

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA SITTING AT ARUA**  
**CIVIL APPEAL No. 0031 OF 2012**  
**(Appeal from the judgment and decree of Adjumani Magistrate Grade One**  
**Court in Civil Suit No. 0015 of 2012)**

**MAISHA VICKY ..... APPELLANT**

**VERSUS**

**MADRAA EMILY ..... RESPONDENT**

**Before: Hon Justice Stephen Mubiru.**

**JUDGMENT**

This is an appeal from the decision of His Worship Patrick Kitiyo, Magistrate Grade One of Adjumani in Civil Suit No. 0031 of 2012 given on 23<sup>rd</sup> November 2012, when he awarded the respondent shs 1,000,000/= as general damages for slander, and the costs of the suit.

By a plaint dated 17<sup>th</sup> September 2012 and filed in court on the same day, the respondent sued the appellant claiming general damages for defamation and costs. In the body of the plaint, the respondent pleaded that during the evening of 11<sup>th</sup> September 2012, the appellant insulted the respondent and her family by repeatedly referring to the respondent as a wizard. As a result, people fear her home and children run away from her. Attempts by the L.C.I to mediate a settlement between the two parties were unsuccessful, hence the suit.

In her written statement of defence dated 24<sup>th</sup> September 2012 and filed in court on the same day, the appellant denied the accusation and contended instead that it is the respondent who attacked her “using bitter words thereby setting in motion a quarrel.” That the words uttered during the quarrel were not defamatory of the respondent, more especially since the respondent, as a quarrelsome village woman, had no reputation to protect.

At the hearing of the suit, the respondent testified that the appellant was her immediate neighbor. On the morning of 11<sup>th</sup> September 2012, she had gone to the appellant's home and punished one of the appellant's daughters, who had admitted dumping orange peelings at the respondent's door, with two strokes of the cane. Later in the evening of that day, the appellant approached the respondent inquiring why she had punished her daughter in her absence. The respondent explained what had happened but the appellant reacted angrily and started abusing the respondent. The appellant accused the respondent of being a wizard, of practicing wizardry and that it was the reason all the respondent's children had died. The respondent reported the incident to the L.C.I Chairman who convened a Court at which the appellant was asked to apologize to the respondent but the appellant adamantly refused to do so and preferred that the matter goes to court. She was not cross-examined on this testimony by the appellant.

The respondent called four witnesses in support of her case. P.W.2 the L.C.I Chairman testified that on the morning of 12<sup>th</sup> September 2012, while passing by the home of the appellant, he heard the appellant insulting the respondent that she was a wizard who had bewitched all her children and it was the reason she had been banished from her previous place of residence. He advised the respondent to make a formal complaint to the L.C.I which she did. The matter was referred to the L.C.I of the neighbouring village for reasons of neutrality. Proceedings were conducted at the home of the appellant. The appellant admitted having insulted the respondent but refused to apologise to her. A copy of the proceedings was tendered in evidence as exhibit P.E.X 1. One of the neighbours of the appellant, P.W.3 testified that on 11<sup>th</sup> September 2012 she found the respondent complaining about children who had dumped orange peelings at her doorstep. Together they went to the home of the appellant from where respondent punished one of the appellant's daughter who admitted having dumped the peelings. Later that evening, she saw and heard the appellant hurl insults at the respondent to the effect that the respondent had attempted to kill the appellant's daughter unsuccessfully but had instead killed her father and children using witchcraft. This witness attended the subsequent L.C.I proceedings where the appellant admitted the accusation but refused to apologize to the respondent.

P.W.4, the L.C.I Secretary for Defence testified to have been called by the respondent complaining about children who had dumped orange peelings at her doorstep. Together they

went to the home of the appellant from where respondent punished one of the appellant's daughters who admitted having dumped the peelings. At 7.00 pm, he was at a neighbour's place when he heard the voice of the appellant telling the respondent "why do you want to kill my children the way you killed yours through witchcraft." He came closer and heard the appellant calling the respondent a wizard. She continued to do so the following morning at the top of her voice. This conduct continued for two days until the respondent reported to the L.C.I Chairman. This witness too attended the subsequent L.C.I proceedings where the appellant admitted the accusation but refused to apologize to the respondent. P.W.5, the L.C.I Chairman of the neighbouring village who presided over the L.C.I proceedings at the home of the appellant testified that at that meeting, the appellant admitted the accusation but refused to apologize to the respondent.

