



**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MBARARA
HCT-05-CV-0049-2019**

ARTHUR NATWIJUKA ----- PLAINTIFF

VERSUS

- 1. THE EDITOR IN CHIEF ORUMURI NEWSPAPER**
- 2. NEW VISION PRINTING & PUBLISHING COMPANY LTD**
- 3. STUART TWINOMUJUNI ----- DEFENDANTS**

Before: Hon. Justice Nshimye Allan Paul M.

JUDGMENT

REPRESENTATION

The Plaintiff was represented by M/s Akampurira & Partners Advocates, while the Defendants were represented by Sozi & Partners Advocates.

BACKGROUND

The Plaintiff instituted this suit by ordinary plaint on 23rd July, 2019 but later on amended it on 23rd July, 2020, against the Defendants jointly and severally seeking; punitive and exemplary damages for defamation and for a permanent injunction restraining the Defendants from further publishing defamatory statements concerning him. The Plaintiff averred that the Defendants published a defamatory article in relation to him on 27th May, 2019 wherein it was reported that he was under investigation by the State House Anti-Corruption Committee for defrauding an Organisation in Kampala of UGX7,000,000,000/= only in October 2017. He added that the statements were false, malicious and meant to tarnish his good name.

The Defendants filed a joint written statement of defence on 16th August, 2019 wherein they contended that the article was wrongly interpreted and denied that it was defamatory. They added that they have a duty to expose fraud and corruption and all issues of public concern.

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EVIDENCE

Plaintiff's evidence

10 **Arthur Natwijuka PW1** (the Plaintiff) filed a witness statement on 6th July, 2020 and stated that he received a phone call from Mr. Twesigye Kamara David, a co-Director with him of Itendero High School regarding an article published in Orumuri Newspaper of edition of 27th May, 2019. He purchased the newspaper and found an article by the 3rd Defendant reporting that he was under investigation by the State House Anti-Corruption Committee for defrauding an Organisation in Kampala of UGX7,000,000,000/= only in October 2017 (see PEX8). He stated that the
15 statements are false as he has never been under investigations of any sort and that being a co-Director of Itendero High School, one of the best Schools in western Uganda, the statements were meant to harm his image among right thinking members of society.

20 He added that he is not related to anyone called Philip Nahabwe or Allan Amumpe as the article mentioned and that the article which contained his picture was widely circulated among parents of Itendero High School, his peers and church members among whom he commands high respect (see PEX1 to PEX7). That the article has lowered his reputation as people regard him a fraudster.

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Twesigye David Kamara in a witness statement filed on 6th July, 2020 testified that he is a joint Director of Itendero High School with the Plaintiff, and that he received phone calls from Mutungi Stephen, Katabazi Fred and other parents on 27th May, 2019 complaining about the Plaintiff's fraudulent behaviour as reported in the
30 Orumuri newspaper. He purchased the newspaper and found an article by the 3rd Defendant wherein it was reported that the Plaintiff was under investigation by the State House Anti-Corruption Committee for defrauding an Organisation in Kampala of UGX7,000,000,000/= only in October 2017. He established that there were no such investigations against the Plaintiff and that the statements were false. He

added that the statements tarnished the image of all directors of Itendero High School who are looked at as fraudsters and that he has never opened a company called Science Logistics Limited with the Plaintiff as alleged in the article.

5 **John Rubabanza PW2** in a witness statement filed on 9th December, 2022 testified that he is a joint Director of Itendero High School with the Plaintiff and that he received phone calls from Kanyomozi Julius and other parents of Itendero High School on 27th May, 2019. The rest of his averments are similar to those of Twesigye David Kamara.

10 **Defendants' evidence**

In a witness statement filed on 14th December, 2022, **Stuart Twinomujuni DW1** testified that he is a professional journalist reporting for Orumuri newspaper and that he sourced and reported a story about an investigation by the State House
15 Anti-Corruption Unit for fraud against the Plaintiff. That Justus Karamura, a director of Science & Biotechnology Support Systems Limited complained to the Unit that the Plaintiff, a co-owner of the company, irregularly diverted company funds.

