THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL APPEAL NO. 35 OF 2007

(Arising out of Mengo Civil Suit No. 536 of 2003)

YUSUF MUKASA SUNDAY :::::::::::::::::::::::::::::: APPELLANT

VERSUS

HAJJATI MARIAM NABUKENYA ::::::::::::::::::RESPONDENT

BEFORE: THE HON JUSTICE V.F. MUSOKE-KIBUUKA

JUDGMENT:-

The appellant was the defendant in civil suit No. 536 of 2003. The suit was filed in the Magistrate's court of Mengo in which the respondent's claim against the appellant was for general and special damages and exemplary damages for defamation and a permanent injunction restraining the defendant from making further defamatory statements against the respondent.

The suit was heard by a Grade 1 Magistrate who finally decided it in favour of the respondent. This appeal is against the judgment and decree of her Worship Immaculate Busingye the Gr. 1 Magistrate of the Chief Magistrate's Court Mengo delivered on the 13th September 2007 in favour of the respondent.

When the appeal was called for hearing, the respondent raised a preliminary objection on a point of law. It was that the appeal was bad in law in that it offended the mandatory provisions of the law. Counsel submitted that such an appeal was governed by the provision of section 220 (1) of the Magistrate's Court Act, Cap. 16, which reads as follows:-

> ***" Subject to the provisions of any written law, and save as provided in this section, an appeal shall lie;***
>
> ***a) from the decrees or any part of the decrees and from the orders of a Chief Magistrate's court presided over by a Chief Magistrate or a Magistrate Grade one in the exercise of its original Civil jurisdiction to the High Court."***

In the instant appeal, there was an extracted decree but the date which it bore did not correspond with the date of the judgment. A decree is a formal adjudication of judgment as pronounced by Magistrate. Learned counsel, for the respondent prayed that the purported appeal was incurable for that material deviation and should therefore be struck out, because according to learned counsel, no decree was in existence.

In his response, the appellant contends that, a decree in Mengo Civil suit No. 536 of 2003 was dully extracted by M/s Semakula Kiyemba and Matovu, Advocates. The decree complies with all the rules of Order 21 rule 6, regarding the contents of a decree. There was an error on the date, the

decree was dated 10th October, 2007 yet it ought to have been dated 13th September, 2007, the date on which the judgment was delivered. He submitted that the Magistrate's error of inserting the wrong date ought not to be visited on the appellant.

Court duly acknowledging and appreciates the decisions in ***Alexander Marrison Vs. Ms. Versi and another (1953) 20 EACA 26 and Mukasa Vs. Ocholi [1968] EA P. 89, where it was held that without a decree an appeal was incompetent and premature.*** Similarly in ***Robert Biiso Vs. Mary Tibamwenda HC CS No. 8/1990.*** Justice Mukanza (RIP) held that, where an application to the High court failed to comply with section 232 (1) (c) of the Magistrate's Court Act now section 220 of Magistrate's Court Act, which provides for an appeal lying from orders of decrees of Magistrates, he could not accept court to use its inherent jurisdiction and assist him because there was a specific statutory provision laid down under section 232 (1) (c) of the Magistrates' Courts, Act. However, court believes that the position is now different.

Clearly, this case is distinct from the cases cited above in the sense that, the memorandum of Appeal was accompanied by a decree except that the decree bore different date from that on the judgment. Order 7 rule 1 provides that"=

" a decree shall bear the date on which the judgment was delivered". But should this warrant a dismissal of the Appeal itself?

Civil Procedure Rules, no doubt, provide an essential guide to an orderly disposal of suits. However, they cannot be used to deny a party, who is entitled to a remedy, the right to justice. As the Supreme Court of Uganda observed in ***Utex Industries Ltd Vs. Attorney General SCC Application No. 52/95,***

"….rules of procedure are a handmaid of justice- meaning that they should be applied with due regard to the circumstances of each case".

Apart from the fact, that the mistake of insterting a wrong date into the decree was not one made by the appellant but by the learned Magistrate and, therefore, it cannot appropriately and justly be visited upon the appellant, there is equally the fact that an appeal is against the judgment and not the decree. That important principle has been emphasized in two separate decisions of the court of Appeal of Uganda. The decisions are:-

-Kibuuka Musoke William And Another Vs. Apollo Kaggwa, Civil Application No. 46 of 1997 (unreported).

- ***Banco Draake Espanal Vs. Bank Of Uganda, Civil Application No. 42 of 1998 (unreported)***

At page 7, of the judgment of the court in the ***Banco Draabe Espanal*** case, (supra) the court stated:-

“ An appeal, by it’s very nature, is against judgment or the reasoned order. The extraction of the decree was, therefore, a mere technicality which the old municipal law put in the way of intending appellants and which, at times prevented them from having their cases heard on merits. Such a law cannot co-exist in the context of the provisions of 1995 Constitution, Article 126 (2) (e). Court, would, upon those reasons reject the preliminary objection. It is rejected.

Court will now turn to the grounds of appeal, which are that:-

1. the learned trial Magistrate erred in law by wrongly relying on biblical quotations and finding the defendant’s letter defamatory.
2. the learned trial Magistrate erred in law and in fact when she found that defendant’s letter was circulated.
3. the learned trial Magistrate erred in law and in fact when she found that the defendant uttered defamatory statements on Radio Simba.
4. the learned trial Magistrate erred in law and fact when she unjustifiable awarded general damages to the plaintiff.

