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THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT ARUA
CIVIL SUIT NO. 0010 OF 2022

NANTALE RUTH ASIIMWE:.....PLAINTIFF
VERSUS

10

1. NAKAZIBWE ROSE

2. KASAIJA JOEL:..... DEFENDANTS

BEFORE HON. JUSTICE COLLINS ACELLAM

JUDGEMENT

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Background

The plaintiff sued the defendants jointly and severally for defamation and for declaration that the agreement dated 17th /10/2021 between the plaintiff and the 2nd defendant was procured through duress, coercion and undue influence. It is the plaintiff's case that sometime on the 31st day of March 2022, the defendants jointly and severally published on the walls, windows and doors of the plaintiff's work place a Public Notice with her photograph to wit; *'This is to notify all our clients that Nantale Ruth Asiimwe is no longer a worker of BNOEL HOLDINGS UGANDA LIMITED Arua Branch. Any transactions/ Services made between her and our clients out of the company premises will be considered illegal and void'*.

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The plaintiff further allege that the defendants uttered defamatory statements at police in Arua City in Arua Central Police station to the effect that the plaintiff is a thief having allegedly stolen money belonging to the defendants ,which utterances , the plaintiff contend to be highly defamatory and false as the plaintiff is a well-known person in Arua dealing in money lending business and that she deals with very many clients hence the words uttered against her and the publications pertaining to her directly impact on her business . The plaintiff purport that the utterances and publications were defamatory in character thereby shunning her reputation in the eyes of the right-thinking members of the society and unsuspecting members of society within and outside West Nile, Arua Town being the central business hub. She prayed for general damages for libel, interests, permanent injunction and costs of the suit against the defendants and declaration that the agreement dated 17th /10/2021 was procured under duress, coercion and undue influence.

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5 In their joint written statement of defence, the defendants denied the claim in toto. They contended that the suit does not disclose a cause of action against them for the notice was placed on behalf of the said company after an audit report had implicated the plaintiff to have misappropriated Ugx. 200,000,000/= for the company and when the plaintiff repeatedly refused to pay the said money as she
10 had agreed, the 1st defendant reported a case of theft against her at Arua Central Police Station. The defendant avers that the plaintiff signed the agreement with **BNOEL HOLDINGS UGANDA LTD** after an audit report revealed that she had mismanaged funds which she admitted and voluntarily, at the premises of the company, without force of police or forms of any arms or anybody, signed the
15 agreement. The defendants prayed that the suit be dismissed with costs for lack of merit.

Representation

At the hearing, *M/S Kasadha & Partners Co. Advocates* represented the plaintiff whereas *Ederu & Gama Advocates & Solicitors* appeared for the defendants.

20 At the hearing, when the defence closed their case, court issued directives for both parties to file in their submissions and rejoinders if any. The said directives were fully complied with, appreciation goes to the two learned counsel for their diligence exhibited throughout the hearing.

Issues

25 The Agreed issues for determination are.

1. *Whether the plaint discloses a cause of Action against the defendants.*
2. *Whether the agreement dated 17th /10/2021 was signed under duress, coercion and under undue influence.*
3. *Whether the document titled Public Notice dated 31st /3/2023 was*
30 *defamatory to the plaintiff.*
4. *What remedies are available to the parties.*

I shall proceed to examine and resolve the issues in the above order.

Issue 1

Whether the plaint discloses a cause of Action against the defendants.

35 A cause of action can be defined as the fact or combination of facts which gives rise to a right of action. There are three essentials to support or sustain a cause of action.

- i. The plaintiff enjoyed a right
- ii. The right has been violated
- 40 iii. The defendant is liable.

- 5 If any of these essentials is missing, the plaint is a nullity and ought to be struck off.

See: Priamit Enterprises Limited Vs Attorney General SCCA NO. 1 of 2001

Submission of Counsel for the Plaintiff

- 10 Citing the case of *Auto Garage vs Motokov (supra) and Attorney General David Tinyefuza SCCA NO. 1/1997*, Counsel for the plaintiff submits that a person's reputation can be injured in several ways that is to say, in relation to her personality, office and profession. It was the evidence of the plaintiff that she was been demeaned and defamed to appear as a thief and a staff of BNOEL HOLDINGS as a result the public Notice came in place thus, she was defamed.
- 15 Counsel adds that the plaintiff was defamed because of the publications in the way of photos in the public Notice which was circumstantial after she was put brutally in the cells in Arua Police while being referred to a thief at Police.

