

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**CIVIL DIVISION**

**HCCS NO. 83 OF 2011**

**HARRISON BUSINGYE .....PLAINTIFF**

5 **V**

**ATTORNEY GENERAL .....DEFENDANT**

**BEFORE HON. LADY JUSTICE H. WOLAYO**

**JUDGMENT**

**Introduction**

10 The plaintiff sued the defendant for defamatory statements allegedly made by the defendant's servant contained in two letters authored by the defendant's servant and to the Managing director, Hydraform International ltd dated 5.10.2010 and 20.1.2011 respectively.

The defendant denied the claim and pleaded in the alternative that the contents of the two letters are true. The defendant also raised a counterclaim but it was abandoned in their  
15 written submissions.

**Representation**

Ms Mugisha & Co. Advocates appeared for the plaintiff while Mr. Kalemera PSA appeared for the defendant.

Both counsel filed written submissions that I have carefully considered.

20 **Issues framed**

Both counsel contested the issues as framed by the other. I have examined the record and found that my learned brother Justice Kabito framed the issues on 15.12.2015 as follows:

1. Whether the letters issued by the defendant's official were defamatory of the plaintiff.
2. Whether the plaintiff is liable in defamation as against the defendant
- 25 3. Remedies

Defendant's counsel in his written submissions abandoned the counterclaim, a move that attracted a protest from counsel for the plaintiff who prayed for costs of the withdrawal/abandonment.

- 5 Defendant's counsel canvassed his own issues that he framed, namely,
1. Whether there exists a cause of action in defamation
  2. Whether the plaintiff can sustain a claim in defamation against the defendant
  3. Remedies

After some reflection, I have determined that I will discuss only two issues

- 10 1. Whether the letters issued by the defendant's official were defamatory of the plaintiff.
2. Remedies.

These two issues adequately deal with the dispute at hand especially as defendant's counsel abandoned the counterclaim.

- 15 With respect to the issue on whether the plaint discloses a cause of action, this issue was not agreed upon and neither was it raised in the written statement of defence. In the premises, I will not discuss this specific issue as it was introduced very late in the proceedings to the prejudice of the plaintiff.

### **Undisputed facts**

- 20 No facts were agreed upon but i have examined the witness statements, and the court record and in particular the witness statements, pleadings and impugned letters. The following facts emerge.

- a) Mr. Busingye was a director and shareholder in Hydraform International Ltd South Africa with whom government of Uganda entered into an MOU for a development program.
- 25 b) Under the MOU, Hydraform was to supply, deliver, install, commission and install block making machines and provide support services that included maintenance of quality standards, training communities on the production and usage of the block and

to handle routine service equipment, supervision of the construction of structures .  
Monitoring was a joint effort under the MOU on a monthly basis.

- 5 c) It was a result of execution the monitoring role by Hydraform on its own without  
the OPM as stipulated in the MOU that prompted the two impugned letters from the  
Permanent Secretary (PS) dated 5<sup>th</sup> October 2010 and 20<sup>th</sup> January 2011.

### **Whether the letters authored by the defendant's official were defamatory of the plaintiff**

10 Both counsel rightly articulated the principles that guide the determination of what  
constitutes a defamatory statement.

A summary of the legal position on libel which is the permanent form of defamation , is that  
that the defamatory statement is made about the claimant and communicated to another  
person other than the claimant and causes damage to the claimant's reputation .

15 It is defamatory if it lowers the claimant in the estimation of right thinking members of  
society, it tends to bring him into hatred, contempt or ridicule and causes him to be shunned  
and avoided.

The reasonable person is the standard for determining the above feelings.

A statement can be defamatory in its natural meaning or by innuendo. In the instant case, the  
plaintiff pleaded the two letters were defamatory in their natural meaning.

20 **Gatley on Libel and Scandal 8<sup>th</sup> edition, para. 115** , cited by counsel for the plaintiff, is  
instructive on this point.

He states that where the words complained of are defamatory in their natural meaning the  
plaintiff need prove nothing more than their publication in which case the defendant needs to  
prove that from the circumstances of publication, they were not defamatory when  
25 understood by reasonable persons.

### **Letter dated 5.10.2010**

30 The first letter dated 5.10.2010 is three pages long and contains 12 paragraphs. It is written  
by the PS of Office of the Prime Minister to the Managing Director Hydraform International  
(PTY) Ltd.  
South Africa.

Apart from reproducing the entire letter, the plaintiff does not specify the parts that are defamatory. It was the case for the plaintiff that the entire publication is defamatory.

The letter was written by the PS who represented the OPM on the project. He was reminding the partner to the MOU the terms of the MOU and that Hydraform should not operate outside those terms, specifically, the requirement to conduct joint monitoring of the project.

