuendo' in contrast to a 'true innuendo' where the extrinsic facts only bear on***

the defamatory meaning."

I have studied the plaint. In my view, all that ought to have been pleaded for proof in a case of defamation, as stated in the above quotation, was pleaded by the plaintiff herein. The particulars of the reference innuendo are stated in paragraph 4 (b) of the plaint. And all the plaintiff's witnesses testified that they had no doubt in their minds that the impugned advertisement referred to the plaintiff. I have seen no reason to doubt their evidence and sincerity on the matter. They sounded truthful and convincing. Even though the victim may not be named, as herein, a description may be so detailed as to make it obvious who is being referred to. In all these circumstances, court is satisfied on the balance of probabilities that the impugned publications referred to the plaintiff. I so find.

The second issue is also answered in the affirmative.

Issue No. 3: ***Whether the publications, Exh. P1 and P2. were defamatory of the plaintiff.***

I have already observed that the adverts drew attention of consumers of cooking oil generally to the labelling and packaging practices of the plaintiff. The plaintiff alleges that it amounts to a false, defamatory and highly damaging attack on its trading reputation and integrity. The evidence of PW1 Karmali is loud and clear on this point. The defendant denies it. It alleges that the impugned publication was motivated by the desire to point out the non-compliance with the law relating to packaging and labelling and the plaintiff cannot found a cause of action on such publication.
I have given due consideration to this rather unique matter.

Defamation is something more than an insult or derogatory comment. It is not capable of exact definition. How far a person is affected by unkind words will depend not just on the words used, but also on the people who must then judge him. That's why communication to the plaintiff alone will not suffice. Defamation is an injury to one's reputation and reputation is what other people think about a man and not what a man thinks of himself. The history of

this tort shows that at first the solution adopted by the courts was for the Judge to ask whether the statement was one which tended to bring the person 'into hatred, contempt or ridicule.' A different approach was however adopted by the House of Lords in ***Sim vs Stretch 119361 2 ALL* ER *1237*** where the court had to decide whether or not a suggestion that the plaintiff had been obliged to borrow money from his house maid was defamatory. The plaintiff argued that this implied that he was not the sort of person to whom anyone ought to give credit. The defendant replied, in effect, that those words were just not reasonably capable of giving such a defamatory meaning. Lord Atkin put forward the following test:

> ***"The conventional phrase exposing the plaintiff to hatred, ridicule and contempt is probably too narrow. The question is complicated by having to consider the person and class of persons whose reaction to the publication is the test of the wrongful character of the words used I propose in the present case the test: would the words tend to lower the plaintiff in the estimation of the right thinking members of society generally?(emphasis mine).***

I adopt that test in the instant case on account of its being fairly objective. Besides, what is defamatory will vary from one age and set of circumstances to another. Thus in ***Slazeners Ltd vs Gibbs & Co. [1916] 33 T.L.R 35,*** a case involving two companies, as in the instant case, where it had been suggested during the course of the first World War that a company was German, the Judge held that given the circumstances in 1916, the statement had indeed been defamatory. For records purposes, in ***Sim vs Stretch,*** supra, the House of Lords held that the statement was not defamatory.

Turning now to the instant case, I have already alluded to the fact that in law every person is entitled to his good name and to the esteem in which he is held by others. It does not matter whether the 'person' is a natural or artificial one e.g. a company. Such a person has a right to claim that his reputation shall not be sullied by defamatory statements made about him to a third person without lawful justification.

In the instant case, on 13/08/2005, evidently as part of its launch activities as a new entrant into edible oils and fats market, the defendant bought space and caused to be published in the two leading Dailies, a full page advert which contrasted the plaintiff's product with that of its own. The heading was: **BE AWARE** in big and conspicuous print.

The publications then continue through use of a 'magnifying glass' and use of a warning colour 'red' for the plaintiff's product and a friendly colour 'green' for the defendant's. There is a juxtaposition of the two products (to juxtapose is to put people or things together, especially in order to show contrast or a new relationship between them — OXFORD ADVANCED LEARNERS DICTIONARY 7th Edn. at p.807).

The publications contrast the ***gross weight*** of the plaintiff's product in kilograms with volume (in litres) of the defendant's product. For instance, under the *4.5* kg plaintiff's product, the defendant wrote: ***'4.5 kg gross weight is equal to 4.47 litres of oil.'*** This apparently is in itself not false. The problem appears to be the comparison of different units of measurement, one in Kgs and the other in litres.

