

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

CIVIL SUIT NO. 218 OF 2013

ADAM RUJUMBA ::: PLAINTIFF

Versus

**THE NEW VISION PRINTING AND
PUBLISHING CORPORATION :::::::::::::::::::::::::::::: DEFENDANT**

BEFORE: HON. MR. JUSTICE STEPHEN MUSOTA

JUDGMENT

The plaintiff Adam Rujumba, brought this action in defamation against the defendant for;

- a) *General damages.*
- b) *Interest there on.*
- c) *Costs of the suit.*

The facts constituting the cause of action are that;

Sometime in 2003 the plaintiff was stopped by a Traffic Officer during a routine traffic operation. At that moment the defendant's photo journalist took the plaintiff's photograph with the Traffic Officer during the operation.

The photograph was first published in the Bukedde Newspaper in 2003 under a caption that suggested that the plaintiff is an errant driver or a traffic offender. Since that publication, other subsequent publications of the plaintiff's photos by the defendant followed. Such publication was in the New Vision of Tuesday 1st December 2009 under the caption "**SHOOTING SPEED DOWN.**" The photograph showed the plaintiff seated in his car with a Traffic Police Officer seated on the passenger seat. The same photo again appeared in the New Vision of November 23rd 2011 at page 30 and below it were the following words

“ Traffic officer writes a ticket for an errant driver.”

The most recent publication of the said photograph was in The Sunday Vision of 8th January 2012 at page 40 under the caption

“Avoid costly Traffic Offences this year.”

The plaintiff avers that the constant and persistent publication of his photograph by the defendant under captions relating to Traffic Offences and the words contained there in the accompanying articles are understood in their natural and ordinary meaning to portray by way of innuendo that the person in the photo is a Traffic Offender. That this itself is defamatory. That by persistently and consistently publishing his photo under such negative captions, the plaintiff’s reputation has been greatly injured yet he is a responsible citizen, who is married with children who look up to him. He is also a staunch Muslim yet some of the various captions suggest that he was caught for drunken driving.

The plaintiff further says he is a 38 year old graduate of Bachelor of Finance and Banking and a former Garage owner and Salesman in Hima Cement.

In its defence, the defendant substantially denied the plaintiff’s claim and contended that the words complained of did not bear by innuendo or otherwise and were incapable of bearing the alleged defamatory message against the plaintiff. That the plaintiff was not severely injured in his public capacity or shunned by the public.

At the scheduling conference the following issues were agreed upon

- 1. Whether the publications and photographs are defamatory of the plaintiff?***
- 2. Whether the defendant has any defences?***
- 3. Whether the plaintiff is entitled to the remedies sought?***

In defamation suits, for court to determine whether the words complained of are capable of a defamatory meaning, one must first look at the words themselves. Then one has to consider the circumstances under which they were published. In all this, the plaintiff does not

shoulder the burden of proving falsity or malice in order to establish a cause of action. If the words are defamatory or capable of being so construed, the law presumes that they are false. The burden shifts to the defendant to show that they are true. **AK Oils & Fats (U) Limited Vs BIDCO Uganda Limited HCCS 0715 of 2005.**

From the evidence, it is not contested that the pictures of the plaintiff were published depicting a person who had committed offences. In his testimony the plaintiff was categorical that he gave a Traffic Policeman a lift in 2003 who disembarked on Wilson Road whereat he saw flashes and a man running away. A photo was then published in the Bukedde Newspaper of the defendant under a caption that suggested that the plaintiff was an errant driver or a traffic offender. A week later the same photograph was published in the New Vision of 1st December 2009 under the caption **“SHOOTING SPEED DOWN.”** It showed the plaintiff seating in his car with a Traffic Police Officer as shown in exhibit P1. After the publication in 2009, the plaintiff approached the New Vision complaining about the publications and requested them to stop using his photo but in spite of the complaint the same photo appeared in the New vision 23rd November 2011 at page 30 under the words “Traffic Officer writes ticket for an errant driver,” Exhibit P3. Thereafter, it appeared twice. One in Sunday Vision under the caption **“Avoid Costly Traffic Offences This Year” Exhibit P3.**

The plaintiff further testified that as a practicing Muslim and a businessman who deals in cars as a trade he was subjected to ridicule every time the publications were made and he had to explain himself numerous times to business and religious associates. That he was exposed to a lot of hardship and ridicule owing to the numerous phone calls he received every time he was published.

