THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT FORT PORTAL

CIVIL SUIT NO. 24 OF 2020

HON. ANNAH TWEHEYO :: PLAINTIFF

VERSUS

APOLO MURUNGI :: DEFENDANT

BEFORE: HON. JUSTICE VINCENT WAGONA

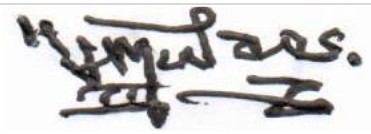
RULING ON POINTS OF LAW

Introduction:

Before commencement of the trial, Mr. Aijuka Joab Learned counsel for the defendant intimated to Court that he had a point of law to raise regarding the competence of the suit. A schedule to file submissions on the point of law was issued and both counsel complied. Learned counsel for the defendant raised two points of law which shall be considered separately.

That suit is barred in law, is a nullity and fatally defective:

Mr. Aijuka submitted that the plaint does not disclose the date on which the alleged cause of action arose. That it was thus impossible to ascertain whether the suit was brought within the set statutory time. He asserted that Section 3 (1) of the Limitation Act provides that no action founded on contract or tort shall be brought after the expiration of 6 years from the date on which the cause of action arose. That the none disclosure of the date when the cause of action arose is makes the plaint defective and contravenes Order 7 of the Civil Procedure Rules. That such failure risks court



entertaining a suit that is outside the statutory time as such the same should be struck out with costs.

Learned counsel further submitted that the plaint did not state the particulars of the words which are alleged to have defamed the plaintiff. That in ***John Kizito v Red Pepper Publication, HCCS No. 624 of 2016, Justice Stephen Musota (High Court Judge as he then was)*** observed that; "*It is a principle of law that in an action for defamation the basis of the cause of action are the words used. The words used are therefore the material facts on which an action for defamation is based. The words used whether verbal or written must be set out in the particulars of the claim. It is not sufficient to state the substance, purpose or effect of the words used. The actual words must be pleaded*." That since the plaint did not plead the words which are alleged to be defamatory, the plaint is barred in law and should be rejected.

(a) <u>No cause of action disclosed:</u>

Learned counsel submitted that a cause of action is disclosed when it is shown that a plaintiff enjoyed a right, that the right was violated resulting into damages and the defendant is liable. (See ***Auto Garage v Motokov (1971) E.A 514 and Tororo Cement Co. Ltd v Frokina International Ltd, Civil Appeal No. 21 of 20210.*** Counsel submitted that in the plaint, the plaintiff does not disclose the right that he enjoyed which was violated by the defendant. That she did not disclose the damage suffered as a result of the alleged violation. That the plaint is thus defective and thus the same should be rejected and the suit consequently dismissed with costs.

In response Mr. Atuheire for the plaintiff asserted that it is trite law that a written statement of defense must be served upon the plaintiff. He cited the case of ***Protection Security Services Ltd v Eastern Builders and Engineers Ltd HCMA 511 of 2011*** to support his assertion. He submitted that the defendant in this case was supposed to serve his written statement of defense upon the plaintiff within 15 days from the date of endorsement by court which was not done. That as such the defense on record is incompetent and thus should be struck out.

In relation to the first point of law, Mr. Atuheire argued that the suit is not barred by limitation. That in the plaint, the plaintiff averred that the acts of defamation happened five months prior to the filing of the suit on 26th June 2020. Further that among the particulars of defamation were a letter dated 14th May 2020 authored by the defendant that contained defamatory statements. That as such the suit was brought within time.

As regards the second point of law, Mr. Atuheire contended that annexure A contained the impugned defamatory statements made by the defendant and that the plaint was well within the dictates of Order 7 rule 14(1) of the Civil Procedure Rules. That the plaintiff equally pleaded the words uttered by the defendant while on radio which were defamatory as such the plaint clearly pleaded the particulars of the claim.

Counsel further argued that the plaint disclosed a cause of action against the defendant being defamation that affected the reputation of the plaintiff before the right thinking members of society and thus the defendant is liable. That the particulars of the acts committed by the defendant are contained in paragraph 4 (a)

of the plaint. He thus asked court to strike out the written statement of defense for the defendant and be pleased to overrule the points of law.

DECISION:

I will start with the concern raised by Mr. Atuheire for the plaintiff on the competence of the written statement of defense for the defendant on record. It is trite law as submitted by counsel that a written statement of defense must be filed within 15 days from the date of endorsement by court. (***See Stop and See (U) Ltd v Tropical Africa Bank Ltd (Miscellaneous Application No. 333 of 2010) [2010] UGCommC 41 (9 December 2010).***

Therefore, where a written statement of defense is lodged in court and endorsed by the Registrar or Magistrate as the case may be, the defendant is required to serve the same within 15 days from the date of endorsement by court. The follow up question is, what is the effect of failure to serve the written statement of defense upon the plaintiff within 15 days after endorsement by Court?