The above juxtapositionlcontrast is repeated in respect of the 18 kg plaintiffs product and 20 litre product of the defendant. While the plaintiffs product is described as ***blended*** oil (indicated in red) which was also factually correct, the defendant's is indicated as ***'100% pure'*** palm vegetable cooking oil (also in red). Underneath the contrasts are the following words:

> ***"Bidco is an ethical company that always upholds integrity. So go out today and buy a Bidco product. Bidco only charges you for the oil, jerrican is FREE" (in green background).***
>
> *And also:*
> ***"Bidco leading ethical change across East Africa!" (in purple background).***

It is the plaintiff's case that the words and images in the publications complained of, in light of the contrasting juxtaposition of the plaintiffs product with that of the defendant, meant and were understood to mean that the plaintiff deliberately deceives and misleads consumers as to the amount of oil in ***Three Star,*** 4.5 kg and 18 kg jerrycans; that the plaintiff was an unethical company judging by the results of the defendant's microscopic scrutiny; that the plaintiff is dishonest in its trading practices in contrast to the defendant who upholds integrity; that the plaintiff unlike the defendant is an unethical company with no integrity of which consumers should be wary and from which consumers should not buy cooking oil; and, that the plaintiff secretly and dishonestly charges for its jerrycan packaging in contrast to the defendant who gives out its jerrycan packaging for free.

The above suggestions, as was clearly testified to by PW1 Karmali and PW4 Babinga, arise from several aspects of the advert.

The first relates to the use of the words: ***Be aware!,*** (with an exclamation mark). The plaintiff contends that this was designed to sensationalize and draw attention to what followed in the publications. The use of a shouting headline in my view was intended by the defendant to carry a strong message to the public.

From the evidence, the requirement as to how cooking oil is packaged and sold is a matter regulated by Statute and subsidiary legislation. The relevant law is Weights and Measures Act, Cap. 103 and Rules made under it. It is not important to reproduce those provisions. What is important is that the plaintiff's labelling practice at the time was not in contravention of any law. If any such law existed, the defendant has not brought it out to assuage the plaintiff's concerns. In fact, from the evidence, edible oil of over one litre in capacity in rigid containers of plastic, such as the impugned jerrycans herein, was required to be pre-packed and offered for sale by ***weighht*** and not by ***vo1ume*** implying that in pre-packaging and offering its products for sale in Kgs (weight), the plaintiff was not acting contrary to any written law.

In view of this, learned Counsel for the plaintiff have submitted that it was disparaging and defamatory of the plaintiff to suggest that by so pre-packaging its product the plaintiff

intended to mislead consumers as to the volume of the content.
Looking at the adverts, one finds it difficult to come to a different conclusion. At the hearing the defendant claimed, through DW1 Fatima, that it decided to run the impugned adverts as a general public education effort and that they informed Uganda National Bureau of Standards, the UNBS, prior to placing the same in the papers, implying that the same had the blessing of the regulatory body, the said UNBS. The defence tendered in evidence a letter, Exhibit D2, whose content clearly disproves DW1's assertion. The letter is from {JNBS and it is addressed to the Managing Director of the defendant company. It reads:

"NEWSPAPER ADVERTS REGARDING LABELING OF COOKING OIL.
You will recall that BIDCO raised the issue of labelling "gross weight" as opposed to "net weight" on packaged cooking oil and other products by some producers. I immediately arranged a meeting with officials of BIDCO namely Mr. Vimal B. Shah and Ms. Fatima Alimohamed on 5th August, 2005 to review the pro visions of the Weights & Measures Act on this matter.

UNBS experiences numerous capacity constraints in getting industry to fully comply with certain requirements of standards and during the meeting it was clearly stated that the UNBS was in the process of enforcing the requirement and also sensitizing of stakeholders.

The UNBS appreciated that manufacturers were not aware of the requirement to display "net weight" on their packages preferring to display "gross weight" because it related better to their loading arrangements, not looking at the consumers' need to know net material he is buying.

UNBS was therefore surprised to see newspaper adverts run in the "Daily Monitor" and "New Vision" newspapers of 13th August 2005 regarding to same subject.