- Counsel concludes that the plaintiff enjoyed the right to gainful employment which she later lost, liberty and other rights before the defendants began interfering
- 20 with her normal trend of carrying on her business as they were violated when the defendants unlawfully occasioned to the plaintiff great suffering thereby subjecting the plaintiff to unprecedented losses in the normal course of her business for which the plaintiff holds the defendant liable.

Submission of counsel for the Defendants.

- 25 Citing the case of **TORORO CEMENT. CO. LTD VS FROKINA INTERNATIONAL LTD. SCCA NO. 2 OF 20021**, Counsel submit that a plaint discloses a cause of action if its averments show that the plaintiff enjoyed a right which has been violated and the defendant is responsible for that violation.

- Counsel adds that the law on pleadings pertaining the cause of action in
- 30 defamation is coached in strict terms and if not followed, the plaint suffers being struck off and the authorities above emphasises that regards is only had to the plaint and its attachments.

- Citing the case of **Angwee Kalanga Versus Odongo Milton &Anor HCCS No. 0065 of 2011**, counsel contends that the authority charges a plaintiff with a claim
- 35 of defamation to set forth the words used in the plaint verbatim and mention the names of the persons to whom the alleged defamatory publication was made and a plaint which does not set forth verbatim the words used and mention names of the persons to whom the publication was made , does not disclose a cause of action and the same is bad in law.

5 Counsel concludes that they have laboured to read the entire plaint and the Annexures but there is no single name mentioned by the plaintiff of a person to whom the alleged defamatory statements were made as required by the law.

I have had the benefit to consider the submissions by both counsel and I shall respond/resolve as follows.

10 In light of the earlier landmark case of **Auto Garage Vs Motokov**, this issue brings into the fore a consideration of 'a cause of action'. I can do no more on the meaning of a 'cause of action' than call to mind the observation made by Court in *Bello v Attorney-General of Oyo State* [1986] 5 N. W.L.R. (Part 45) 828 at 876 thus:

15 *"I think a cause of action is constituted by the bundle or aggregate of facts which the law will recognize as giving the plaintiff a substantive right to make the claim for the relief or remedy being sought. Thus, the factual situation on which the plaintiff relies to support his claim must be recognized by the law as giving rise to a substantive right capable of being claimed or enforced against the defendant. In other words, the factual*
20 *situation relied upon must constitute the essential ingredients of an enforceable right or claim - see Trower & Sons Ltd. v Ripstein [1944] AC 254 at p.263;*

Concisely stated, an act on the part of the defendant which gives to the Plaintiff his cause of complaint is a cause of action."

25 A cause of action is defined as the entire set of circumstances giving rise to an enforceable claim. To our mind, it is, in effect, the fact or combination of facts, which give rise to a right to sue and it consists of two elements the wrongful act of the defendant which gives the plaintiff his cause of complaint and the consequent damage. As Lord Esher said in *Cooke v Gill*, (1873) L.R. 8 C.P. 107 and later in
30 *Read v Brown* (1888) 22 Q.B.D. 128 (C.A.), it is every fact that it would be necessary for the plaintiff to prove, if traversed, to support his right to the judgment of the court. See *Kusada v Sokoto Native Authority*, (1968) 1 All N.L.R. 377 where the definition in *Read v Brown* (*supra*) was referred to with approval'

By the two elements in the foregoing definition of 'cause of action', there can be
35 no doubt that as far as the plaintiff was concerned and as indicated in his plaint and witness statements, the wrongful act of the defendants was that the plaintiff's reputation was grossly defamed by the defendants who pinned on the walls of the premises she was working in and the doors her photograph with the inscription leading to this suit. By this, if proved, the plaintiff would be entitled to damages in
40 civil defamation.

- 5 The question that follows is: Looking at the facts pleaded by the Plaintiff in support of its claim, can it be said that the case at all events has no reasonable chance of success? It needs be said here that the proposition that a plaintiff has no reasonable cause of action can only be made upon an examination of the facts pleaded in the statement of claim.
- 10 It has nothing to do with the nature of the defence which the defendant may have to the plaintiffs claim.

