THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA SITTING AT GULU

CIVIL SUIT No. 0065 OF 2011

ANGWEE KALANGA …… PLAINTIFF

VERSUS

1. ODONGO MILTON } …… DEFENDANTS
2. OPENY VINCENT }

Before: Hon Justice Stephen Mubiru.

JUDGMENT

The plaintiff sued the defendants jointly and severally for general and punitive damages for slander, an injunction restraining them from further publication of the slanderous utterances, interest and costs. The first defendant was at the material time Deputy Resident District Commissioner of Gulu District. His claim is that at a meeting of The Acholi War Debts Claimants Association of 5th June, 2010 attended by over one thousand people, the two defendants uttered of and concerning him, false allegations that he was a thief. The second defendant had before that meeting reportedly told that first defendant that the plaintiff had stolen shs. 6,900,000/= the property of the second defendant. At that meeting, the first defendant repeated that accusation and called upon the plaintiff to identify himself whereupon he publicly called him a thief who stole cash from the second defendant. The second defendant was called upon to confirm that assertion and he did so publicly. The first defendant then ordered the plaintiff's arrest detention, he was taken to the Central Police Station where he was charged with the offence of theft. The allegations were thereafter aired across a number of the local radio stations. By the utterances and the consequent brutal arrest, his reputation and character was injured among right thinking members of the public.

In their joint written statement of defence, the defendants denied the claim is denied in toto. They contended that the facts alleged in the utterances were true in fact and substance. They were not made maliciously and are incapable of bearing any of the meanings attributed to them by the plaintiff.

The plaintiff, Angwee Kalanga, testified as P.W.1 and stated that the second defendant died before hearing of the suit commenced. The words complained of were made at a meeting of The Acholi War Debts Claimants Association of 5th June, 2010 by the first defendant and confirmed by the second defendant. Both the plaintiff and the second defendant had between February and May, 2010 received sums of money deposited onto their respective bank accounts as settlement of their claims for cows lost during the war. Upon the false allegations, he was arrested, detained in a classroom for two hours and later taken to the police. Both the utterances and the arrest caused him embarrassment. He recorded a statement at the police and was released on police bond but was never charged in any court of law.

P.W.2 Mrs. Kidaga Lucy, testified that she was in attendance at the meeting of The Acholi War Debts Claimants Association of 5th June, 2010 at Gulu Public Primary School. The first defendant stated that he had received a report that the plaintiff was a thief. He asked him to identify himself and when he did he directed his immediate arrest. He was detained in a classroom for some time and later he was taken to the police aboard a pick-up truck.

In his defence as D.W.1 Odongo Milton, the fist defendant testified that he was formerly a Resident District Commissioner, chairing the security committee and overseeing government programmes. The Acholi War Debts Claimants Association meeting of 5th June, 2010 at Gulu Public Primary School had been convened for the election of leaders upon direction by Court. The elections were to be presided over by the Registrar of the Court. He was in attendance at the invitation of the Registrar. It is during question time that the second defendant made the allegation against the plaintiff. He asked the named person to stand up and hen he did he directed the police to apprehend him and forward him to the police CI.D for investigation of the accusation. That was the end of his participation and he never made any of the utterances attributed to him.

In their final submissions, counsel for the plaintiff, M/s Komakech-Kilama &Co. Advocates argued that the testimony of the plaintiff and his witnesses has proved that the words complained of were indeed uttered by the defendant. The defendant admitted having directed the police to arrest the plaintiff. The words uttered were defamatory of the plaintiff since in their natural and

ordinary meaning they imputed that the plaintiff was a thief. Consequently he is entitled to the reliefs sought.

In response, counsel for the defendant M/s Odongo & Co. Advocates submitted that the defendant did not utter any of the words attributed to him. The actual words allegedly uttered were not pleaded. Alternatively, even if they were uttered, the occasion was privileged since the second defendant had complained to the first defendant of an alleged theft of hid funds by the plaintiff. The first defendant simply reacted as an administrator by directing the detention of the plaintiff pending further investigations by the police. The plaintiff did not suffer any damage and the suit should be dismissed with costs.