The advert was unfortunate because of the following reasons:

- **Since UNBS as the regulator was already informed, there should have been ample time given to enable regulatory work to be carried out.**

- **It also attacked an existing brand which we think is not ethical.**

- **Press wars cannot be appropriate as they have adverse impact and do not cover all the grounds concerning an issue. For example, BIDCO itself does not comply with the same law regarding the declaration of weights. BIDCO is also, using the Food fortification logo on its cooking oil without having gone through the required procedure and regulations for the use of the logo. UNBS has not gone to the Press over this issue.**

Whereas I recognize the right of the private companies to promote their products, I feel that it's not proper to engage in press laws particularly when the regulator has not been given ample time to address the complaint. UNBS always employs the policy of dialogue rather than confrontation in enforcement of standards and this has gone a long way in causing self compliance.

Consequently, UNUS requests you to desist from handling the issue through the press so that it can be amicably resolved.

Looking forward to your continued co-operation.

Yours faithfully,
UGANDA NATIONAL BUREAU OF STANDARDS

Dr. Terry Kahuma
EXECUTIVE DIRECTOR."

Clearly the tone of this letter does not support the defence argument. If anything, it destroys it. The defendant was evidently warned against taking the law into its own hands at a meeting of 05/08/05. The defendant ignored that warning. In fact, UNBS lambasts the defendant in that letter that none of the queries in that meeting could justify the impugned publication which UNBS went on to describe as 'unethical' for a company claiming, in the advert, to be ethical and always upholding integrity. The long and short of all this evidence is that the defendant was motivated by the prospects of the material benefits the company would reading from the publications without caring as to the damage it was inflicting on the plaintiff's reputation as a manufacturer of the same product. I would have come to a different view if the defendant had taken care to black out the plaintiff's labels on the containers so that its brand name "Three Star" was not identified on them.

From the evidence; it is clear to me that the defendant's intention in all this was to portray the plaintiff, and perhaps others doing the same, as misleading consumers as to amount of oil in its 4.5 kg and 18 kg containers. It is immaterial indeed that ***4.5 kg 'gross weight' of oil is equal to 4.74 litres 'Net Weight'*** of oil. In fact the statement that the defendant, unlike the plaintiff, only charges for the oil and not the jerrycan, was accepted by DW1 Fatima to be factually incorrect as all manufacturers factor the price of packaging in the price of the product.

I have considered the effect of the juxtapositioning.

In ***Monson vs Tussauds Ltd [1894/ I Q.B. 671,*** the juxtaposition of some wax models was held to be defamatory. In that case, the defendant's waxworks exhibited a wax model of the plaintiff near the "Chamber of Horrors." The model held a gun in its hand which was unfortunate because the plaintiff had recently been tried in Scotland for murder by shooting and had been discharged on that country's verdict of 'not proven.' The court of appeal held that this unhappy juxtaposition was defamatory.

I do not hesitate to say the same of the juxtaposition herein. The labels on the containers make it clear that the reference was to the plaintiff's 'Three Star' oil. The publications complained of were in my judgment defamatory of the plaintiff. Accordingly, the defendant's defence ofjustification and truth lacks merit. It must fail and it fails.

I would therefore answer the 3 issue in the affirmative and I do so.

Issue No. ***4:*** ***Whether the plaintiff is entitled to general, exemplary and/or aggravated damages.***

Having found that the publications in the instant suit were defamatory, I will now address the issue of the assessment of damages. This is of course not an easy issue to resolve.

As regards general damages, these require no specific proof. The quantum of general damages is a matter which falls within the discretion of court, taking into account, obviously, the facts and circumstances of the plaintiff in society. Learned Counsel for the plaintiff have passionately prayed for a heavy award of Shs.500m/ to act as compensation for the wrong committed against the plaintiff. They have cited a number of authorities, among them ***Biwott vs Clays Ltd & Others 120001 EA 334*** in support of their prayer. The lawyers for the defendant think that the proposal is preposterous. However, they have not proposed any figure. Their objection is premised on their opinion that the plaintiff did not adduce evidence to prove that it suffered any damage to its trading reputation or its business.

The position of the law is that once a person has been libelled without any lawful justification, as indeed is the case herein, the law presumes that some damage will flow from ordinary course of events from the mere invasion of his/her right to his/her reputation. This is the basis for awards of general damages.