That DW1 interviewed Karamura and he confirmed the complaint in addition to
20 showing him evidence that he co-owns the company with the Plaintiff. That in 2017, misunderstandings arose between Karamura and the Plaintiff and the latter used proxies to remove moneys from the company accounts and that the Plaintiff had him arrested numerous times which prompted his lawyers to petition the State House Unit.

25 DW1 stated that he called the Plaintiff to get his side of the story but the latter refused to talk to him, and that the article was reviewed by his editors before being published. He added that contents of the article were already in the public domain and that as a journalist, he has a legal duty to bring to the attention of the general
30 public matters of relevance such as corruption. He added that he never intended to injure the Plaintiff's reputation.

ISSUES

The parties filed a joint scheduling memorandum on 10th November, 2022 and agreed to the following issues;

1. Whether the Defendants' publication in the Orumuri newspaper of 27th May, 2019 was defamatory of the Plaintiff.
2. If so, whether the Defendants are entitled to any defence(s)
3. What remedies are available to the parties.

SUBMISSIONS

Plaintiff's submissions

The Plaintiff's submissions were filed on 20th February, 2023 and regarding the first issue, counsel submitted that the subject article referred to the Plaintiff and its meaning depicted him as a criminal, thief, fraudster and one not fit to be a Director of Itendero High School or head of finance at Makerere University – Walter Reed Project. That PW2 called State House Anti-Corruption Unit and established that there were no investigations against the Plaintiff. Counsel cited **NEKEMIYA MATEMBE AND ANOTHER VS UGANDA CONFIDENTIAL PUBLICATIONS LTD AND ANOTHER HCCS NO.1047/2001** and **AMOS TWINOMUJUNI VS ATTORNEY GENERAL AND ANOTHER HCCS NO.0413/2005** for definition and elements of a defamatory statement. Counsel contended that the Defendants had to prove that the words would not be understood to convey the imputation suggested but they failed to discharge that duty.

For issue 2, counsel argued that since the 1st and 2nd Defendants did not file witness statements, then the Plaintiff's evidence against them is unchallenged. He argued that the Defendants are not entitled to any defence. Regarding remedies, counsel prayed for compensatory damages of UGX150,000,000/= while relying on the **AMOS TWINOMUJUNI (supra)** case. He also prayed for general damages of UGX20,000,000/= only at a rate of 25% from the date of filing until payment in full. Counsel also prayed for a permanent injunction restraining the Defendants from defaming the Plaintiff and costs of the suit.



Defendants' submissions

In submissions filed on 10th March, 2023, counsel for the Defendants contended as regards issue 1, that the Plaintiff's pleadings did not reproduce the impugned article in full and verbatim as was published as is required by law. Counsel cited
5 **BULLEN AND LEAKE AND JACOBS ON PRECEDENTS & PLEADINGS**, 12th Edition page 626 for the principle that "the statement of claim must set out verbatim the libel complained of." That that rule is strict and mandatory (see **JOHN KIZITO VS THE RED PEPPER PUBLICATION LTD HCCS NO.624/2016**). Counsel also contended that the Plaintiff did not adduce evidence of injury to reputation as is required under
10 such claims (see **FRANCIS LUKOOYA MUKOME AND ANOTHER VS THE EDITOR IN CHIEF BUKEDDE NEWSPAPER AND OTHERS HCCS NO.35/2007**). Counsel further argued that the Plaintiff did not adduce evidence from any member of the public who actually knew him well, had read the publication and as a result had thereafter held the Plaintiff in less esteem. Counsel submitted that there is substance in the
15 allegations as published and that the Plaintiff lacked truthfulness. Counsel pleaded that the facts giving rise to the published article put the Plaintiff in the exact position as the article put him and no defamation could have arisen therefrom.

On the second issue, counsel contended that the Plaintiff has not made out a case
20 in defamation entitling him to any of the reliefs sought, instead the Defendants had upon them an inalienable legal, social and moral duty to report about the detail of that case. (See **JEREMIAH HERBERT NTABGOBA VS EDITOR IN CHIEF OF NEW VISION NEWS PAPER AND ANOTHER HCCS NO.1113 OF 2003** for definition of matter of public significance). On the third issue, counsel prayed for the dismissal
25 of the suit with costs.

