

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

**CIVIL SUIT NO. 194 OF 2013**

**ESTHER KISAAYE ::::::::::::::::::::::::::::::::::::::: PLAINTIFF**  
**VERSUS**

**SARAH KADAMA ::::::::::::::::::::::::::::::::::::::: DEFENDANT**

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

**JUDGMENT:**

The plaintiff brought this defamation suit against the defendant for a permanent injunction to restrain the defendant and her agents from uttering and publishing defamatory statements against the plaintiff, general damages for injury to her reputation, costs of the suit, and interest on the decretal sum from date of judgment until payment in full.

According to the plaint, the plaintiff's cause of action arose as follows:

In an open letter dated 22<sup>nd</sup> April 2013 and addressed to the Chief Justice of Uganda the defendant stated inter alia that;

*“...in summary I wish to register my disappointment with Justice Esther Kisaakye; as a Judge she is supposed to be the best example of honest and law abiding citizens of Uganda. Secondly as a woman she would be one of those that fight for women rights.”*

That the utterances of the defendant were deplorably reiterated in paragraph B on page 2 of the defendant's written statement of defence in Land Division Civil Suit No. 191 of 2013 wherein she stated that;

***“It is very disappointing to learn that a person with such status as Her Lordship can be lowered to be part of a game to mistreat an innocent woman like I am.”***

The plaintiff contended that the defendant in making these statements was insinuating and concluding that the plaintiff is not an honest and law abiding citizen and that the plaintiff does not fight for women's rights. The words were also intended to portray the plaintiff to the Chief Justice and the public a lurid message that the plaintiff is not a fit and proper person to be a Judge of the Supreme Court of Uganda.

Further that relying on the aforementioned letter to the Chief Justice the defendant approached a tabloid newspaper called “Hello Uganda” which is sister paper of “The Red Pepper” and on page 6 of an issue dated 21<sup>st</sup> June 2013, the defendant caused a publication under the title and caption of “Justice Kisaakye in property wrangles.” In paragraph 1 of the article it was reported that:

***“Justice Kisaakye of the Uganda Supreme Court is currently embroiled in a bitter struggle for property with Sarah Kadama of Lukuli Makindye. The two women are struggling over Frank Samanya Kitimbo's wealth. Kadama in the documents which Hello Uganda has accessed accused Justice Kisaakye of attempting to evict her from the property she worked hard to earn with her business partner Kitimbo.”***

The plaintiff further contended that the defendant's conduct and words are evidently intended to lower the plaintiff's reputation in the eyes of the right thinking members of the society and if unchecked this will consequently result in irreparable injury to the plaintiff's reputation.

In her written statement of defence dated 3<sup>rd</sup> April 2014 the defendant denied each and every allegation. The defendant pleaded that she made comments in respect of a claim of property by the defendant and the said comments were fair and truthful and cannot be said to have been defamatory of the plaintiff. She also emphasized that at no time did she deliberately or conscientiously defame or utter defamatory remarks against the plaintiff and that the claims of the plaintiff are not genuine and shall be put to strict proof.

In the scheduling memorandum the agreed issues were:

- 1. Whether the defendant published/caused the publication of defamatory statements against the plaintiff?*
- 2. Whether the plaintiff is entitled to remedies sought?*

This Court ordered that witness statements be filed. The plaintiff produced three witness statements including herself and the defendant produced only herself as witness for the defence in Court.

The facts in this case are largely undisputed. It is undisputed that the letter to the Chief Justice was written. It is also undisputed that the Article entitled Justice Kisaakye in land wrangles was published in the Hello News paper. The contents of all these publications are also not in dispute. What is in issue after hearing the cases of both the plaintiff and the defendant is whether or not the defendant caused these publications and if so whether they are defamatory of the plaintiff and if they are defamatory should the plaintiff be granted the remedies in the plaint?

I have considered the evidence, submissions and pleading. I shall deal with the issues as were identified by the parties seriatim. However before I deal with the issues I must state that in all

civil cases the plaintiff must prove his/her case on a balance of probabilities. Therefore the burden of proof lies on the plaintiff to prove all the elements of the tort of defamation.

