

REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION
CIVIL SUIT NO. 168 OF 2018

- 1. STANLEY SSEMAMBO**
- 2. JULIET NAMATOVU SSEMAMBO:::PLAINTIFFS**

VERSUS

- 1. PATRIC NELSON BYEKWASO**
- 2. JOHN SSEMWEZI**
- 3. BEN MUSOMESA**
- 4. SAMWILI KIYEMBA**
- 5. MUKYALA SAMWILI**
- 6. ENERIKO KIWANUKA**
- 7. KARISA NAKAKWYA**
- 8. IBRAHIM BATUUKA**
- 9. HARRIET NAKIYEMBA**
- 10. ERIC M ULUYA**
- 11. EVA BISIRIKIRWA**
- 12. IRENE SEKATAWA**
- 13. JJULIUS LUKKODA**
- 14. HANNINGTON KIZITO :::::::::::::::::::::::::::::::::::DEFENDANTS**

RULING

BEFORE: LADY JUSTICE LYDIA MUGAMBE

1. This ruling is on a preliminary objection raised by the Defendants that the plaint in this civil suit does not disclose a cause of action.
2. In the suit, the Plaintiffs prayed for; i) punitive damages to a tune of Ug. Shs. 100.000.000 (one hundred million shillings) for irresponsible utterances and defamatory statements, ii) permanent gagging order restraining the Defendants from future defamatory utterances against the Plaintiffs, iii) public apology by each Defendant through town hall rallies and on a radio of wide coverage for a period of 6 months, iv) loss of anticipated rental income amounting to Ugx. Shs 30.000.000 (thirty million shillings), and v) general damages.
3. The Plaintiffs were represented by Mr. Derrick Lufunya of M/s. Lufunya Associated Advocates while the Defendants were represented by Mr. Isaac Walukagga of M/s. Mmaks Advocates.
4. The Plaintiffs' claim against the Defendants jointly arose from defamation, loss of income, assault, loss of rental income and threats to life and property through a staged alleged witch and wizard hunt.
5. The facts constituting the cause of action were that:
 - a) In April and March 2018 at Wamala village, the 3rd Defendant was paid by the 1st and 2nd Defendant to exorcise demons that were allegedly terrorizing the residents of Wamala village. The 3rd Defendant led the 1st and 2nd Defendants to the housing rental units of the Plaintiffs and told the residents in the housing rental units that demons were resident therein.

b) The Defendants confirmed that the Plaintiffs were witches and wizards and as such were subjected to ridicule threats to their life, rejection in their community and all their business sabotaged as a result of the said innuendo.

c) The insinuations by the Defendants have damaged the Plaintiffs' reputation in the right thinking members of society and incited the public to commit mob justice to the Plaintiffs by circulating written information known as (bibalawa) that threaten to cause harm to the Plaintiffs and their property.

d) On 12th April 2018, the Defendants summoned the Plaintiffs to Cabana Restaurant and told them to their face that they were practicing witch craft and have caused the death of so many residents and illnesses to the residents.

6. The Defendants denied all the allegations and at trial raised a preliminary point of law that the plaint as presented does not disclose a cause of action against them and sought to have it struck out with costs.
7. The Defendants in their written statement of defense denied each and every allegation and averred that sometime in April 2018, a lady called Getrude Nanyonjo developed health complications and in some instances lost her conscience while mentioning the names of the Plaintiffs.
8. Some of the Defendants got worried of Nanyonjo's health and reported the matter to Police for assistance. The 1st Defendant as the Lord Mayor of Kajjansi Town Council investigated the matter and called for a meeting involving all parties and Nanyonjo who had a minor land boundary dispute with the Plaintiffs.
9. At the meeting the Plaintiffs were tasked to explain if they had any idea about Nanyonjo's hallucinations and why she was mentioning their names. No concrete resolution was reached in respect of the matter. The Plaintiffs were nonetheless cautioned and advised to live harmoniously with their neighbors.

10. The Defendants further averred that the Plaintiffs' claim is unfounded as there was no defamation against them and that the claim for damages of Ug. Shs. 130,000,000(one hundred thirty million shillings only) is unfounded and has no legal basis.
11. The issue raised was whether the plaint discloses a cause of action against the Defendants?
12. I have looked at the pleadings and submissions of all the parties. I have particularly looked at the plaint in respect of the preliminary objection that it does not disclose a cause of action against the Defendants. I have specifically considered the letter (killo kitaala munaku) whose translation was attached to the amended plaint and the minutes of the meetings held on 12th April 2018.
13. In determining whether a plaint discloses a cause of action, it was necessary for me to consider the standard for defamation. In **Francis Lukooya Mukoome & Anor v. Editor in Chief Bukedde Newspaper & 2 Others, Civil Suit No.351 of 2006**, Justice Yorokamu Bamwine defined defamation to be an injury to one's reputation and that reputation is what other people think about a man and not what a man thinks about himself. He further held that in order to determine whether or not the statement is defamatory, the test is whether the words complained of would tend to lower the Plaintiff in the estimation of the right-thinking members of society and for a statement to be defamatory it must not be true. (**See also Gitley on Libel and Slander, 8th Edition Para 31**).
14. In **David Etuket & Anor v. The New Vision Printing and Publishing Corporation HCCS No. 86 of 1996**, it was held that in order to prove the reduction of reputation or esteem, the Plaintiff must adduce evidence from either his or her colleagues or from any member of the society who knew the Plaintiff before the publication of the statement complained of and who read the article. The Court can then judge how the right-thinking members of society regarded the Plaintiff following the publication of the article.
15. If a defamatory statement is made in writing or some permanent form, the tort of libel is committed. **See Ratcliffe v. Evans (1892) 2QB 524 at 528**. Libel is defined as

defamation by written or printed words, pictures, or in any form other than by spoken words or gestures. Libel is therefore a published false statement that is damaging to a person's reputation.