Plaintiff's submissions in rejoinder

Regarding issue 1, counsel reiterated that since the 1st and 2nd Defendants did not file witness statements, the Plaintiff's case has been proved as against them on a
30 balance of probabilities. He submitted that the article was reproduced as published in the newspaper and its English translation provided. Regarding the contention that there was no evidence to prove injury, counsel submitted that PW2 covered that in his witness statement.

Counsel further argued that there was no substance in the allegations against the Plaintiff because PW2 called the Statehouse Unit and found no investigations against the Plaintiff and that the allegations made imputed a criminal character against a financial director in a reputable organisation. Regarding issue 2, counsel
5 contended that the article did not meet professional standards of journalism and that defence is not available to the Defendants. Counsel reiterated his earlier submissions on remedies.

DETERMINATION

10 **I will address both issue 1 and 2 together. Issue1 is Whether the Defendants' publication in the Orumuri newspaper of 27th May 2019 was defamatory of the Plaintiff? And issue 2 is whether the Defendants are entitled to any defence(s)?**

The cause of action in a defamation suit is brought out by;

- 15 1. The plaint containing the actual words that are alleged to be defamatory reproduced therein verbatim.
2. The plaint should state to whom the statement or words were published.
3. The plaint must state that the uttered or published words are false.
- 20 4. The plaint ought to state that the uttered or published words have a defamatory meaning.

The defendant in its submission stated that the suit was bad since the defamatory statement was not reproduced. The plaintiff in reply submitted that the published article had been reproduced in paragraph 6 (b) of the plaint. I have perused the
25 plaint and find that indeed the articles words were reproduced in the plaint in both the original Runyankore version and the English translation.

The evidence on court record also shows that the during cross examination of DW1
30 **STUART TWINOMUJUNI** stated that "The Runyankore and English version of the story in the plaint are correct,I wrote the story" meaning that the journalist that wrote the article owned it as true and not only confirmed it was reproduced in the plaint, but also confirmed that the English translation was a correct translation of the Runyankore version. I therefore find that the plaint fulfilled the requirement of

reproducing the defamatory article's words verbatim. The defendant's submission is therefore rejected.

I have also studied the plaint and I find that

- 5 1. In paragraph 10, he states that the article was printed in the Orumuri Newspaper issue no 21 of May 27th, 2019, with a wide circulation both nationally and international. He therefore states in the plaint to whom the article was published.
- 10 2. In paragraph 11 of the plaint, the plaintiff states that the statement was false, malicious and meant to tarnish his good name and business as director of Itendero High school as well his profession at Makerere University where he works for a living as a director of finance in the Walter Reed Project. He therefore states in the plaint, that the article is false.
- 15 3. In paragraph 9, it states that the statement that appeared in the article lowered his reputation in right thinking members of the society. He thereby makes the claim in the plaint that the words are defamatory. In paragraph 7 of the plaint states that the words contained in the article are highly defamatory of the plaintiff and their natural or ordinary meaning or by way of innuendo are understood to mean that he is a criminal. Thief and fraudster
- 20 that engaged in forgery that is not fit to hold the office of director of Itendero High school. He therefore states in the plaint the defamatory meaning associated with the words.

The test used to determine whether a statement is capable of giving defamatory
25 meaning was discussed in the case of **A.K. OILS & FATS (U) LTD VS BIDCO UGANDA LIMITED HCCS NO. 715 OF 2005** where Bamwine J (as he then was), relied on **SIM V STRETCH [1936] 2 ALL ER 123 A.C.**, where Lord Atkins held that 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
30 persons whose reaction to the publication is the test of the wrongful character of the words used. He proposed, in that case, the test: "would the words tend to lower the plaintiff in the estimation of the right-thinking members of society generally?"

The evidence on court record given by PW1 Artthur Natwijuka in paragraphs 4, 5,10, and 16 of his witness statement stated that the article defamed him and lowered his reputation among right thinking members of the society where he serves as a Director Finnace at the Walter reed Project of Makerere University, a member of the synod of west Ankole Diocese of Church of Uganda and a member of the Chartered institute of Accountants. This evidence is corroborated by PW2 John Rubabanza who states in paragraphs 3, 4,5 15, 16 and 18 of his witness statement that he is a joint director with the plaintiff in Itendero High school Limited. That on 27th May 2019 he received phone calls from Kayomozi Juluis and other parents in the school complaining and alarmed by the article. The witness also testified that the journalist did not cross check with the school before publishing and the article that hurt the integrity of the directors and the school. He averred that the plaintiff was highly regarded in their society but is now viewed with suspicion among the right thinking members of the community.