In her brief defence, the appellant denied knowing the respondent at all or having made the utterances she was alleged to have made. She denied that the respondent was her neighbor and denied ever having quarreled with her. She denied there having been any attempt by the L.C.I to resolve the matter between them. She called two witnesses in support of her case. D.W.2, the appellant's biological mother, said she had lived with the appellant in the same courtyard for over ten years and the respondent is their neighbor. She was present when the respondent administered corporal punishment to one of the appellant's daughters. The witness and the appellant later reported a case of assault to the police and were issued with police form 3. The appellant did not attack the respondent at all and she was surprised that the respondent had sued the appellant for having insulted her. D.W.3, the appellant's 15 year old daughter testified how the respondent had come to their home on 11<sup>th</sup> September 2012 and accused her of dumping orange peelings at her doorstep. The respondent had proceeded to force her to remove the peelings and later administered corporal punishment on her against the protests of D.W.2. This witness reported to her mother, the appellant, upon her return in the evening and the case was reported to the police.

In his judgment, the trial magistrate stated that he did not believe the appellant's defence when he claimed not to know the respondent, since it contradicted the evidence of her mother and her written statement of defence in which she had admitted quarrelling with the respondent but

contended that the words she used were not defamatory. He believed the testimony of the respondent and her witnesses who heard the utterances. He found that words imputing wizardry and witchcraft to the respondent were defamatory of her. He found that as a result of the utterances the respondent was being shunned and for that reason awarded her general damages of shs. 1,000,000/= and costs.

Being dissatisfied with the decision of the court, the appellant appeals against the whole of the said judgment on the following grounds, namely;

1. The learned trial magistrate erred both in law and fact and failed to properly evaluate the evidence on record and thus reached a wrong decision against the appellant.
2. The learned trial magistrate erred both in law and fact when he awarded general damages to the respondent when there is no evidence that the respondent suffered any damage as a result of the alleged slander.

Order 43 r (2) of *The Civil Procedure Rules* requires the memorandum to set forth, concisely and under distinct heads, the grounds of objection to the decree appealed from without any argument or narrative. The first ground of appeal as stated in the memorandum of appeal offends this requirement since it lacks precision. It is the sort of ground which the Court of Appeal in *National Insurance Corporation v Pelican Air Services, CA No.15 of 2005*, held should be struck off for non-compliance with the requirements of Order 43 r (2) of *The Civil Procedure Rules*. However, in the desire to administer substantive justice without undue regard to technicalities, counsel for the appellant was allowed to present his arguments in support of this ground.

In his submissions, counsel for the appellant, Mr. Henry Odama argued that the trial court erred when it found that the respondent had suffered and fell in her esteem when none of her witnesses testified to that effect. There was no evidence that the respondent was shunned as a result of the utterances yet in his judgment, the trial magistrate found that people fear her home. He argued further that in cases of defamation, the plaintiff must prove that his or her reputation was lowered by the utterances. He cited *Namuyiga Nabbowa v New vision Printing and Publishing Corporation and another, H.C. Civil Suit No. 226 of 2003* and *David Etuket and another v The New Vision Publishing Corporation H.C. Civil Suit No.86 Of 1996, [2000] KALR 714*.

Regarding the second ground, his submission was that the trial magistrate erred in awarding shs 1,000,000/= in damages yet there was no proof that the respondent had suffered any loss of reputation. He cited *Uganda Breweries Limited v Uganda Railways Corporation, C.A. Civil Appeal No. 6 of 2001*. He finally prayed that the appeal be allowed.

In response, counsel for the respondent Mr. Richard Bundu submitted that the trial magistrate had made a correct decision since the appellant failed to controvert the evidence presented by the respondent. There was no need to prove loss of reputation since the words complained of imputed that the respondent practiced witchcraft, which is a criminal offence and is therefore actionable *per se*. In respect of the second ground, he argued that the damages awarded were nominal and should be allowed to stand. He distinguished the case of *David Etuket and another v The New Vision Publishing Corporation H.C. Civil Suit No.86 Of 1996, [2000] KALR 714* as having discussed award of exemplary damages. He instead cited *Peter Kaggwa v New Vision Printing and Publishing Corporation and others, H.C. Civil Suit No. 244 of 2002*, in support of his submissions that damages for slander are compensatory. He finally prayed that the appeal be dismissed with costs.

This being a first appeal, I have to bear in mind the duties of a first appellate court as stated in *Selle v Associated Motor Boat Co. [1968] EA 123*, thus:

An appeal ..... is by way of retrial and the principles upon which this Court acts in such an appeal are well settled. Briefly put they are that this Court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular this Court is not bound necessarily to follow the trial judge's findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanor of a witness is inconsistent with the evidence in the case generally (*Abdul Hameed Saif vs. Ali Mohamed Sholan (1955), 22 E. A. C. A. 270*).

