

THE REPUBLIC OF UGANDA
INH THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION
MISCELLANEOUS APPLICATION NO. 774 OF 2021
(ARISING FROM CIVIL SUIT NO. 300 OF 2021)

GEOFREY SEMATA EDU:.....APPLICANT

VERSUS

YASIN OMARI:.....RESPONDENT

BEFORE: HON. JUSTICE SSEKAANA MUSA

RULING

This application is brought under Order 7 rule 11 and 14 and Order 6 rule 3, 28, 29 and 30 of the Civil Procedure Rules seeking for;

1. An order striking out the plaint in Civil suit No. 300 of 2021 for failure to disclose a cause of action against the applicant.
2. Costs of the application.

The grounds upon which the application is based are contained in the affidavit in support of the application deponed by the applicant and briefly they are;

- a) That the Respondent filed Civil suit No. 300 of 2021 against the Respondent and two other parties for defamation through purported publication on whatsApp, Youtube and social media channels generally alleging that the respondent among others murdered the 1st

and 2nd defendant's child for political, cultural, religious and social reasons all of which were malicious and false.

- b) That the Respondent's plaint in Civil Suit No. 300 alleges that the applicant and other defendants published the defamatory content in both audio and video form but does not extract what defamatory words he actually used against him.
- c) That the Respondent's plaint in Civil Suit No. 300 alleges that the applicant and the other defendants published the defamatory content in both audio and video form but does not extract what defamatory words the applicant allegedly used against him.
- d) That the applicant received the copy of the plaint and summons to file a defence but neither the purported video or audio recording of the purported defamatory material was attached to the plaint but the plaint simply refers to annexure "C" which is an invitation to appear at police while annexure "C" and "C" of the same are photos without any word complained about.
- e) That the plaintiff's suit vide Civil Suit No. 300 of 2021 is incurably defective and discloses no cause of action against the applicant since the plaint does not specify the exact words the applicant allegedly used to defame him and no alleged audio or video containing the defamatory material is attached to the plaint, as basis of the suit against the applicant.
- f) That the applicant has been unable to properly defend himself in the main suit since he does not know the exact defamatory words he is

alleged to have purportedly used against the Respondent, on which date, and in which language.

- g) That the Respondent's suit against him is incurably defective, frivolous and vexatious and discloses no cause of action against him.

The Respondent opposed the application by filing an affidavit in reply deposed by him and contended that:

1. The application is incompetent and an abuse of court process as all the parties in the main suit have not been joined to defend themselves and thus ought to be dismissed with costs.
2. The application is frivolous and vexatious and only brought in bad faith to delay the applicant from obtaining justice in the main suit.
3. The applicant has severally admitted having engaged in recording and publishing the said defamatory materials on live television, you tube and social media generally, used words and statements on the whatsApp group of Bukasa stating that the plaintiff indeed murdered the 1st and 2nd defendant's child. A write-up transcription of the said clip was attached and marked "E", transcription clip of the messages on the whatsApp group and a police report dated 29th November 2021 were attached to prove the statements.
4. The Respondent also added that the defendants were jointly and severally sued and as such, the applicant cannot claim that there is no cause of action against him.
5. That the Applicant published the messages to get back to the Respondent for supporting his opponent Farouk Ntambi in the youth

elections where he was miserably and decisively defeated, he prayed that the application be dismissed with costs.

At the hearing, the applicant was represented by *Counsel Ambrose Tebyasa & Counsel Ola Gabriel* and the Respondent was represented by *Counsel Najib Mujjuzi*.

The court gave directives for filing of submissions and both counsel filed written submissions which have been duly considered in making this ruling.

Issues

- 1. Whether the plaint discloses a cause of action against the applicant?*
- 2. What remedies are available to the parties?*

Determination

Counsel for the applicant submitted that court is inclined to just look at the plaint to ascertain the cause of action, reference was made to Order 6 rule 28 of the Civil Procedure Rules which provides that a party may raise any preliminary objection from the pleadings and court may dispose it off at the earliest point. Reference was also made to Order 6 Rule 29 and 30 of the Civil Procedure Rules.

Counsel further referred to Order 7 Rule 11(a) and (e) which provides for rejection of a plaint which does not disclose a cause of action. He cited the case of *Kibuuka Mukasa v The New Vision Publishing Co. Ltd* where it was held that the document from which the libelous words are taken must be identified by date or description in the plaint. It was further held that the particular passage with the alleged defamatory content referring to the claimant must be set forth in the plaint.

Counsel also raised an objection that on reading the plaint, one would be confused as to whether paragraph 4 of the plaint implied that the defendants murdered their own child and as such, the plaintiff would not have any claim against any defendant.

In response, counsel for the respondent submitted that the preliminary objection is misconceived and without an iota of merit, must be rejected and dismissed with costs. He further stated that the preliminary objection cannot be raised if any fact has to be ascertained or what is sought is judicial discretion. He cited the authority of *Mukisa Biscuits Manufacturing Co. Ltd v West End Distributors Ltd [1969] E.A 696* where it was held that the entire article need not be produced but rather the actual words complained of must be produced and thereafter the entire publications annexed to the plaint.

To rebut the claim that paragraph 4 of the plaint changed the whole meaning of the claim, counsel for the Respondent submitted that it was just a misnomer to say defendant instead of plaintiff and that has no effect on the cause of action against the defendants. Counsel reproduced the audio transcription of the 1st and 2nd defendants, made reference to Annexures "E" "F" and "G" as attached on the reply to the defence and with reference to common law, counsel further submitted that when one produces, broadcasts or publishes anything, they are liable for the words they published and they cannot rely on the defense that the words were said by someone else.