I have perused the article headline that was titled *"Nakalema naacondooza dayirecta wa Itendero H/S ahabw'okuferea"* and whose translation as admitted by Dw1 the journalist that wrote the article, during his cross-examination is *"Nakalema is investigating the Director of itendero High school for Fraud"*. It is clear that the headline focused on the Itendero High School and its director the plaintiff whose name and photo was affixed in the article, this means that an attack on the integrity of the individual and the school was a foreseeable result of the publishing of the article, in fact DW1, Stuart Twinomujuni, the journalist that wrote the article stated during cross examination that **"To make an allegation about a director would have serious consequences on the school"** and further stated that **"The allegation of financial impropriety would have serious consequences to the career of the plaintiffs at Walter Reed"**. I find that the journalist was alive to the effect of the article would have on the plaintiff and the school.

The question now is whether the statement in the article was false or if the defendants are entitled to any defence. I note that the defendants did not expressly put forward a defence in their written statement of defence, but state that they have a moral and social duty to publish the story in order to inform the public on

matters of public interest in lieu of safeguarding the public by a qualified privilege to the press (See page 12 of the defendants' submissions).

The defendants submitted at page 13 of their written submission that *"whether the story is defamatory or untrue is not the issue as long as the discharge of the defendant's duty through publication is made in good faith and without exaggeration"*

The Court of Appeal has in the case of **MONITOR PUBLICATIONS LIMITED & ors**
VERSUS PIUS BIGIRIMANA COA CIVIL APPEAL NO. 0170 OF 2022 stated that;

"a defendant who raises the defence of qualified privilege effectively admits that the alleged defamatory statements were false. The defendant raises the defence not to assert that the statements were true, but to assert that the statements were privileged and should not attract liability. The defendant bears the burden to prove the elements of the defence of qualified privileged."

It is a well settled principle of law that the defence of qualified privilege in defamation cases arises where the defendant has an interest in making the communication to the 3rd person and the 3rd person has a corresponding interest in receiving it as was held in **MANGAT VS SHARMA [1968] EA 620**.

The defendants have stated in their Written statement of defence that they have a duty to society to expose fraud (see Paragraph 5 of the WSD) , and also state in paragraph 8 of the their WSD that "the publication was a balanced depiction of the plaintiff in regard to the allegations in issue with out malice or intention to malign his personality , name or character". I am of the opinion that the test in the **MANGAT VS SHARMA** case above requires that;

1. The defendants as a media house have a duty to responsibly report to the public matters on matters of public interest, so as to contribute to a better society.
2. The public as the consumers of published stories from the media houses have an interest in promoting a better society by in receiving well researched

stories, devoid of deliberate falsehoods or misinformation. The public is on the other hand not interested in receiving publications with deliberate falsehoods or misinformation because they only mislead the population and make the society worse rather than better.

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The evidence on court record shows that DW1, Stuart Twinomujuni during cross examination stated that the source of his story was Justus Karamura, who PW1, Arthur Natwijuka, identified as his relative with whom they have misunderstandings relating to cows and have had running matters with police where a complaint of threatening violence was reported against Justus Karamura.

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The complaint documents offered by Justus to DW1, Stuart Twinomujuni, were in respect to a complaint about the mismanagement of his case as was admitted by DW1, Stuart Twinomujuni during cross examination (see also DEX14 and DEX16).

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The documents that DW1 states he got from Justus that informed his story also refer to a company called Science and Biotechnology Support Systems Limited (see DEX2, DEX3 & DEX13). I find that the Articles and Memorandum of the Company do not mention the plaintiff as a shareholder and none of the documents show that any money was transferred from that company to the plaintiff.

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I have noted that the article that was published in its headline makes reference to Itendero High school, an institution that does not feature anywhere in the complaint or documents the defendants have exhibited as the ones they based on in the research of their story. The headline states that "*Nakalema naacondooza dayirecta wa Itendero H/S ahabw'okuferea*" and whose translation as admitted by DW1 the journalist that wrote the article, during his cross-examination is "*Nakalema is investigating the Director of Itendero High school for Fraud*". PW2, John Rubabanza, a co-director in the school has testified that he was never consulted before publishing the story. In my opinion, responsible reporting would require that the directors of the school that may be individually harmed by the story as well as the school management would have been consulted for a comment or opinion before publishing the story. That is what fair and responsible journalism demands.

