

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

CIVIL SUIT No. 0121 OF 2016

HON. ARIDRU AJEDRA GABRIEL :::::::::::::::::::: PLAINTIFF

Versus

THE RED PEPPER LIMITED :::::::::::::::::::: DEFENDANT

BEFORE: HON. MR. JUSTICE STEPHEN MUSOTA

RULING:

The plaintiff sued the defendant for defamation. The plaintiff's claim is for a permanent injunction restraining the defendant from publishing any defamatory content against the plaintiff, an apology on the front page of the Newspaper, exemplary and general damages and costs of the suit. This complaint arose out of a publication of 27th April 2016 – Annexure “HL” and Annexure “PG”.

In its defence, the defendant in the written statement of defence threatened to raise a preliminary objection as follows:

- i) That the plaint does not disclose a cause of action against the defendant as the publication complained of is not reproduced in the plaint as required by Law.
- ii) That the plaint does not describe a place of residence of the parties as required by Law.
- iii) That the defendant shall therefore pray that the plaint be rejected and struck out with costs to the defendant.

Indeed after scheduling Mr. Mutabingwa Learned Counsel for the defendant raised the objections.

In his submissions, he prayed that the plaint be rejected under order 7 rule 11 of the Civil Procedure Rules for disclosing no cause of action. That in determining this, Court looks at the plaint alone. That pleadings in defamation differ from other pleadings because a plaint does not disclose a cause of action if the words complained of are not reproduced in the plaint. That this omission cannot be cured by annexing the Article complained of. This was the holding in **Karaka Vs Turwomwe CA 5 of 1975** per Lubogo J, where it was held that in an action for defamation, the plaint must contain among others:

1. The allegation of the publication and reference to the plaint.
2. The words complained of.
3. The defamatory meaning.

That the plaint in this case did not comply with these mandatory requirements. Further Learned Counsel submitted that even the attachment to the plaint lacks some things such as volume, number and date.

Secondly, Mr. Mutabingwa submitted that Order 7 rule 1 of the Civil Procedure Rules was not complied with by the plaintiff. That what is contained in the plaint is an address for service of the Advocates but not place of residence of the plaintiff. That this is a serious omission because it may be necessary to serve the plaintiff personally.

In reply Mr. Wandawa for the plaintiff submitted that his client enjoyed a right to his reputation but the defendant has admitted publishing an Article which injured his reputation. That the plaint must only contain the words complained of but not the Article. That the Annexures to the plaint form part of the plaint, so the words complained of and the Articles are part of the plaint.

Secondly, Learned Counsel submitted that as required under Order 7 rule 1 of the Civil Procedure Rules, the plaint indeed contains particulars of residence and place. That since the

plaintiff is represented by an Advocate it is easy to access the client through the Advocate. That the objections lack merit and should be overruled.

In rejoinder, Mr. Mutabingwa submitted that unlike in the case of *Motokov*, defamation cases do not arise out of Statute but rather from common Law in textbooks and precedents. That when Court interprets the complaint it refers to the entire Article not the heading or one sentence.

I have considered the preliminary objections raised by Mr. Mutabingwa and the response by Mr. Wandawa. I have also considered the Law applicable and the authorities relied on.

It is a fundamental rule of pleading that a party 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 facts 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. **Phillips Vs Phillips [1878] 4 Q.B.D 127, at pg 138.**

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 the claim. It is not sufficient to state the substance purpose or effect of the words used. The actual words used must be pleaded.

In the instant suit and as rightly submitted by Mr. Mutabingwa, the plaintiff's particulars of claim did not plead the actual words alleged to have been used by the defendant. Therefore in the absence of the actual words used, there is no cause of action.

In paragraph 4 (b) of the plaint the plaintiff just included part of the publication without a date or volume of the publication. Yet when Court is considering the publication, it reads the publication as a whole. Annexing the publication complained of does not cure the irregularity because in a claim for defamation every word or Article complained of must be reproduced in the plaint.

It was held in ***Bruce V Odhams Press Limited [1936] 1 K.B 697*** that it is succinct on the rule that pleadings in defamation must be clear and the particulars must bear out what is alleged in the main allegation which is the material allegation.

The importance of the actual words used are material facts since in defamation the words used are material fact and must therefore be set out in the statement of claim. It is not good to merely describe their substance, purpose or effect. The Law requires the very words used to be set out in the claim so that the Court may judge whether they constitute a ground for action. That's why in ***Karaka Vs Turwomwe CA 5 of 1975*** Lubogo J held inter alia and I agree that in an action for defamation the plaint must contain among others:

- (1) The allegation of the publication and reference to the plaint.
- (2) The words complained of.
- (3) The defamatory meaning.

In the instant case, it was not enough to quote headings or headlines and single sentences complained of.

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

The second objection 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 a requirement whether the plaintiff is represented or not.

In reply, Mr. Wandawa acknowledged that the plaint did provide the address of residence of the plaintiff but said this was not necessary since the plaintiff is represented.

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

“The plaint shall contain the following particulars –

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

The requirement to state the name, description and place of residence of the plaintiff is mandatory. It must be stated in the plaint so that the place of abode is ascertainable because sometime it might necessitate serving the plaintiff personally. Since this is an omission which does not go to the root of the claim, Learned Counsel for the plaintiffs are usually graceful to request for amendment to correct the omission. It was wrong not to provide the place of residence of the plaintiff.

For the reasons I have given in this ruling, I will uphold the two preliminary objections raised by Learned Counsel for the defendant. The plaint in its current form is rejected under Order 7 rule 1 (b) of the Civil Procedure Rules with costs.

Stephen Musota
J U D G E

30.03.2017