However, the disposing of this appeal will concentrate on only these following issues:-

a) Whether the appellant’s letter to the respondent was defamatory.

b) Whether the appellant uttered defamatory statements on Radio Simba; and
c) Whether the awarding of general damages was appropriate.

Whether The Appellant's Letter to The Respondent Was Defamatory?

Mr. Matovu, learned counsel for the appellant, submitted that, the trial Magistrate erred in law in relying on biblical quotations i.e***. We hand you over to God punish you as he wishes at the time he pleases***". He also attacked the finding that, the contents of the letter was defamatory. In his response, Mr. Segona, learned for respondent, submitted that, court had to make its own finding on the ordinary meaning of the words, and whether a reasonable person would be likely to understand those words in a defamatory sense. ***NTANGOBA Vs. Editor In Chief of the New Vision Newspaper And Anor (2004) 2 EA 234***. He submitted that the finding of the lower court had not, in any way, occasioned any miscarriage of justice.

A defamatory statement is one which injures the reputation of the plaintiff by its tendency to lower him in the estimation of the right thinking members of society or to cause right thinking members of society to shun or avoid him. ***Sim Vs. Stretch (1936) AC, per Lord Athin***. It is so because it brings him or her into hatred and contempt or ridicule" e,g. because it alleges criminality, dishonesty or cruelty. The

statement need not impute misconduct or moral turpitude, for example a statement may be defamatory which shows the plaintiff as being merely ridiculous.

In order to prove that a statement was defamatory, there is also no need to show that anyone believed the statement. In ***Hough Vs. London Express (1940), Goddard LJ stated "if words are used which impute discreditable conduct of my friend, he has been defamed to me, although I do not believe the imputation and may even know that it is untrue."***

For a claim of defamation to succeed, the plaintiff must show that, the statement was defamatory. He or she must show that it, referred to the plaintiff and that it was published. Though the first two ingredients are not in contention in this case, the last one of the impugned statement, contested. A statement must be made known to at least one person other than the person claiming to have been defamed. Publication need not be to the public at large. A statement is not published unless it is understood by the person to whom it is made known. A person to whom an allegedly defamatory statement is published must understand it's meaning and that it refers to the plaintiff.

This being a first appellate court in this matter, it has a duly to re-evaluate the evidence and come to it's own conclusion.

Selle Vs. Associated Motor Boat Co. Ltd And Others [1968] A.A. 123.

The contents of the letter were as follows; ***"Your irresponsible and disrespectful words that you habitually speak against my children Geoffrey and Henry and I, the Landlord, to whoever you meet are well within our knowledge. We hand you over to God to punish you as he wishes and at the time he pleases".***

The defendant in his testimony admitted writing the notice dated 20th May, 2003 as well as having given a copy of the said letter to two other people namely Damalie Nalongo and Wasswa. But he denied referring to the plaintiff as a rumormonger. The general rule is that admissions by a party to a proceeding are admissible against him or her. They are however, not admissible in favour of such party, to disprove the truth of the fact stated. But when an admissions is tendered against a party he or she s entitled to have proved as part of his adversary's case, so much of the whole statement or document containing the admission, as is necessary to explain the admission although such other parts may be favourable to him***. Zarina Vs. Noshir [1963] E.A. 239.***

Court, would ordinarly, require the plaintiff to prove that he or she has been defamed in the eyes of the community or

within a defined group within the community. And according to the plaintiff, PW1 who is now the respondent, gave evidence that the publication of the letter to so many other people, including her own employees at the restaurant, damaged her dignity as well as her business. The above notwithstanding, court of the view that, the above letter reflected negatively on the respondent's character, morality, or integrity and is, therefore, defamatory. Court would agree with the finding by the trial court to that extent.

Whether The Appellant uttered defamatory statements on Radio Simba?

The respondent testified that, she was listening to Radio Simba when the issue was broadcast. Having known the appellant for a long time, she easily identified his voice. The respondent also called two other witnesses PW2 and PW3. PW2, Peter Zziwa testified that, while listening to Radio Simba, on the day in question, the news reader introduced the appellant, who subsequently narrated a story relating to the matter constituting this case. Peter Zziwa easily identified the appellant's voice because he knew him very well. The respondent also called PW4, a former presenter on Radio Simba, who testified that the appellant came to Radio Simba and wanted to broadcast news to the effect that the respondent wanted to poison him through her workers. He testified that among other things the appellant stated that the respondent used to steal electricity. PW4 recorded both the appellant's and the respondent's stories.

The appellant in his testimony admitted that one Kyomuhendo, one of the respondent's witnesses, had told him about the respondent's plan to poison him and his elder son. But he denies uttering the above words on Radio Simba a denial court cannot believe in the circumstances. The appellant can not then deny that be believed says the radio broadcast was a mere fabrication, completely unknown to him.

The trial, magistrate, therefore, correctly, in my view, even in the absence of the actual tape on which the recording were made, decided correctly that the appellant uttered the words complained about on Radio Simba and that those words were defamatory of the respondent.

Whether The Awarding Of General Damages Was Appropriate.

Court, without delving into the question of adequacy, of the Shs. 1,500,000/= awarded as general damages since the question was never raised in the appeal, finds that, the trial court was justified to award general damages to the respondent in principle.

All in all, therefore, there is absolutely no merit in this appeal. It is dismissed. The Respondent shall recover her costs in this court as well as in the court below.

V.F. Musoke-Kibuuka
(JUDGE)
20.04.2012