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The evidence on court record shows that Dw1 Stuart Twinomujuni, testified during cross examination that;

1. "The source of the story was Justus karamura who lodged a complaint"
2. "The complaint in the anti-corruption unit was about mismanagement of Justus karamura's case"
3. "The amount of 7 billion in the story was not in the complaint."
4. "There was no complaint in anti-corruption unit about a director of itendero secondary school ."
5. "The fact that the plaintiff had defrauded an organisation in Kampala was not captured in the complaint"

I base on the above evidence to conclude that the Journalist that wrote the story knew that it was false at the time of research, yet he still focused it on the plaintiff as a director in itendero High school and put him and the school at the centre of the headline. Secondly the journalist who wrote the story never cross checked with the banks where the money was alleged to have been transferred, or with Walter Reed Project at Makerere University or with the administration of itendero High school leave alone the plaintiff.

The media ought to carry out responsible reporting based on research that confirms sources and emphasizes getting opinions of all persons that are likely to be affected by the journalistic reporting. This is the foundation of the Media's moral and public duty to report to the public, which public, is also interested in receiving responsibly researched publications that are devoid of deliberate falsehoods.

The article in this case was meant to mislead the public, it is clear, due diligence research was not done to cross check the facts and the journalist who wrote it knew before it was published that the sensational aspects, such as a mention of seven billion allegedly defrauded by the plaintiff was a falsehood he created, that did not even feature in the complaint by Justus Karamura. I conclude that the article does not pass the test that would entitle the defendants to the defence of qualified privilege.

REMEDIES

I have had the benefit of reading the decision of His Lordship Justice Stephen Mubiru in **MAISHA V MADRAA HIGH COURT CIVIL APPEAL NO. 31 OF 2012** where he quotes the following cases that I will reproduce to guide the discussion in respect to this issue on remedies in defamation cases. They are;

1. 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 (see **SCOTT V SAMPSON (1882) 8 QBD 503**)
2. 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 (This principle governing the award of damages was outlined in **JOHN V MGN LTD [1996] 2 ALL ER 35 AT 47**)
3. General damages are to be determined and quantified, depending upon various factors and circumstances. Those factors are (i) the gravity of allegation, (ii) the size and influence of the circulation, (iii) the effect of publication, (iv) the extent and nature of claimant's reputation and (v) the behaviour of defendant and plaintiff, The court may take into consideration the conduct of the defendant before action, after action, and in court at the trial of the action. (**MAISHA V MADRAA (HIGH COURT CIVIL APPEAL NO. 31 OF 2012)**)
4. A person's reputation has no actual value, and the sum of be awarded in damages is therefore at large and the Court is free to form its own estimate of the harm taking into account all the circumstances (see **KHASAKHALA V AURALI AND OTHERS [1995-98]1 E.A. 112**).

In coming up with the damages, the factors I have considered are that;

1. The article was run only once in the Orumuri Newspaper dated 27th May 2019.
2. I have also considered that the plaintiff testified that he met the journalist who wrote the article during mediation without animosity.
3. I have also noted that the media house has not continued to attack the plaintiff or use the proceedings of the suit to further make money by publishing follow-up stories.

4. I have also considered that integrity devoid of fraudulent behaviour is relevant for one to be a director of a company or serve as a director finance in any company as such the article threatened more than just the reputation of the plaintiff but his livelihood.

5. I have also considered other cases where an award of damages has been made.

I therefore consider damages of Uganda shillings seventy Million (70,000,000) fair in the circumstances.

In conclusion, Judgement Is entered in favour of the plaintiff and I order that;

1. The defendants shall pay the plaintiff general damages for the defamation of Uganda shillings seventy Million (70,000,000/=)
2. The defendants shall pay interest of 10% on the above sum from the date of this judgment until payment in full.
3. The defendants shall pay the plaintiff's costs of the suit.



NSHIMYE ALLAN PAUL

JUDGE

20-10-2023