16. In **Halsbury's Laws of England 4th Edition**, it is explained that in order to constitute libel, the statement must be published and it must be concerning the plaintiff. The plaintiff can rely only on the defamatory matter contained if he or she is referred to, whether expressly or by implication in the statement in respect of which the action is brought. Where the plaintiff is referred to by name or otherwise clearly identified, the words are actionable even if they were intended to refer to some other person and both the plaintiff and the other person may have a cause of action.
17. Secondly, the plaintiff must prove that the publication was defamatory. Again, there is no complete or comprehensive definition of what constitutes a defamatory statement. However, generally speaking, a statement is defamatory if it tends to lower a plaintiff in the estimation of right thinking members of society generally or if it exposes such person to public hatred, contempt or ridicule or if it causes him to be shunned or avoided as stated by Justice Allen in the case of **Geoffrey Ssejjoba v. Rev. Patrick Rwabigonji HCCS No. 1 of 1976**.
18. In **A.K Oils & Fats v. Bidco (U) HCCS No. 715 of 2005**, Justice Yorokamu Bamwine held that in determining whether a word is defamatory the Court must first consider what meaning the word conveys to an ordinary man. The fact that the person to whom the words were published did not believe them to be true is irrelevant and does not affect the right of action. Therefore the words have to be accorded their ordinary and natural meaning. The plaintiff therefore has to prove that indeed the words are defamatory, and once the ordinary meaning has been determined, the court must decide whether the words complained of are defamatory.
19. According to **Giltley on Libel and Slander, 8th Edition at paras 114 and 115**, where the words are defamatory in their ordinary and natural meaning, the plaintiff needs to prove nothing more than their publication. This position was confirmed by Justice **Gideon Tinyinondi in Ntagoba v. Editor New Vision (2001 – 2005) 2 HCB 209**.

20. There are defences in defamation. Justification is a complete defence to an action for the defendant to plead that the statement is true substantially. The Defendant can only plead justification where there is clear and sufficient evidence that the allegation is true.
21. Truth may be pleaded as a defence to the whole defamatory statement. In **Chaina Movat and Voice of Kigezi v. Kyarimpa Enid, HCCA No. 42 of 2008**, Justice Kwesiga held *inter alia*, that the defence of justification means that the Defendant is contending that the words complained of were true. The burden is on the Defendant to prove that the facts in these words were true.
22. Fair comment is another defence in defamation. The word “fair” embraces the meaning of honesty, relevance and free from malice and improper motive. The defence of fair comment was discussed in **Figueredo & 4 others v. The Editor of Sunday Nation & 4 Others (1968) EA 501** to enshrine matters dealing with affairs of the state, affairs of local institutions, books, pictures and works of art, theatres, concerts etc. However fair comment should have the following qualifications:
- i) The matter commented on must be of public interest. Lord Denning (MR) in **London Artists v. Litler (1969) 2 ALLER** stated:

“Whenever a matter is such as to affect 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 a fair comment. This was quoted with approval in the case of **Rev. Besigye v. Amama Mbabazi HCCS No. 104 of 2002**;
 - ii) The statement in question must be an expression of opinion and assertion of facts and;
 - iii) The comment must be fair and not malicious. It must be of facts that are truly stated. Fairness here is tested in two ways i.e. the subjective test and the objective test at the same time. There must be total absence of malice.

23. In **Kebirungi v. Road Trainers Ltd & 2 others [2008] HCB 72**, court held that the question whether a plaint discloses a cause of action, must be determined upon perusal of the plaint alone together with anything attached so as to form part of it.
24. In this case, it is not disputed that a one Nanyonjo Getrude got serious health complications that were allegedly connected to witchcraft. In addressing this problem, Nanyonjo's parents reported the matter to the LC1 Committee. In addition, an exorcist-the third Defendant, was hired to assist with Nanyonjo's healing. The LC1 Committee called a meeting which was held at Cabana Restaurant on 12th April 2018 at which Nanyonjo's problems were discussed with a view to find a solution.
25. This meeting was attended and involved the Plaintiffs who the third Defendant had allegedly identified through his healing prayers to be the cause of Nanyonjo's problems or ill health. All the Defendants are members of the area LC1 committee.
26. It is not clear to me how the third Defendant who is an exorcist works in finding solutions to problems, nor the veracity of his findings. What is clear in the facts before me is that the LC1 Committee held a meeting to address the problem on their hands. Whatever was said and done appears to have taken place in good faith in trying to find a solution to Nanyonjo's problem.
27. The fact that the Plaintiffs were implicated as the cause of the witchcraft cannot be said to have been malicious just because they were named as such. In the same way the whole LC Committee and other leaders and family members who sat in a meeting to find a solution to Nanyonjo's problem cannot be said to have acted maliciously or committed defamation. What the Defendants did is what is normally expected when there is a problem of this nature in a village or area.
28. My reading is that all the Defendants acted truthfully and honestly in trying to save Nanyonjo's life. I therefore have no basis to say that they defamed the Plaintiffs. So the

plaint does not disclose a cause of action against them. The preliminary objection is accordingly allowed, the plaint is dismissed for not disclosing a cause of action.

29. Before I take leave, I wish to urge all the parties before me to work together in finding a conclusive solution to the said Nanyonjo's ill health.

30. The Defendants are awarded costs to be paid by the Plaintiffs.

I so order.

Lydia Mugambe
Judge
17th July 2019