The Civil Procedure Act and the Civil Procedure Rules do not provide for the consequences of failure to serve within 15 days. I am thus of the view that where the written statement of defense is not served within fifteen days from the date of issue, court can extend the time within which to serve to ensure that the ends of justice are met.

In the present suit, when the case came up for mention on 1st March 2023, Mr. Atuheire learned counsel for the plaintiff asked for directions to file a joint scheduling memorandum and witness statements for both parties and a schedule was issued by court. Further on 5th June 2023, Mr. Atuheire asked for more time to file a joint scheduling memorandum and serve the defendant and the case was adjourned to 19th June 2023. On 19th June 2023, Mr. Atuheire for the plaintiff was present and when Mr. Aijuka asked for a schedule to file submissions in respect of the current points of law, he consented and a schedule was issued. On all the different occasions the matter came up in court, he never raised the issue of none service of the written statement of defense. It is my considered view that since Mr. Atuheire had committed to generate a joint scheduling memorandum, he had knowledge of the defense by the defendant. I therefore find that the plaintiff was served and the point of law was raised as an afterthought and the same is rejected.

Defendant's Points of law:

(a) ***<u>Suit being barred in law, nullity and fatally defective</u>***

This point of law had two segments which I will attempt to address separately thus;

(i) <u>Suit being barred by limitation:</u>

Section 3 (1) of the Limitation Act Cap. 80 is to the effect that an action based on contract or tort shall not be brought after the expiration of six years from the time the cause of action arose.Therefore, the six years provided under section 3 (1) start to run from the time the cause of action arose. In ascertaining the time when the cause of action arose, reference is made to the time pleaded by the plaintiff in the plaint and the annexures thereto.

In this case, the plaintiff indicated under paragraph 4 (b) and (c) of the plaint thus:

*(b) In the period over the **last five months** before the filing of this suit, the defendant has published or caused the publication of false statements the grabbing of 10.000 acres of land at Musaijamukuru hill, over two radio channels in Kamwenge and Ibanda which are listened to by the numerous persons in both districts representing that the plaintiff personally and as an officer of M/s Kabuga – Rubanda United Farmers Ltd has engaged herself in acts of mismanagement, land grabbing and corruption for which acts of defamation the defendant is liable in general damages.*

*(c) The defendant has also authored a letter of **14/5/2020** to the State House Anti-Corruption department and copies to the I.GG, the District Land Board, The Kamwenge District CAO, the RDC and the whole District Council in which letter he falsely accuses the plaintiff of being associated with land grabbing and corruption.*

The plaintiff stated that five months prior to institution of the suit, the defendant published or caused to be publish false statements. Further that he wrote a letter dated 14th May 2020 which contained statements which were defamatory. Therefore, in my consideration of paragraph 4(b) and (c) the cause of action arose five months prior to the institution of the suit. In considering the time when the cause of action arose, the timelines stated in the plaint and the annexures thereto play a guiding role. The point of law raised in this regard fails.

(ii) Suit being a nullity and fatally defective.

It is trite law, that in an action for defamation, the words complained off must be pleaded by the claimant.It is a principle of law that in an action for defamation the basis of the cause of action are the words used. The words used are therefore the material facts on which an action for defamation is based. The words used whether verbal or written must be set out in the particulars of claim. It is not sufficient to state the substance purpose or effect of the words used. The actual words must be pleaded. (See ***John Kizito v Red Pepper Publication, HCCS No. 624 of 2016).***

Bullen & Leake and Jacob's Precedents Of Pleadings, 12th Edition P. 626, posited that the libel complained of must be set out verbatim in the statement of claim; it is not enough to set out the substance or effect ***"as the precise words of the document are themselves material.***". In case of a book, newspaper or other document from which the words are taken should be identified by date or description. Where the defamatory matter is part of a longer passage, the ***defamatory part only need be set out***, provided the remainder of the passage would not vary the meaning of the defamatory matter. Where the defamatory matter arises out of a long article or "feature" in a newspaper, the plaintiff must set forth in his/her statement of claim the particular passages referring to him of which he/she complains and the respects in which such passages are alleged to be defamatory. See ***DDSA Pharmaceuticals Ltd Vs Times Newspaper [1973] 1 Q.B 21 CA.***

Further, where if the part complained of is not clearly severable from the rest of a single publication, the whole publication must be set forth in the statement of claim even though the defendants may be entitled to plead justification or fair comment in respect of the other parts of the publication. ***S & K Holdings Ltd Vs Throgmorton Publications Ltd [1972] 1 W.L.R, 1036.***