In a suit for slander, a plaintiff has to prove that the relevant statement is defamatory, but he or she does not have to prove that it was a lie. If a statement is defamatory, the court will simply assume that it was untrue. The test of defamatory nature of a statement is its tendency of excite

against the plaintiff the adverse opinions or feeling of other persons. In *Ssejjoba Geoffrey v Rev. Rwabigonji Patrick* [1977] H.C.B 37 a defamatory statement was defined as one which has a tendency to injure the reputation of the person to whom it refers by lowering him in the estimation of right-thinking members of society generally and in particular to cause him to be regarded with feelings of hatred, contempt, ridicule, fear, dislike and disesteem.

It is a statement which imputes conduct or qualities tending to disparage or degrade any person, or to expose a person to contempt, ridicule or public hatred or to prejudice him in the way of his office, profession or trade. It is a statement which tends to lower a person's reputation in the eyes of or the estimation of right thinking members of society generally or which tends to make them shun and avoid that person. The typical form of defamation is an attack upon the moral character of the plaintiff attributing to him any form of disgraceful conduct such as crime, dishonesty, untruthfulness, trickery, ingratitude or cruelty. The person defamed does not have to prove that the words actually had any of these effects on any particular people or the public in general, only that the statement could tend to have that effect on an ordinary, reasonable listener.

First, it must be proved that the statement referred to the appellant. In *Onama v Uganda Argus* [1969] EA 92, the Court of Appeal of Eastern Africa held in deciding the question of identity, the proper test is whether reasonable people who knew the appellant would be led to the conclusion that that the report referred to him. The question is not whether anyone *did* identify the appellant but whether persons who were acquainted with the appellant *could* identify him from the words used. In the instant case, the words were not only used in reference to the respondent but they were uttered directly at her in her presence during a series of incidents. They were capable of being regarded as referring to the appellant since there was no evidence that they were directed at any other person. These words would lead reasonable people who know the respondent to the conclusion that they referred to her.

Secondly, these words would in my view convey to the ordinary man, in their natural and ordinary meaning, that the appellant had committed the offence of theft. Allegations are defamatory of the plaintiff if they impute the commission of a criminal offence which he would be liable to imprisonment under the laws of Uganda (see *Odongkara v Astles* [1970] EA 377).

On the face of it, imputation of witchcraft is an imputation of a criminal offence since s 2 of *The Witchcraft Act, Cap 124* provides that any person who practices witchcraft or who holds himself or herself out as a witch, whether on one or more occasions, commits an offence and is liable on conviction to imprisonment for a period not exceeding five years.

*Gately on Slander and Libel* (supra) 8th Edition at page 114 paragraph 115 states that; “where words complained of are defamatory in their natural and ordinary meaning, the plaintiff need prove nothing more than their publication. The onus will then lie on the defendant to prove from the circumstances in which the words were used, or from the manner of their publication, that the words would not be understood by reasonable men to convey the imputation suggested by the mere consideration of the words themselves”. In the instant case, the appellant was unable to rebut the imputation suggested by the words themselves.

Where a person has an extremely bad reputation in one particular respect, and the false allegation is in the same vein and does not make that reputation worse, that person might well have difficulty proving that they have been lowered in the estimation of right-thinking people. In paragraph 4 of his written statement of defence, the appellant contended that the words uttered during the quarrel were not defamatory of the respondent, more especially since the respondent, as a quarrelsome village woman, had no reputation to protect. In the first place, being quarrelsome has nothing to do with practicing witchcraft, it was therefore not an allegation in the same vein of being quarrelsome for which the appellant alleged the respondent already had a bad reputation. Since there was no evidence led to show that the respondent had the reputation of being a quarrelsome village woman and that such conduct had generated an extremely bad reputation on her part, such that the subsequent false allegation of witchcraft did not make that reputation worse, I find that the words complained of were defamatory of the appellant.

There can be no slander unless the defamatory statement is published or communicated to a third party, that is to a party other than the person defamed and that publication must have been done maliciously. Publication occurs when information is negligently or intentionally communicated in any medium. A person who did not intend that his or her statement be published must still show that he or she took reasonable care in relation to its publication, which may very well be

lacking. The authors of *Gatley on Libel and Slander*, 9<sup>th</sup> edition at p 136 has the following passage;- 6.12 Loss of defamatory document and mistake at common law; the defendant is liable for unintentional publication of defamatory matter to a third person unless he can show that it was not due to any want of care on his part.

The Supreme Court of Canada in *McNichol v. Grandy*, [1931] S.C.R. 696 decided, as Per Duff J. that: when the defamatory matter is intended only for the plaintiff but is unintentionally communicated to another person, the responsibility must, generally speaking, depend upon whether communication to that other person, or to somebody in a similar situation, ought to have been anticipated. Where the communication is the direct result of the defendant's act, the burden is upon him to show that the communication was not the result of his negligence. As regards proof of publication, the law recognizes no distinction between cases in which express malice in uttering the defamatory words is proved and those in which it is not.