Before dealing with the substantive issue, it is necessary to determine the status of the suit as against the second defendant. Under Common Law, a cause of action will usually survive the death of a party to the suit. A cause of action existing at the date of an individual's death survives either for the benefit of, or against, his estate. The personal representative of the estate steps into the shoes of the deceased and has the authority to take part in any legal proceedings on behalf of the estate. Exceptionally, suits for defamation are by nature personal claims and the suit abates with the defendant's death (see *Rose v. Ford [1937] AC* 826 and *Harvey smith v. Bobby DHA [2013] EWHC 838 (QB*). Since death of a party to a defamation claim will cause the action to abate, the suit against the second defendant abated upon his death. The court will now proceed to consider the first two issues concurrently.

First issue; <u>whether the first defendant uttered the words attributed to him</u>.
Second issue; <u>If so, whether the words are defamatory of the plaintiff</u>.

With regard to the first defendant, for a claim in slander, the plaintiff must plead that; (a) the defendant made a false and defamatory statement concerning the plaintiff, (b) the defendant made an unprivileged publication of that statement to a third party, and (c) except where the slander is actionable *per se*, the plaintiff must plead and prove special damages.

For a statement complained of as being defamatory, the actual words must be set forth verbatim in the plaint and the persons to whom publication was made have to be mentioned in the plaint (see *Rutare S. Leonidas v. Rudakubana Augustine and Kagame Eric William [1978] H.C.B.243*). A plaint in a defamation suit that does not allege persons to whom publication was made nor that the words uttered were false and were published maliciously, which are matters essential in a plaint, does not disclose any cause of action and is bad in law (see *Karaka Sira v. Tiromwe Adonia [1977] H.C.B. 26*). In the instant case, the plaintiff in paragraph 4 (ii) and (iii) reproduced verbatim, both in Luo and Englsh the utterances complained of tghat are attributed to the first defendant, as follows; "*In akwo me ikwalo cente pa Openy Vincent illion abicel ki lak abunwen*" i.e. "You are the thief who stole six million nine hundred thousand shillings (6,900,000/=) belonging to Mr. Openy Vincent." He pleaded further that those words were false and were published maliciously to the over one thousand members of the Acholi War Debt Claimants in attendance.

In paragraphs 3 and 4 of his written statement of defence, the first defendant denied having uttered those words but in the alternative stated that if he did, then they were true in fact and in substance. In his testimony, the first defendant reiterated his denial. It is a well established principle of the law of evidence that "he who asserts must affirm." The onus is on a party to prove a positive assertion and not a negative assertion. It therefore means that, the burden of proof lies upon him who asserts the affirmative of an issue, and not upon him who denies, since from the nature of things he who denies a fact can hardly produce any proof (see *Jovelyn Bamgahare v. Attorney General S.C. Civil Appeal No. 28 of 1993* and *Maria Ciabaitaru M'mairanyi and Others v. Blue Shield Insurance Company Limited, 2000 [2005]1 EA 280*).

To rebut that defence, the plaintiff testified that he was the subject of the utterances, he heard the utterances himself and also called a witness, P.W.2 Mrs. Kidaga Lucy to corroborate the fact that the utterances were made. Taken in context that the alleged utterances were preceded by an accusation of theft and that soon thereafter the first defendant directed the detention of the plaintiff, it is more probable than not that the plaintiff made these utterances as a spontaneous reaction to the report of theft he had just received from the second defendant. A public accusation of an alleged theft of that magnitude was an occurrence or event sufficiently startling

to render inoperative the normal reflective thought processes of the first defendant, and capable of drawing the statement attributed to him, as a spontaneous reaction to the occurrence or event and not the result of reflective thought.

