

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA

HOLDEN AT GULU

HCT – 02 – CR – CS – 0044 – 2013

NYEKO KENNETH -----PLAINTIFF

VERSUS

1.UGANDA BROADCASTING CORPORATION COMPANY
LIMITED

2. BONGOMIN FRED-----RESPONDENTS

BEFORE LADY JUSTICE MARGRET MUTONYI

JUDGEMENT

The plaintiffs claim against the defendants was for general damages, exemplary or aggravated damages, defendant public apology and costs of the suits, for defamation and slanderous publication by the defendants in Radio Mega in Gulu on 11th- 12-2011.

It is the plaintiff case that the two defendants on or about 11th December 2011 on the 1st defendant's radio (Mega FM) in Gulu, falsely and maliciously broadcast during prime news time, defamatory information about the plaintiff to the effect that the plaintiff an LCV Councilor of Gulu committed adultery with his neighbour's wife and further that he ran away when he was taken for a medical examination in Gulu Independent Hospital.

The news was broadcast in a mixture of English and Luo a language spoken by the majority of the populace. The broadcast used the following words: as translated in English

- i. That the LCV Councilor of Ongako Sub County, Gulu District Hon. Nyeko Kenneth (the plaintiff) was caught red handed last Thursday with the wife of his neighbor Bongomin Fred in Kasubi Bardege Division Gulu Municipality.

- ii. That the people caught him but he escaped from Gulu Independent Hospital where he was taken for examination. The LCV Chairperson of Gulu Hon. Ojara Mapenduzi tried in vain to resolve the issue amicably yesterday but failed.
- iii. A case was filed against him in Gulu Central Police Station case file No. SD/40/10/12/2011. Further that Bongomin wants Nyeko to face the law because he should have been a good example to the people.
- iv. Nyeko Kenneth has switched off his phone. Further that Mega FM tried in vain to get information from Nyeko even his phones were not on air. Mega FM today also visited Gulu Police Station and found out that, this Mr. Nyeko has not been arrested. The second defendant it was alleged maliciously used the following words on air.
 - I. That it was an act of shame I caught the Hon. Councilor of Koch Ongako on my bed with my wife. And I was trying hard to go and test his status because I don't know how long they have been in this kind of relationship.
 - II. So when we reached Independent he disappeared from there and up to now, he is on the run, we do not know his where abouts.
 - III. So I see that this should be an announcement, anyone who sees him should inform us of his where about, so that he could be handled under the law.

The above were the words complained about as defamatory

The plaintiff entered into a Consent judgment with the 2nd defendant Bongomin Fred where the plaintiff agreed to withdraw the suit against him and the 2nd defendant undertook not to cause any other false publication against the plaintiff.

Each party agreed to meet any costs.

This was after mediation aided by court.

This judgment is therefore in respect of the plaintiff and 1st defendant. The first defendant did not file a written statement of defence. The suit therefore proceeded Exparte after court was satisfied there was service of sermons.

Two issues were framed for court determination.

1. Whether the plaintiff was defamed.
2. What remedies are available.

In cases of this nature, the burden of proof rests upon the party that alleges facts which he wants court to believe.

The party has to adduce evidence to prove all the facts or issues raised in a dispute.

Unlike in certain facts where if the defendant does not respond judgment is entered, in defamation, the plaintiff has to prove the allegation before judgment can be entered. Court has to be satisfied with the evidence in formal proof.

The standard of proof is light it is on the balance of probabilities.

The plaintiff in this case had to prove the act of injuring his reputation by the slanderous communication whether it was written or Oral. He had to prove the act of malicious injury to his good name.

Slander is defined as a false tale or report maliciously uttered, tending to injure the reputation of another, or the malicious utterance of defamatory words and dissemination of such defamatory statements

The plaintiff in this case testified that he was a politician and LCV Councilor for Ongako S/C and the Chairperson Finance and Planning and Administration Gulu District local government.

He also represents Gulu District local Government at Gulu university council and Secretary General for Forum for Democratic change Party Gulu District.