In rejoinder, counsel for the applicant reiterated their submissions and submitted that the plaint discloses no cause of action, that the Respondent ought to have attached the evidence on the plaint and that the word "defendant" in paragraph 4 of the plaint changed the meaning of the case

and court should not overlook it and if court does so, it would be amending the plaintiff's pleadings.

Analysis.

Where questions of whether a pleading discloses a cause of action arise, court is obligated to peruse the pleading itself together with its annexures in order to answer this question. *Kapeka Coffee Works Ltd v NPART CACA No. 3 of 2000*. Court does not have to consider any other information save for what is laid out in the pleading to ascertain the cause of action.

A cause of action refers to a group of operative facts giving rise to one or more bases for suing; a factual situation that entitles one person to obtain a remedy in court from another person.

A cause of action means the cause of complaint or a right or obligation or a dispute which a court of law would use its adjudicatory or jurisdictional powers to determine and resolve. It also consists of or includes all material facts a plaintiff is saddled with the responsibility of proving if traversed in order to obtain judgment in his/her favour.

The applicant's counsel raised in his written submissions an issue that paragraph 4(a) of the pleading does not disclose a cause of action against all the defendants because instead of writing "plaintiff", he wrote defendant to imply that the defendants murdered their own daughter which does not make any sense. I am inclined to agree with counsel for the Respondent that this was just a typographical error (misnomer) which cannot be exploited to defeat the ends of justice. Clearly, the applicant understood what was entailed in the pleading and as such, a misnomer that has not had an effect on the plaintiff's claim cannot be invoked to strike out the pleading. Advocates however need to take extra caution when dealing with clients'

cases so as to avoid unnecessary dismissals based on minor typographical errors.

Counsel for the Respondent also raised a concern pertaining the competence of the application considering that Civil Suit No. 300 of 2021 was against three defendants and yet the applicant opted to solely file this application. Each of the parties was sued in their own right and they are at liberty to file any application independent of each other.

It was the applicant's obligation to bring it to the attention of this court if he felt like the plaint did not disclose a cause of action against him. The applicant was not under any obligation to act for and on behalf of the other defendants although the suit was against all of them. That is why a suit may proceed *Exparte* against a defendant who does not appear in court when the matter is set down for hearing and it proceeds interparty as against the one that appears. With all due respect to counsel for the respondent, it is not logical to submit that this application ought to fail because the applicant did not include the other defendants.

Now considering the merits of the application, paragraph 5(h) of the plaint states that "also when the trio were invited to the CID headquarters around the 12th October 2021, the 3rd Defendant emphatically and with no remorse in a video clip captured by BBS TEREYAYINA and published on their website and YouTube and also captured in their newscast; admitted to having recorded and published the false and malicious statements against the plaintiff together with and or concert with the 1st and 2nd defendants" this was the plaintiff's allegation although the said clips were not rely attached to the plaint. The transcriptions were annexed on the reply to the 3rd defendant's defence. Whereas the media platforms were mentioned in the plaint, the video clips were not transcribed as opposed to the 1st and 2nd defendants' case.

The respondent has set out the bundle of facts which the law recognizes as giving him a right of action. The facts as presented form a bundle or aggregate of facts which the law recognizes as giving the plaintiff substantive right to make the claim for relief or remedy sought. It is such facts or a combination of facts which give rise to a right to sue for the wrongful act of the defendant and for the consequential damage to the plaintiff.

As stated in the case of *Kapeka Coffee Works Ltd v NPART CACA No. 3 of 2000*, this court is supposed to consider the contents of the plaint to ascertain whether there is a cause of action. The Evidence Act places the onus of proving any allegations in the plaint on the plaintiff. At this point however, the parties have not led any evidence to prove the allegations and as such, it is too early for this court to determine the truthfulness of the allegations. The courts have the duty to ensure that justice is fully served without leaving room for endless litigation this applications to set aside or appeals to hear the suit on merit.

It is always distasteful to decide any issues on technical grounds rather than substantial merit but the rules of pleading have been evolved in general interest so that all parties may know the allegations they have to meet and that issues may be framed and justice done without delay. See *H.J Stanley & Sons Ltd vs. Akberali Saleh [1963] EA 574*.

The applicant does not however deny having knowledge of the facts at hand; annexure "C" to the plaint clearly has a background that is known to both parties in this application and this court has an obligation of reaching to the root of this matter and come up with a logical conclusion.

Whereas the rules of procedure do exist, the same cannot be coldly and blindly interpreted so as to cause a miscarriage of justice. The major point of contention between the parties in this suit is defamation which can only

be resolved if Civil Suit No. 300 of 2021 is heard and determined on its merits. This will finally determine and put an end to the concerns between the parties.

The nature of the present application is like a preliminary objection and the same could have been safely raised as an issue for trial and determined together with the merits of the main suit. It is now common practice for a court to hear motions or objections raised against the hearing of the suit together with the subject matter where time is of essence for the determination of the substantive matter especially if it is not about jurisdiction.

That being said, Miscellaneous Application No. 774 of 2021 is accordingly dismissed with costs and Civil Suit No. 300 of 2021 should be set down for hearing.

I so order.

Ssekaana Musa

Judge

24th October 2022