When two people tell different stories, the Court can use common sense and reasoning to figure out what happened. It has was argued by counsel for the defendant that P.W.2 Mrs. Kidaga Lucy being related to the plaintiff as a husband of one of her relatives and that as such her testimony should be rejected as it was self-serving. Self-serving statements are made out of court and ordinarily intended for one's own vindication with no useful purpose other than furthering or reinforcing a party's position. They are inadmissible because the adverse party is not given the opportunity for cross-examination, and their admission would encourage fabrication of testimony. This cannot be said of a witness' testimony in court made under oath, with full opportunity on the part of the opposing party for cross-examination. In any event, the testimony of P.W.2, even when subjected to cross-examination, is not reflective of a person preoccupied with one's own interests, to the extent disregarding the truth or the interests of justice. I do not perceive of any direct benefit that would accrue to her in the circumstances of this case. I am therefore inclined to believe the plaintiff and his witness when they stated that the utterances were actually made by the first defendant.

In a suit for slander, a plaintiff has to prove that the relevant statement is defamatory, but he or she does not have to prove that it was a lie. If a statement is defamatory, the court will simply assume that it was untrue. The test of defamatory nature of a statement is its tendency of excite against the plaintiff the adverse opinions or feeling of other persons. In *Gatley on Libel and Slander* (9th editin) where (at p 7 para 1.5) the learned authors state:

> What is defamatory? There is no wholly satisfactory definition of a defamatory imputation. Three formulae have been particularly influential: (1) would the imputation tend to "lower the plaintiff in the estimation of right-thinking members of society generally?" (2) Would the imputation tend to cause others to shun or avoid the plaintiff? (3) Would the words tend to expose the plaintiff to "hatred, contempt and ridicule?" The question "what is defamatory?" relates to the nature of the statement made by the defendant; words may be defamatory even if they are believed by no one and even if they are true, though in the latter case they are not of course actionable.

In *Ssejjoba Geoffrey v. Rev. Rwabigonji Patrick [1977] H.C.B 37* a defamatory statement was defined as one which has a tendency to injure the reputation of the person to whom it refers by lowering him in the estimation of right-thinking members of society generally and in particular to cause him to be regarded with feelings of hatred, contempt, ridicule, fear, dislike and disesteem. If words have been proved to be defamatory of the plaintiff, general damages will always be presumed slander imputing criminal conduct is actionable per se. Imputation of commission of a criminal offence is actionable per se without any need of proving damage on the part of the plaintiff (See *Blaize Babigumira v. Hanns Besigye H.C.C.S No. 744 of 1992*).

A defamatory utterance therefore is one which imputes conduct or qualities tending to disparage or degrade any person, or to expose a person to contempt, ridicule or public hatred or to prejudice him in the way of his office, profession or trade. It is a statement which tends to lower a person's reputation in the eyes of or the estimation of right thinking members of society generally or which tends to make them shun and avoid that person. The typical form of defamation is an attack upon the moral character of the plaintiff attributing to him any form of disgraceful conduct such as crime, dishonesty, untruthfulness, trickery, ingratitude or cruelty. The person defamed does not have to prove that the words actually had any of these effects on any particular people or the public in general, only that the statement could tend to have that effect on an ordinary, reasonable listener.

Although a statement need not be perfectly true, it should be substantially true in order not to be false. Slight inaccuracies of expression are immaterial if the defamatory statement is true in substance. There are certain established rules to determine whether statement is defamatory or not. The first rule is that the whole of the statement complained of must be read and not only a part or parts of it. The second is that words are to be taken in the sense of their natural and ordinary meaning. The Court must have regard to what the words would convey to the ordinary man. In *Ssonko Gerald v. Okech Tom [1978] HCB 36,* it was held that the test is the general impression of the words on the right thinking person and it is from that perspective that the words are to be considered before determining whether they are defamatory or not. The determination depends on answering the question; "would the words tend to lower the plaintiff in the estimation of right-thinking members of society?" The defamatory nature of a statement is its

tendency to excite against the plaintiff the adverse opinions or feelings of other persons. A typical form of defamation is an attack upon the moral character of the plaintiff attributing to him any form of disgraceful conduct, such as crime, dishonesty, untruthfulness, trickery, ingratitude or cruelty (see *Ssejjoba Geoffrey v. Rev. Rwabigonji Patrick [1977] H.C.B 37*). For example in *Sekitoleko Edirisa v Attorney General [1978] HCB 193*, allegations in newspaper that the plaintiff was a robber and had been beaten to death were found to be defamatory.

