

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
[CIVIL DIVISION]
CIVIL SUIT. NO 305 OF 2015

RTD CHIEF JUSTICE

SAMUEL WILLIAM WAKO WAMBUZI..... PLAINTIFF

VERSUS

1 EDITOR IN CHIEF,
RED PEPPER PUBLICATIONS LTD
2 RED PEPPER PUBLICATIONS LTD..... DEFENDANTS

BEFORE: HON. LADY JUSTICE P. BASAZA - WASSWA

JUDGMENT

Background

[1] The Plaintiff filed this suit against the Defendants seeking for general and exemplary damages for alleged libel, interest thereon and for a permanent injunction and costs of the suit.

In his plaint, the Plaintiff contends that in relation to him, the Defendants published in their newspaper known as “Sunday Pepper

Vol. 15. No. 115, at pages 16 and 17, a false, sensational and defamatory article under the title ***“EXPOSED! 100 Most indebted Personalities Revealed”***.

He contends further that by reason of the said article, he has been gravely damaged in his reputation and standing in community and has suffered damage.

[2] In answer, the Defendants filed a written statement of defence by which;

- a) They admit publishing the article complained about, but deny the allegation that the article was false, malicious, defamatory of the Plaintiff or that the article bore the meaning attributed to it.
- b) They contend that they have already published an apology which is annexed to the plaint
- c) They contend that the plaint did not disclose a cause of action and is incurably defective.

[3] At the trial the Plaintiff was represented by Mr. Masembe Kanyerezi and Mr. Timothy Lugayizi while the Defendants were represented by Mr. Maxim Mutabingwa.

In their joint scheduling memorandum dated 19th September, 2016 Counsel agreed to the following two (2) facts;

1. That the Defendants published the article complained about in the Sunday Pepper of 11th October, 2015 (**EXB. P. 1**). Hereinafter referred to as ***“the publication”***
- 2 ***The publication*** read as follows;

“EXPOSED!

100 Most Indebted Personalities Revealed”

“Many of you think top personalities / tycoons are in the comfortable zone, living a luxurious life.

However, maintaining and sustaining the status quo has pushed some of them to borrow from banks and other

money lenders, a development that has seen some of them live in fear and misery over failure to pay back. Today, Salt N' Pepper, unveils a list of top 100 highly respected personalities who are having sleepless nights over debts, collapsing businesses and financial woes in general. These will be published in series every Sunday until the list is exhausted. We hope you will learn a thing or two about this investigative story..."

"Chief Justice Samuel Wako Wambuzi

Retired three-time Chief Justice Samuel Wako Wambuzi needs no mention in the Ugandan legal circles where he served in very precarious time. After retiring from the judicial services, he diverted all his energies to his investment in the education sector. He is the proprietor of the posh Namuwongo based Greenhill schools. Sources reveal that the brilliant learned fellow is struggling with almost Shs 10bn loan from a top city commercial bank.

An insider intimated to us that the former judge secured a business loan to expand his Greenhill School in Buwatte and failed to service the loan like in the projected bank loan assessment program that is giving him sleepless nights.

It is said that he is under pressure over the loan interest rates yet he had envisioned a peaceful retirement free from the court case pressures”

- [4] There are only two (2) issues for my determination. Although Counsel had agreed on three (3) issues in their joint scheduling memorandum, I reduced the issues to two (2) under the provisions of O. 15 rule 5 of the Civil Procedure Rules. I did so on the basis that the first issue was framed and derived from paragraph 1 (i) of the written statement of defence to the effect that the Defendants intended to raise a preliminary objection that the plaint does not disclose a cause of action. Such preliminary objection was however abandoned and was neither raised at the commencement of the trial, nor at any other stage of the proceedings or at all. It was not even referred to by the Defendant's Counsel in his written submissions.

The two (2) issues for trial are:

- 1 Whether the publication was false and defamatory of the Plaintiff?
- 2 Whether the Plaintiff is entitled to the remedies prayed for?

[5] The Plaintiff had two (2) witnesses; the Plaintiff (PW1) and Retired Judge Mr. Edmund Ssempe Lugayizi (PW2). The Defendants called one witness, Mr. Naire Haruna, a journalist and the author of the publication.

Issue No. 1:

Whether the publication was false and defamatory of the Plaintiff?

[6] The Plaintiff (PW 1) stated that the publication and its heading was defamatory of him. The story was mentioned on the cover page and it read 100 most indebted tycoons exposed, and it mentioned and included him with an insert of his photograph.