***Issue 1: Whether the defendant published/caused the publication of defamatory statements against the plaintiff?***

Learned counsel for the plaintiff submitted that the defendant is the one who wrote the complaint to the chief justice and it contained defamatory content. For this submission counsel relied on the quoted text in the plaint from the letter and also the testimony of the defendant in cross-examination where when asked if the plaintiff is honest she said no and whether the plaintiff is law abiding she said no, and when asked whether the plaintiff fights against women rights she said YES but when asked why she says the plaintiff is not honest she said that it is because the plaintiff did not inform her that she had purchased the property which the defendant was occupying. That this argument does not in any way prove that the plaintiff is a dishonest person. That the defendant also said the plaintiff does not fight for women rights because she was indirectly attempting to evict her from her land through Mr. Kitimbo which allegations according to counsel for the plaintiff, were only made up since she never included these reasons in the publications. That her statement that she is the only example to prove that the plaintiff is dishonest, not law abiding, and does not fight for women's rights shows that these claims are baseless and defamatory. That the defendant should not also have copied the defamatory letter to all kinds of offices if she genuinely needed help from the Chief Justice. That although the reasons for writing the letter may have been justified as it is her right, she should not have used defamatory words. That the defendant's complaint to the Chief Justice was frivolous and without merit. That there is overwhelming circumstantial evidence to show that the defendant caused the publication of the article in the Hello Tabloid Newspaper dated 27<sup>th</sup> June 2013.

Learned counsel for the defendant submitted that when dealing with defamation cases what is important are the words complained of which must be set out verbatim in the plaint. That in this case these words are in paragraph 4 (a) of the plaint and these are the ones which counsel for the defendant concentrated on. That the explanation given by the plaintiff in paragraph 4 (b) of the

plaint stretches the natural meaning of the words complained of. That the words do not even by innuendo convey the meaning attached to the words in the plaint. Counsel relied on Black's Law Dictionary 8<sup>th</sup> Edition at page 805 where innuendo is defined to mean an oblique remark or indirect suggestion usually of derogatory nature. In the law of defamation, an innuendo is the plaintiff's explanation of statements with defamatory meaning when that meaning is not apparent from the statement's face.... That a true innuendo relies on a conjunction of the words used and extrinsic fact. Counsel submitted that simply put innuendo is one which is not directly contained in the words complained of but which would be understood by those reading it based on special knowledge. That in paragraph 4(b) of the plaint, the plaintiff has exaggerated the meaning of the words complained of. That the plaintiff did not provide proof that the statements caused her to be summoned by the Chief Justice, or that these were considered in her determination of whether she would be Chief Justice. That the defendant honestly sought the intervention of the Chief Justice so that he would call them and mediate the dispute. That the statements she made in the letter to the Chief Justice were just an opinion based on the circumstances substantiated in the defendant's evidence.

Learned defence counsel further submitted that the statement about her disappointment in the fact that the plaintiff was involved in a game to mistreat her were not defamatory whether by their natural meaning or by innuendo. That the defendant was of the opinion that all the acts of the plaintiff and Kitimbo Samanya whom she regarded as her spouse having cohabited with him for 16 years were part of a scheme to get her out of the house. That the plaintiff later married the said Kitimbo Samanya. That the statements that Justice Kisaakye in property wrangles is a common statement in our society and was not defamatory and the same was not pleaded to be defamatory. That only issues which have been pleaded must form issues and court has not power to decide issues not pleaded per ***Nairobi City Council Vs Thabiti Enterprises Ltd [1995-98] 2 EA 23***. That a party is expected and is bound to prove the case as alleged by him/her case or set up a case inconsistent with what is alleged in his pleadings except by way of amendment of pleadings.

Learned counsel then submitted that the pleadings of the plaintiff in this case were lacking in relation to the article in the “Hello Uganda” tabloid. That therefore they should be treated with the contempt they deserve. That the defendant in her witness statement paragraph 21 and the written statement of defence paragraph 6 denies publishing or causing the publications in the Hello Uganda tabloid. That the published stories could have been sourced from somewhere else other than from the defendant so it is unsafe to conclude that the defendant caused the publications.