The court must therefore confine itself only to the averments in the Statement of Claim in the assessment of whether the plaintiff has a reasonable cause of action: See *Shell B.P. Petroleum Development Co. of Nigeria Ltd. & Ors. v. Onasanya*
15 *[1976] 6 S.C.89, 94*

I should now examine the facts pleaded by the plaintiff in her plaint. The relevant facts pleaded by the plaintiff on pages 4-10 of the plaint read:

Paragraph 4..... 'The defendants jointly and severally in the above quoted falsely and maliciously wrote, posted and published or cause to written and published a
20 public notice quoted..... "*This is to notify all our clients that Nantale Ruth Asimwe is no longer a worker of BNOEL HOLDINGS UGANDA LTD ARUA BRANCH. Any transactions / services made between her and any client out of the company office premises will be considered illegal and void.*

Paragraph 5 of the plaint reads; *the defendants uttered defamatory statements*
25 *against the plaintiff in Arua city and at Arua Police Station to the effect that the plaintiff is a thief, she having allegedly stolen the money belonging to the defendants.*

Paragraph 7 of the plaint reads.....*by words contained in the article complained of titled public notice in their natural meaning or innuendo the defendants*
30 *meant or were understood to mean that the plaintiff is a law breaker, criminal, a person of evil genius who should not carry on her business of money lending in Arua City and the surrounding areas.*

Paragraph 10 of the plaint *aver that she signed an agreement on the 17th /10/2021 under pressure and influence of the defendants shouting on the top of their*
35 *voices.*

The above averments from the Statement of Claim/Plaint clearly made the point that the defendants had allegedly defamed and forced the plaintiff to sign an agreement she had no intention to be bound with. At this point, all evidence ought

5 to be produced and matter determined on its merits. We cannot deal with its success, all that matters is whether a cause of action has been established.

It seems to me that on those facts pleaded, the plaintiff had shown that, it's by public notice published that her reputation was lowered, demeaned and regarded to be a thief before right thinking members of society. Contracts/agreement was
10 signed under duress and coercion by the defendants.

Those facts in my humble view clearly entitles the plaintiff to a hearing on the merit of its case. It is another matter whether the action may succeed or it may fail. The court is not yet there as it will decide at the end of the proceedings. For now, there is a valid cause of action.

15 I must emphasise that A party ought not to be precluded from putting across his case in a full hearing except on the clearest indication that the action is denuded of all merits even on the supposition that the averments in the statement of claim are deemed as admitted by a defendant. This issue, therefore, fails.

Issue 2

20 **Whether the agreement dated 17th /10/2021 was signed under duress, coercion and under undue influence.**

Before I proceed to resolve this issue, I wish to note that the same was pleaded but not resolved and submitted on by counsel for the plaintiff in their submission.

However, in reference to paragraph 10 of the plaint, the plaintiff pleads that she
25 signed the agreement dated 17/10/2021 under pressure and influence of the defendants shouting on top of their voices.

The plaintiff adds that she signed the impugned agreement under gunpoint at Arua Police station with a threat of arrest and detention if she refused to sign the said agreement.

30 She contends that she signed the impugned agreement under the instructions of the second defendant who claimed to be a director in Bnoel Holdings Uganda limited whereas not and she also acknowledged indebtedness, yet she never received any such money from the defendants. The plaintiff concludes that she signed the said agreement while under threat, intimidation and torture by the
35 defendants and their agents.

In response, the defendants, specifically under paragraph 9 of their written statement of defence avers that the plaintiff signed the agreement with BNOEL Holdings Uganda Ltd after an audit report revealed that she had mismanaged funds and she admitted her indebtedness and undertook to pay the same by

5 signing the agreement unequivocally and voluntarily at the premises of the company without force of police or force of any arms or anybody and the 1st defendant signed on behalf of the company.

The law on this area is well settled. For a contract to be enforceable, it must have been made by the parties freely and genuinely without any force whatsoever. Such
10 contract must have been entered into with consent.

Consent generally means an Act of Assenting to an offer / terms and conditions in the agreement intended to result into an agreement. Two or more persons are said to consent to an agreement when they agree on the same terms and conditions in the same sense. The parties to the agreement must mutually and voluntarily
15 negotiate the terms of their agreement and agree to them willingly without any force. See Section 2 and 13 of the Contracts Act, 2010

There must be unity of mind between the parties which is referred to as, under common law as *consensus-ad-idem*.

Section 2 of the contract Act defines *Coercion* as the commission or threatening
20 to commit any Act forbidden by the Penal Code Act or unlawful detaining or threatening to detain any property to the prejudice of any person with the intention of causing that person or any other to enter into an agreement.