He stated further that he is not the proprietor of the school. His wife, who is now departed together with other people founded the school and when she departed her interest in the School went to their

children. He stated that Greenhill holdings holds Greenhill Academy which has two schools in Kibuli and in Buwaate and that he is a Director in Greenhill Academy that has about seven (7) Directors.

He stated further that he does not have any loan with any bank for which he is struggling to settle and neither does Greenhill Holdings or Greenhill Academy have any loans. He told court that Greenhill Holdings had a loan of UGX. 3BN that was settled ahead of the programme and that at the time the publication appeared, the loan had been settled six (6) months back and there was no truth in the statement.

PW1 further told court that he does not live an extravagant life. He lives a humble life within his means and does not finance his life through borrowing. He told court that to attribute the style of life suggested by the publication is insulting in a way much as he was painted as a respected person. Citing parts of the publication, he invited court to conclude that what was meant by the words was that he is a kind of person who pretends to do one thing, when he is doing something else and that the sum total being that he is a dishonest

person that borrows money to improve a school but instead uses the money to live a luxurious life, and worse still, fails to pay.

He stated that he has worked in legal sections of Government, Ministry of Justice and was on the Bench that he joined in 1969 as a judge of the High Court and in 1972 - 75 he was made Chief Justice. Between 1975 and 1977 he was President of the Court of Appeal for East Africa until the East African Community collapsed. He worked briefly as a judge in the Court of Appeal of Kenya between 1977 and 1979 when he returned to Uganda as Chief Justice between 1979 and 1980. He took a break off the bench and in 1986 to 2001 he was a judge of the Court of Appeal and retired after clocking the compulsory age of 70.

He further stated that he felt very strongly wronged and greatly damaged in his reputation by the publication and sought legal advice.

[7] PW2, stated that he has known the Plaintiff for 44 years since 1972 when as a young student at the Law Development Centre, during his clerkship. He spent two (2) months under the Plaintiff's tutelage at the High Court. Later in 1993 he was appointed a High Court Judge and

was nurtured when he worked as a new appointee in the Judiciary by the Plaintiff who was the Chief Justice until 2000 when the Plaintiff retired.

PW2 described the Plaintiff as an honest, very humble, parental and a very organised person in every area of his life; his speech, dressing and is a gentleman of the highest calibre.

Referring to the publication (EXB P. 1), PW2 stated that when he read it, he was perplexed because the person he knew was not the person he thought all that had been written about. The publication conveyed a bad message portraying the Plaintiff as leaving beyond his means, with debts that he could not pay and that he was irresponsible and living in a desperate way financially.

[8] For the Defence, DW1 stated that they (the Defendants) have always associated the Plaintiffs name with Greenhill and that they go hand in hand. He stated that their intention was to write about businesses with loans and the people behind the businesses. That upon receiving the Plaintiff's lawyer's letter of intention to sue with a demand for an apology (EXB P. 2), they sincerely apologised as the letter had

demanded. He also stated that upon receipt of the said letter (**EXB P. 2**), they discovered from the letter that the loan had been paid six (6) months back and the publication appeared after the loan was paid. He told court that he as the journalist who wrote the story, tried to get the Plaintiff's number but was unsuccessful and that he based the publication on his source who provided the story. He also stated that the source of the story did not provide him with any document showing him the details of the loan.

DW1 showed court another publication of the 2nd Defendant; in their "Sunday Pepper" dated November, 1st 2015 (**EXB P. 3**) and stated that the latter publication was the Defendants' apology that they published in line with the apology specified in the lawyer's letter (**EXB P.2**). He told court that the Defendants clarified in their apology that the Plaintiff is not a shareholder and his late wife's shareholding was taken over by the children.

Arguments of Counsel

[9] The Plaintiff's Counsel submitted that the uncontroverted testimony of the Plaintiff showed that the publication was false and that the Plaintiff (*sic*) did not lead any evidence to support its truth.

Counsel also submitted that the natural and ordinary meaning and or innuendo of the publication meant and were understood to mean;

- i) That the Plaintiff was to serialize, was extravagant, fickle and lives beyond his means and finances that life style through borrowing for consumption from banks and other money lenders
- ii) The Plaintiff is irresponsible and failed during his working life to plan for his retirement and
- iii) The Plaintiff is the principal shareholder of Green Hill schools and under his direction and control, has been financially irresponsible and has borrowed colossal sums of UGX. 10BN which it has failed to service or re-pay.

