

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**CIVIL DIVISION**

**MISC APPLICATION NO. 148 OF 2013**

**CAPTAIN KIBUUKA MUKASA :::::::::::::::::::: APPLICANT**

***VERSUS***

**THE NEW VISION PUBLISHING CO. LTD :::::::::::::::::::: RESPONDENT**

**BEFORE: HON. JUSTICE STEPHEN MUSOTA**

**RULING**

Through M/s Mbogo & Co. Advocates the applicant, Captain Kibuuka Mukasa brought this application by Chamber Summons under O.6 rr 6 and 31 of the Civil Procedure Rules (CPR) and Article 126(2)(e) of the Constitution to be heard on an application for orders that:

1. The plaint in HCCS 23 of 2011 be amended to include the exact extracts of the publications dated 25<sup>th</sup> June, 2008 and 24<sup>th</sup> July, 2008 from the Bukedde and New vision Newspapers respectively.
2. Costs of the application be provided for.

The respondent is the New Vision Publishing Co. Ltd represented by M/s Kiwanuka, Karugire Advocates. The grounds of the application are set out in the supporting affidavit of the applicant but are set out briefly that:-

- (i) At the time of defamation and filing the suit, the applicant was a serving military officer in Uganda Peoples' Defence Forces (UPDF) whose movements were severely restricted.

- (ii) On the 25<sup>th</sup> June, 2008, the Bukedde and New Vision Newspapers respectively, falsely and maliciously printed and published a defamatory story regarding the plaintiff saying that he had maliciously damaged civilians' property in his capacity as Captain in the UPDF and a 12 year old child had survived his brutality.
- (iii) The plaint did not contain the exact extracts of the defamatory words and articles as the plaintiff did not have the original copies or photocopies of those articles at the time.
- (iv) The defamatory articles were subsequently obtained and are now available and the proposed amendment does not change the nature of the claim.
- (v) The amendment will not cause any injustice to the respondent and is not prejudicial to its case since the parties are yet to give evidence.
- (vi) The amendment is necessary for the purpose of determining the real questions in controversy between the parties.
- (vii) It is in the interest of justice that this application be allowed.

In reply, Doreen Awanga Pachuto, the Legal Officer Compliance for the respondent swore an affidavit in reply on its behalf. She deponed that by virtue of her legal training she is aware that in matters of defamation, it is mandatory to state the words complained of verbatim and they must be put in context lest they do not disclose a cause of action.

That upon perusal of the applicant's pleadings in HCCS 23 of 2011 she is aware that they did not disclose a cause of action against the respondent. That an amendment that would disclose a cause of action is not allowed.

That in the interest of justice both this application and **HCCS No. 23 of 2011 Captain Kibuuka Mukasa Vs The New Vision Printing and Publishing Co. Limited** should be dismissed with costs.

In his submission during the hearing of this application Mr. Mbogo learned counsel for applicant reiterated the contents of the application. He added that amendments should be freely made if no injustice is caused. That leave to amend can be refused if a party seeks to alter the nature of his case or if there is no substantial ground shown by the amendment. That by amending the pleadings, the applicant is not bringing a new case or prejudicing the defendant or depriving the defendant of the defence of limitation. Mr. Mbogo further submitted that the defendant will be at will to amend his defence.

In his submission in reply Mr. Ocaya for the respondent re-echoes their affidavit in reply and emphasised that the amendment sought by the applicant is prohibited by law. That the pleading in the suit is specialised pleading because in a suit for defamation, it is required that a plaintiff pleads the words alleged to be slanderous and defamatory. Mr. Ocaya further submitted that a defamation pleading without the words complained of is gravely defective. That omitting to state the words is not a technicality but is intended to allow the defence to prepare its defence. Mr. Ocaya pointed out that this application has been prompted by the revelation in the defendant's Written Statement of Defence that it intended to raise the issue of deficiency of the pleadings which raise no cause of action. That since the plaintiff discloses no cause of action, no amendment can be allowed. Further to this, Mr. Ocaya submitted that this application is malafide and should not be granted. That the words in the pleadings do not categorise the source of the words complained of; whether they are from Bukedde of the New Vision Newspaper. Learned counsel prayed that this application be disallowed and pleadings be struck out.

An action for libel lies where the defendant publishes to some person other than the plaintiff false and defamatory matter in reference to the plaintiff. In order to be actionable the defamatory words must be understood to be published of and concerning the plaintiff: **Knupffer Vs London Express Newspaper Ltd [1944] AC 116**. Publication is the making known of defamatory matter to some person other than the person defamed.