Coercion exists where a person is compelled to enter a contract using force or through threats of bodily harm or harm to property. It is the overcoming of the
25 free will of a person by causing fear in him or her.

The threat amounting to coercion need not necessarily come from someone who is a party to the contract. It may come from a stranger to the contract for as long as that stranger is proved to be acting for and in the interest of a party to an agreement. See: *A Concise Work Book on Fundamentals of Commercial Law in*
30 *Uganda by Waiswa Abudu Sallam at page 71.*

A contract made through coercion is voidable at the option of the party whose consent was so caused.

I must note that coercion and duress are almost similar, Duress involves actual or threatened violence to the person of the contracting party or those near to him.

35 The ingredients of an actionable duress are that there must be pressure,
(a) whose practical effect is that there is compulsion on or a lack of a practical choice for the victim,
(b) which is illegitimate and
(c) which is a significant cause inducing the claimant to enter the contract.

5 See **Universal Tanking of Monrovia vs ITWF [1983] AC 336,400 B-E and The Evia Luck [1992] 2AC 152, 165 G**

In determining whether there has been illegitimate pressure, court considers a range of factors. These include whether there has been an actual or threatened breach of contract, whether the person allegedly exerting pressure has acted in good
10 or bad faith.

Section 14 of the contracts Act provides that a contract is induced by undue influence where the relationship subsisting between the parties to a contract is such that one of the parties is in position to dominate the will of the other party and uses that position to obtain an unfair advantage over the other party.

15 Sub-section of the same section goes on to provide that for the purpose of subsection 1, a party is taken to be in a position to dominate the will of the other party, where

- a) A party holds a real or apparent authority over the other party.
- b) The party stands in a fiduciary relationship to the other party or
- 20 c) The mental capacity of the other party is temporarily or permanently affected by reason of age, illness, mental or bodily distress.

When a person who is dominant position unreasonably uses his superior power to obtain a bargain which is so much to his own advantage or makes an exorbitant profit out of the other's distress or contract, the transaction is said to be
25 unconscionable.

So, as you can see, the law in this area is settled. I shall now proceed to evaluate the evidence provided for this court to determine whether indeed the plaintiff signed the agreement under duress, coercion and under undue influence.

I emphasize that the above was pleaded but never submitted on.

30 During cross examination, PW1 testified that she signed a separation agreement, and that the agreement was signed from the office where the company was in operation at West Nile Teachers building.

She further adds in her testimony that on the day of signing the agreement, there were around 8 people, and the separation agreement was signed on the
35 17th/10/2021 and she was arrested on the 30/3/2022.

On further cross examination, PW1 testified that no one was holding a gun, but they just read to her the agreement. She adds that no one beat her up, but the agreement was read to her from the laptop, after which they opened a page and told her to sign a copy.

40 This was contrary to what was pleaded by the plaintiff on the plaint.

5 I believe/presume that both the plaintiff and her counsel decided to abandon this issue and only focus on the other three issues. In strict terms, I don't see the above allegations proven by the plaintiffs.

However, one of the functions of a legal justice system is to effectively administer justice, promote reconciliation and unity within society. I shall therefore to proceed
10 to advance my reasoning on grounds of Justice. **See Article 126 of The Constitution of the Republic of Uganda, 1995**

I find the whole process of signing the separation agreement disturbing because much as the plaintiff was read to the audit report, she told this court that she never anticipated an agreement /report would be given to her to sign.

15 In the room, there were individuals at a more dominant position than her, she never got the time to peruse through the agreement nor did she ascertain the advice from an independent person/Auditor. These are issues pertaining to mismanagement of funds worth Ugx 200,000,000/=.

An audit report was made by an Auditor who was never brought before this court,
20 an audit report was never brought for the analysis of this court, this presents doubt on my mind as a person. I believe that, with the anxiety/desire to remain in the company or avoid any further issues, the plaintiff decided to rely solely on the Audit report read to her by a person/ auditor appointed by her superiors.

Admitting to the mismanagement does not negate the fact that the plaintiff could
25 have been in a state of dilemma. The procedures undertaken to procure the plaintiff to sign the agreement is quite suspicious to me.

I want to bring to the attention of the parties that considering the principles of justice, once laws become an affront and hurdle to wedge against justice, the court is entitled to meander its way through the laws in search of JUSTICE because it is
30 the bedrock of the legal judicial system.

