

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

CIVIL SUIT NO. 105 OF 2010

DR. SPECIOZA WANDIRA NAIGAGA KAZIBWE ::::::::::: PLAINTIFF

Versus

- 1. THE INDEPENDENT PUBLICATIONS LTD**
- 2. THE EDITOR IN CHIEF INDEPENDENT MAGAZINE :::: DEFENDANTS**
- 3. DICTA ASIIMWE**
- 4. ISAAC MUFUMBA**

BEFORE: HON. MR. JUSTICE STEPHEN MUSOTA

JUDGEMENT

The plaintiff brought this suit in defamation against the defendants jointly and severally for general damages, exemplary damages, a permanent injunction to restrain the defendants from further publication of the complained of articles plus costs of the suit, arising out of the alleged defamatory articles headed **“Kazibwe Squanders SACCO’s shs. 300m”** and under the article **“SACCOs have left Busoga Poor”** published in the Independent Magazine news paper issue 105 of April 02-08-2010, interest on the general damages and costs of the suit.

According to the plaint dated 1st June 2010, the plaintiff’s cause of action arose as follows:

- a. On or about the 02-08 April 2010, the defendants and each of them printed and published or caused to be printed and published in the Independent Magazine newspaper a headline/words **“Kazibwe Squanders SACCO’s shs. 300m”** at the front page in full color and bold print accompanied with a picture of the plaintiff.*
- b. Further at page 10 and 11, each of the defendants extensively published an article under the said headline in full color and bold print accompanied with a picture of the plaintiff*

alleging that the plaintiff had squandered UGX.300 millions of money meant for people with disabilities.

- c. *The defendants in the above quoted article are also alleged to have maliciously written and printed and published the following words;*

“Kazibwe Squanders SACCO’s shs.300m”

The former Vice President and now President Museveni’s advisor on Microfinance Dr. Specioza wandira Kazibwe is again in the spotlight over abuse of public funds under the Government Bonna Bagaggawale program.

The money meant for the people with disabilities(PWDS) in Busoga under the Bonna Bagaggawale (prosperity for all) has sparked a controversy”.

- d. *Further reference was made in the same article by the said reporter at page 11 where he said that;*

“this is not the first time Kazibwe is accused of abusing public resources. In 2003 Kazibwe was accused of mismanaging the Valley Dam Project, leading to a total loss of UGX.4 Billion (USD 2 Million) by the Government when she was still Minister of Agriculture. Corruption at the time was so pronounced in the sector that some donors like the Swedish Government withheld aid.”

- e. *Equally the reporter stated under the same article that;*

“in February, 2003 Kazibwe was accused of being among the beneficiaries of fraudulent allocation of a Government Forest Reserve in Mukono the National Forestry Authority, the District Forestry Services and the Forestry Support Services, came under fire in Parliament for allocationg the Forest Reserve to big Government Officials including Kazibwe to plant trees.”

- f. *The plaintiff further contended that in the same issue of the Independent Magazine at page 12 the defendants allegedly printed and published or caused to be printed and published the following defamatory words;*

“SACCOs have left Busoga Poor”

It’s now emerging that Former Vice President and now President Museveni’s advisor on Microfinance Dr. Specioza Wandira Kazibwe is under the spotlight for Squandering SACCO’s shs.300m of SACCOs money. Those developments look like an indictment of Bonna Bagaggawale”.

The plaintiff contends that in their natural and ordinary meaning the words complained of and contained in the above articles were and are highly defamatory of the plaintiff as hereinafter stated.

- 1. That the plaintiff is corrupt, fraudulent, dishonest, incompetent and unfit to be a leader, or hold public office.*
- 2. That the plaintiff is against President Museveni’s development of SACCOs and Bona Bagaggawale (prosperity for all program) programs.*
- 3. That the plaintiff is corrupt and or unfit to head Microfinance support Centre.*
- 4. That the plaintiff is a perennial and perpetual abuser of public assets and that she has historical encumbrances of abuse of public funds.*

The plaintiff contended that the articles were, malicious, baseless and unfounded and lack any iota of truth since she was never a party to the disbursements or expenditure of the above stated sums having been disbursed in 2008 before she became Chairperson of the Microfinance Support Centre. That in consequence of the said false publications she has been seriously and severely injured in her reputation and character as former Vice President of Uganda, Minister in a

number of portfolios, as well as Political Leader and with different accolades both locally and internationally and therefore this has lowered her locally and internationally in the eyes of all readers.

