

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MBARARA

**HCT-05-CV-CA-0048-2008**  
(Arising from MBR-00-CV-CS-346-2007)

1. THE EDITOR IN CHARGE OF THE NEW VISION PRINTING &  
PUBLISHING)

2. THE NEW VISION PRINTING &  
PUBLISHING CORPORATION ).....APPELLANTS  
VS  
NATHAN KAREMA).....RESPONDENT

**BEFORE: THE HON. MR. JUSTICE LAWRENCE GIDUDU**

**J U P G M E N T**

This is an appeal from the judgment and decree of the Chief Magistrate Mbarara.

The facts giving rise to this appeal are that on 3 different occasions in the month of July 2004, the Appellants through their sister paper "Orumuri" published defamatory stories about the Respondent's Mbarara Community Hospital where the Respondent is proprietor and Chief Executive officer.

In the first story, the publication was to the effect that one Gertrude Twongyeirwe was lured by one Elizabeth and taken to an unnamed Hospital recently built in Mbarara and was murdered in a ritual and buried at the gate.

The second publication stated that Elizabeth Kagwa had been arrested by Police in connection with the ritual murder of Gertrude

Twongyeirwe. That she denied participating in the murder.

That unconfirmed reports had it that the owners of the Hospital where Gertrude is suspected to have been sacrificed had paid 3.5 million to Elizabeth for procuring the victim.

The last story is that a security guard at the Hospital had abandoned his job because he knew the victim and did not approve of what was done to her. That he saw the victim brought in by Elizabeth in a numberless vehicle. That the Police was questioning Elizabeth about her role in this crime. That the girl (Gertrude) was sacrificed by the owners of one of the hospitals in Mbarara.

As a result of these publications, the Police investigated the matter by questioning and recording statements from his employees at the Mbarara Community Hospital - Kakiika. That the Police investigation found the stories false but the Respondent was injured in his international reputation and character since he was portrayed as a criminal and suffered damages.

The Appellants contended before the trial court that the stories did not refer to the Respondent's hospital at Kakiika and in the alternative that the publication was a matter of great public concern and interest.

The Chief Magistrate found for the Respondents hence this appeal.

Six grounds of appeal were filed which could be summarized as follows:

- (i) That the learned trial Chief Magistrate erred in law when he found that it was the Respondent's hospital that the stories referred to.
- (ii) That the learned trial Chief Magistrate erred when he

found that Mbarara Community Hospital was affected yet it was a non-party to the suit.

- (iii) That the learned Chief Magistrate erred to find that the articles referred to the Respondent.
- (iv) That the award of 30 million as aggravated damages was excessive.
- (v) That there being no loss, the award of damages was an error.
- (vi) That the learned trial CM, erred to find for the Respondent yet his name and that of the Hospital were not mentioned in the publications.

As a first appellate court, my duty is to re-hear the case by subjecting the evidence to fresh and exhausted giving allowance only to the fact that I did not see the witnesses testify.

I shall deal with the grounds in the order that learned counsel for the Appellant argued them.

#### Ground one

The Appellants complained that the learned CM, erred when he found that the publications referred to the Respondent's hospital. Counsel submitted that apart from the Respondent and his codirector, no member of the public testified about calling him to inquire about the truth of these stories and that the employees of the Respondent did not testify about being questioned by the

Police. He argued that the Respondent was not questioned by Police and details of the Police CRB were not given.

Though the memorandum of appeal has 6 grounds, I should perhaps

observe here that the gist of grounds 2, 3 and 6 is related to ground one. I shall therefore deal with them in ground one.

The issue for resolution in these four grounds is whether the words complained of referred to the Respondent and Mbarara Community Hospital and whether Mbarara Community Hospital which was no-party to the suit was defamed.

Responding to the Appellants' grievances in ground 1, 2, 3 and 6, learned counsel for the Respondent submitted that the Respondent's testimony was not subjected to cross-examination about calls from third parties, that the Hospital had owners who were aggrieved by the publications and that the hospital was defamed. He referred to the case of *Herbert Ntabaoba vs NewVision* - High Court Civil Suit 113/2003 (unreported) for the proposition that you do not have to bring the public to prove that one was lowered in his/her esteem.

Whether the words complained of referred to the Respondent and his hospital was one of the issues framed in the lower court. The learned Chief Magistrate at pages 3 and 4 of his judgment noted that the Respondent had a hospital which was newly opened and when the stories were published, the Police contacted the Respondent as they investigated the matter. The Police took some statements which were annexure "D". He concluded that the stories referred to the Respondent and his newly opened hospital. He went to observe at page four that the hospital acts through human beings and if a person was sacrificed at that hospital then its owners, like the Respondent must be affected. He relied on *Newstaad vrs London Express Newspaper Ltd(1940)* I.KB. 377 for the proposition that the Respondent

need not have been referred to by name provided the words are actionable.

On the authorities, the test appears to be whether the defamatory words complained of would be understood by reasonable persons to refer to the Respondent. The name of the person complaining need not be published provided the publication is found to be defamatory and right thinking persons would read those words and understand them to refer to the Respondent.

Lord Comptell in lie Farm vrs Makomson (1848) 9 ER 910 at page 923 held thus:

“Whether a man is called by one name or whether he is called by another or whether he is described by a pretended description of a class which he is known to belong, if those who look on, know well who is aimed at, the very same injury is inflicted the very same thing is fact done as would be done if his name and Christian name were ten times repeated.”

And Allen, J, observed in *Edrisa Sekitoleko vrs. AG.* [19781HCB.193 that in all cases of libel, the plaintiff must prove that the words complained of referred to him. However, even if the defamatory words are true only of some other persons, they may at the same time be defamatory of the plaintiff if they might be understood by reasonable persons to refer to him in which case it is immaterial that the defendant did not intend to defame him.