I am of the opinion that a plaintiff who has proved a libel is entitled to a reasonable compensatory award of general damages. The Constitution enjoins courts to award adequate

compensation to victims of wrongs (Article 126 (2) (c)).

I have addressed my mind to the able arguments of all Counsel.

In law words which impute commission of a criminal offence or criminal conduct on the part of the person against whom they were written cannot be taken lightly. They are defamatory per Se. In the instant case, the statement by reference innuendo that the plaintiffs were deceiving and misleading consumers as to the volume of oil in their *4.5* kg and 18 kg containers was, in my view, a serious one. By themselves and without extrinsic proof, the adverts injure the reputation of the plaintiff company.
I have read the many cases cited to me by all learned Counsel. It is neither possible nor necessary to comment on each one of them. Be that as it is, I have particularly addressed my mind to the ***Biwott*** case, supra, and considered the context in which the hefty award of KShs.30million (equivalent to about UShs.750m/= at the current exchange rate) was awarded to the plaintiff.

From the record of the judgment, the court felt itself duty bound to send a clear message to all who libel others with impunity and they get away with ridiculously low awards, that the courts of law (in Kenya) will no longer condone the mischief. While I agree with the principle itself, I do not think that it offers a compelling environment to make a comparable award in this case. I say so because from my reading of that judgment, the award arose out of consolidation of a number of suits. The plaintiff had been implicated with complicity in the murder of a fellow Minister by publications made by the defendants. The allegations against Biwott were of a capital nature, amenable to capital punishment. It must have been along those lines of capital offences that the award was made and concern expressed about previous low awards. The insinuations in the instant matter were of a tortious nature.

I consider it unnecessary to make damages rise to such levels as to confine access to justice to the wealthy. Victims of wrongs should indeed be adequately compensated but so far as it is practicable, there should be predictability and consistency in the awards the courts make. The circumstances in the ***Biwott*** case may indeed have warranted the astronomical award. However, for reasons I have given above, I do not find it comparable to the conditions in this

country and in this case.

There are numerous cases in this country where issues of damages have been considered. However, most of them involved natural persons. Cases of libel involving artificial persons only, as in the instant case, appear to be rare.

The most recent case on libel in Uganda is perhaps ***Hon. Lady Justice L.E.M Mukasa - Kikonyoio vs The New Vision Anor HCCS No. 0166 - 2008,*** (unreported). It did not go to full trial. In a consent judgment, the defendants were ordered to pay to the plaintiff a sum of Shs.52,500,000/= as general damages and an additional Shs.3,000,000/= as costs of the suit. The defendants also agreed to publish an apology in the words agreed and signed by both parties.

It appears to me that an award in the same region herein would meet the ends ofjustice. I accordingly make an award of Shs.50,000,000/ in favour of the plaintiff against the defendant as general damages.

As regards the claim for exemplary damages, learned Counsel for the defendant have submitted that the plaintiff did not claim aggravated damages in their pleadings and that they cannot therefore introduce this claim in their submissions. They claim that there was neither an averment in the plaint nor any specific prayer for aggravated damages.

I must confess that I have found this submission rather puzzling. It has left me unsure as to whether their submission is based on the same plaint as the one presented to court. However, if the plaints are indeed the same, it is evident that in the plaint the plaintiff prayed for exemplary damages and the same prayer is repeated in its Counsel’s submissions. The prayer for them appears in paragraph 7 where particulars thereof are sufficiently set out in (a) - (f).

Specifically in paragraph 7 (f) of the plaint the plaintiff avers:

> ***"(f) in the circumstances pleaded above the conduct of the defendant was oppressive and malicious, was motivated by achieving profit likely to exceed any purely compensatory damages, and involved conscious wrong doing so outrageous, and a disregard of the plaintiff's rights so contumelious, that an award of exemplary damages is necessary and appropriate."***

In view of these pleadings and prayers, I have failed to understand what more learned Counsel for the defendant expected the plaintiff to do to feel that their opponents had sought recovery of exemplary damages from them. In paragraph 8, the plaintiff had averred that in relation to the claim for exemplary damages it would seek discovery of the defendant's financial projections and means in order to allow empirical evaluations by the court of such sum as will achieve the punitive objective of the said damages award. The plaintiff did not pursue it. Perhaps that is the basis for the wrong impression that exemplary damages have not been pleaded and prayed for.

