

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT JINJA**

**CIVIL APPEAL NO. 021 OF 2010
(Arising from Jinja Chief Magistrate’s Court Civil Suit No. 01 of 2007)**

KYAMUNDU AGGREY ::::::::::::::::::::::::::::::: PLAINTIFF

VERSUS

NANKWANGA MARY ::::::::::::::::::::::::::::::: DEFENDANT

BEFORE: THE HON. JUSTICE GODFREY NAMUNDI

JUDGMENT

This is an appeal against the Judgment of the Magistrate Grade 1 in which she dismissed a claim by the Plaintiff/Appellant for General Damages for defamation and a Permanent Injunction against the Defendant/Respondent, arising out of an action for defamation.

The background to this matter is that the Respondent/Defendant residence was broken into by thieves who stole various valuable items therefrom.

The Respondent/Defendant made a report to the nearby Police post. Investigations were carried out using a Police sniffer dog which led the search party to the residence of the plaintiff/Appellant, but none of the stolen items were found there.

The Plaintiff then filed a suit in tort for defamation and in his Complaint under paragraph 3 (a) thereof stated **“Sometime around 27/11/2006, the Defendant went to Lwanda Police station and uttered the following defamatory words against him “KYAMUNDU AGGREY MWIIBI YANDIBHA” meaning Kyamundu Aggrey is a thief who stole from me.”**

The Plaintiff then stated in paragraph 3 (c) thereof that the said words were defamatory of him and reduced him in the eyes of society, his integrity and esteem were reduced and for which he sought redress.

5 The grounds of Appeal are:

1. That the trial magistrate failed to evaluate the evidence and reached a wrong decision.

2. That the trial magistrate erred when she failed to hold that the Respondent defamed the Appellant.

10 3. That the trial magistrate relied on technicalities rather than substantial justice to dismiss the case.

4. The trial magistrate erred in law when she failed to award damages against the Respondent.

15 It has been argued that the witnesses called by the Plaintiff all confirmed that the Respondent/Defendant defamed him by calling him a thief who stole the Respondent's property. That she uttered the defamatory words in their presence.

That under Ground 3 the suit was dismissed on technicalities. That the Appellant is now shunned by right thinking of members of the public.

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In reply it is submitted that the lower Court came to the right decision.

That the police only carried out their investigations as they are bound to do but the Plaintiff/Appellant was absolved for lack of corroborative evidence.

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That in any case the statement the Appellant/Plaintiff relies on as having been made at the police was never tendered in evidence.

The High Court as the first appellate Court from the lower bench is mandated to subject the proceedings and Judgment of the lower Court to fresh scrutiny and if necessary make its own findings.

- 5 I have carefully looked at the proceedings and Judgment of the lower Court. The trial magistrate's decision was based on the premises that what the Plaintiff pleaded in his
Plaint is not what came out in the evidence before Court.

In other words, that a litigant is bound by the pleadings filed and should not depart from
10 them.

She cited **Odgers on Civil Court Action 24th Edition at pages 150 and 158**. A quick perusal of the pleadings reveals that while the defamatory utterances were made at the Police station according to the Plaintiff, the evidence adduced by his witnesses is that the
15 Defendant/Respondent kept uttering defamatory words at different places and times against the Plaintiff/Appellant. Various authorities are available where the issue of departure from pleadings has been dealt with. In **Mohan MusisiKiwanuka Vrs. Asha Chand – SCCA 14/2002**, it was observed that a party's departure from his/her pleadings is a good ground for rejecting the evidence and such a litigant may be taken to be a liar. Also see **A. N.**
20 **Biteremo Vrs. Damascus MunyandaSituma – CA 15/91**. The above decision was also relied on in **Sebughingiriza Vrs. Attorney General in HCCS 251/2012** where Justice Monica Mugenyi held that a party who departs from his pleadings and gives evidence contrary thereto would be deemed to be lying.

- 25 Finally, if the Plaintiff/Appellant felt it necessary to allege different facts he should have applied to amend the plaint. Ref: **East African Development Bank – EALR (1990-94) EA 117**.

In the instant appeal, the Respondent made a report to the Police about the theft of her
30 property.

None of the witnesses called was at the police to hear the statement the Defendant/Respondent made at the Police.

- 5 The so called defamatory utterances at the Police therefore stand unsupported by any evidence.

This appeal cannot accordingly stand. It is dismissed for lack of merit and the Judgment and Orders of the lower Court are upheld. Costs to the Respondent.

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Godfrey Namundi

JUDGE

15 **17/02/14**

14/02/14:

Parties in Court

Eseet holding brief for Mr. Mangeni

5 Court: Judgment read.

Godfrey Namundi

JUDGE

10 **17/02/14**