



2. The defendant's reporters Richard Olwenyi and Ssebagala Sande attended the said press conference and made reports of the same in its news broadcast of 31<sup>st</sup> day of August, 2017 during a program called "LIVE AT 9".
3. The bulleting published news of suspects who had so far been arrested in connection with the said murders. Among the identified suspects was a prominent businessman identified as Katongole and his partner Mugalu Robert.

### ***Agreed Issues***

1. *Whether the news publication by the defendant is defamatory to the plaintiff?*
2. *Whether there is any defence available?*
3. *What remedies are available to the parties?*

The plaintiff was represented by *Mr. Allan Mulindwa* while the defendant was represented by *Mr. Muhammad Ali Kajubi*.

The parties led evidence through witness statements and where cross examined on the statements and later the court had the benefit of watching the recording of the news at 9 in presence of the parties in court.

All parties were directed by Court to file submissions which have been considered by this Honorable Court.

### ***RESOLUTION OF ISSUES***

#### ***Whether the news publication by the defendant is defamatory to the plaintiff?***

Counsel for the applicant submitted that defamation is an unprivileged false statement of fact which tends to harm the reputation of a person or company. Defamation is concerned with the publication of lies or untruths and defamatory statement is one which lowers the claimants in the estimation of right thinking members of society. It has been split into slander and libel. Slander is defamation of a person through a transient form of communication generally speech

(including sign language) while libel is defamation of a person through a permanent form of communication mostly written words. However, defamation is not limited to linguistic forms. Other forms of publishing including audio recordings, video recordings, photographs, painting, illustrations even use of status and bodily gestures can also be regarded as defamatory. The claimant must prove in a case of slander that the effect of the defamation has actually been damaging to them in case of libel, a court will assume that the claimant is of good character and the libel is untrue. The burden of proof is on the person (or publisher) accused of libel.

Counsel further submitted that a person's reputation is not confined to his general character and standing but extends to his trade, business or profession and words will be defamatory if they impute lack of qualification, knowledge, skill, capacity, judgement or efficiency in the conduct of his trade, business or professional activity. In order to distinguish libel and slander to state "if a defamatory statement is made in writing or printing or some other permanent form, the tort of libel is omitted and the law presumes damage. If the defamation is oral, or in some other transient form, it constitutes the tort of slander which is not actionable at common law without proof of actual damage, except where the statement is one of a particular character.

Counsel submitted that the plaintiff's case is unique in a way that if you analyse the contents of the transcribed copy of exhibit P.1 from Makerere University, it is apparent that the story does not defame the plaintiff since it refers to Ivan Katongole, but on observation of the video which was played in open court chambers, the picture of the plaintiff is used in the narrative to describe a one Ivan Katongole. The plaintiff exhibited exhibit P.2 to show proof that he is not Ivan Katongole but Namayilira Ronald, thus the defendant's use of the plaintiff's picture in the news narrative amounts to defamation.

Counsel further submitted that the plaintiff has fulfilled the test for defamation in the circumstances of this case because the words describe him as Ivan Katongole per exhibit P.1 (transcript) when you watch the video. The DPC of Entebbe called for the press conference to relay the information which the defendant is responsible for using the wrong identity of the plaintiff in the story as Ivan Katongole. The people who saw the story related the plaintiff to it hence damaging his reputation and esteem. Furthermore, the defendant was reckless in

their reporting and or broadcast when it failed to establish the true identity of Ivan Katongole but instead used that of the plaintiff. The reporter on ground if he did due diligence would easily have verified the identity of the alleged Ivan Katongole since he was in custody of police who called the press conference.

Counsel submitted that in the plaintiff's witness statement (PW1) he clearly states that he is a leader of the fisherman and business community at Kisenyi landing site and that there were mysterious killings of women in Katabi sub-county in Entebbe which necessitated police to deploy in the entire are. Furthermore, the plaintiff's face was identified in the publication as Ivan Katongole who was murdering and raping women in Entebbe. The police conference would only be true if the description and face of the said Ivan Katongole was used for spreading slanderous publication.

Counsel submitted that the plaintiff in his statement stated that he got to learn of the story through his brother Mugabi Miph, after seeing his photo on the news bulletin being described as the one Ivan Katongole who was arrested on suspicions of being connected with rampant mysterious murders of women in Katabi Town Council. That when he reported for work the next day, he observed the suspicious look people gave him which was unusual. That his wife called him informing him that her relative had called from USA concerned after they had watched the news. This in essence was not only malicious but lowered his reputation before his people at the landing site, church community and relatives.

The defendant's counsel submitted that the plaintiff did not invite his said wife, her relatives, his brother Mugabi Miph or people he claims saw the news as his witnesses in court and he did not call any witness to show how the bulletin referred to him, ridiculed him or implicated him in the said murders.

Counsel further submitted that a communication of the defamatory matter to the person defamed cannot injure his reputation and a man's reputation is not the good opinion he has of himself, but estimation in which others hold him thus in absence of evidence of evidence of a third party on court record stating that as a result of the broad cast or bulletin the plaintiff's reputation and standing in society was injured.

It was the defence case that the image was published by mistake on the defendant's bulletin and the names referred to the murder as Ivan Katongole and his name Namayilira Ronald was not mentioned anywhere. The said broad was in good faith and it was neither misleading nor deceptive with regard to the plaintiff's personality. The story and photograph did not make any reference to the plaintiff, his personal details and business. Counsel cited the case of ***Charleston and Another v Newgroup Newspaper Ltd [1995] All. ER 313***, where court held that a publisher of an alleged defamatory publication was entitled to have the publication looked at in full and its proper context.