Allegations are defamatory of the plaintiff if they impute the commission of a criminal offence which he would be liable to imprisonment under the laws of Uganda (see *Odongkara v. Astles [1970] EA 377*). On the face of it, imputation of witchcraft is an imputation of a criminal offence since s 2 of *The Witchcraft Act, Cap 124* provides that any person who practices witchcraft or who holds himself or herself out as a witch, whether on one or more occasions, commits an offence and is liable on conviction to imprisonment for a period not exceeding five years. *Gately on Slander and Libel* (supra) 8th Edition, at page 114 paragraph 115 states that;

> Where words complained of are defamatory in their natural and ordinary meaning, the plaintiff need prove nothing more than their publication. The onus will then lie on the defendant to prove from the circumstances in which the words were used, or from the manner of their publication, that the words would not be understood by reasonable men to convey the imputation suggested by the mere consideration of the words themselves.

Similarly in the instant case, the allegation that the plaintiff had stolen a sum of money belonging to the second defendant, was defamatory of the plaintiff in so far as it imputed that he is a thief. These words would in my view convey to the ordinary man, in their natural and ordinary meaning, that the plaintiff had committed the offence of theft. The first defendant was unable to rebut the imputation suggested by the words themselves.

Then, it must be proved that the statement referred to the plaintiff. In *Onama v. Uganda Argus [1969] EA 92*, the Court of Appeal of Eastern Africa held in deciding the question of identity, the proper test is whether reasonable people who knew the plaintiff would be led to the conclusion that that the report referred to him. The question is not whether anyone *did* identify the plaintiff but whether persons who were acquainted with the plaintiff *could* identify him from the words used. In the instant case, the words were not only used in reference to the plaintiff but

they were uttered directly at him in his presence at that neeting. They were capable of being regarded as referring to the plaintiff since there was no evidence that they were directed at any other person. In his testimony, the plaintiff stated that not only was he the only person at that meeting known by those names, but he was also called forward and publicly identified. These words therefore would lead reasonable people who knew the plaintiff to the conclusion that they referred to him.

There can be no slander unless the defamatory statement is published or communicated to a third party, that is to a party other than the person defamed and that publication must have been done maliciously. Publication occurs when information is negligently or intentionally communicated in any medium. A person who did not intend that his or her statement be published must still show that he or she took reasonable care in relation to its publication, which may very well be lacking. The authors of *Gatley on Libel and Slander*, 9th edition at p 136 has the following passage;- 6.12 Loss of defamatory document and mistake at common law; the defendant is liable for unintentional publication of defamatory matter to a third person unless he can show that it was not due to any want of care on his part.

The *animus injuriandi* (desire to offend) necessary for a defamatory action requires the deliberate making of the defamatory statement and also its deliberate communication to a third party. There should be both the deliberate making of the defamatory statement and a definite intention to send it. Nevertheless, a communication made recklessly, negligently, inadvertently or by omission may as well give rise to liability as well (see for example *Byrne v. Deane [1937] 1K.B. 818*). In paragraphs 4 and 5 of his written statement of defense, the first defendant pleaded that the contents of the utterances were true in fact and substance, were not made ,maliciously and that they were incapable of carrying any meaning defamatory of the plaintiff.

In essence the first defendant raised the defense of justification and if successful, this is a total defense even when the defendant may have been actuated by ill will or spite. The burden of proof of such a defense is on the defendant, and he was required to call evidence that establishes the words are accurate. The defense of justification will succeed if the gist of the statement is true, even though certain details may not be accurate. For this defense to succeed, the defendant

must prove that the defamatory imputations or meanings are true. A wholly unfounded plea of truth, and especially where it is maintained unsuccessfully through to the end of trial, can result in a higher level of damages (see *Ssejjoba Geoffrey v. Rev. Rwabigonji Patrick [1977] H.C.B 37*). The defendant must prove that the content of the statement was true, not merely that it was made. Further, the defendant must prove that the imputations conveyed by the words (not simply the words themselves) are true. The first defendant never led any evidence to establish the truth of the utterances or their imputations. His defense therefore failed.

