

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**CIVIL DIVISION**  
**CIVIL SUIT 624 OF 2016**

**JOHN KIZITO ::: PLAINTIFF**

*Versus*

**THE RED PEPPER PUBLICATION LIMITED ::::::::::::::: DEFENDANT**

**BEFORE: HON. MR. JUSTICE STEPHEN MUSOTA**

**RULING**

John Kizito, the plaintiff, sued the defendant, The Red Pepper Limited for defamation. The plaintiff claims for:

- (a) A declaratory order that the articles published by the defendant were libellous and defamatory.*
- (b) Payment of general and exemplary damages.*
- (c) Interest thereon at court rate from the date of judgment until payment in full.*
- (d) Costs of the suit; and*
- (e) Such further orders as the court may deem fit.*

In paragraph 4 of the plaint, the plaintiff set forth the facts constituting the plaintiff's cause of action. All the paragraphs 4(a) to 4(g) are essentially descriptive of the cause of action. He then attached annextures "A" to "G" but none of the contents thereof were included in the plaint.

In its defence, the defendant promised to raise preliminary points of law as follows:

- (i) *That this plaint is incurably defective and does not comply with the Civil Procedure Rules.*
- (ii) *That the plaint discloses no cause of action against the defendant and the defendant shall pray that the plaint be struck out with costs to the defendant.*
- (iii) No sufficient court fees had been paid.

In the alternative, the defendant denied each and every allegation of fact contained in the plaint. It also admitted having published the story complained of but maintains that it is not false or malicious or defamatory of the plaintiff and it bears the meaning attributed to it. That the words published are true in fact and substance.

At the commencement of the hearing of this suit Mr. Tom Mbatunda appeared for the plaintiff while Mr. Maxim Mutabingwa appeared for the defendant.

In his submissions on the preliminary objection, Mr. Mutabingwa urged that:

1. *The plaint is defective because it was not drawn in accordance with order 7 of the Civil Procedure Rules. That the plaint does not disclosed a cause of action because it does not reproduce the publications complained of fully. That a mere annexing of the publication is not enough because the words used are material facts and must be reproduced.*

Further that in the instant suit, although the plaintiff alleges to have annexed the publication, it is not the case.

2. *Learned counsel further submitted that paragraph 1 of the plaint contravened order 7 rule 1 (b) of the Civil Procedure Rules because it does not provide the description of place of residence of the plaintiff.*

That it is mandatory to provide the address of the plaintiff because it is through that address that he/she can be traced for personal service if the lawyer steps down or if he/she is penalised in costs it easy to recover the said costs.

In reply Mr. Mbatunda learned counsel for the plaintiff submitted that:

- (i) *The plaint provides an address of service. That order 3 rule 4 of the Civil Procedure Rules recognises advocates as agents of their clients. That if the address of the advocate is given, it is enough. That the submissions on this issue be rejected.*
- (ii) *Regarding causes of action, learned counsel submitted that the publication is mentioned in the list of documents and are part of the pleadings. That the fact that the annexed paper copies contain other stories does not imply the pleadings are incomplete.*

Further. Learned counsel said that, he has the publications in his possession in their original form. That the pleadings as they stand do not prejudice the defendant and court should look at the totality of the pleadings in terms of Article 126 (2) (e) of the Constitution.

In rejoinder Mr. Mutabingwa reiterated his submissions. He emphasised that merely annexing the publication does not cure the anomaly.

I have considered the preliminary objections raised by Mr. Mutabingwa and the response by Mr. Mbatunda.

I have considered the Law applicable and the authorities relied on.

In resolving the issues raised, I will start with the complaint that the plaint discloses no cause of action against the defendant.

According to **BULLEN & LEAKE AND JACOB'S PRECEDENTS OF PLEADINGS, 12<sup>TH</sup> EDITION P. 626**, it is trite law that the libel complained of must be set out verbatim in the statement of claim; it is not enough to set out the substance or effect "as the precise words of the document are themselves material" **Collins Vs Jones 1955 1 Q.B 564**. The book, news paper 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 be set out, provided the remainder of the passage would not vary the meaning of the defamatory matter. Where the defamatory matter arises out of a long article or "feature" in a news paper, the plaintiff must set forth in his/her statement of claim the particular passages referring to him of which he/she complains and the respects in which such passages are alleged to be defamatory. See **DDSA Pharmaceuticals Ltd Vs Times News paper [1973] 1 Q.B 21 CA**.