Mr. Busigyge admits visiting the northern Uganda project on 29.9.2010 without OPM officials as required by the MOU. He confirms that one Lubega from OPM was not at the site when he visited.

In re-examination, he defends the move on the grounds that there was a threat by trainees to riot over medicine, transport refund and welfare conditions.

As pointed out earlier, the plaintiff does not lift out the alleged defamatory statement or statements. It was the responsibility of the party who alleged he was defamed to be explicit in his claim.

In re-examination, the plaintiff attempted to clarify on the defamatory statements when he defined the word 'stealth' to mean under cover; 'sabotage' to mean undermining; 'incitement' means to cause commotion.

The standard for determining whether a statement is defamatory is that of a reasonable right thinking member of society.

Burden of proof is on the plaintiff to prove that statement was defamatory.

#### **Use of the word 'stealth', 'incitement' and 'sabotage'**

These words appear in para. 3.0 of the letter dated 5.10.2010 and the sentence reads as follows:

*'The teams have been moving **stealthily** to Northern Uganda and going to sites where Hydraform construction teams of OPM and communities are working and **inciting** the people to abandon the program which I interpret as **sabotage**'*

This statement follows immediately after the PS had pointed out to the addressee the terms of the MOU and after he had expressed displeasure with the conduct of the Hydraform team that was operating outside the MOU.

With respect to the use of the word 'stealth', this was in the context of the plaintiff's  
5 admission he visited the project site in the absence of OPM staff and proceeded to write to his fellow directors in South Africa a report on the state of the houses under construction. The permanent secretary rightly protested this report that was made without input from his staff.

Counsel for the plaintiff submitted that Mr. Bigirimana conceded that the plaintiff was free to  
10 visit the site. This is fine except that in the visit of 29<sup>th</sup> September 2010, on his own, he evaluated progress made and reported to his parent company contrary to the MOU.

A reasonable person would I find nothing derogatory about the word 'stealth' in the context it was used.

The other word complained of is 'sabotage'. No criminality is implied in the use of this  
15 word. The context within which it was used was how the permanent secretary perceived the actions of the plaintiff. There is nothing derogatory in the manner the word was used.

To say a person sabotaged a program does not mean he is a saboteur in his dealings or that he is a crook.

The last word complained of is 'incitement'. The people who were present at the meeting  
20 between the plaintiff and the trainees were not called but this was the impression created by the reports the P.S received. This was the conclusion arrived at by the P.S in the course of his duties after he confirmed the plaintiff met the trainers in the absence of staff from OPM.

Counsel submitted that the statement implied the plaintiff was a criminal. The P.S made  
25 reference to possible abandonment of the program by the community which does not import a criminal intent on their part.

The suggestion by the plaintiff in his witness statement that the publication portrayed him as a criminal is therefore not supported by evidence.

### **False statements**

Counsel for the plaintiff submitted that the statements were not true and therefore they were defamatory.

A description of a situation as the PS perceived it does not call for an inquiry into whether those perceptions are true or not. The issue here is how a reasonable PS would have  
5 described the situation he was faced with and over which he had supervisory power .

The plaintiff called PW1 Patrick Jaramogi who was shown the letters by the plaintiff and his impression was the plaintiff is a criminal, saboteur , crook, etc. The impressions of this witness are irrelevant because the letter was never published publicly for him to access it. He accessed it through the plaintiff himself and therefore Jaramogi's evidence does not meet the  
10 test of 'publication or communication to a third party by the defendant'. His evidence is therefore worthless .

There was nothing clandestine about the PS sharing his concerns with the leadership of Hydraform who controlled the plaintiff and his staff and any reasonable PS would have done the same thing.

15 Consequently the letter dated 5.10.2010 is not defamatory at all as it does not imply the plaintiff is a criminal or a crook or a saboteur of government programs.

Consequently, the letter dated 5.10.2010 is not defamatory at all.

**Letter dated 20.1.2011.**

In this letter, the P.S is making a follow up on earlier discussions in which the P.S makes it  
20 clear he does not want to work with the plaintiff. There is nothing defamatory in this letter.

My conclusion is that the two letters were official communication concerning conduct of officials of Hydraform International ltd a partner in a government program , addressed to the leaders of the contracting party and there is nothing defamatory in them.

As this is the case, I do not have to discuss the defence of qualified privilege which was in  
25 any case, not raised in the written statement of defence.

The suit is dismissed with costs to the defendant.

**DATED AT KAMPALA THIS 25<sup>TH</sup> APRIL 2018**

**HON. LADY JUSTICE H. WOLAYO**

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