Although not pleaded and not raised during the trial, I have considered the alternative argument presented in the defendant's final submissions that being a representative of the President at the District in his capacity as the Resident District Commissioner, the first defendant was immune from a suit of this nature. Under article 98 (4) of *The Constitution of the Republic of Uganda, 1995* while holding office, the President is not be liable to proceedings in any court. The President has the right freely to delegate his powers and responsibilities according to law and in the way he deems most efficient but cannot delegate the immunity attached to the office. The law is clear that the express mention of one thing in a statutory provision automatically excludes any other which otherwise would have applied by implication, with regard to the same issue (*expressio unius est exclusio alterius*). Immunity is expressly extended to the person of the President and not to those to whom he may from time to time delegate some of the functions of that office. In any event, the judicial duty to protect rights prohibits a grant of immunity for tortious executive action, except if conferred by statute. The fundamental demands of fairness in the administration of justice are more important than shielding those exercising delegated power of the presidency.

The other argument not canvassed during the trial but presented in the defendant's final submissions is that the first defendant is protected from liability since the utterance is covered by the defense of qualified privilege. In the first place, this defense was never pleaded and this alone could dispose of it. The defense is premised on that fact that the person communicating the statement and that receiving the communication had reciprocal legal, moral, or social duty to make and receive it. For the defense to succeed, the first defendant needed to show that he or she

has made the statement in good faith, believing it to be true and that the statement was made without malice.

Where the publication is based upon facts and statements which are not true, the defendant is not liable unless the plaintiff establishes that the publication was made by the defendant with reckless disregard for truth. The defendant is protected even though his language was violent or excessively strong if, having regard to all the circumstances, he might honesty and on reasonable grounds have believed that what he uttered was true and necessary for his purpose, even though in fact it was not so (see *Adam v. Ward 119171 A.C. 309 at 339*).

In such cases, it is enough for the defendant to prove that he acted after a reasonable verification of the facts; it is not necessary for him to prove that what he has written is true. But where the publication is proved to be false and actuated by malice or personal animosity, the defendant would have no defence and would be liable for damages. Qualified privilege operates only to protect statements which are made without malice (i.e., spitefully, or with ill-will or recklessness as to whether it was true or false). According to *Gatley on Libel and Slander* (p 328 para 14.4), the main classes of statements which come under the defence of qualified privilege at common law are:-

1. statements made in the discharge of a public or private duty;
2. statements made on a subject matter in which the defendant has a legitimate interest;
3. statements made by way of complaint about those with public authority or responsibility;
4. reports of parliamentary proceedings;
5. copies of or extracts from public registers;
6. Reports of judicial proceedings.

The House of Lords in *Reynolds v. Times Newspapers Ltd [2001] 2 AC 127, 205* required multiple factors to be considered when deciding whether defendants have established privilege, with Lord Nicholls listing 10 illustrative factors; -

1. The seriousness of the allegation. The more serious the charge, the more the public is misinformed and the individual harmed, if the allegation is not true.

2. The nature of the information, and the extent to which the subject matter is a matter of public concern.
3. The source of the information. Some informants have no direct knowledge of the events. Some have their own axes to grind, or are being paid.
4. The steps taken to verify the information.
5. The status of the information. The allegation may have already been the subject of an investigation which commands respect.
6. The urgency of the matter. News is often a perishable commodity.
7. Whether comment was sought from the plaintiff. An approach to the plaintiff will not always be necessary.
8. Whether the article contained the gist of the plaintiff's side of the story.
9. The tone of the article. A newspaper can raise queries or call for an investigation. It need not adopt allegations as statements of fact.
10. The circumstances of the publication, including the timing.