[10] The Defendant's Counsel submitted that the publication is not defamatory of the Plaintiff. He argued that reasonable people who read and understood the publication did not regard the Plaintiff with

hatred, contempt, ridicule or dislike. The reputation of a man who borrows money to expand his business and gets problems in payment is not lowered in any way whatsoever. Citing *Halsbury's laws of England, Vol. 24 3rd ed. at page 24 and Stubbs Ltd vs. Russel 1913 AC at page 386*, he submitted that the publication merely states that the Plaintiff has difficulties in paying his loan which is not defamatory per se. He argued that there is no discreditable reason assigned to the statement whether expressly or by innuendo that the Plaintiff is avoiding his creditors.

Decision of Court:

[11] Before I determine this issue, it is essential that I first lay down the definition by learned scholars of the terms defamation and libel.

Defamation is defined as;

“The act of harming the reputation of another by making a false statement to a third person”

“The wrong of defamation consists in the publication of a false and defamatory statement concerning another person without lawful justification”.

Black’s Law Dictionary 9th ed. at Pages 479 & 480

A statement is defamatory if it tends to bring a person into hatred, contempt or ridicule or if the words tend to lower the claimant in the estimation of right-thinking members of society generally or if they tend to cause the claimant to be shunned or avoided. There are two forms of defamation; libel and slander. Libel is defamation in a permanent form whereas the latter is defamation in a non-permanent form.

See Winfield & Jolowicz on Tort, Sweet & Maxwell, 19th ed. (2014) paragraph 13 – 001 & 13 - 002 at page 360.

“...Libel is a defamatory statement expressed in a fixed medium, esp. writing but also a picture, sign, or electronic broadcast.

Libel is that which is communicated by the sense of sight, or perhaps also by touch or smell..."

Black's Law Dictionary, (supra) at Page 999

[12] Under this issue, I am required to determine whether the words of the publication were false, and whether the publication which unequivocally referred to the Plaintiff, brought him into hatred, contempt or ridicule or if the publication lowered him in the estimation of right-thinking members of society generally or if it caused him to be shunned or avoided. To wit; whether the words in the publication mean what the Plaintiff alleges them to mean, as viewed in the mind and eyes of the reasonable reader / person.

[13] The burden of proof lies on the Plaintiff. It is trite that he who asserts must prove such assertion. (See **sections 101 & 103 of the Evidence Act, Cap. 6**)

[14] The standard of such proof is on a balance of probabilities;

"Where it is more probable than not, the burden is discharged, but if the probabilities are equal, it is not"

As per Lord Denning in Miller vs. Minister of Pensions [1947]

2 All ER 372

a) *Alleged falsity of the publication;*

[15] From the outset, it is apparent that the assertions and evidence of the Plaintiff that the publication was false were uncontroverted. I agree with the Plaintiff's Counsel that the Defendants did not make any attempt to demonstrate that the publication was true as contended in their written statement of defence. In converse, the gist of DW1's evidence was an acknowledgment that the publication was false. DW1 acknowledged that the Plaintiff did not own the school business referred to as stated in the publication and that neither the Plaintiff nor the Greenhill Schools owed any loan as at October 11th 2015, the date of the publication (**EXB P. 1**). DW1 referred court to (**EXB P. 2**), the Plaintiff's lawyer's letter of intention to sue, and admitted that upon receipt of (**EXB P. 2**), the Defendants discovered that the loan had been paid six (6) months prior to the date of the publication.

[16] In addition to [15] above, I have also considered that the wording of **EXB. P.3**, the Defendant's publication of November, 1st 2015, is itself

an acknowledgement of the falsity of the publication. The relevant part of that publication read thus;

"In our Newspaper of the 11th October 2015, we published an article under the tile (sic) "Exposed! 100 Most Indebted Personalities Revealed," which included a caption referring to Rtd. Chief Justice Samuel William Wako Wambuzi and Green Hill Schools. We have since established that neither Rtd Chief Justice Samuel William Wako Wambuzi nor Green Hill Schools have any indebtedness as referred to in the article and the statements in the article (in regard to Wambuzi and Green Hill Schools) were incorrect" (Underlining added)

[17] From the foregoing, it is abundantly plain that the publication was false.

b) *Alleged defamation of the Plaintiff by the Publication?*

[18] The Plaintiff (PW1) invited court to conclude that what was meant by the words published by the Defendant in **EXB P. 1** was that;

"he is a kind of person who pretends to do one thing, when he is doing something else and that the sum total being that he is a dishonest

person that borrows money to improve a school but instead uses the money to live a luxurious life, and worse still, fails to pay”.