As a person, I want to put myself in the shoes of the plaintiff, issues can arise in the company that you are a branch manager, your superiors call you in a room where an agreement is read to you, no copy or time is given to you to scrutinize what exactly you're signing. This is an issue pertaining digits, it cannot be done ex
35 parte, all parties ought to be involved, these are amicable ways of resolving disputes. I am alive to the fact that company memorandum and articles always provides for modes of dispute resolution.

I note that I shall not to go deep into the irregularities of actions undertaken by the company, our point of focus is to resolve the issues brought before this court.

40 The company should have done justice in accordance with its MEMARTS if it so provides for dispute resolution. I must relate to paragraph 9 of the witness

5 statement of **Pambalito John** wherein he states that after the 1st Defendant left the office after signing the agreement, the plaintiff told a one **TINA JUSTINE** in his presence that she only signed the document to make them happy and she wasn't going to pay the money.

10 In my mind, I perceive the plaintiff took the signing of the separation agreement a joke that would not bind her, a mindset that is reckless, in my view.

Considering other circumstances, where the above occurrences were in the negative, the plaintiff would absolutely be bound to the document she so undertook to sign.

15 I am alive to Paragraph 14 of the separation agreement which clearly spells that total amount agreed upon and paid as compensation to Rose is worth Ugx 50,000,000/= and this is deducted from the gross payable of 200,000,000/= leaving a balance payable to Rose by Ruth worth Ugx 149, 967,000/= to be collected from the outstanding disbursements and defaulters.

20 All this could have been possible if the plaintiff was still operating in the company. The notice clearly made it known that the plaintiff was no longer a worker at BNOEL Holdings Ltd, my question is, how was she supposed to collect money from defaulters, because I believe the collection of such money can only be possible if the plaintiff is still working in the name of the company.

25 The agreement was signed on the 17th/10/2021 and the arrest took place on the 30th/3/2022, on the 31st/3/2022, notice was published, the arrest and notice publication took place five months after the signing of the agreement.

One of the reasons advanced by the defendants, specifically paragraph 12 of the 1st defendant's witness statement, she states that a case was reported for theft vide CRB 320/2022 after the plaintiff refused to pay the money as agreed.

30 In my view, I feel this was a mission of impossibility, there was already bad blood between the 1st Defendant and the Plaintiff, the issue of transparency and trust was a subject of conflict.

35 At this stage, the best strategy to this conflict resolution is compromising. The concept is that everyone gives up a little bit of what they want, and no one gets everything they want. The perception of the best outcome when working by Compromise is that which splits the difference. Compromise is perceived as being fair, even if no one is particularly happy with the outcome.

40 This being a business relationship among colleagues and long-term friendship, I order for a sit down, terms ought to be agreed upon, an independent auditor be invited, with the involvement of both parties to establish each other's liabilities.

- 5 Before I take leave, I wish to note that am persuaded with the statement of **Pres. D. Eisenhower** where he quotes that “*though force can protect in emergency, only justice, fairness, consideration and cooperation can finally lead men to the dawn of eternal peace*”.

By peace we mean the capacity to transform conflicts with empathy, without violence and insults.

- 10 Considering the above, I so request that it is put into consideration.

ISSUE 3.

Whether the document titled Public Notice dated 31st /3/2023 was defamatory to the plaintiff.

Position of the law.

- 15 The right to freedom of expression, like most other rights is not absolute. There are recognized restrictions and exceptions to this right. One of which is to be found in the law of defamation. Thus, the enjoyment of the right to freedom of expression must take into consideration the right of other citizens to protect their reputation. The rationale of this law is to protect the good reputation of a person from being
20 damaged by another.

The law recognizes in every person a right to have the estimation in which he or she stands in the opinion of others unaffected by false statements to his credit. Under all civilized jurisdiction, a person is entitled to his good name and to the esteem in which he or she is held by others.

- 25 Breach of this right gives rise to liability to the tort of defamation.