The case seeks to protect defamatory material of public importance where defendants have published responsibly, irrespective of the material's truth or falsity. It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation provided it is done in good faith. The person alleging in good faith must establish the fact that before making any allegations he had made an inquiry and necessary reasons and facts given by him must indicate that he had acted with due care and attention and that he was satisfied about the truth of the allegation. In *Adam v. Ward [1917] AC 309, [1917] All ER 151* Lord Dunedin closely considered the question of a communication published on a privileged occasion. At pp. 326, 327, he observed as follows:

> What now is the situation? You have a communication issued on a privileged occasion and in that communication are used words which are in themselves defamatory. What test is to be applied? On the one hand it is said that, the occasion being privileged, the whole document is privileged, but that if in the document you find parts which are not really necessary to the fulfillment of the particular duty or right which is the foundation of the privilege on the occasion, then these parts may be used as evidence of express malice. In other words, it stands thus: Malice, which is of the essence of libel, is presumed from defamatory words. Privilege destroys that presumption. But the place of the implied malice which is gone may be taken by express malice which may be proved. It may be proved either extrinsically or intrinsically of the document and such words in the document are apt as evidence.

There is no doubt that it is a defence to an action for defamation that the defamatory statement was published in the discharge of a duty to a person who has a corresponding right or duty to receive the information. The duty to communicate defamatory matter may be legal, moral or social. The first defendant was the Resident District Commissioner and by virtue of that office Chairperson of the District Security Committee. He as such he had a duty in communicating to the police any suspected crime, but not to declare the plaintiff publicly as a thief in the manner he did. In those circumstances, the requisite duty to communicate the information and the reciprocal interest to receive it was not established. The utterances were therefore not published on a privileged occasion. Whereas it was for the first defendant to prove that the occasion was privileged, had he done that, his bona fides would have been presumed (see *Janoure v. Delmege (1891) A. C. 73 at 79*), and the burden placed on the plaintiff to prove malice.

Secondly, the defence of qualified privilege can be assailed if the defendant was actuated by an improper motive that is to say by "express malice" (see Lopes C.J. in *Royal Aquarium and Summer and Winter Garden Society Ltd. v. Parkinson [1892] 1 Q.B. 431 at p.454*). The burden then shifted to the plaintiff to show express malice (see *Clark v. Molyneux (1877) 3 Q.B.D. 237*). Until proof was established by the first defendant that the occasion was privileged, the plaintiff had no burden to prove that the first defendant acted maliciously. Express malice, unlike legal malice, is never presumed; it must be proved as a fact. Malice in law, which is presumed in every false and defamatory statement, stands rebutted by a privileged occasion. In such a case, in order to make a libel actionable, the burden of proving actual or express malice is always on the plaintiff.

In one sense, malice is about the attitude of the defendant toward the plaintiff. In that sense, malice means personal hostility, animosity, ill will, bad motive, dislike, bias, or bad faith. In that sense it means the intentional commission of a wrongful act, without justification, with the intent to cause harm to another. The defendant would be found to have made the statements with “express malice” if he acted with knowledge that the statement was false or with reckless disregard of whether it was false or not. Evidence of inadequate investigation would show intent to inflict harm through falsehood. Such evidence would suggest that, because of his bias, the

defendant knowingly or recklessly avoided the truth by performing an inadequate investigation. Deliberate or reckless falsity is evidence of express malice.

In another sense, malice is about the attitude of the defendant toward the veracity of his statements concerning the plaintiff. In that sense, the term does not necessarily imply personal hatred, a spiteful or malignant disposition or ill feelings of any nature, but rather, it focuses on the mental state which is in reckless disregard of the law in general and of the legal rights of others. Malice is present if the acts were done in the knowledge that the statement is invalid and with knowledge that it would cause or be likely to cause injury. It also exists if the acts were done with reckless indifference or wilful blindness to that invalidity and that likely injury.

Malice is presumed to exist, in law, when there is intention to bring disrepute or knowledge that the matter in question could bring disrepute to a person. Five important considerations must be kept in mind while establishing good faith and bona fides; - a. the circumstances under which the letter was written; b. whether there was any malice; c. whether the plaintiff made any inquiry before he made the allegations; d. whether there are reasons to accept the version that he acted with care and caution; and e. whether there is preponderance of probability that the plaintiff acted in good faith.

The motive of the defendant becomes material where privilege is established and the burden has shifted to the plaintiff to show actual malice. Improper motive is the best evidence of malice. Malice in this sense means making use of a privileged occasion for an indirect or improper motive. Such motive can be inferred from evidence regarding the defendant's state of mind. If the defendant did not believe in the truth of what he stated, that fact is conclusive evidence of express malice, for no man can legitimately claim privilege if what he stated was a deliberate and injurious falsehood about another.

