

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT MASINDI
CIVIL APPEAL NO. 104 OF 2014
(Arising from civil suit No. 95 of 2013)

5 **MURAMA ROBINAH:.....APPELLANT**

VERSUS

ABIGABA TADEO:.....RESPONDENT

10 **BEFORE: HON. JUSTICE WILSON MASALU MUSENE**

JUDGMENT

The Appellant in this case is Murama Robina, represented by the legal aid project of the Uganda Law society. The Respondent, Abigaba Tadeo is represented by M/s Kasangaki & Co.
15 Advocates.

The Appellant being dissatisfied with the whole of the Judgment and orders of the Chief Magistrate’s court of Masindi at Masindi before His Worship Byaruhanga Jesse chief Magistrate dated the 11th day of July, 2014 appeals to the High Court of Uganda at Masindi on the following grounds;

- 20 1) The Learned trial Magistrate erred in law and in fact when he failed to properly evaluate the evidence on record thereby arriving at a wrong decision in civil Suit No. 095 of 2013 that the Respondent was defamed by the Appellant.
- 2) The Learned trial Magistrate erred in law and in fact when he totally disregarded the appellant’s evidence thereby arriving at a wrong decision in civil suit No. 095 of 2013
25 that the Respondent was defamed by the appellant.
- 3) The Learned trial magistrate erred in law and in fact when he made the Appellant proceed alone even when he knew that she is represented.

4) The learned trial Magistrate erred in law and in fact when he awarded excessive damages against the appellant.

Wherefore it is proposed to pray court for the following orders:

a) The appeal be allowed.

5 b) Costs of this appeal be awarded to the appellant.

Brief background facts:

The case of the Plaintiff (Respondent herein) was that the Defendant (Appellant herein) on 26/05/2013 uttered statements defamatory of him that “*amaka gange goona kubonabona nuwe abigaba ogwo, otugrogerere bworaba noyenda kutwita twite otulye otumaleho na magufa goona*”
10 *ogalye, habwokuba niiwe otusetekerize*”

Which is translated in English as “*All my family’s suffering is because of that Abigaba who has bewitched us. If you want to kill us, kill us, eat us and finish all our bones because it is you who has cast a spell on us.*” It was the Plaintiff’s averment in the plaint that the above statements uttered by the Defendant were interpreted to mean that he is a
15 cannibal, a witch, sorcerer and bad person to be avoided in society. The Defendant (Appellant) in her defence (paragraph 6 thereof) averred that the words were mere insults that ensued from a quarrel and did not constitute any elements of defamation.

During the scheduling the following issues were framed for court’s determination :-

20 a) Whether the statements uttered by the Defendant on the 26/5/2013 was defamatory to the Plaintiff?

b) What remedies are available to the parties?

To prove his case, the Respondent/Plaintiff called three witnesses and so did the appellant/Defendant. Court passed judgment in favour of the Respondent/Plaintiff.

25 Grounds 1 and 2

1) The Learned trial Magistrate erred in law and in fact when he failed to properly evaluate the evidence on record thereby arriving at a wrong decision in civil Suit No. 095 of 2013 that the Respondent was defamed by the Appellant.

2) The Learned trial Magistrate erred in law and in fact when he totally disregarded the Appellant’s evidence thereby arriving at a wrong decision in civil suit No. 095 of 2013 that the Respondent was defamed by the Appellant.

Counsel for the Appellant submitted that according to **Lord Atkin in Sim vs Stretch [1936] 2**
5 **all E.R 1237** “*a defamatory statement is one which injures the reputation of another by exposing him to hatred, contempt , or ridicule or which tends to lower him in the esteem f right thinking members of society.*”

He added that defamation seeks to protect a person’s reputation but in the process seeks to have a balance between protecting reputation and upholding the freedom of speech.

10 It was further stated that the gist of defamation must be that the defendant either lowers the claimant in the estimation of reasonable, right thinking members of society or causes such people to shun or to avoid the claimant.

That reputation extends to both character of the individual as well as his trade. *A statement which only amounts to can insult without causing injury to reputation would not be actionable.*

15 Counsel for Appellant’s further submissions were that the Appellant/Defendant was sued in slanderous defamation, that she allegedly uttered defamatory statements against the Respondent/Plaintiff in the presence of Kabamuza Christine, Kiiza James and Baikaranabyo John.

He quoted

20 **Gatley on Libel and Slander, 8th Edition at page 15 paragraph 31:** “*The gist of the tort of Libel and slander is the publication of a matter (usually words) conveying a defamatory imputation. A defamatory imputation is one to a man’s discredit, or which tends to lower him in the estimation of others, or to expose him to hatred, contempt or ridicule or to injure his reputation in his office, trade or profession, or to injure his financial credit. The standard of*
25 *opinion is that of right thinking people generally.*”

Slander is defamatory matter that is in transitory form. It is only actionable on proof of special damages save for exceptional cases where it imputes a serious crime, disease, or attack on professional ability.