Defamation has been sufficiently defined in both the Court of Appeal cases and In *Winfield & Jolowicz on Tort (13th edition, 1989) W.V.H Rogers (ed) Sweet & Maxwell, London, (International Student edition) 1990, atp.294*, defamation is defined to be;

- 30 *“The publication of a statement which reflects on a person’s reputation and tends to lower him in the estimation of right-thinking members of society generally or tends to make them shun or avoid him.”*

At p.295, the learned authors discuss the community of “*right-thinking members of society*” thus

- 35 *“The words must tend to give rise to the feelings mentioned in the definition. But on the part of whom? The answer is the reasonable man. The standard must be that of the ordinary citizen who is “neither unusually suspicious nor unusually naïve and [who] does not always interpret the meaning of words as would a lawyer for he is not inhibited*

5 *by a knowledge of the rules of construction. He may thus more freely read an implication into a given form of words and, unfortunately as the law of defamation must take into account, is especially prone to do so when it is derogatory”.*

10 The case of *Owusu-Domena v Amoah* [2015-2016] 1 SCGLR 790, laid out the principles of that tort at common law. At p.801-802 of that judgment, Benin JSC restated the common law principles on the definition and law of Defamation.

Quoting Halsbury’s Laws of England (4th ed) (Reissue) Vol 28 page 7, para 10 Court defined the tort as follows:

15 *‘A defamatory statement is a statement which tends to lower a person in the estimation of right-thinking members of society generally or to cause him to be shunned or avoided or to expose him to hatred, contempt or ridicule, or to convey an imputation on him disparaging or injurious to him in his office, profession, calling trade or business.’*

Benin JSC then went on to explain that;

20 *“There are two steps involved in establishing that the publication was defamatory: first, whether the publication was capable of a defamatory meaning... next the defamation complained of may be established from the prevailing facts and/or circumstances. Proof of either would suffice for the plaintiff.”*

25 From these, he teased the principles that in establishing that a publication was defamatory, the plaintiff must plead and lead evidence on the following matters in order to succeed:

- i. there was publication by the Defendant.*
- ii. the publication concerned the Plaintiff.*
- 30 *iii. the publication was capable of a defamatory meaning in its natural and ordinary sense.*
- iv. alternatively, or in addition to (iii) above, that from the facts and/or circumstances surrounding the publication, it was defamatory of her, the Plaintiff and*
- 35 *v. if the defendant sought the defence of qualified privilege or fair comment that the defendant had been actuated by malice, and malice in such matters would be said to exist if there was spite or ill will on the part of the Defendant or if the court found indirect or improper motive against the Defendant in publishing the words complained of.*

5 Typical examples are an attack upon the moral character of the plaintiff, attributing to him any form of disgraceful conduct, such as crime, dishonesty, cruelty and so on.

Considering the facts, the plaintiff (PW1) testified that the defendants published a notice stopping her from entering the office and that the notice was put /
10 published by the management which comprises the Secretary, Director and Manager but she is sure it was the 1st defendant that published the said Notice.

In response, the defendants do not deny the publication of the notice but rather dispute having placed it there.

The question before this honourable court is therefore, whether the Notice was
15 **defamatory in nature.**

Under Section 101 of the Evidence Act, the burden of proof lies on the party who asserts the affirmative of the issue or question in dispute. And the standard of proof in civil cases is on a balance of probabilities.

For a statement complained of as being defamatory, the actual words must be set
20 forth verbatim in the plaint and the persons to whom publication was made must be mentioned in the plaint (see *Rutare S. Leonidas v. Rudakubana Augustine and Kagame Eric William [1978] H.C.B.243*).

A plaint in a defamation suit that does not allege persons to whom publication was made nor that the words uttered were false and were published maliciously, which
25 are matters essential in a plaint, does not disclose any cause of action and is bad in law (see *Karaka Sira v. Tiromwe Adonia [1977] H.C.B. 26*).

In the instant case, PEX5 was the public notice complained of to constitute defamatory statement. The Public Notice was dated 31st /03/2022 which, I quote.

30 *'This is to notify all our clients that NANTALE RUTH ASIIMWE is no longer a worker of BNOEL HOLDINGS UGANDA LTD, ARUA BRANCH. ANY Transactions/services made between her and any client out of the company office primes will be considered illegal and void. Company Management.'*

For liability in an action for defamation to arise, three elements must be fulfilled.

35 The statement in issue must have defamatory character. This means that the statement must lower the reputation of the person in the view of right-thinking members of the society generally.

The court in deciding whether the statement is defamatory must first consider what the meaning of the words would convey to the ordinary man. The test is whether
40 under the circumstances in which the words were published, a reasonable man to

5 whom the publication was made would be likely to understand it in defamatory sense. *See Capital and Counties Bank Ltd vs George Henry and Sons (1982) 7 App. CAS. 741 at 745.*

Another important element that ought to be proved is the fact that the defamatory statement refers to the plaintiff. Reasonable people should understand that the
10 statement was about the plaintiff.