Such malice can be proved in a variety of ways, inter alia; (i) by showing that the writer did not honestly believe in the truth of these allegations, or that he believed the same to be false; (ii) or that the writer is moved by hatred or dislike, or a desire to injure the subject of the libel and is merely using the privileged occasion to defame (See *Watt v. Longsdon, [1930] 1 KB 130* and the

observations of Greer, L. J. at p. 154) and (iii) by showing that out of anger, prejudice or wrong motive, the writer casts aspersions on other people, reckless whether they are true or false (See observations of Lord Esher, M. R. in *Royal Aquarium and Summer and Winter Gardens Society v. Parkinson, (1892) 1 QBD 431 at p. 444*). Reckless publication of untrue defamatory matter without caring whether what is said was true or not would be treated as a deliberate lie and would thus be evidence of malice.

Although a person making a communication on a privileged occasion is not restricted to the use of such language merely as is reasonably necessary to protect the interest or discharge the duty which is the foundation of his privilege and will be protected, even though his language should be violent or excessively strong, if, having regard to all the circumstances of the case, he might have honestly and on reasonable grounds believed that what he wrote or said was true or necessary for the purpose of his vindication, though in fact it was not so, if anything is found in the thing published which is not reasonably appropriate to that duty or right, then privilege cannot extend to that.

In any event, it is well-settled that the fact that the defamatory publication might have been calling for an inquiry or investigation is no defence (See *"Truth" (N.Z.) Ltd. v. Holloway [1960] 1 W.L.R. 997, P.C*). The desire to injure the plaintiff was shown to be the dominant motive for the defendant's defamatory on account of the fact that he and his Council, acted impulsively and illogically and perhaps irrationally in arriving at the belief he did that the plaintiff was involved in the theft. “Malice” means that the defamatory statement was made for some ulterior purpose and was not the “honest communication” that qualified privilege is intended to protect. The existence of malice may be inferred by showing that the defendant knew the imputations or meanings of their statement were not true (or did not care if they were true or false). This is because a person who knowingly makes a statement with false imputations is unlikely to have a proper purpose. The defendant’s negligence in not checking the truth of their statement does not amount to malice, unless such negligence amounts to reckless indifference to the truth. Intending to cause harm to someone is an “improper purpose”, and is therefore usually considered to be malicious.

In the instant case the evidence shoes that the defendant leapt to a conclusion based on inadequate evidence and without making any inquiries. His conduct in directing the immediate arrest of the plaintiff without reasonable suspicion was indicative malice and intent to injure the plaintiff. Apart from the allegation made by the second defendant, he had no knowledge of any facts and circumstances which he reasonably considered to be trustworthy information such as would in itself be sufficient to warrant a man of reasonable caution in the belief that an offense had been committed. His conduct demonstrates indifference to the truth or a wilful disregard of the importance of the truth of the statements made by the deceased defendant. It was made with the dominant desire to humiliate or injure, rather than to discharge a duty. The first two issues therefore are decided in the affirmative.

Third issue; whether the plaintiff suffered any damage.
Fourth issue; If so, what remedies are available to the plaintiff.

There are four categories of statements that constitute slander *per se*: (i) imputing to another a criminal offense; (ii) imputing to another a presently existing venereal disease or other loathsome and communicable disease; (iii) imputing to another, the other being a woman, acts of unchastity; and (iv) imputing to another conduct, characteristics or a condition incompatible with the proper exercise of his lawful business, trade, profession, or office. In a suit premised on slander *per se*, damages may be awarded even though the amount of actual damages is neither found nor shown, for in such a case, the requirement of a showing of actual damages as a basis of an award for damages is satisfied by the presumption of injury which arises from a showing of slander that is actionable *per se*. The fact that the slanderous statements in the instant suit imputed a criminal offence, entitle the plaintiff to an award of general damages.