In rejoinder the plaintiff submitted that the defendant failed to prove the truthfulness of the statements complained of in the plaint. That according to Halsbury’s Laws of England 3<sup>rd</sup> Edition Vol. 24 page 27 a defence fails if words not proved to be true do materially injure the plaintiff’s reputation. That the defendant has failed to prove her defence of fair and truthful comment. That instead she was attempting to change the defence from truthfulness to honest belief which is not a defence in actions for defamation.

That the statements made by the defendant were intended to attack the reputation of the plaintiff.

I have considered the submissions of the parties. This Court holds the opinion that *“Every man or woman is entitled to have his or her reputation preserved and inviolate.”*

A man’s or woman’s reputation is his or her property. Depending upon perception of that man or woman, reputation is more valuable to him or her than any other property. Reputation is the state of being held in high esteem and honor or the general estimation that the public has for a person. Reputation depends on opinion, and opinion is the main basis of communication of thoughts and information amongst humans. In simpler words, reputation is nothing but enjoyment of good opinion on the part of others. So, the right to have reputation involves right to have reputation inviolate or intact.

Defamation is the act of harming the reputation of another by making a statement to a third person. The wrong of defamations consists in the publication of a false and defamatory statement concerning another person without lawful justification. Black's Law Dictionary 9<sup>th</sup> Ed. pages 479 and 480.

Defamation can be in many forms. It can be in words written or spoken or it can be through pictures or cartoons among others.

For defamation, the plaintiff must prove the following elements:

1. The defendant made a statement about the plaintiff to another.
2. The statement was injurious to the plaintiff's reputation in the eyes of the right thinking members of society.
3. The statement was false.
4. If the plaintiff is a public figure, or was involved in some newsworthy event or some other event that engaged the public interest, then the defendant must have made the false statement intentionally or with reckless disregard of the plaintiff's rights.
5. There are no applicable privileges or defences.

In Black's Law Dictionary 8<sup>th</sup> Edition a defamatory statement means one that tends to injure the reputation of a person referred to in it. The statement is likely to lower that person in the estimation of reasonable people and in particular to cause that person to be regarded with feelings of hatred, contempt, ridicule, fear or dislike.

The test used to determine whether a statement is capable of giving defamatory meaning was discussed in the case of ***A.K. Oils & Fats (U) Ltd Vs Bidco Uganda Limited HCCS No. 715 of 2005*** where Bamwine J (as he then was) relied on ***Sim vs Stretch [1936] 2 ALL ER 123 A.C.***, where Lord Atkin held that the conventional phrase "***exposing the plaintiff to hatred, ridicule***

*and contempt” is probably too narrow. The question is complicated by having to consider the person and class of persons whose reaction to the publication is the test of the wrongful character of the words used. He proposed in that case the test: “would the words tend to lower the plaintiff in the estimation of the right thinking members of society generally?” This position has been adopted with approval in Uganda in Honourable Justice Peter Onega Vs John Jaramoji Oloya HCCS No. 114 of 2009.*

In this case this court is satisfied on a balance of probabilities that the statements complained of are defamatory because the plaintiff being a Supreme Court Judge has a sensitive reputation which naturally would be harmed by any sort of allegation that she is a dishonest and conniving person who does not care about women’s rights. Though the defendant attempts to deny ever causing the publication complained of, it was clear that the interview showed she was the one who answered the questions in the interview. The story in the Hello tabloid was even in tandem with the opinions she expressed in the letter to the Chief Justice about the plaintiff. In her evidence to this court the defendant has not proved why she believed these statements to be true description of the person of the plaintiff. In my opinion this amounts to failure to prove any defence on the part of the defendant. People must be careful before they speak. Before they publish allegations they must have the evidence to back up whatever perceptions or opinions they have about another. If this court condones the conduct of the defendant against the plaintiff then persons of good repute will suffer at the mercy of reckless speakers who have audience.

The plaintiff as a person is entitled to her reputation and has the right to keep the same inviolate. The defendant was reckless with her words about the plaintiff and must suffer consequences of that absolute disregard of the effect of her words. Any right thinking member of society would lower his or her estimation of the plaintiff upon hearing or reading the toxic words of the defendant.