The defendants filed a joint written statement of defence admitting that they published the words complained of in paragraphs 5-7 of the plaint. The defendants also avered that the words were meant and understood to mean that the plaintiff was at all material times involved with the SACCO under discussion in the article(s) and that the plaintiff defended the loss and misuse of funds by the officials of the SACCO. The defendants denied that the said words meant or were understood to mean or were capable of meaning in their natural and ordinary meaning that the plaintiff was corrupt or squandered the funds herself.

Further the defendants in their defence said that the words were fair comment on matters of public interest namely misuse of public funds SACCOs and the plaintiff's role in defending such misuse and loss of funds. The particulars of fair comment were stated in paragraph 4 of the written statement of defence as follows:-

1. *The plaintiff is presumably an experienced former Vice President and continues to hold the high office of Presidential Advisor paid by public funds and whose actions in relation to the use or misuse of public funds ought to be scrutinised and publicly evaluated.*
2. *The plaintiff appeared before the Parliamentary Committee of the Parliament of Uganda investigating the misuse and/or loss of public funds by the SACCO in issue and vehemently defended the actions of the officials under investigation claiming among others things, that no funds were lost or misused.*
3. *In the circumstances the words complained of were fair comment in expressing the opinion that the plaintiff's defence of officials of the SACCO and their actions in the loss and misuse of public funds was questionable.*

The defendants further contended that the plaintiff is a public figure who has previously been embroiled in corruption and social scandals that have irredeemably lowered her estimation in the eyes and minds of right thinking members of our society and that therefore she has no good reputation to protect and is incapable of being defamed. That they have not in any way, manner or form defamed or lowered the plaintiff's estimation and that the plaintiff is in any event not entitled to an injunction by reason of the matters pleaded in the plaint or at all. That she is not entitled to any damages exemplary or general or otherwise. As such the defendants prayed that the suit against them lacks merit and substance and should be dismissed with costs to all the defendants severally.

At the hearing of this suit counsel Wambuga Sylvester and Robert Bautu of Syba Associated Advocates appeared for the plaintiff while Bob Kasango of the Marble Law Firm and later M/S Kirunda & Wasige Advocates appeared for the defendants.

The framed issues in this case are as follows:

- 1. Whether the Article published by the defendants are defamatory?***
- 2. Whether there is any defence available to the defendants?***
- 3. What remedies are available to the parties?***

This suit proceeded inter parties and both the plaintiff and defendants had the time to make their case and present witnesses. The plaintiff presented herself as the only witness and defendants presented three witnesses.

I shall deal with the issues seriatim. But before I proceed I must state that it is trite law that the burden of proof lies on the plaintiffs to prove their case on a balance of probabilities.

In cross-examination PW1 stated that the report which counsel Bob Kasango referred to was not a result of investigations into her personally. It was investigation into the mismanagement of the Microfinance Support Centre (MSC). She also testified that she was cleared by the Inspector

General of Government. When PW1 (the plaintiff) was asked whether or not she was suspended by the Ministry of Finance she said that by the time the suspension was done her term of office had already expired so the suspension was null and void. PW1 also testified that Alex Ndenzi former MP for persons with disabilities did not accuse the MSC or her. That he only sought clarity on certain donation which was given by the President through MSC for persons with disability and what had happened to the money. But the article states that Alex Ndenzi accused the MSC. At page 22 of the record of proceedings PW1 also denied ever giving an explanation for the question but she rather invited the responsible officer to explain. However, it was reported in the article that the plaintiff said that the Government gave only 300m instead of 400 and that she also said that they had used 117 million to buy a safe for the money, pay rent for office premises in Iganga and buy office equipment chairs, computers and recruit and pay managers of the SACCO. She also said that she did not give any interview to the Independent Magazine. She further testified that the role of the MSC was never to expend the monies but rather distribute it to the SACCOs of persons with disabilities in Eastern Region Areas of Mbale, Kamuli and Iganga. That MSC did not have any say in how the grant was to be utilized. That she could not tell whether the money was received because it was received before she became chairperson of the Board.