General damages are such as the law will presume to be the natural and probable consequences of the defendant's words or conduct. They arise by inference of law and need not, therefore be proved by evidence. If words have been proved to be defamatory of the plaintiff, general damages will always be presumed since all libel is actionable per se. Imputation of commission of a criminal offence is actionable per se without any need of proving damage on the part of the plaintiff (See *Blaize Babigumira v Hanns Besigye HCCS No. 744 of 1992*).

A person's reputation has no actual value, and the sum of be awarded in damages is therefore at large and the Court is free to form its own estimate of the harm taking into account all the circumstances (see *Khasakhala v Aurali and Others [1995-98]1 E.A. 112*). General damages are to be determined and quantified, depending upon various factors and circumstances. Those factors are (i) the gravity of allegation, (ii) the size and influence of the circulation, (iii) the effect of publication, (iv) the extent and nature of claimant's reputation and (v) the behavior of defendant and plaintiff. In *Kanabi v Chief Editor Ngabo Newspaper and others*, the Supreme Court commented as follows;-

> It is not enough to consider the social status of the defamed person alone in assessing award of damages. It is necessary to combine the status with the gravity of or the seriousness of the allegations made against the Plaintiff. Anyone who falsely accuses another of a heinous crime should be condemned heavily on damages. Once an ordinary person is defamed seriously and is shunned by the public then it does not matter whether he or she is of high or low status.

In *David Kachontori Bashakara v Kirunda Mubarak, H.C.C.S No. 62 of 2009,* general damages of Shs.45,000,000/= were awarded to a plaintiff who had been a public servant for a period of 33 years and had during the course of his service been to various parts of Uganda. He had a family of seven mature children and lots of friends in many parts of the country who were saddened and scandalized by the utterances complained of made in Lusoga, imputing a criminal offence (the words were "corrupt, thief, embezzler, unfit to hold public office") and broadcast in many parts of the country where the language is understood. He had as a result lost the Mayoral race in Mbarara.

In *Joseph Kimbowa Lutaaya v Francis Tumuheirwe H.C. Civil Suit No.862 of 2001*, general damages of shs 10,000,000/= were awarded to a plaintiff, a manager with Allied Bank, in respect of a defamatory memo written by the defendant to the Permanent Secretary to the Treasury explaining the reasons why the plaintiff's wife had been suspended. In that memo the defendant alleged inter alia that the plaintiff while still working with the Standard Chartered Bank connived with his wife to steal shs.50,000,000/= (fifty million) and was as a result was dismissed from the Bank while his wife was dismissed from USAID. In that case the publication was made only once and there was no repetition. The publication did not capture a wide publicity.

In *Abu Bakr K. Mayanja v Tedi Seezi Cheeye and another, H.C. Civil Suit No. 261 OF 1992*, the plaintiff who by then a Minister of Justice and Constitutional Affairs and Attorney General, was awarded a sum of shs 2,000,000/= in general damages for libel for an article published by the defendants alleging that he was a confused "third deputy Prime Minister." The court observed that a plaintiff who puts himself in public life must expect public scrutiny of his conduct as a public figure. The established principle though is that the higher the Plaintiff's social status, the greater is the likely injury to his feelings by a defamatory publication about him and therefore the greater is the amount of damages awardable. The amount is enhanced where the publication is extensive and where the defendant acted maliciously in the publication. In that case, it was found that the circulation of the Newspaper was limited to Kampala, Jinja and few main towns in Western Uganda.

I have considered the gravity of the allegation. The plaintiff was accused of the criminal offence of theft before a group of more than five hundred people. The allegation attracted wide circulation over the local FM radios. On account of all those factors, I am of the view that an award of shs. 10,000,000/= (ten million shillings) in general damages would be adequate compensation to the plaintiff. Considering the passage of time from the date of publication of the letter, the relief of a permanent injunction and a public apology may not serve any useful purpose now. These other reliefs claimed will not be granted to the plaintiff.

In the final result, judgment is entered for the plaintiff against the defendant for;

a) General damages of shs. 10,000,000/=
b) Interest of 8% pa from the date of judgment until payment in full.
c) The costs of the suit.

Dated at Gulu this 13h day of December, 2018

……..
Stephen Mubiru
Judge,
13th December, 2018.