The argument which was advance by learned counsel for the Appellant in the lower court and during the appeal is that no names were mentioned. From the authorities above, that argument is not tenable.

Would reasonable persons reading those articles conclude that they referred to the Respondent and his hospital? I believe they would. The Respondent's evidence in the lower court is that two Hospitals were newly opened in Mbarara. That is Mbarara Community Hospital and another in Nyamityobora also in Mbarara. His evidence is that the owners of the other Hospital sympathized with him and were not questioned by Police. This evidence is not controverted by the defence. It remains intact that of the two hospitals, only his was understood to have engaged in the criminal act of human sacrifice. The published stories also made reference to the victim and her abductor being residents of Kakiika where the Respondent's hospital is situate. You have to be unreasonable to think that the articles were referring to another hospital.

An attempt was also made here and in the court below to put forward the argument that the Respondent was only one of other directors, why did the others not complain.

Both PW1 and PW2 testified that the Respondent was the major shareholder with 70 shares. PW2 had 1 share and the couple's children owned 29 shares. The main investor, if you like, was the Respondent. The others were his wife (PW2) and children. Once the integrity of the hospital is brought in issue by any publication, all the owners would be defamed and those who would wish to enforce their rights to compensation would file the suit as the Respondent did. It is, with respect, too simplistic to say that the Respondent has no cause of action because his wife and children - with who he owns the hospital, are not in court as parties pursuing same remedy.

Sieridan J, in *Kiaozi vrs Hon. Abu Mayanja* Civil Suit 149 of 1965 while

citing Level Russel in *Kuupffer vrs. London ExpressNewspaper Ltd.* (1944) A.C. 116 held that particular individuals may be defamed though not named and defamation of a body of trustees or directors involves defamation of each member thereof. The Respondent and his other shareholders were equally defamed but only the Respondent came to court.

Finally on grounds 1-3 and 6, learned counsel put forth the argument that the Hospital and the Respondent are different entities. That if the hospital was defamed then the Respondent was not affected.

True, Mbarara Community Hospital Ltd is a limited liability Company according to exhibit "D2" which is the Company Memorandum and Articles of Association reveal that the Respondent is the majority shareholder with 70 shares out of 100 shares. It is tact of company law that the actions of a company are performed by its directors and employees. If a story is published that owners of Mbarara Community Hospital have killed a person and buried her head at the hospital gate, would it be reasonable for right thinking members to understand it to mean that the hospital walls and furniture did it or would they understand the story to mean that the hospital owners, with help from their employees did it? Defamation for a Company is defamation of its shareholders because it is shareholders who form companies. Companies do not form themselves and the distinction usually drawn is for purposes of liability in the profits and loss account and not in torts. For these reasons, grounds 1 , 2 , 3 and 6 fail.

I shall deal with grounds 4 and 5 together since both are on damages. Learned counsel complained that the award of 30 million was too high

because the Respondent did not adduce evidence of the loss. That no witnesses were brought to court to testify on the injury that the Respondent suffered.

Learned counsel for the Respondent supported the award basing on the authority of *Ntabaoba's case* (supra).

In arriving at the figure of 10 million per article (total 30 million), the learned Chief Magistrate noted at page five of his judgment that the Respondent's Company was a business enterprise and that the Respondent testified that patients shunned his hospital when they heard that a person had been killed and buried there. He referred to it as a business enterprise.

There is no doubt about this, going by exhibit "D1 and D2". Mbarara Community Hospital is not a charitable organization but a business enterprise whose main objective is to provide "efficient, affordable, highly professional medical services to the public....."

It was registered on 11/6/2003 and one year later defamatory articles are published against it.

It is trite law that libel is actionable per se without proof of damages, See *Lalobo vrs Lakidi (1971) EA. 87*. The submission by counsel for the Appellant that witnesses should have been brought to prove damages is with respect made in error.

To allege that a person has been abducted, driven in a numberless car, killed in a hospital and her head buried at the hospital gate that is understood to belong to the Respondent imputes very grave criminal offences like murder, witchcraft and concealment of a felony which are crimes in the Uganda Penal Code. If proven serious punishment including a death sentence may be imposed.



As Byamugisha J (As she then was) held in *Blaze Babigumira vs Harms Besigye* HCCS 744 of 1992, it is not necessary to produce evidence that once those articles were published people were now avoiding the Respondent. The Respondent is entitled to damages for injured feelings, reputation, annoyance and irritation. This is inferred as a natural and foreseeable consequence of the content of the statement and its publication. The quantum is based on the persons' reputation, absence of an apology and extent of the publication. At page 4 of the proceedings, the Respondent testified that he is a health professional, community leader, advisor to the Bishop and member of Ankole Diocese Synod. The stories complained were published in 3 issues in a row despite their falsity. This was a form of sensationalism coupled with recklessness. For each story in each issue, the trial

Chief Magistra awarded 10 million. Since three stories came out on 3 different occasions, the total came to 30 million. I was asked to find this figure too high.

With respect, I am unable to find the reason to interfere with that award taking into account the status of the Respondent in society and the reckless manner in which the stories followed each other and the business interest of the Respondent's hospital.

Grounds 4 and 5 fail with the result that the appeal is dismissed with costs here and in the court below.

**J u d g e**  
12/2/2010

Appellants not represented in court Mr.  
Kamukama for appellant in court  
Respondent in person Counsel for  
Respondent absent Tushemereirwe  
clerk Judgment delivered.

Lawrence  
Gidudu  
**J 12/2/2010**