The defendant attempts to put forward the argument that hers was just a fair true opinion of the plaintiff but this she did not prove. It should also be noted that reputation depends on opinion,



and opinion is the main basis of communication of thoughts and information amongst humans. In simpler words, reputation is nothing but enjoyment of good opinion on the part of others. So, the right to have reputation involves right to have reputation inviolate or intact and continue to enjoy good opinion.

I therefore find that the defendant made the publication of the statements complained of the Chief Justice and these statements were defamatory of the plaintiff.

There is also overwhelming evidence to show that the defendant caused the publication in the “Hello” tabloid News paper dated 21-27 June 2013. She copied exhibit “P1”, the letter addressed to the Chief Justice amongst others, all media/press houses in Uganda. The tabloid repeatedly refers to the letter the defendant wrote to the Chief Justice. The defendant caused the impugned publications.

**Issue 2: Whether the plaintiff is entitled to the reliefs sought in the plaint?**

In the plaint the plaintiff made many prayers to this Court.

**1. Permanent Injunction:**

Counsel for the plaintiff cited several authorities on this. Since the defendant has used the media against the plaintiff it is proper for this court to grant this prayer. I grant the plaintiff a Permanent Injunction restraining the defendant and her agents from further publication of defamatory content in relation to this issue.

**2. General damages:**

The successful party in a defamation suit is entitled to recover general damages such as will compensate him/her for the wrong he/she has suffered. In assessing the appropriate damages for injury to reputation the most important factor is the gravity of the libel, and extent of publication. Damages are aimed at vindicating the plaintiff's reputation and status especially where no apology or retraction is offered.

Regarding this claim, counsel for the plaintiff prayed for UGX.200,000,000/= (Two hundred million shillings). I find this sum to be on the high side since general damages are a sum representing the natural consequences of the wrong. In this case, the News paper responsible for the publication was not sued. There is no evidence to prove that this has resulted from the wrong. I will consider the social standing of the defendant and decided cases. Most awards range between UGX.20,000,000/= and UGX.50,000,000/=. See: *Amos Twinomujuni Vs The Attorney General & Lt. James Mwesigye HCCS 0413 of 2005*; *Honourable Justice Peter Onega Vs John Jaramoji Oloya HCCS No. 114 of 2009*; *Nyeko Vs Uganda Broadcasting Corporation Company Ltd & Anor CS No. 0044 2013*. In the circumstances of this case i do therefore find the sum of UGX.20,000,000/= to be sufficient to compensate for the damage caused to the plaintiff's reputation and the injury suffered. It is accordingly awarded.

### **3. Punitive damages:**

Since the defendant insisted that her opinion about the plaintiff were true and this court found otherwise and the defendant having failed to prove her allegations against the plaintiff to be true, I find this was reckless and could be repeated. As such the defendant should be punished. I find the sum of UGX.5,000,000 to be sufficient punitive damages to punish the defendant. The same is awarded.

### **4. Costs of the suit:**

Costs follow the event and so the plaintiff having succeeded in this suit is entitled to costs of the application. The plaintiff shall get the taxed costs of this suit.

**5. Interest:**

The plaintiff asked for an interest of 20%p.a. on damages from the date of judgment until payment in full.

I find the interest of 20% as pleaded to be on the higher side. I therefore grant the plaintiff interest on the general and punitive damages at the rate of 6% per annum from the date of judgment till full payment.

I so order.

**Stephen Musota**

**J U D G E**

**13.07.2017.**

**14.07.2017:-**

Mr. Kawalya Stanley counsel for the plaintiff in court.

Plaintiff is not in court.

Respondent is not in court.

Counsel for the defendant not in court.

Ms. Jackie Busingye Court Clerk.

**Court:**

Ruing delivered in open court in presence of

1. Mr. Ronald Tusingwire counsel for the plaintiff
2. Jackie Court Clerk.

**Joy Bahinguza Kabagye**  
**ASSISTANT REGISTRAR**

**14/07/2017**

JUDGMENT