The defendant further submitted that the plaintiff cannot select the part of the bulletin where the photograph is flashed to justify his claim and ignore the fact that the story refers to Katongole Ivan and not him. The news bulletin as broadcast did not refer to the plaintiff as he also admitted in his testimony.

The defendant contended that from the plaintiff's testimony he has never suffered any harm since he is still a respectable leader in his business and church thus no injury or harm was occasioned to him with respect to the broadcast. There must be evidence from a third party to show the effect that the standing and reputation of the plaintiff has been lowered as a result of the defendant's broadcast. See ***Sembatya Kimbowa v The Editor-The Observer & 2 Others HCCS No. 482 of 2018***

### **ANALYSIS**

A defamatory publication is the publication of statement about a person that tends to lower his/her reputation in the opinion of right thinking members of community or to make them shun or avoid him. See ***John Patrick Machira v. Wangethi Mwangi and anor KLR 532***

And also 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 9<sup>th</sup> Ed. Pages 479 and 480***

I have carefully reviewed the evidence and the submissions from both counsel, I will then address my mind to the test used to determine whether a statement is capable of giving defamatory meaning as was discussed in the case of ***A.K. Oils &***

***Fats (U) Ltd v. Bidco Uganda Limited HCCS No. 715 of 2005*** where *Bamwine J* (as he then was), relied on ***Sim v. 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 v. John Jaramoji Oloya HCCS No. 114 of 2009.***

Having carefully reviewed the evidence and submissions adduced in court by the parties, it is no doubt that on the 31<sup>st</sup> August 2017, the defendant broadcast a news bulletin of a press conference on mysterious murders of young women, on NBS Live at 9 and Youtube, which video was transcribed and exhibited P.1 from Makerere University. When seen it may appear defamatory in nature but it has to be understood in the circumstances surrounding the case. The defence counsel also notes that the story does not defame the plaintiff since it was referring to a one Ivan Katongole, in exhibit 2 the plaintiff showed proof that he was not the one Ivan Katongole but Ronald Namayilira.

The DPC of Entebbe called for the conference to relay the information which the defendant is responsible for using the wrong identity of the plaintiff in the story as Ivan Katongole. The statements that were broadcast on the NBS were not false and did not contain any defamatory content or were not intended to lower the plaintiff in the estimation of right thinking members of society or it never exposed the plaintiff to hatred, ridicule, contempt or to injure his business.

The publication was as a result of insecurity in the area where the Police was trying to allay fears and worries of the Entebbe community of the rampant murders. The plaintiff claimed that the people who saw the story related to him hence damaging his reputation and esteem as he was the leader of the fishermen and business community at Kasenyi landing site. I do not agree with the plaintiff's submission and indeed he never proved this by way of evidence or otherwise. It is mere speculation or assumption not support by any cogent evidence.

The statement was never defamatory since they were true facts and it properly described the suspected murders as Katongole Ivan and not the plaintiff since an accidental clip showing the plaintiff in less than 10 seconds could not infer the plaintiff as a murderer. In the case of ***Wasswa Matovu v. Baryamureeba & 7 Ors (Civil Suit- 2012/391) [2020] UGHCCD 104 (18 May 2020)*** I noted that “*once a statement is capable of being interpreted as an assertion of fact, the question will be whether it imputes any moral fault or defect of personal character?*”

The said broadcast was in good faith and it was neither misleading nor deceptive with regard to the plaintiff's personality. The story and photograph did not make any reference to the plaintiff, his personal details and business. In the case of ***Charleston and Another v Newgroup Newspaper Ltd [1995] All. ER 313***, where court held that *a publisher of an alleged defamatory publication was entitled to have the publication looked at in full and its proper context*. The plaintiff cannot select the part of the bulletin where the photograph is flashed to justify his claim and ignore the fact that the story refers to Katongole Ivan and not him. The news bulletin as broadcast did not refer to the plaintiff as he also admitted in his testimony.

The plaintiff had a duty to prove that the statement of which he complains might reasonably be understood by people that it refers to him. The plaintiff bears the onus of proving the publication of the alleged defamation which once proved gives rise to the inference that such publication was wrongful and intentional. See ***Foodworld Stores Distribution (Pty) Ltd v Allie [2002] 3 All SA 200 (C.)***

The words published by the defendant were true and not in any way defamatory. These were bona fide statements which were based on facts truly stated and the inference drawn must be honest and reasonably warranted by such facts. The plaintiff was not the referred to person in the publication as he went far and beyond to prove who he was in the identification of names. The plaintiff clearly confirmed that at the face of it, it was not defamatory unless looking at the circumstances.

Considering the circumstances, the plaintiff's face was shown less than a minute, as the story was running, just like any other passersby captured on the street as a recording is being done. The plaintiff claims that his reputation was damaged but neither did he bring to court any person to defend his claim as this remains a

hearsay or wishful thinking of his reputation in society. The duty of the court in the case of this nature is to determine whether the words are capable of being defamatory or the appearance of the plaintiff photo in a story unrelated to him by description of names was capable of being defamatory. The news caption during the press conference was about murders of sex workers in Entebbe whose names were specifically mentioned by Police as Ivan Katongole and Mugalu Robert.

The photograph of the plaintiff was so trivial to be read into the murders and considering the circumstances of the case, this could not be considered to be defamatory and the plaintiff could not have suffered harm to his reputation. This was a case of overzealous litigant trying to make a mountain out of a mould.

This case should also be a warning to individuals in society who stand in the way of cameras or on site as journalists do their work of reporting and when captured claim defamation.

I, therefore, find that the plaintiff was not defamed. This suit is dismissed with costs.

I so Order.

**SSEKAANA MUSA**

**JUDGE**

**7<sup>th</sup> July, 2021**