As regards Quantum, learned Counsel for the plaintiff have proposed a hefty sum of Shs.4 billion under this head. The principles upon which the court proceeds to award exemplary damages were spelt out in the English case of ***Rookes vs Barnard & Others [1964] A.C. 1129*** a case which has been quoted with approval in a number of cases by this court and even appellate courts. See: ***Obongo & Anor vs Municipal Council of Kisumu [1971] EA 91.*** One such principle as laid down in Rookes case, supra, is where the defendant has acted in such manner so as to procure for himself some benefit, not necessarily financial, at the expense of the plaintiff.

In the instant case the defendant's conduct was no doubt intended to promote its own product through decampaigning of the plaintiff's.

Exemplary damages are, as the name implies, by way of punishment or deterrent. They are awarded entirely without any reference to any proved actual loss suffered by the plaintiff:

Davies vs Mohanlal K Shah [1957J E.A. 352.

From this authority, it follows that the plaintiff herein cannot be denied its right to exemplary damages even if it has not proved actual financial loss, so long as there is sufficient reason for such an award.

Lord Reid, looking back at ***Rookes vs Barnard,*** supra, in which he took part, explained the method of awarding damages in this way in ***Cassell & Co. Ltd vs Broome 119721 1 ALL ER 801*** at p. 839 as follows:

> ***"The difference between compensatory and punitive damages is that in assessing the former the jury or other tribunal must consider how much the defendant ought to pay. It can only cause confusion f they consider both questions at the same time. The only practical way to proceed is first to look at the case from the point of view of compensating the plaintiff He must not only be compensated for proved actual loss but also for any injury to his feelings and for having had to suffer insults, indignities and the like. And where the defendant has behaved outrageously very full compensation may be proper for that. So the tribunal will fix in their minds what sum would be proper as compensatory damages. Then if it has been determined that the case is a proper one for punitive damages the tribunal must turn its attention to the defendant and ask itself whether the sum which it has already fixed as compensatory damages is or is not adequate to serve the second purpose of punishment or deterrence. If they think that that sum is adequate for the second purpose as well as for the first they must not add anything to ii. It is sufficient both as compensatory and as punitive damages. But if they think that sum is insufficient as a punishment then they must add to it enough to bring it up to a sum sufficient as punishment. The one thing which they must not do is to fix sums as compensatory and as punitive damages and add them together."***

His Lordship could not have offered any better guidance on the matter. Relating it to the instant case, it appears to me that the prayer for exemplary damages herein is fairly well

grounded. Although uniform labelling on packaged cooking oil and other products was perhaps long overdue in the manufacturing sector, to discourage some manufacturers using ‘gross weight’ and others ‘net weight,’ whichever each found convenient, the approach adopted by the defendant was wholly unwarranted. All that was needed, and was indeed being considered, was for the regulator, the UNBS, to intervene, evolve a policy on the matter and eventual change of law. However, in a rather hurried and unethical way, for a company claiming to be ethical, the defendant arrogated to itself the role of a regulator to the embarrassment of the plaintiff. Attacking an existing brand after the matter had been taken up with the regulator was in my view highly unethical. Given that this was done after the defendant had been warned against it by the regulator in a meeting of 05/08/05, the defendant clearly took the law into its own hands to publish the impugned adverts court is therefore of the considered view that this is a proper case for an award of exemplary damages as the sum awarded as compensatory damages is, in my opinion, not adequate to serve the second purpose of punishment or deterrence. But the figure proposed to court of Shs.4 billion is too high, outrageous and out of proportion with the wrong proved against committed by the defendant.

Taking into account all the peculiar facts surrounding this case, especially the fact that the defendant has to date defiantly refused to apologize to the plaintiff; and, taking into account the compensatory award of Shs.50m/= made herein above, I consider an additional sum of Shs.20,000,000/ (twenty million only) to be an adequate award of exemplary damages. I award it.

In the final result, judgment is entered for the plaintiff against the defendant in the sum of Shs.50,000,000/ as general damages; Shs.20,000,000/ as exemplary damages; and, the costs of the suit. The decretal sum of Shs.70,000,000/= (seventy million only) shall earn interest of 25% per annum from the date of judgment till payment in full.

The plaintiff shall also have an injunction order restraining the defendant by itself, its agents or servants, from further publication of the impugned advert or similar defamatory matter.

Orders accordingly.

06/03/09