PW2 Hajji Bruhan Kyamanywa and PW3 Faisal Tezikuba testified in support of the plaintiff.

In their defence, the defendants contended that that articles published as Exhibit P.1 titled **“Shooting Speed Down”** only discussed how a passenger can contest the reading of a speed gun in court though their chances of success are thin. That Exhibit P.2 titled **“Traffic Police**

Demands SH 15B Arrears from Motorists” discussed the introduction of the Express Penalty Scheme and how it is a lucrative revenue source for the police. That **Exhibit P.3 titled “Avoid Costly Traffic Offences This Year”** discussed traffic offences and their charges.

That all these articles did not at any one time mention the plaintiff. The articles were generally informative and educative in nature for the benefit of the public and as such could not be defamatory of the plaintiff. That as a result although the plaintiff was subjected to disciplinary action by his employer, he was absolved because he does not drink.

The defendant further contended that there was no evidence of any letter calling for a disciplinary hearing or any proceedings of what transpired. That in cross examination the plaintiff also revealed that his relationship with his employers remained okay following the publications of the articles. That articles do not refer to the plaintiff at all and in any case since the plaintiff is a regular offender who has no respect for the laws governing traffic and Road Safety in Uganda he cannot claim to have a reputation to protect. That the plaintiff did not adduce any evidence of any customers to his garage business or even call logs received by him from his customers and various business stakeholders.

As rightly cited by counsel for the defendant, ***GATLEY ON LIBEL PARAGRAPH 31 states that:***

“a defamatory statement is one which tends to lower a person in the estimation of right thinking members of society or to cause him to be shunned or avoided or to expose him to hatred, contempt or ridicule or to convey an imputation on him which is disparaging or injurious to him in his office, profession, calling, trade or business”

In ***SHAH Vs UGANDA ARGUS [1971] EA 362*** Youds J stated that;

“.....any words or imputation which may tend to lower a person in the estimation of right thinking members of society or expose a person to hatred, contempt or ridicule have been held to be defamatory and it is a general impression that the words are likely to create in the minds of

reasonable persons which must be considered rather than making a lose and precise analysis of the words used.”

After analysing the evidence on both sides, it is my finding that the different captions complained of portrayed the plaintiff as an errant driver who does not pay fines. The captions caused PW2 the plaintiff’s father to take over some responsibilities of his son following business losses as a result of the negative publications. These losses were confirmed by PW3 a business partner of over 5 years.

The articles published by the defendant lowered the plaintiff in the estimation of the right thinking members of society because the plaintiff was depicted as a perpetual Traffic Offender and yet he was not. It depicted the plaintiff as careless and always on the wrong side of the law. Whereas DW1 testified that he saw the plaintiff driving a pick-up vehicle and was waved down by the Traffic Police Officer who got into his car and the two held discussions, the different captions published by the defendant in Exhibits P1, P2 and P3 depict that the plaintiff was driving at a high speed and was paying a fine. DW1 also said that the plaintiff was stopped for not putting on a seat belt because the whole week was for cracking down motorists who were driving without wearing seat belts.

The defendant did not satisfactorily justify why they used the same caption of the plaintiff for different topics they wanted to publish without his consent.

I will find that the words used in the different captions by the defendant portrayed the plaintiff to be an errant drunken driver against his deep Islamic religious inclination and belief.