In light of the facts, it is the plaintiff's submission that the statements complained of in their natural and or ordinary meaning or by way of innuendo mean or were meant to be understood that the plaintiff is a thief and that nobody should deal with her in the business of money lending in Arua City which is scandalous,
15 shameful and unnatural, false and highly defamatory of the plaintiff.

Counsel cites the case of **David Etuket & Another vs The New Vision. HCCS NO. 86/1996** where court held that the plaintiff must prove to the satisfaction of court that they have suffered reduction in their Reputation or esteem in as far as the right-thinking members of the society.

20 Counsel submits that the plaintiff was defamed by the publication pinned on the walls and the doors which were being accessed by the public and the clients who would wish to have the plaintiff's services began as a result to look at her with discernment. The plaintiff suffered the stigma of being regarded as a thief and a criminal as a result of the publication and the utterance of the defendants thus
25 damaging her image among the right-thinking members of the society in ARUA town and the whole of West Nile and Uganda as a whole as she is a businesswoman.

In response, Counsel for the defendants submit that Annexure DEX1 is a separation agreement dated 17th /10/2021 between the plaintiff and the 1st
30 defendant on behalf of the company.

Counsel contends that the separation Agreement is the bedrock of the relationship between the parties to this suit and the BNOEL Holdings Ltd as it clearly stipulated the rules of engagement between the plaintiff and the defendant as far as the 1st company is concerned.

35 Counsel further adds that the contends of the separation agreement are explicit in the sense that the plaintiff would be allowed to use the name of BNOEL Holdings Limited if she was within the premises of the company but not when she left the premises.

Counsel states that in the Testimony of PW1 & PW2, they told court that they left
40 for good the premises of Bnoel Holdings Limited for which they were working on

5 the 30th day of March 2023 and the notice was placed on the 31st day of March 2023, a day after they had left the office.

Counsel contends that the company was simply fulfilling its obligations under the separation agreement and safeguarding role of notifying its esteemed clients that the plaintiff had left working for the company following the separation Agreement
10 of 17th /10/2021.

Counsel adds that there is nothing defamatory as the plaintiff signed the separation agreement after understanding same and she knew the implications of leaving the premises of the company and therefore the 1st defendant cannot be held liable in defamation.

15 Counsel submits that the 2nd defendant has not been mentioned anywhere to have defamed the plaintiff either in the pleadings and in evidence so he cannot equally be held liable in defamation.

Counsel concludes that there was no better way of informing the public that the plaintiff who was the company employee had left its premisses and was not then
20 authorised to transact in the name of the company outside the company premises. There was no better way for the company or the 1st defendant to notify the clients who knew BNOEL Holdings LTD as their money lender than putting a notice at their premises to inform its clients.

25 **Having listened to both parties, and I shall therefore proceed to dissect the components of this issue.**

I note that the test for determining if a statement is defamatory in nature is an objective one, i.e it is based on the view of the “ordinary reasonable person” who is not unduly suspicious or avid for scandal. The judicial perspective of how the
30 ordinary reasonable man views particular statements or words essentially determines the defamatory nature or otherwise of the impugned state. See Dr. Wasswa Joseph Matovu Vs Prof. Venansius Baryamureeba & 4 Ors Corporation, CIVIL SUIT NO. 391 of 2012.

In the case of Adoko Nekyon vs Tanganyika Standard Ltd, H.C.C.S No. 393 of
35 1964, Sir Udo Udoma C.J. as he then was, held: -

“In order to determine whether the article is defamatory and is capable of bearing any of the meanings ascribed to it by the Plaintiff, it is necessary that the article be considered as a whole. It is not sufficient to pick out a phrase here and a sentence there and to conclude from such phrases and sentences that the article is defamatory.”
40

5 Picking out few words from the publication does not constitute a defamatory statement. The publication must always be construed as a whole and not in parts.

One of the important things common in civil defamation is that the words must injure the reputation of the plaintiff in the minds of right-thinking members of the society generally, not merely in the minds of a particular section of the public.

10 In *Egbuna v Amalgamated Press of Nigeria Ltd.*¹⁶, the court made a clarification that the standard of determining a right-thinking member of the society is that of a normal reasonable man not polluted by extra-conscientious or censorious characteristics.