In their submissions, the Plaintiff's Counsel also assigned a similar meaning to the publication. (Refer to paragraph [9] (i) – (iii) above).

[19] *I agree with the Plaintiff and his Counsel. I am satisfied that in the mind and eyes of the reasonable reader / person, the same natural and ordinary meanings they assign to the false statements in the publication, would be imputed. Particularly the absurd meaning that the Plaintiff is of dishonest and pretentious character.*

I note that in his submissions, the Defendant's Counsel tactfully restricted his propositions on what the imputation of the false statements are, to a business context. He avoided the imputation of the false statements to the reputation and character of the Plaintiff. Counsel's said propositions are void of merit for that reason and for the reason that the statements about the Plaintiff in relation to the businesses referred to, were themselves untrue.

[20] *I hold the view therefore that the publication no doubt, disparaged the Plaintiff in his highly esteemed reputation as three (3) time Chief Justice of the Republic of Uganda. It lowered him in the estimation of right - thinking members of society. The picture painted of him by far breached all tenets of professional ethics and conduct of a retired Judicial Officer of his stature.*

[21] For the reasons given under [19] & [20] above, issue no. 1 is accordingly answered in the affirmative. The publication was false and defamatory of the Plaintiff.

ISSUE 2:

Whether the Plaintiff is entitled to the remedies prayed for?

[22] In his plaint, the Plaintiff prays for general and exemplary damages and interest thereon. He also prays for a permanent injunction and costs of this suit.

General Damages:

[23] Citing *John vs. MGN Ltd [1996] 2 All ER page 47 and 48 and Hon. Rebecca Kadaga vs. Richard Tusiime & 2 Ors H'CCS No. 56 of 2013 and Samuel Ndungu'u Mukunyu vs. National Media Group &*

Anor High Court of Kenya Civil Suit No. 420 of 2011, the Plaintiff's Counsel submitted that the Defendant is entitled to the award of **UGX. 300M/=** as general damages for the damage by the Publication to his reputation and for the conduct of the case by the Defendant including the cross-examination of the Plaintiff.

In support of their proposition, Counsel referred court to the decision of **Nyanzi, J in the Hon. Rebecca Kadaga case (supra)** where **UGX. 80M** was awarded to the Plaintiff as general damages for libel in similar circumstances and to the awards referred to in the **Samuel Ndungu'u case (supra) at pages 26-27.**

[24] The Defendant's Counsel submitted that should court be inclined to hold that the publication was defamatory of the Plaintiff and award damages, the Plaintiff would be entitled to only nominal damages of **UGX. 5,000,000/=**. He argued that being retired and aged 85 years, the Plaintiff is no-longer in service and the publication is not likely to have any major impact on the Plaintiff's life or cause him damage.

Counsel further argued that the publication was in the 2nd Defendant's Red Pepper newspaper which is published only in English

and has a limited area of circulation and was published only once with no repetition. In support of his arguments, Counsel relied on ***Justice Sempa Lugayizi vs. Teddy Ssezi-Cheeye & Anor HCCS No. 644 of 2001*** and an extract from ***Gatley on Libel and Slander 8th ed. page 484 and Ntabgoba Herbert vs. The New Vision HCCS No. 113 of 2003***. In the latter case the Principal Judge emeritus, was awarded **UGX. 30M/=** as general damages.

Decision of court

[25] A Claimant who succeeds in establishing liability in defamation is entitled to compensatory damages for the wrong committed by the Defendant. The factors to be considered in assessing damages include; the reputation of the Claimant, the gravity of the libel, the extent of the publication, the effect of the publication and whether the plea of truth is successful.

See ***Winfield & Jolowicz on Tort, (supra) paragraph 13 – 116 -13-121 at pages 410 -411.***

[26] The Plaintiff has successfully established that he was defamed by the publication and he is therefore entitled to compensatory damages. Before assessing what quantum he is entitled to, I need to determine whether the November 1st, 2015 publication (**EXB P. 3**) amounted to an apology as claimed by the Defendants.