Following the holding in the case of ***A.K oils & Fats (U) Ltd Vs Bidco Uganda (HCT-0715-2005*** (supra), the defendant has failed to prove on a balance of probabilities that the publications were not defamatory of the plaintiff. I will hold that the publications and photographs were defamatory of the plaintiff.

ISSUE 2: Whether the defendant has any defences?

The defendant pleaded the defence of justification, truth and fair comment on matters of public interest. That the publications were fair in regard to Traffic Offences and Rules. That the plaintiff acknowledged that indeed there was a Police Officer in his car and DW1 said he saw a Police Officer questioning the plaintiff. That the role of the defendant as a media house is to generate information which the public needs either for education, entertainment or information. The defendant relied on the case of *Nyeko Vs Uganda Broadcasting Corporation Company Ltd & Anor CS No. 0044 2013* where it stated that:

“The media including Radio Broad Cast have the duty to enlighten the public on what is going on. This is part of if not the main work of the 1st defendant disseminating information to the public far and near”

What comprises as a publication in the interest of the public was discussed by Lord Denning (MR) in the case of *London Artists Ltd Vs Littler (1969)2 ALL ER.* He stated that:

“Whenever a matter is such as to affect a people at large so that they may be legitimately interested in or concerned at what is going on or what may happen to them or others, then it is a matter of public interest on which everyone is entitled to make fair comment.”

It is clear from the photographs complained of that the plaintiff appears distressed with a Police Officer seated beside him seemingly writing during a routine traffic check. However, the same caption has been used by the defendant under different articles published as **Exhibits P.1, P2 and P3**. From the exhibited articles the plaintiff was severally depicted or portrayed as a Traffic Offender in the eyes of the right thinking members of the public. Even if the defendant’s role as a media house is to generate information which the public needs either for education, entertainment or information, the defence of fair comment on a matter of public interest is not available to the defendant because they would have published the same information without necessarily using the photograph of the plaintiff who was never charged with any Traffic Officer and/or convicted.

None of the articles published by the defendant applies to the Traffic Offence which was committed by the plaintiff on the day when the plaintiff's photo was taken.

In the circumstances, I am constrained to find that the defendant has not proved any defences available to them.

Issue 3: Whether the plaintiff is entitled to the remedies?

The plaintiff prayed for General Damages for compensation from the defendant for its conduct when it brought the plaintiff to scandal, public odium and unnecessary queries by his business associates and clients and those he is known to for experiencing mental stress, anguish, anxiety and annoyance by the persistent publications of the said photo.

The defendant insisted that the plaintiff is not entitled to general damages because the articles were not malicious. That the complaint by the plaintiff was received by the defendant on 10th January 2012 after the publications were made.

I have already held that the plaintiff was defamed. What remains is assessment of the quantum of general damages to be awarded. It was held in *Samwiri Lugogobe Vs Hussein Lukaga [1980] HCB 18* (a case relied upon by counsel for the defence) by Allen J (as he then was) held that:

“.....in a defamation case when considering the quotation of damages, what matters is the injury done to the plaintiff's reputation and character taking into account his wounded feelings and any insulting or malicious conduct on the part of the defendant. In absence of evidence of any of those factors an award of nominal damages only would be made for injury done to the plaintiff's good name.”

In the instant case the continuous reference to the plaintiff severally without justification in exhibits P1, P2 and P3, some damage was occasioned to the plaintiff by the invasion of his

privacy and reputation. Since, however, no malicious intent has been proved as against the defendant, in the circumstances of this case, I think that an award of UGX.10,000,000/= would be reasonable General damages not too high, not so low. It is so awarded, with interest at court rate from the date of judgment till payment in full and costs.

Stephen Musota

J U D G E

28.02.2017

28/2/2017:-

Mr. Karuhanga Justus for the plaintiff.

Ms. Brenda Ann Akello for the defendant.

Milton for Clerk.

Mr. Karuhanga:-

We are for the ruling.

Court:-

Ruling read and delivered.

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Ajji Alex Mackay
DEPUTY REGISTRAR

20/02/2017