In addition, where the libellous matter is in a book, the parts or pages where the libel is should be stated. Where the libel complained of is what the defendant says a third party told him, it should be so pleaded and not pleaded as if the defendant had said it because it is a different libel and the charge is open to a different defence.The statement of claim should also state the date of each publication which is relied on as a cause of action. In case of a letter or other private communication, the name of each person to whom publication is alleged should also be stated ***Dalgleish Vs Lowther (1899) 2 Q.B 590.*** If his/her name be unknown, he must in some way be identified otherwise the plaintiff in the absence of exceptional circumstances will not be allowed to prove at the trial publication to any such person ***Barham Vs Lord Huntingfield [1913] K.B. 193.***

In the case of a Newspaper prospectus, hand bill, or other document widely disseminated, the defendant is not, as a rule entitled to particulars of the names of the person to whom, or the dates on which, the alleged libel was published because all such matters would in all probability be within his own knowledge and not within that of the plaintiff. ***Keogh Vs Incorporated Dental Hospital of Ireland [1910] 1r R 166).***

In this case, the plaintiff pleaded under paragraph 4 (b)and (c), that the statements made by the defendant on two radio channels were that the plaintiff was grabbing 10,000 acres of land at Musaijamukuru hill. That the plaintiff had engaged in acts of mismanagement, land grabbing and corruption which were defamatory. She further stated under paragraph 4(c) that the defendant wrote a letter dated 14/5/2020 to State House Anti – Corruption department and copies to IGG, the District Land Board,

The Kamwenge District CAO, the RDC and the whole District Council in which he falsely accused the plaintiff of being associated with land grabbing and corruption.

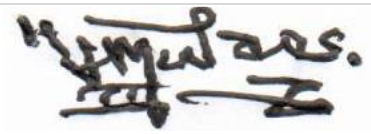
The plaintiff further stated the false statements allegedly made by the defendant under paragraph 4(d) thus:

> ***"****The defendant has specifically employed false claims by words that the plaintiffis* ***"degrading the environment"*** *and causing a land slide and resultant death of two people" being one of* ***"the land grabbers",****being involvedin* ***"open corruption and threatening and intimidating citizens who want to end the corruption"****and that she is part of* ***"purporting to divide public land among themselves which belongs to Kamwenge District"*** *and other statements, slanderous and libellous of the plaintiff in the above publication."*

The plaintiff also went ahead and attached the publication as annexure A. I believe the words allegedly used by the defendant are well pleaded in the plaint and a copy of the letter or publication allegedly made by the defendant was attached as annexure A. Therefore, I agree with Mr. Atuheire that the plaintiff properly pleaded the words allegedly used by the defendant which she claims were false and defamatory. I find no merit in this point of law and the same is overruled.

(b) No cause of action disclosed:

A cause of action connotes every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgement of the court. It does not comprise every piece of evidence which is necessary to prove each fact, but



every fact which is necessary to be proved. (***See GladyNdukuNthuki Vs. Letshego Kenya & Anor, Kenya High Court Civil Suit No. 007 of 2021).***

For one to satisfy court that he or she has a cause of action, he or she must plead facts in the plaint which if proved would entitle him or her to judgment in respect of the claim in the plaint. The plaintiff must prove that he enjoyed a right which is protected by statute, common law or equity, that that right was violated and that the defendant is responsible for such violation to entitle him to the reliefs sought. (***See Tororo Cement Co. Ltd vs Frokina International Ltd SCCA No. 2 of 2001).***

In ascertaining whether a plaint discloses a cause of action or not, court should limit its self to the plaint and the annexures thereto. ***(See Kebirungi vs. Road Trainers ltd & 2 others [2008] HCB 72.***.

In ***Yaya Towers Limited vs. Trade Bank Limited (In Liquidation) Civil Appeal No. 35 of 2000*** court expressed itself thus:

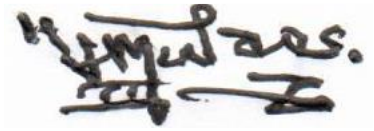
> ***(c) "No suit should be summarily dismissed unless it appears so hopeless that it is plainly and obviously discloses noreasonable cause of action and is so weak as to be beyond redemption and incurable by amendment."***

In the present case, the plaintiff claimed that the statements made by the defendant while on two radio stations that she was grabbing 10,000 acres of land at Musaijamukuru hill were defamatory. Further that the letter authored by the defendant which portrayed her as corrupt and a land grabber was false. That the statements made by the defendant had the effect of lowering the plaintiff in the estimation of the right thinking members of the communities in Kamwenge in which

the plaintiff serves as an elected District Woman Councilor and in all other capacities pleaded in the plaint. At this stage, court is not duty bound to examine the merits of the case. What is required is for the plaintiff to establish an arguable case that invites a decision of court on the basis of the pleadings before it. I find that the plaint does disclose a cause of action against the defendant.

I therefore find no merit in both points of law raised Mr. Aijuka for the defendant and the same are overruled with costs to the plaintiff in the cause.

I so order.



Vincent Wagona

High Court Judge

FORTPORTAL

DATE: 30/11/2023