He informed court that on 11/12/2011 while listening to Radio Mega, he heard the words he is complaining of in this suit. He said the statements were not true as he did not have any relationship with the wife of Bongomin Fred.

He only interacted with her as a beneficiary of the project he was working with. He denied having any sexual relationship with her, and whatever was broadcast over the news by the 1st defendant.

He informed court the effect of the broadcast was gross.

As a politician, he calls for meetings which are shunned by the people who elected him. He informed court; the defamation has affected his profession and put his CV at stake. His work with Community Empowerment for Peace and Development an

organization was terminated because of the broad cast.

He tendered in court exhibit P1 which was a letter terminating his contract of service dated 21/2/2012.

In that letter, the main reason for termination was the news bulletin aired in the local media house (mega FM) that he was caught red handed having extra marital affairs with his neighbours wife.

He was rebuked by people, made subject of preaching in his church, and the family asked him so many questions.

He lost the earnings he was getting from his employment with the organization.

PW2 Okello Michael in a nutshell informed court when he heard it broadcast, he believed the news and it was said because he had known the plaintiff as a good man. He said he lost respect for him as a person, and few people now attend his political rallies.

The issues to be resolved are whether the plaintiff was defamed and what remedies are available to him. I will consider both issues concurrently.

In the case of **Francis Lukooya Mukeome and Sarah Babirye versus (1) The Editor in Chief of Bukedde News Paper, (2) The New Vision Printing and Publishing Company,(3) Isaac Mukasa.HCCS NO 351/2007(Civil)Division**

Hon. Justice Yorokamu Bamwine as he then was stated that defamation is Something more than insult or derogatory comment.

It is not capable of exact definition. How far a person is affected by unkind words will depend not just on the words used, but also on the people who must then judge him.....Defamation is an injury to ones reputation and reputation is what other people think about a man and not what man thinks about himself.

I entirely agree with him and also add that it means the character imputed to a person in the community in which he lives. In case of defamation one's character becomes an issue. Needless to mention, the plaintiff is a public figure by virtue of being the LCV Councilor for Angako Sub County. It is an elective office where people show trust in a person. They view him as a fit person to represent people. The media has a role of letting the public know what is going on in the lives of public officials especially people's representatives.

They have a right and duty to report which in court's view creates a culture of accountability for their behavior. It is a recognized fact that public officials including politicians' private life is not always private. The media including Radio broadcast have the duty to enlighten the public on what is going on. This is part of if not the main work of the 1st defendant. Disseminating information to the public far and near. They look for or receive information they disseminate. But in so doing, the first defendant must comply with journalism ethics and principles which include truthfulness, accuracy, objectivity, impartiality, fairness and public accountability before any broadcast.

This calls for diligence before reporting or broadcasting any information to the public. As a radio station involved in broadcasting news, it must have ethical standards in terms of people's rights, obligations, fairness and specific virtues.

The 1st defendant must have reasonable set standards of verifying information received with a view of refraining from slander. In a nutshell, professional integrity is the cornerstone of a journalist's credibility and the work of a Radio Broadcast must be centred on public trusts, truthfulness, fairness, integrity, independence and

accountability. The second defendant Bongomin Fred entered into a consent judgment. He promised never to cause Any false publication against the plaintiff.

This in essence proves that whatever the 1st defendant broadcast On 11-12-2011 during the prime news were false. The 1st defendant had an obligation to verify information more so from a single informer who pretended to be married to a woman he was never lawfully married to. The 1st defendant, knew the position the plaintiff was holding. He is a peoples representative. The news obviously was going to attract reactions from the community.

The broad cast was not objective. It was biased because, the 1st defendant did not bother to get the other side of the story from the plaintiff. The 1st defendant did not even bother to apply the principle of limitation of harm.