He concluded that for an action in defamation to succeed, the following have to be proved;

1. The publication, words, statements must refer to the Plaintiff.
2. That the statement was defamatory.
3. Publication.

5

Counsel for the appellant on evaluation of evidence submitted that whereas PWI (Respondent) testified on page 2 of the record of proceedings that he knew the Appellant as a neighbour and that she uttered the words in the presence of Kabahumuza Christine, **Balikaababyo John** and **Kiiza James**, that the evidence of PWII, John Balikarababyo did not support Respondent's case.

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He added that whereas the Respondent (PW1) testified that Balikarababyo John (PWII) was present when the appellant was uttering the defamatory statement, Balikabarababyo John (PWII) on page 3 (last paragraph) and page 4 of the record of proceedings as follows:

15 *"I know the Plaintiff, he is my brother. The Defendant is my step mother. On the 26th May, 2013 at around 4:00 p.m, I was at home resting and then the plaintiff rang me summoning me to his place. I went to his place. He told me that his worker was being insulted by the Defendant that she should not work for him because she was going to get her a better job. However, the worker replied her not to bother but to get that job for the daughter.*

20 *I decide to find out from the Defendant/appellant what was happening...I inquired from the Defendant what business she had with Abigaba's worker. The Defendant denied uttering any worker to the worker of the Plaintiff. She instead lamented that Abigaba should leave her alone because he is up to completely destroyer finish her home and since it is his desire, he should go ahead and do it.*

25 *I left the defendant and went home. I only heard that she uttered words to the effect that the Plaintiff/Respondent is a cannibal and a witch."*

Upon cross examination, PWII confirmed that he heard from Kizza.

Counsel for Appellant further submitted that from the testimony of PWII, PWII was not present when the alleged defamatory words were uttered, and so did not hear the alleged defamatory words.

Counsel for Appellant also stated that even the words which were told to PW2 by PW1 were
5 completely different from what Respondent stated . They were:

“He told me that his worker was being insulted by the Defendant that she should not work for him because she was going to her a better job. However, the worker replied her not to bother but to get that job for the daughter.”

He added that the said words are completely different from what the Respondent alleges to have
10 been said by the appellant and in any case, the Respondent did the publication himself when he summoned PWII.

As for PWIII, counsel for appellant submitted that he was coached what to say as he was not around or physically present.

In reply, counsel for the Respondent also submitted at length on grounds 1 and 2 of appeal. He
15 maintained that the trial Magistrate properly evaluated the evidence and properly addressed himself on the law of defamation (slander). Counsel for Respondent submitted that in law, every person is entitled to his good name and to the esteem in which he or she is held by others. It was further stated that if the defamation is oral, it constitutes a tort of slander and is actionable when the words impute a criminal offence or calculated to the disparage a person in any officer,
20 profession, calling or trade carried out by him at the time of publication.

Counsel for the Appellant added that in cases of defamation (slander) the claimant must prove the following: _

- i) That the statement uttered by the defendant was defamatory.
- ii) That the statement referred to the defendant, and
- 25 iii) That it was published, that is to say, communicated to a third party.

Having proved the above elements the onus then shifts to the defendant to prove any of the following three defences;

- a) Truth (justification)
- b) Fair comment on a matter of public interest, or
- c) That it was made on a privileged occasion.

Counsel added that since the defendant in paragraph 6 of her written statement of Defence
5 admitted that she uttered the words complained of, then as a general rule, parties are bound by
their pleadings. He quoted the case of **Draco (U) LTD vs. Kamuli District Local Government
Civil Suit No. 250 of 2003**, where **Lady Justice Stella Arach Amoko** held that parties are
bound by their pleadings.

He also quoted Section **57 of the Evidence Act** to the effect that facts admitted need not be
10 proved as they are regarded as established.

Counsel for the appellant further submitted that in the instant case, the statement complained of
considering its ordinary and natural meaning shows that the Plaintiff/Respondent is a man of
immoral character and despicable social conduct who eats fellow human beings without sparing
bones and a criminal who kills people using witchcraft. And so the words complained of were
15 defamatory.

I have considered the submissions on both sides as far as grounds No. 1 and 2 of appeal are
concerned. They essentially touch on evaluation of evidence. The Law on the duty of this Court
as a first appellate court is well settled. It is to re-examine, re-appraise and re-evaluate the
evidence on record and come to its own decision where need be. In so doing, it subjects the
20 evidence on record to a fresh and exhaustive scrutiny. (**See Banco Arabe Espanol vs Bank of
Uganda SCCA NO. 8 of 2001**).

Furthermore, under Section 101 of the Evidence Act, the burden of proof lies on the party who
asserts the affirmative of the issue or question in dispute. And the standard of proof in civil
cases is on a balance of probabilities. The Plaintiff/Respondent's case was that the defamatory
25 words of **Kabalumiza Christine, John Baikaranabyo, and Kiiza James**.

