

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA**  
**HOLDEN AT KAMPALA**  
**HCT-OO-CR-MC-0001 - 2013**  
**(Arising from KCC Court Crim. Case No. 531/2011)**

**UGANDA.....APPLICANT**

**VERSUS**

**NYAKAHUMA KALYEGIRA.....RESPONDENT**

**BEFORE: HON. JUSTICE LAMECK N MUKASA**

Representation:

Mr. Rwakafuzi counsel for the Accused

Barbara Masinde (SA) for State

Ms. Jackie Busingye – court clerk.

**RULING:**

The matter before Court was a question of law reserved for the opinion of this Honorable Court under Section 206 of the Magistrate Court’s Act. The section provides:

*“(1) A Magistrate Court presided over by a Chief Magistrate or by a Magistrate Grade I, exercising Criminal jurisdiction may, and shall upon the application of the Director of Public Prosecutions, at any stage of the proceedings before judgment, reserve a question of law arising during the trial of any accused person for the opinion of the High Court.*

*(2) Where a question of law is reserved under subsection (i) the magistrate shall make a record of the question reserved with the circumstances upon which it arose and shall transmit a copy of the record to the Chief Registrar.*

*(3) The High Court shall consider and determine the question reserved and shall remit the case to the magistrate with the opinion of the High Court upon that question, and the magistrate shall dispose of the case in accordance with that opinion.*

*(4) No party shall have any right to be heard before the High Court when exercising its powers under subsection (3), but the High Court may, if it thinks fit, hear any party either personally or by advocate”.*

Nyakahuma Kalyegira Timothy was charged with criminal libel contrary to section 179 of the Penal Code Act. The particulars of the offence are:

*“Nyakahuma Kalyegira Timothy on the 12<sup>th</sup> and 16<sup>th</sup> days of July 2010, in the Kampala District with intent to defame the person of the President of the Republic of Uganda, unlawfully published in the Uganda Records online paper that His Excellency President Yoweri Museveni is responsible for the bomb blast that occurred at Kyaddondo Rugby ground”*

Section 179 provides:-

*“Any person who, by print, writing, painting, effigy or by any means otherwise than solely by gesture, spoken words or other sounds, unlawfully publishes any defamatory matter concerning another person, with intent to defame that other person, commits the misdemeanor termed libel”*

The question reserved is:

***“Whether publishing on line constitute a commission of any offence under section 179 of the Penal Code Act”.***

In view of the fundamental right to be heard this court found it fit to hear the DPP and the Accused person’s Counsel.

Mr. Rwakafuzi, counsel for the Accused cited Article 28(12) of the Constitution which provides that:

***“Except for contempt of court, no person shall be convicted of a criminal offence unless the offence is defined and the penalty for it prescribed by law”***

Counsel argued that section 179 of the Penal Code Act does not refer to publication vide cyber space. He contended that cyber space publication is not within the definition of libel in the Penal Code Act. He argued that it is not possible for the State Prosecutor to tender a cyber space publication in court. With regard to “...any means otherwise than solely by gestures spoken words or other sound” he argued that such other means must be physical. He further argued that though a website can be extracted, the publisher cannot be charged under section 179 PCA as he will not be the person who had extracted the printout. He also argued that website circulation is not public but limited to only those who know where to find it. He argued that an offence must be equivocally defined. He cited ***Knüller (Publishing, Printing and Promotion) Ltd. vs DPP (1972)2 ALL ER 898*** where it was held to the effect that there should be certainty in the criminal

law, Parliament or Legislature is the only proper authority to alter the law and to create or abolish an offence.

Technological developments may render legislation obsolete if the legislature does not catch up with them. This is true with the applicability of current statutory provisions to situations involving ICTs. The learned State Attorney argued that the statutory provisions in section 179 of the Penal Code Act by use of the phrase **“by any other otherwise.....unlawfully publishes.....”** encompasses posting matter on the website.

She contended that information posted on the website was by writing using a computer.

Section 181 of the Penal Code Act defines publication thus:-

***“(1) A person publishes a libel if he or she causes the print, writing, painting, effigy or other means by which the matter is conveyed to be so dealt with, either by exhibits, reading, recitation, description, delivery or otherwise, that the defamatory meaning thereby becomes known or is likely to become known to either the person defamed or any other person”***

Section 29 of the Computer Act defines access to mean:

***“Gaining entry to any electronic system or data held in an electronic system or causing the electronic system to perform any function to achieve that objective”***

The same section defines Computer to mean:

***“an electronic, magnetic, optical, electrochemical or other data processing device or a group of such interconnected or related devices, performing logical, arithmetic or storage functions, and includes any data storage facility or communications facility directly related to or operating in conjunction with such a device or group of such interconnected or related devices,”***

And “computer output” or “output” means:

***“a statement, information or representation, whether in written, printed, pictorial, graphical or other form.....***

***(a) produced by a computer, or***

***b) accurately translated from a statement or produced from a computer.”***

The same section defines “electronic record” to mean:

***“data which is rendered or stored in any medium in or by a computer or other similar device that can be read or perceived by a person or a computer system or other similar devices and includes a display, printout or other output of that data”***

The above statutory provisions show that any information typed on computer and posted is thereby conveyed by cyberspace to be read by whoever has access to the internet and can be printed out for further circulation. So whoever types out information on computer and posts it makes the information available for reading, retrieval and circulation.

I accordingly find that publication online can constitute a commission of an offence under section 179 of the Penal code Act.

So let the file be remitted back to the Learned Trial Magistrate to dispose of the case in accordance with the above opinion.

**Lameck N. Mukasa**

**Judge**

**2/8/2013**