In the pleadings sought to be amended, the applicant pleaded in paragraph 5 thereof that:

***“5. On the 23<sup>rd</sup> June 2008 and 24<sup>th</sup> June 2008 respectively the New Vision and Bukedde Newspapers, which have a wide circulation all over Uganda, East Africa and the whole***

*world through internet and other means falsely and maliciously printed and published material concerning the plaintiff the following script and wordings, that is to say;*

*When he started building in early 2000, someone who identified himself as Captain Kibuuka Mukasa, approached him and stopped him from continuing with the construction claiming he was trespassing on his land. Ddamulira claims he demanded compensation for the man ..... and ..... when he suggested out of court settlement with Mukasa, he disappeared and was never heard of until February 9, 2008. “I had invested a lot in the land, when Mukasa disappeared, I decided to complete my house and wait for him for negotiations. I could not move away without a single cent Ddamulira who was limping explains. The Deputy Police Commander for Entebbe, Hilary Kulaiye condemned the act and said the police are looking for Mukasa to answer charges of malicious damage. “Whether he is an army man or not, the law must be observed. People could have lost their lives that night. “By press time, attempts to trace Mukasa had proved futile as information showed he was in Mbarara ..... and ..... The LCI for Namulanda Matiya Mukwaya condemned the inhuman act. He said Mukasa bought three acres of land from the late Nakumusana in 1980, according to the papers he presented to the executive. Mukwaya says Mukasa claims that Ddamulira, Gonzaga, Nakyanzi and part of Keneddy Primary School are occupying his land illegally and should vacate it to allow him develop it”*

The above quotation comprise words complained of by the plaintiff as having been published in both the New Vision and Bukedde Newspapers. Since Bukedde is a Luganda (a local dialect) Newspaper it means that the plaintiff paraphrased what was published therein. The complaint against the two newspapers is presented as one.

The law governing cases of libel has been clear for a long time. The statement of claim must set out verbatim the libel complained about. It is not enough to set out its substance or affect as the precise words of the document are themselves material: **Collins Vs Jones [1955] 1 QB 564.**

In **Bullen and Leake and Jacobs Precedents of Pleadings, 12<sup>th</sup> Edition P 626** which was followed in Presidential SC Election Petition No. 1 of 2006 per Odoki CJ (as he then was), the authors state *inter alia* that:-

***“The 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 to be set out, provided the remainder of the passage would not vary the meaning of the defamatory matter (Sydenham Vs Man [1617] Cro. Jac 407). Where the defamatory matter arises out of a long article ‘feature’ in a Newspaper, the plaintiff must set forth in his statement of claim the particular passage referring to him of which he complains and the respects in which such passages are alleged to be defamatory (DDSA Pharmaceuticals Ltd (1973) 1 QB 21 CA); and if the part complained of is not clearly severable from the rest of a simple 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.”***

With the above clear enunciation of the mode of pleading in libel cases I will accept the submission by Mr. Ocaya for the respondent that without quoting the words complained of verbatim, the alleged defamatory statements were defectively framed. Words take their meaning from the context, and if the context and background is not provided or the full statement reproduced, their malicious or defamatory effect may not be easy to discover. The particulars of the statement also enable the defendant to know what case he or she has to meet and defend.

See also; **Bruce Vs Odhams Ltd [1936] 1 KB 697.**

The importance of the actual words uttered or published in pleadings has always been a recurrent reminder, since in Libel, the words used are the material facts and must therefore be set out in the statement of claim.

In the instant case, it was not good to merely describe the substance of the articles complained of in one paragraph. The law requires the very words in the libel to be set out in order that court may judge whether they constitute a ground of action. The plaintiff has not done this. For example, the Luganda words complained of ought to have been quoted verbatim and translated into English the official court language, to make part of the pleadings.

In **Nkalubo Vs Kibirige [1973] EA 102; [1972] 2 ULR 49** Spry V.P

held *inter alia* that :-

***“..... the particular words complained of should have appeared in the plaint in Luganda since the letter was written in the language, followed by a Literal translation in English.”***

In his submission Mr. Mbogo for the applicant submitted that S. 126 (2)(e) of the constitution should be invoked. I do not agree with this submission. Proper pleadings are not mere technicalities because justice can only be done if the defendant knows exactly what the words complained of are in order to prepare for his/her defence.

Regarding the assertion by the respondent’s counsel that the plaint does not disclose a cause of action Mr. Mbogo seemed to concede to this but rejoined that this can be cured by amendment. He added that amendments should be freely made if no injustice will be suffered by the opposite party and the nature of the case is no altered.

I do not agree with the submissions by Mr. Mbogo on the effect of absence of cause of action but agree with that of Mr. Ocaya that without the words complained of being reflected in the claim, the plaint does not disclose a cause of action and raises no issues for determination. A plaint which does not disclose a cause of action cannot be amended.

Therefore the claim must instead fail. This application is dismissed with costs.

Consequently since the application for amendment has been dismissed and the plaint does not disclose any cause of action it will be rejected as well under O. 7 r 11(a) of the Civil Procedure Rules.

**Stephen Musota**

**J U D G E**

**15.05.2014**