

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)
CIVIL SUIT NO. 156 OF 2009

YUNUS LUBEGA BUTANAZIBA :::::::::::::::::::::::::::::: PLAINTIFF

VERSUS

MTN (U) LIMITED :::::::::::::::::::::::::::::: DEFENDANT

BEFORE: LADY JUSTICE LYDIA MUGAMBE

JUDGMENT

A) Introduction

1. The Plaintiff brought this suit against the Defendant seeking; (a) a declaration that the Defendant violated his right to privacy; (b) general damages; (c) costs of the suit; (d) interest on (b) and (c) from the date of judgment till payment in full and (e) any other relief that may be deemed appropriate.
2. The Plaintiff was represented by Mr. Denis Owor of M/s. Muhebwe & Owor Advocates & Solicitors and Mr. Paul Kaweesi of M/s. Shonubi, Musoke & Co. Advocates represented the Defendant.
3. Briefly, the facts of this case were that; the Plaintiff was a subscriber to the Defendant's mobile telephone network and the owner/holder of mobile station ISDN number (MSISDN) +256772543849. On or about 10th June 2008, at its head offices at plot 22 Hannington road, the Defendant printed out and certified a summary of the Plaintiff's call

records for the period 1st August to 2nd December 2008. On 28th January 2009, a one Sandra Ndyomugenyi, an employee of Pepper Publications Ltd while adducing evidence at Nakawa Chief Magistrates court in civil suit No. 82 of 2008- Yunus Lubega Butanaziba v. The Pepper Publications Ltd & Anor tendered the print out prepared and certified by the Defendant on 10th June 2018 as a defense exhibit. On 4th February 2009, the Plaintiff wrote to the Defendant demanding an explanation for the release of his call records. On 8th August 2009, the Defendant replied stating that it had released the call records in compliance with a court order dated 8th May 2008.

4. The said court order was only in respect of 1st January to 8th May 2008 yet the call records released were in respect of 1st August to 2nd December 2008 and was not issued by the Chief Magistrates court of Nakawa. The Plaintiff did not authorize the Defendant to release his call records and the Defendant's actions were an infringement of his right to privacy of his communication which is enshrined and protected by the Constitution. He suffered great anxiety, anguish and embarrassment as a result of the Defendant's actions as the print out was used by the Pepper Publications Ltd to allege and/or insinuate infidelity, promiscuity and conduct unbecoming on his part to his prejudice.
5. The Defendant denied the Plaintiff's claim and averred that the call records alluded to in the plaint were not printed out and certified as alleged. The call records printed out by the Defendant in respect of 0772543849 and released to a police officer, a one D/C Murangi, were released pursuant to court orders received by the Defendant from the Chief Magistrates court of Uganda at Buganda road. The Defendant released the said call records to an authorized person, D/C Murangi and has never released the said call records to any unauthorized third party. The release of the call records was lawful and proper.
6. When the suit came up for scheduling, the following issues were framed for determination;
 - i) Whether the release of the Plaintiff's call records was in breach of his constitutional right to privacy.
 - ii) What remedies are available to the parties?

7. The parties proceeded by witness statements in lieu of examination in chief. The Plaintiff testified as PW1 and called two other witnesses. Mr. Benon Muhwezi a detective inspector of police who investigated this matter testified as PW2 and Mr. Murangi Tom one of the police officers who purportedly requested for the release of the call records testified as PW3. The Defendant called Ms. Maureen Asiimwe,- its employee who worked as a security officer at its security department between January and December, 2008.
8. Article 27 of the Constitution as amended provides that “(1) no person shall be subjected to—(a) unlawful search of the person, home or other property of that person; or (b) unlawful entry by others of the premises of that person. (2) No person shall be subjected to interference with the privacy of that person’s home, correspondence, communication or other property.”

B) Analysis

9. I have considered all the pleadings and submissions of the parties. It is not disputed from the evidence that the Plaintiff’s call records were released by the Defendant. Although the Defendant appears to have believed that they acted on a court order in releasing them, it turned out later that in fact there was no such court order. The fake order that the Defendant acted on states PW3 as the officer who applied for it requiring the particulars of the Plaintiff.
10. However PW3 clarified in his statement and in cross examination in court that he has never issued or in any way applied for the court order for the Defendant to release the Plaintiff’s records in issue. The Defendant on the other hand could not even identify who presented the court order to their offices for them to release the information. .
11. There is a fiduciary relationship between the Defendant and its clients like the Plaintiff by which the Defendant holds highly personal, confidential and private information of its clients in trust and confidence. It follows that the Defendant should not release its client’s information to anybody that seeks it from it.

12. To avoid such instances of breach of this trust and confidentiality, the Defendant needs to have due diligence checks to verify orders like the one in issue with relevant authorities or institutions before it releases the information.
13. Whichever way I look at it in this case, the Defendant acted on a fake order and without his authorization released the Plaintiff's private information and the Red pepper was able to illegally use the same in a court case to the embarrassment and prejudice of the Plaintiff. This was in breach of the Plaintiff's right to privacy. It caused the Plaintiff inconvenience for which he is entitled to general damages.
14. Accordingly the Plaintiff's suit succeeds with the following orders:
- i. The Plaintiff is awarded general damages of Ug. shs: 10,000,000/= (Uganda shillings ten million only) for the breach of his right to privacy and resultant embarrassment and inconvenience.
 - ii. Interest of 10% p.a on (i) above is awarded from the date of this judgment till payment in full.
 - iii. The Plaintiff is awarded costs of the suit.

I so order.

Lydia Mugambe.
Judge.
11 June 2020.