In cross-examination counsel for the defendant cast some doubt on the extent of damage that the article caused to the plaintiff's reputation.

In the defence case, DW1 was Andrew Mujuni Mwenda the Managing Director of the 1st defendant. He said that his role at the Independent is Editor-in-Chief who is the 2nd defendant in this case. That in his role he manages the business and over sees the editorial work, the collections, the writing, editing, laying and publication of stories, then distribution of the magazine and posting of the contents on their online edition. Further that the circulation of the 1st defendant's paper is estimated to be between the figures of 3,000 to 5,000 a week. That he thinks of the plaintiff as a person with a bad reputation internationally and nationally and that he is very much aware of her bad reputation. That he does stand by every single word that was published in exhibit "P3". When asked about the headline he said that they had to fit a story of 2,000 words in it and that is what they do. That the plaintiff was being accused of squandering

UGX.300 million and that the headline had to make that understood. Further, DW1 conceded that the responsibility for accountability for funds in a Ministry is on the Permanent Secretary and by the time the valley dams issue came up the plaintiff was a Minister of Agriculture. That as Journalists they report events as they occur and their responsibility is not to find out how the responsibilities are done. When asked in further cross-examination whether the Inspector General of Government report was connected with the UGX. 300 million issue he said that they are related. The witness did not also seem to know much about the details of the Inspector General of Government's investigation of 2012 but said that he knew that the Inspector General of Government investigated the plaintiff on her reputation as a person in charge of public trust and found that she abused public trust. That he was also not aware that by the time the Inspector General of Government did investigations the plaintiff was no longer the Board Chairperson of Microfinance Support Centre (MSC). When asked whether or not they verified from the plaintiff the allegations before publishing the story he was not straight forward with his answer. He rather said that it is not him who investigates but their reporters do and in this case the plaintiff was in the meeting where the article says she said they spent 40% of the money on office equipment. In further cross-examination the witness (DW1) admitted that they were holding the plaintiff accountable not for her actions but rather for her responsibility as the Head of the Institution and held the financial responsibility for the monies. And DW1 seemed to suggest that the headline did not have to reflect the truth in the story.

Although DW1 seemed to suggest that the article was entirely based on a meeting that happened in Parliament, a reading of the piece does not demonstrate this. He however says that their story is true because they report the events as they are. That the plaintiff was accused and they reported that she was accused.

In re-examination DW1 testifies that their readers are males above 25 and educated with a University Degree. That they are likely to read the article to the end and can distinguish between a headline and the full story.

Benedicta Asimwe testified as DW2. He said that he consulted the plaintiff before the story was published and he confirmed that the monies were spent the way the article stated on office equipment. That he chose to include just a portion of the interview with the plaintiff because it was the part that was relevant to the story. That it matters not what the heading is. As long as the story is correct the story cannot be wrong.

Isaac Mufumba testified as DW3. He testified that the headline of the magazine did not have anything to do with what he authored. That he authored the story with headline “SACCOs have left Busoga Gone”. That he should not be asked about the squandering of money story because that was not his work.

I will now go ahead and deal with the issues seriatim having considered the pleadings, the evidence for both sides and the respective submissions which court directed the respective parties to make.

Issue 1: Whether the Article published by the defendants are defamatory?

This Court holds the opinion that ***“Every man or woman is entitled to have his or her reputation preserved and inviolate.”*** A person’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 honour 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 other 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 9th 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.

In a defamation suit, 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 8th Edition** 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 Atkins 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.*

A defamatory statement is one which has a tendency to injure the reputation of a person to whom it refers by lowering him or her in the estimation of the right thinking members of society generally and in particular to cause him/her to be regarded with feelings of hatred, contempt, ridicule, fear or dislike and typical examples are an attack upon the moral character of the plaintiff attributing to him/her any form of disgraceful conduct such as crime, fraud, dishonesty among others; per Justice Allen in Geoffrey Ssejjoba Vs Rev. Patrick Rwabigonji HCCS No. 1 of 1976.