I agree with the above analogy. In other words, the court does not regard people
15 who may be so emotionally weak that they regard every simple negative statement as defamatory. *The standard must be that of the ordinary citizen who is "neither unusually suspicious nor unusually naïve and [who] does not always interpret the meaning of words as would a lawyer for he is not inhibited by a knowledge of the rules of construction. He may thus more freely read an implication into a*
20 *given form of words*

I note that it is noteworthy that what may be defamatory in a society will not necessarily be so in another, and that, as time passes and social attitudes change, word, may cease to be or become defamatory, as the case may be

There are two types of defamation in Uganda

25 (1) Libel

(2) Slander

The one complained of is libel. Libel is defamation in a permanent form, and it is actionable *per se*. Libel that appears quite common is the one written or printed, especially in a newspaper, a book, a letter, a notice. It is also in permanent form if
30 it is contained in a painting, cartoon, a photograph, a statue, or a film.

In the case of libel, the claimant just needs to prove that the libelous publication has been done without legal justification and needs not to establish that he has suffered any resulting actual damage or injury to his reputation.

In light of the facts, it is PW1's testimony during cross examination that the notice
35 was put on the 31st/3/22 which was after she had signed the separation agreement on the 17th/10/22. She adds in her testimony that the agreement meant that she was not supposed to do the business of BNOEL outside the company office.

The plaintiff contends under paragraph 22 of the Witness statement that the defendant placed the public notice and thus making the right-thinking members
40 of the society believe she is a bad person to deal with.

5 I want to state that am not persuaded by the above analogy of the plaintiff who states the contrary during cross examination.

I believe the plaintiff was merely aggrieved by the series of incidences /conflicts that came across within the company. As I said earlier, the court does not regard people who may be so emotionally weak that they regard every simple negative statement/ act as defamatory.

10 I agree with counsel for the defendants that there was no better way for the company or the 1st defendant to notify the clients who knew BNOEL Holdings Limited as their money lender than putting a notice at their premises to inform its clients.

15 It is the course of dealing in the business world to promote transparency, accountability, trust and good management within corporate business societies.

The insinuation of the offence of theft was uttered at the police to wit both parties agreed to be of a case registered independently that ought to be proved. Besides, such utterance must have been done so under the heat of passion between the two women on a reflection of a disagreement in the company in respect to the mismanagement of funds.

20 In my understanding, the wordings of the Notice do not in any way insinuate that the plaintiff is a law breaker or thief. It literally informs the public that the plaintiff is no longer a partner of the company and any transactions done with her in the names of the company is illegal. The company is merely avoiding liability for the actions of the plaintiff in case anyone decides to deal with her.

25 In view of what I have outlined, I find that the plaintiff was not defamed. This issue therefore fails.

Issue 4

30 What Remedies are available to the plaintiff

Counsel for the plaintiff submit that where the defamation is in the form of Libel, the action becomes actionable per se. If the plaintiff proves that libel has been published against him or her which is the case with the plaintiff, then her case is complete and therefore need not to prove actual damage for the law presumes that some damages will flow in the ordinary course of things from the mere invasion of her absolute right to reputation.

35 It is the plaintiff's submission that court should have consideration when assessing damages arising out of statements defamatory to the plaintiff such as the plaintiff position and standing in the society, nature of libel and the mode of publication and absence of an apology or retraction and the whole conduct of the defendants

5 from the time the public notice was placed to the time of judgment are taken into consideration.

Concludes that the plaintiff is entitled to costs of the suit as costs follow the event.

10 In defendant's submission, counsel submits that the defendants denied the allegations made by the plaintiff and prayed that the suit has no merit and the same should be dismissed with costs.

15 Its trite law that costs follow the event, and the successful party is entitled to costs. I am alive to the fact that behind every suit, there are real issues and persons i.e., litigants. Award of costs is done so in consideration of such factors. In this particular relationship, there is a tale of previous friendship. I see no reason why I would award cost on parties that had a long term co-existing relationship, finances have been lost, parties are aggrieved, its only right that court finds away to relieve them of further grievances.

Accordingly, considering the above, the plaintiff having failed to prove her case as required by law, the suit is hereby dismissed with no orders as to costs.

20 I SO ORDER.

Delivered at Arua this28th.....day ofMay.....2024


COLLINS ACELLAM.

JUDGE