In that case, during an interview between defendant and plaintiff in the dispensary of plaintiff's drug store, the defendant, in a loud angry tone used words which, plaintiff alleged, slandered her. The conversation was overheard by an employee of plaintiff who was in an adjoining dressing room and was able to hear because of a small hole (covered over) which firemen had cut in the wall. Neither defendant nor plaintiff knew that the employee was in the dressing room or that a person there could overhear what was said in the dispensary. Per Lamont J.:

The defendant must be taken to have intended the natural and probable consequence of his utterance, which was that all persons of normal hearing who were within the carrying distance of his voice would hear what he said. When, therefore, it was established that W. did hear what he said, a prima facie case of publication was made out, and, to displace that prima facie case, the onus was on defendant to satisfy the jury, not only that he did not intend that anyone other than plaintiff should hear him, but also that he did not know and had no reason to expect that any of the staff or any other person might be within hearing distance, and that he was not guilty of any want of care in not foreseeing the probability of the presence of someone within hearing range of the speaking tones which he used.

In the instant case, during the quarrel and on a few other occasions thereafter, the appellant raised her voice to such an extent that it could be heard by several neighbours who included P.W.2, P.W.3 and P.W.4. The appellant must be taken to have intended the natural and probable



consequence of her utterance, which was that all persons of normal hearing who were within the carrying distance of her voice would hear what she said. Where the communication was the direct result of the appellant's act, the burden was upon her to show that communication of the utterances complained of was not the result of her negligence. She failed to discharge this burden. I therefore find that the appellant published the defamatory words and the trial court correctly found her to be liable. Ground one of the appeal must fail.

In a suit for slander that is actionable *per se*, damages may be awarded even though actual damage is neither found nor shown, for in such a case, the requirement of a showing of actual damage as a basis of an award of damages is satisfied by the presumption of injury which arises from a showing of slander that is actionable *per se*. General damages are such as the law will presume to be the natural and probable consequences of the defendant's words or conduct. They arise by inference of law and need not, therefore be proved by evidence. If words have been proved to be defamatory of the plaintiff, general damages will always be presumed slander imputing criminal conduct is actionable *per se*. Imputation of commission of a criminal offence is actionable *per se* without any need of proving damage on the part of the plaintiff (See *Blaize Babigumira v Hanns Besigye HCCS No. 744 of 1992*).

The law recognizes in every man the right to have an estimation in which he stands in the opinion of others, unaffected by false statements to his discredit (see *Scott v Sampson (1882) 8 QBD 503*). A person's reputation has no actual value, and the sum of be awarded in damages is therefore at large and the Court is free to form its own estimate of the harm taking into account all the circumstances (see *Khasakhala v Aurali and Others [1995-98]1 E.A. 112* and *Cassell and C. Limited v Broome and another [1972] ALL ER 801 at 825*). General damages are to be determined and quantified, depending upon various factors and circumstances. Those factors are (i) the gravity of allegation, (ii) the size and influence of the circulation, (iii) the effect of publication, (iv) the extent and nature of claimant's reputation and (v) the behavior of defendant and plaintiff. The court may take into consideration the conduct of the defendant before action, after action, and in court at the trial of the action.

The principle governing the award of damages was outlined in *John v MGN Ltd [1996] 2 ALL ER 35 at 47* where the Court of Appeal of England stated as follows:

The successful plaintiff in a defamation action is entitled to recover, as general compensatory damages, such sum as will compensate him for the wrong he has suffered. That sum must compensate for the damage to his reputation; indicate his good name; and take account of the distress, hurt and humiliation which the defamatory publication caused.

Where a trial court has exercised its discretion to award general damages, an appellate court cannot interfere with the exercise of that discretion unless it is satisfied that the trial court in doing so misdirected itself in some matter of principle and as a result arrived at a wrong decision, or unless it is manifest from the case as a whole that the trial court was clearly wrong in the exercise of its discretion arriving at entirely erroneous estimate of damages as to occasion an injustice (see *Mbogo and another v Shah* [1968] EA 93). I have reviewed the reasons for the award as stated by the trial court and the quantum awarded. The trial court did not misdirect itself on the principles for the award of damages and neither was the award so excessive as to amount to an entirely erroneous estimate. Therefore there is no basis for interfering with the award for which reason the second ground of appeal fails.

In the final result, since both grounds of appeal have failed, the appeal is hereby dismissed with costs to the respondent.

Dated at Arua this 13<sup>th</sup> day of October 2016.

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Stephen Mubiru  
Judge