However, on page 3 of the record of proceedings, **Baikaranabyo John** testified as PW2.

PW2 stated:-

“On the 26.5.2013 at around 4:00 p.m. I was at home resting and then the Plaintiff rang me summoning me to his place. I went to his place. He told me that his worker was being insulted by the Defendant that she should not work for him because she was going to get for her better job. However, that the worker replied her not to bother but to get that better job for her daughter. The Plaintiff proposed that he should summon the Defendants to appear before other peoples so that she explains why she is concerned with his affairs.

I decided to find out from the Defendant what was happening. I got the defendant together with her husband. The Defendant was washing her clothes under a jack tree. I inquired from the Defendant what business she had with Abigaba’s worker. The Defendant denied uttering any word to the worker of the Plaintiff. She instead lamented that Abigaba should leave her alone because he is up to completely destroy or finish her home and since it is his desire, he should go ahead and do it.

I left the defendant and went home. I only heard later that she uttered other words to the effect that the plaintiff is a cannibal and a witch. That is all.”

15

In my view, the above piece of evidence clearly reveals that contrary to what the Plaintiff/ Respondent stated, PW2, John Baikaranabyo was not present when the alleged words were uttered. PW2 added during cross-examination that he heard from Kiiza that Appellant had labelled the Plaintiff/Respondent as an eater of bones and therefore a witch. PW3, James Kiiza, who was also allied by Plaintiff/Respondent to have been present when the defamatory words were uttered. But in his evidence on page 4 of the proceedings, PW3 stated that he was at home when he heard the quarrel between the Plaintiff and Defendant. PW3 said he heard defendant talk a lot of words to the effect that the Plaintiff had destroyed her home and her children.

PW3 did not repeat the very words which Defendant/Appellant uttered. That was very important for corroboration but instead, he summarized in his own way. But that notwithstanding, and as counsel for the appellant submitted, PW3 testified that there were many village people, none of the villagers allegedly present went to Court to court to testify against the Appellant. So PW3, like PW2 was not physically present as alleged by the Plaintiff/ Respondent, thus giving contradictory and inconsistent testimonies. If the trial Magistrate had considered the above

contradictions and inconsistencies, he would have decided in favour of the Appellant. The evidence of PW2 and PW3 and PW1 (Plaintiff/Respondent) is therefore tainted with falsehoods and so the Respondent did not prove his case on the balance of probabilities.

The case of the appellant (DW1) on page 6 of the record was consistent with what PW2 testified. She testified that when PW2 went to her home and told them that the Plaintiff/Respondent had sent him to inquire about what she wanted with his worker. Appellant told PW2 that she was not aware of any claim and when PW2 left, PW3 came and assaulted her husband. The Appellant during cross examination denied seeing many people or the plaintiff/Respondent at the scene. That again discredits the evidence of Respondent (PW1) who lied that the defamatory words were uttered in his presence, and that of PW2. The appellant even denied the presence of Kabahumuza Christine which fact was corroborated by DW3, Joan Kyaligonza and that evidence was never challenged by the Respondent. This court is also inclined to agree with the submissions of counsel for the Appellant that the Respondent did not adduce evidence of damage as to his character and trade among the rightful thinking members of society.

Counsel for the Respondent submitted that defamatory words may be published in an obviously sarcastic or ironic manner so as to be deprived of their defamatory meaning. Nevertheless, in the present case and as already noted, even the persons whom Respondent alleged were present during the utterances were not even there. The evidence of PW2 which counsel for the Respondent and trial Magistrate relied on was hearsay. PW2 was not physically present when the alleged words were uttered.

In conclusion therefore whereas there was a quarrel and fighting among the parties, the law is clear that slander is only actionable on proof of special damages and not speculation.

In the case of **Adoko Nekyon vs Tanganyika Standard Ltd, H.C.C.S No. 393 of 1964**, Sir Udo Udoma C.J. as he then was, held:-

“In order to determine whether the article is defamatory and is capable of bearing any of the meanings ascribed to it by the Plaintiff, it is necessary that the article be considered as a whole. It is not sufficient to pick out a phrase here and a sentence there and to conclude from such phrases and sentences that the article is defamatory.”

Picking out few insults from a village quarrel does not constitute defamatory statements in law.

In view of what I have outlined, I find and hold that the Respondent failed to discharge the burden of proof as required by the law and if the trial Magistrate had considered the inconsistencies and contradictions in Respondent's case, he would have deiced in favour of
5 Appellant.

Ground No. 1 and 2 of the appeal are hereby allowed.

10 **Ground 3.**

The Learned trial Magistrate erred in law and in fact when he made the Appellant proceed alone even when he knew that she is represented.

Having allowed grounds 1 and 2 of appeal, to the effect that the Respondent was not defamed at
15 all, then there is no need to discuss grounds 3 and 4 of appeal. The same are overtaken by events.

Consequently, the whole appeal is hereby allowed with costs.

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W. Masalu Musene
Judge
1/08/2017