

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
CIVIL SUIT NO. 214 OF 2009**

**PONSIANO  
LWAKATAKA :::::::::::::::::::::::::::::::::::::::PLAINTIFF**

**VERSUS**

**1. LUBEGA GODFREY  
2. SARAH ZAWEDDE  
3. THE CHIEF EDITOR, NEWVISION PRINTING  
AND PUBLISHING COMPANY LTD  
4. THE NEW VISION PRINTING &  
::DEFENDANTS  
PUBLISHING COMPANY**



**BEFORE: HON. LADY JUSTICE ELIZABETH MUSOKE**

**RULING**

The plaintiff brought this suit against the defendant in defamation, alleging defamation by the defendants through an article published by the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants in the Bukedde News paper of 22<sup>nd</sup> August, 2009. The plaintiff set out the original Luganda version of the article complained of verbatim on 4 pages of the plaint. (See paragraph 7 of the Cause of action).

At the commencement of the suit the defendants raised a preliminary objection on a point of law that the suit be dismissed for not disclosing a cause of action because of failure to have an English translation of the article complained of.

The defendant Counsel relied on:

1) Article 6 of the 1995 Constitution which makes English the official language of Uganda.

2) In Section 88 of the Civil Procedure Act Cap 71 which states:

***“a) The language of all courts shall be English.***

***b) Evidence in all courts shall be recorded in English.***

***c) Written applications in all courts shall be in English.”***

3) ***Nkalubo Vs Kibirige [1973] E.A 102*** and ***De Souza Vs Senith Printing Works, Kenya C.C. 149 of 1959*** and ***Elisaph Kakwateki Vs The Editor, Orumuri Newspaper & Anor HCCS No. 461/2004,*** Counsel, therefore, submitted that paragraph 7 of the plaint is fatally defective for lack of an English translation and should be struck out, and that the suit should be dismissed for lack of a cause of action, under Order 7 rule 11 of the Civil Procedure Rules in the absence of paragraph 7.

He further submitted that lack of a translation was an incurable defect.

In reply, the plaintiff's Counsel submitted that the plaint as it stood was sufficient and the preliminary objections raised were misconceived. Before 28<sup>th</sup> November 2012, the matter came up for hearing. All the defendants were served but did not attend. Counsel had then sought court's leave to amend the plaint which

oral application was allowed. The defendants were served with the amended complaint as Mr. Ssozi confessed when the matter came up for hearing on the 4<sup>th</sup> December 2012. In paragraph 7 of the amended complaint filed in court on the 8<sup>th</sup> day of November 2012, the defamatory words in Luganda were followed with their English translation.

Counsel further contended that it is trite law that an amendment overtakes the original previous pleadings. It is true Annexure "A", that is, the Bukedde Newspaper page with the defamatory content is annexed without translation but the English meaning of the defamatory words therein were set out in the amended complaint word by word and in any event the defendant's objection does not relate to it.

Counsel concluded that this was a case where Counsel should personally pay costs, because the defamatory words in Luganda were followed with their English translation in paragraph 7 of the amended complaint which was served upon Counsel. He prayed that the application be dismissed with costs.

I have considered the preliminary objection and the submissions of Counsel on either side.

I will not dwell so much on the arguments advanced by both Counsel. Suffice it to note that the record shows that on 6<sup>th</sup> November 2012, the plaintiff's Counsel applied verbally to court to amend the complaint to include an English translation of the

alleged defamatory words. The prayer was granted and an amended complaint was filed in court on 8<sup>th</sup> November 2012, with an English translation included. (Paragraph 7 of the amended complaint).

When the matter came up for hearing in court on 4<sup>th</sup> December 2012, Mr. Ssozi, Counsel for the 2<sup>nd</sup> to 4<sup>th</sup> defendants did not deny getting the amended plaint though he objected to the mode of service, through his clients.

Under the circumstances, I find that the preliminary objection is misconceived. It is, therefore, dismissed with costs to the plaintiff.

**Elizabeth Musoke**

**JUDGE**

**29/04/2014**