And if the part complained of is not clearly severable from the rest of a single 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. **S & K Holdings Ltd Vs Throgmorton Publications Ltd [1972] 1 W.L.R, 1036**.

Where the libellous matter is in a book, the parts or pages where the libel is should be stated. Where the libel complained of is what the defendant says a third party told him, it should be so pleaded and not pleaded as if the defendant had said it because it is a different libel and the charge is open to a different defence.

The statement of claim should also state the date of each publication which is relied on as a cause of action. In case of a letter or other private communication, the name of each person to whom publication is alleged should also be stated **Dalgleish Vs Lowther (1899) 2 Q.B 590**. If his/her name be unknown he must in some way be identified otherwise the plaintiff in the absence of exceptional circumstances will not be allowed to prove at the trial publication to any such person **Barham Vs Lord Huntingfield [1913] K.B. 193**.

But in the case of a News paper prospectus, hand bill, or other document widely disseminated, the defendant is not, as a rule entitled to particulars of the names of the person to whom, or the dates on which, the alleged libel was published because all such matters would in all probability be within his own knowledge and not within that of the plaintiff. **Keogh Vs Incorporated Dental Hospital of Ireland [1910] 1r R 166**.

These principles have been followed time immemorial in all defamation action. They should be followed as principles of law and not as optional requirements.

It is fundamental rule of pleading that a plaintiff must plead all material facts which he/she relies on for his/her claim or defence. The object of the requirement that a party should state the material is to enable the opposite party to know the case he/she has to meet to prepare to meet it and to avoid a party taking his/her opponent by surprise. If such a requirement is not observed, the opposite party is likely to be in a disadvantageous position and to be embarrassed at the trial **Hon. Aridru Ajedra Gabriel Vs The Red Pepper Ltd HCCS 121 of 2016**.

It is a principle of law that in an action for defamation the basis of the cause of action are the words used. The words used are therefore the material facts on which an action for defamation is based. The words used whether verbal or written must be set out in the particulars of claim. It is not sufficient to state the substance purpose or effect of the words used. The actual words must be pleaded.

In the instant suit and as rightly submitted by Mr. Mutabingwa the plaint did not plead the actual words alleged to have been used by the defendant.

Annexing the publication complained of as submitted by the plaintiff does not cure the irregularity because in a claim for defamation every word or article complained of must be reproduced in the plaint verbatim. What is contained in paragraph 4 and the rest of the plaint offends the rules of pleadings in defamation claims. It was not enough to make reference to annexures to the plaint. The plaint ought to have contained:

- (1) *The allegation of the publication and reference to the plaint.*
- (2) *The words complained of; and*
- (3) *The defamatory meaning. Karaka Vs Turwomwe, CA 5 of 1995 per Lubogo J.*

Consequently, I will uphold the submissions of Mr. Mutabingwa that the plaint as presented does not disclose a defamation cause of action and offends Order 7 of the Civil Procedure Rules. I will accordingly order that the same is rejected under order 7 rule 11 (a) of the Civil Procedure Rules.

The second objection I will consider is that the plaint does not provide the plaintiff's place of residence as required under order 7 rule 1 (b) of the Civil Procedure Rules. That this is required whether the plaintiff is represented or not.

Order 7 rule 1 (b) of the Civil Procedure Rules provides that:

**"The plaint shall contain the following particulars –**

**(a) .....**

***(b) the name, description and place of residence of the plaintiff, and an address of service”***

I agree with Mr. Mutabingwa that the requirement to state the name, description and place of residence of the plaintiff is mandatory. These must be stated in the plaint so that the place of abode is ascertainable because sometime it might necessitate serving the plaintiff personally. However I wish to note that since this is an omission which does not go to the root of the claim, opposite Counsel for the plaintiffs are usually graceful to request for amendment to correct the omission and this is normally allowed. It was therefore wrong for the plaintiff not to provide the place of residence of the plaintiff.

For the reasons I have given in this ruling, I will uphold the two argued preliminary objections raised by Learned Counsel for the defendant.

Consequently, the plaint in its current form is rejected under Order 7 rule 1 (b) of the Civil Procedure Rules with costs.

I so order.

**Stephen Musota**

**J U D G E**

**06.12.2017**