In this case this court is satisfied on a balance of probabilities that the statements complained of are defamatory because the plaintiff being a former Vice President, a former Minister, a Doctor, Presidential Advisor and Former Political Leader has a sensitive reputation which naturally would be harmed by any sort of allegation that she is a dishonest, corrupt, money squandering person who is always being accused of misuse of money. The defendants did not deny that they made the publications. 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 defendants against the plaintiff then a person of good repute will suffer at the mercy of reckless speakers or publishers who have audience.

The plaintiff as a person is entitled to her reputation and has a right to keep the same inviolate regardless of how small it is. The defendants were reckless with their words especially in the headline that suggested that it was a concluded investigation that the plaintiff squandered the money which as per the evidence on record was already dealt with by the time she became chairperson of the Board. The defendants therefore should suffer the consequences of that absolute disregard of the effect of their words. Any right thinking members of society would lower their estimation of the plaintiff upon hearing the toxic words of the defendants or reading them. I therefore find that the statements published by defendants as stated in the plaint were defamatory in nature. I therefore find that the defendant made the publication of the false statements complained of.

Although the defendants have a low opinion of the plaintiff this did not give them the right to finish off her reputation. Even a person who is deemed to be a squanderer of funds by the defendants is entitled to the remaining part of their reputation. The attitude of DW1 towards the plaintiff when he took the stand showed that he had no regard at all for the plaintiff's reputation. However, the plaintiff in her testimony and exhibits before this court proved that she has been and still is a highly regarded person in this country and beyond. She should be entitled to her reputation despite the low opinion of the respondents who have an audience.

What came out clearly in the course of this case is that as per the evidence on record there is no doubt that allegations have ever been made against the plaintiff for issues that arose in offices over which she has overseen. She however, proved that these allegations have never amounted to anything. There has been no conviction in a court of law and she has never been found personally culpable in all the allegations. As such it is defamatory and not accurate for the defendants to cast her in that light of a corrupt individual. The defendants' witnesses admitted that when the plaintiff was a Minister she was not responsible for the accountability of the public funds for which she was accused.

I am therefore not convinced that the plaintiff is a person of an irreparably bad reputation who deserves no respect whatsoever by any media house. The defendant's seem to suggest that any media house in Uganda should be able to publish any allegations whatsoever against the plaintiff and have no consequence for it. I do not agree.

A man or woman is entitled to an inviolate reputation no matter how small the reputation may be.

For that reason, I am persuaded by the case put forward by the plaintiff and find that she still has a reputation to protect. The evidence before this court shows she has never been found personally culpable for any of the allegations that have been levelled against her and she surely has never squandered the funds alleged in the article. The articles were therefore defamatory of the plaintiff.

Issue 2: Whether there is any defence available to the defendants?

The defendants put up the defence of fair comment.

I agree with the submissions of counsel for the plaintiff that to succeed in the defence of fair comment, the defendant must show that the word (or nature of words) are a comment and not a statement of fact, that there is a basis of fact (which is true) for the comment complained of and that the comment is of the fact of legitimate public interest. Per *Ntabgoba Vs Editor in Chief of the New Vision News Paper & Anor [2004] 2 EA, Godfrey Amanyire Vs The New Vision [1999] KALR.* I also agree with *Salmon & Heuston's The Law of Torts 21st Ed at page 181* that it is essential to the plea of fair hearing comment that the matter must appear on the face of it to be a comment and not a statement of fact.

In this case the headline could not be justified by the contents of the Articles in the Magazine of the defendants. They were worlds apart in meaning both on the face of it and otherwise. The words of the defendants in the article as I quoted at the beginning of this judgment were not not comments at all. They were authoritative statements of fact. The authors spoke with authority and assurance that they knew the plaintiff had indeed personally misused public funds. This was contrary to what came out in cross-examination and in the evidence laid before this court. I also agree with the submission of counsel for the plaintiff that the principle of law is and should be that if a libelous article in a news paper is introduced by a libelous heading or title, evidence that the facts stated in the article are true is not in itself sufficient. The heading or title must be justified; per **Rhoda Kalema Vs William Pike Civil Suit No. 611 of 1993.**