[27] PW1 stated that by a letter through his lawyers, dated 16th October, 2015 (**EXB P. 2**) he demanded an apology and compensation for the damage to his reputation from the Defendants. In the letter he included a sample apology but the apology as demanded was not published. He stated that there was a so-called qualified apology with a wrong title from the Defendants in their Sunday Pepper (**EXB. P.3**),

[28] DW1 stated that they sincerely apologised as the letter (**EXB P.2**) had demanded and asserted that the Defendants thought that the Plaintiff was satisfied with the said apology because whatever was asked of the Defendants, was put in the apology.

[29] I have carefully read **EXB P.3** and I hold the view that an article whose;

- a) Heading is written in direct speech purportedly by the Plaintiff as follows; ***"I don't have any debts in Banks- Wako Wambuzi"***,

b) Content (the bulk) is written in reported speech referring to words by the Plaintiff's lawyers,

cannot by any measure, amount to an apology by the Defendants.

[30] In addition, the Defendant's unsuccessful plea of truth of the publication in itself, defeats any suggestion that the article of November 1st, 2015 (**EXB P.3**) was an apology. The Defendants cannot be allowed to rely on a plea of truth when it is convenient to do so, then rescind that position and rely on a purported apology in anticipation of the benefit of mitigation. In my view, that amounts to approbation and reprobation and the Defendants are estopped.

[31] Taking the arguments of all Counsel into account and the authorities cited and on the basis of the considerations that I list below, I assess adequate compensation to the Plaintiff at **UGX. 375M/= (Uganda Shillings Three Hundred, Seventy Five Million only)**. I have particularly considered;

i) The stated reputation of the Plaintiff as three - time Chief Justice of the Republic of Uganda,

ii) The gravity of the libel against the Plaintiff,

- iv) The wide circulation of the Defendants' newspaper throughout Uganda
- v) The highly sensational title under which the publication was made and the admission by DW1 that the Defendants did not verify the content of the publication by obtaining the Plaintiff's comment or otherwise, but that they simply run the publication.
- vi) That the Defendants have not apologised and have taken the Plaintiff through a full - blown suit.
- vii) The awards made in the *Hon. Rebecca Kadaga case (supra)* and the *Samuel Ndungu'u Mukonyu case (supra)* cited by the Plaintiff's Counsel. In the former case the award to Hon. Rebecca Kadaga, the Speaker of the Parliament of Uganda was **UGX. 80M.** In the latter case the awards in that case and in similar cases cited therein, of defamation concerning important personalities in Kenya that included; a retired Court of Appeal Judge, a cabinet Minister and prominent Advocates in Kenya, were in the region of **Kshs. 6,000,000 – 15,000,000¹.**

¹ Uganda Shillings 210M/= -527.25M/=at the current exchange rate of 1 KES = 35.15 UGX.

Exemplary damages:

[32] Exemplary damages are punitive or penal in nature. The rationale for these damages is to punish and deter the Defendant from repeating the wrongful act. They are usually awarded inter alia where the Defendant's conduct, as in the present case, has been calculated by him / it to make a profit which may well exceed the compensation payable to the Plaintiff. See the decisions in *Rookes vs. Barnard* [1946] All ER 367 and *Obongo vs. Kisumu Council* [1971] EA 91.

I award the Plaintiff **UGX. 50M/= (Uganda Shillings Fifty Million)** as exemplary damages against the Defendants to punish and deter the latter from repeating the wrong complained of.

[33] In the final result, Judgment is entered for the Plaintiff against the Defendants in the following terms;

1. The Defendants shall pay to the Plaintiff general damages for libel in the sum of **UGX. 375M/= (Three Hundred, Seventy Five Million Uganda Shillings Only)**
2. The Defendants shall pay to the Plaintiff **UGX. 50M/= (Fifty Million Uganda Shillings only)** as Exemplary damages

3. The Defendants shall pay interest on the sums awarded to the Plaintiff under (1) and (2) above at the rate of 6% per annum from the date of this judgment to the date that payment is made in full.
4. A permanent injunction is hereby issued against the Defendants restraining them and their agents or persons under their control and direction from further publishing similar defamatory statements of the Plaintiff
5. The costs of this suit shall be paid by the Defendants to the Plaintiff.

I so order,

P. Basaza Wasswa 4/5

P. BASAZA - WASSWA

JUDGE

04/05/2017

This Judgment was delivered on 4th May, 2017 at 10:00am in the presence of

Mr. Timothy Lugayizi for the Plaintiff & Ms. Aisha Nakimera – Court Clerk.