As a result, the plaintiff lost his contract with the organization he was working with as a focal officer mentorship programme. The letter exhibit P1 reads in part, “This letter serves to inform you that in accordance with S. 22(a) (b) of the Human resource policy of CEPAD (Uganda), the management disciplinary Committee sat and resolved that your contract as focal officer mentorship programme in the organization be terminated with immediate effect, these follows news bulletin aired in the local media house (Mega F.M) that you were caught red handed having extra marital affairs with your neighbours wife.

You are quite aware this organization is faith based and is expects its staff to be of high moral standing to occupy this office: and as for you, the organization disciplinary management committee decided that:

- You have fallen short of that job requirement expected of that office considering your recent publicized action.
- You handle fragile girl child worst of it adolescent students under the programme.
- In the best interest of the organization programme, and the organization., Donors, you are unfit for this office”

What does the above words imply? Before the Broadcast complained of, the plaintiff was considered to be fit to hold the office. He was considered as a person of high moral standing. After the broadcast which was based on false information from the 2nd defendant, he was considered as immoral and unfit for the job. This led to the termination of service contract.

PW2 Okello Michael corroborated the evidence of the plaintiff. People were now shunning his rallies because they look at him as immoral and irresponsible. The character that was imputed on the plaintiff by the community he lives in was that of an immoral person not fit to hold the public office of LCV Councillor.

The plaintiff informed court, he became the topic of sermon in his church. The broadcast indeed was defamatory and slanderous and activated by malice and ill will I therefore resolve the 1st issue in the affirmative

These takes us to the remedies available. The position of the law is that once a person has been libeled without lawful justification, the law presumes that some damage will flow from ordinary course of events from mere invasion of his right or reputation.

The plaintiff in this case has proved defamation and or slander and therefore entitled to reasonable compensatory award of general damages.

Article 126(2) (c) enjoins courts to award adequate compensation to victims of wrongs. I must point out here that no amount of money can adequately compensate for injured reputation. None the less, the reckless, unethical conduct of the 1st defendant should not go unpunished. The first defendant breached their obligation to the public by airing false, unresearched information which has badly damaged the reputation of the plaintiff who is a young politician.

In the case of **Francis Lukoya Mukoome (supra)** the judge ruled that he would have awarded each plaintiff a sum of shs. 50,000,000 inclusive of aggravated and exemplary damages. The plaintiffs were the LCV chairperson and LCV Councillor.

The plaintiff in this case is an LCV Councilor Angako Sub County. He prayed for general damages, exemplary or aggravated damages and the defendant to make a public apology.

In the case of Sarah Kanabo versus 1. The Editor in chief Nyabo

Newspaper

2. The Ngabo Newspaper

3. Omugave Kinene Nyumba

4. The shield publication to

(1997) HCB 27

Their Lordships held that it is not enough to consider the social status of the defamed person alone in assessing award of damages. It is necessary to combine status with the gravity or seriousness of the allegations made against the plaintiff. Anyone who falsely accuses another of a heinous crime should be condemned heavily in damages. Once an ordinary man or woman is defamed seriously and is shunned by the public, then it does not matter whether he or she is of high or low status;

The plaintiff lost his service contract which had benefits and entitlements. He has been shunned by this people who elected him. He has lost respect in the church and went through psychological torture at home. The 1st defendant opted to ignore the summons from court a sign of failure to appreciate the magnitude of the damage their reckless broadcast caused to the reputation of the plaintiff following the holding in Sarah Kanabo” case (Supra) which recommended heavy condemnation in damages (a) I ward damages of shs. 35,000,000 to cater for general and exemplary damages. Had it been a news letter Bulletin, I would have awarded more.

(b) I also order for a public apology using the same means that is broadcast during prime news for a week by the 1st defendant to plaintiff and general public.

(c) Costs of the suit follow the event. The plaintiff is therefore awarded costs of the suit.

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MARGARET MUTONYI
JUDGE
26/9/2014

26/9/2014

Phillip Adonga for plaintiff in court.

Plaintiff absent

Anna for clerk.

Adongo: The defendant did not file WSD. We are adjourning to
receive the judgment.

Court: Judgment read and delivered on 26/9/2014.

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MARGARET MUTONYI
JUDGE