In **Lefroy Vs Burnside [1879] 4 LR TR 556**, it was held that for a comment to satisfy the credentials of fair comment, it must not misstate the facts because a comment cannot be fair which if built on facts is not truly stated. The article complained of in its present state cannot be afforded the defence of fair comment. This is majorly because although the concern about how public funds are managed and expended is a matter of public concern, I do not think that it was in the public interest for the defendants to make sure that the sum total of their publication had to be that the plaintiff is a person with no reputation at all. The articles did not also appear to be in good faith as the plaintiff said her opinion was never sought or published. The defendants' claim that they did some due diligence on the matter was not proved. They did not demonstrate to this court that what they published in the article was indeed what the plaintiff commented about the story when approached. The focus of the article was never the funds. The focus was the person of the plaintiff. The publication was malicious in as far as it did not seek to report about public funds but rather to show that she personally squandered any money. The article can also not be taken to be fair comment especially the headline because the plaintiff was not given the chance to respond to the story before it was published and therefore her comments were not represented in the publication.

The malice can also be deduced from the fact that the headline and the article focused on the plaintiff rather than the public funds. The headline shows that what was intended to be conveyed to the public is that the plaintiff having had allegations against her in the past was completely guilty of misusing public funds. There was only one aim in this publication and that was to lower the image of the plaintiff. That is why her picture covered 90% of the front page and with bold headline that she mismanaged UGX.300 million of money meant for SACCOs.

For the above reasons this court is convinced that the defence of fair comment is not available to the defendants in this case.

Issue 3: What remedies are available to the parties?

It is trite law that once a person has been libeled without justification, the law presumes that some damage will flow from ordinary course of events from the invasion of plaintiff's right to reputation and the hurt to her feelings. In this case this Court is satisfied that the plaintiff was defamed and hurt.

This Court also agrees that the general damages are those losses usually pecuniary which are not capable of precise quantification in monetary terms. They are presumed to be the natural or probable consequence of the wrong complained of; per (*Halsbury's Laws of England 4th Edition reissue volume 12 (1) paragraph 812*).

This Court also agrees with the reasoning in the case of *Biwot Vs Clays Ltd EALR 2000 Vol. 2 page 341* where Court relied on *Casell and Co. Ltd Vs Broome and Anoterh [1972] ALL ER page 824*. The Court said that in actions of defamation and in any other actions where damages for loss of reputation are involved, the principle of restitution in integrum has necessarily an even more highly subjective element. Such actions involve a money award which may put the plaintiff

in a purely financial sense in a much stronger position than he was before the wrong. Not merely can he recover the estimated sum of his past and future losses but in case the libel driven underground emerges from its lurking place at some future date, he must be able to point at a sum awarded by a jury sufficient to convince a by stander of the baselessness of the charge.

Considering the submissions, evidence and facts in this case I find the sum of UGX.600,000,000/= proposed by the plaintiff on the high side. I will instead award the plaintiff general damages of UGX.150,000,000/= (one hundred and fifty million).

I also find that the sum of UGX.350,000,000/= exemplary damages as proposed by the plaintiff on the high side and award exemplary damages of UGX.50,000,000/= (fifty million).

The plaintiff also prayed for a permanent injunction restraining the defendants from further publication on the articles or electronic web portal or otherwise. This prayer is granted and the defendants are also ordered to strike off the offensive articles from their web portal.

Having found in favour of the plaintiff, she is entitled to costs of this suit. I therefore order that the defendants shall pay the plaintiff costs of this suit.

I award interest on the damages at the rate of 8% per annum from the date of Judgment till payment in full.

I so order.

Stephen Musota

J U D G E

30.01.2018

30.01.2018:-

Mr. Robert Kirunda for defendants.

Mr. Jordan Kinyera for plaintiff

Plaintiff absent.

Defendant representative present.

Ms. Ejang D. Court Clerk.

Counsel for defendant:-

The matter is for judgment and we are ready to receive it.

Counsel for plaintiff:-

I am ready to receive the judgment.

Court:-

Judgment read and delivered in open chambers.

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**SARAH LANGA SIU
DEPUTY REGISTRAR**

30.01.2018