IN THE COURT OF APPEAL

AT MENGO

(CORAM: Manyindo, V-P., Lubogo, Ag. J.A., Odoki, J.A.)

CIVIL APPEAL NO.8 OF 1985

BET WEEN

ATEKER EJALU…… APPELLANT

AND

UGANDA RAILWAYS WORKERS UNION……RESPONDENTS

UGANDA RAILWAS CORPORATION

(Appeal from an order of the High Court of Uganda at Kampala (Allen, J.) dated 12th April, 1986

IN

Civil Suit No.2O76 Of 1984)

JUDGMENT OF MANYINDO, V-P.

This is an appeal against the Ruling and Order delivered by Allen, J. (as he then was) on 12/4/85 whereby he struck out the appellant's suit against the respondents (who were second and third defendants respectively), on the ground that there was no cause of action against them. The learned tria1 judge held that there was a cause of action against the first defendant, a Mr. Katabulingi, and ordered the suit against him to proceed.

Although in his appeal the appellant cited only the two respondents, Mr. Katabulingi filed, through his advocates, M/S Kavuma and Katureebe, a Notice of Cross-Appeal. He was cited as first respondent. However, when the appeal came up for hearing neither Mr. Katabulingi nor his counsel appeared to prosecute the cross-appeal.

The Notice of cross-appeal was not served on the counsel for the respondents in the appeal when is should under Rule 92(1) of the Rules of this court. Counsel for the respondents were

therefore surprised to learn of the existence of the cross-appeal from us during the hearing. No wonder then that they said nothing about it.

I would certainly have liked to hear argument as to whether Mr. Katabulingi, who was not a respondent, could make himself one and then cross-appeal. In my view as this matter was not argued it does not fall for decision. As counsel for Mr. Katabulingi was served with the hearing notice and as no cause has been shown for the non-appearance of Mr. Katabulingi or his counsel, I would dismiss the cross-appeal but without costs for the respondents as their counsel were not aware of the cross-appeal and were not bothered by it in any way.

Before we could hear the appeal learned counsel for the respondents, Mr. Sengoba, made a preliminary point of objection. He did so with leave of court under Rule 101(b) as he had not made the objection under Rule 80. His point was that as this was an appeal against a Ruling of the lower court on a point of law raised in the pleadings under 0.6 r.27 CPR, no appeal lay to this court against that Ruling as of right. The appeal had to be by leave of this court or the lower court.

In support of this proposition learned counsel relied on O.40 CPR which lists the Orders against which appeals come to this court from the High Court as of right. Clearly, O.6 r.27 is not included among those Orders. We overruled that objection and promised to give our reasons to which I will now address myself.

In their written statement of defence the first and second defendants (Mr. Katabulingi and the Uganda Railways Workers Union) claimed, in paragraph 4, that the suit was “bad in law, frivolous vexatious and should be dismissed with costs.” The third defendant Corporation took the same stand when it claimed, in paragraph 9 of its written statement of defence, that the Plaint was bad in law “for being frivolous vexatious and discloses no cause of action” against it.

It therefore seems very clear to me that the objection considered by Allen, J. (as he then was) was not made under O.6 r.27 which merely provides for points of law to be raised by the

pleadings, but under O.6 r.29 which provides thus:-

> "29. The Court may, upon application, order any pleading to be struck out on the ground that it discloses no reasonable cause of action or answer and, in any such case, or in case of the suit or defence being shown by the pleadings to be frivolous or vexatious, may order the suit to be stayed or dismissed or judgment to be entered accordingly, as may b just. All orders made in pursuance of this rule shall be appellable as of right."

It was in view that clear provision that I saw no merit in the preliminary point of objection. I will now go on to consider the appeal on its merits.

The facts of the case were, briefly, these. The appellant was at the material time the Managing Director of the Uganda Railways Corporation (the third defendant in the suit).

Mr. Katabulingi was the National General Secretary of the first respondent Union which is a separate legal entity from the second respondent. He had been seconded there by the second respondent.

In September 1984 Mr.Katabulingi wrote and published a letter, which was definitely defamatory of the appellant, to various persons. He signed that letter in his capacity as National General Secretary of the first respondent.

The appellant claimed that Katabulingi was liable to him in damages as he was the author and publisher of the defamatory letter and that the respondents were equally liable on the principle of vicarious liability because, he alleged, that Katabulingi wrote the defamatory letter in the cause of his duties and within the scope of his employment both as an employee of the Corporation as well as an officer of the Trade Union.

Katabulingi and the first respondent pleaded immunity under section 19(l)(b) of the Trade Unions Decree (No.20 of 1976) which section states, inter alia:-

> "A suit against the National Organisation of Trade Unions or a registered trade union or against any member or officer thereof on behalf of themselves and all other members of the National Organisation of Trade Unions or a registered trade union in respect of any tortious act alleged to have committed by or on behalf of the National Organisation of Trade Unions or a registered trade union shall not be entertained by any court."

The learned trial judge found that the Uganda Railways Workers Union was protected by the above provision and accordingly struck out the suit against it with costs. He did so after finding as a fact that Katabulingi had written the defamatory letter on behalf of the Union, in his capacity as its National General Secretary.

In respect of Mr. Katabulingi, the learned trial judge held that the section offered him no protection against the suit because the appellant, who was not a member of the Trade Union, was suing Katabulingi in his personal capacity which was in order.

Finally, he held that the suit was bad against the Uganda Railways Corporation because Katabulingi had written and published the letter not as an employee of the Corporation but as an official of the Trade Union.

Four grounds of appeal were filed and argued by counsel for the appellant. They are:-

> "1. THAT the learned trial judge misdirected himself of the interpretation of section 19(l) (b) of the Trade Unions Decree (No.20 of 1976).
>
> 2. THAT the learned trial judge erred in not addressing himself to the provisions of section 42 of the Interpretation Decree (No.18 of 1976).

3. THAT the learned trial judge erred in dismissing the suit against the 3rd defendant (the Railways Corporation) without having had an opportunity to receive evidence on the peculiar circumstances in which the cause of action arose and which he could only have discovered when the suit was heard on its merits.

4. The learned trial judge erred in law in dismissing the suit against the 2nd and 3rd defendants."

In support of the first ground of appeal counsel for the appellant submitted that in writing and publishing the defamatory letter the first respondent – the Trade Union - was not acting within its own legitimate interests and duties but was acting as a mouthpiece - of the second respondent - the Railways Corporation. It follows,
argued Miss Kadaga, that the first respondent was not immune from prosecution.

Admittedly, the defamatory letter came from the Head Office of the Uganda Railways Workers Union. The subject matter of that letter is stated therein as "THREAT TO KILL FOLLOWING ILLEGAL STRIKE" and it is signed by Katabulingi in his capacity as National General Secretary of the Union. The learned trial judge found that there was nothing in that letter indicating that Katabulingi wrote it in his capacity as an employee of the Corporation. I agree. There can be no doubt that he wrote the letter solely in his capacity as a Union Official.

As was found by the learned trial judge, the allegations contained in the suit letter were very grave. The appellant was accused of incitement, conspiracy, attempted murder, sabotage and several other crimes. Clearly he was defamed. The letter amounted to a tort.

With respect, I think that the learned trial judge correctly interpreted section 19(l)(b) of the Trade Unions Decree (supra) in that it bars any suit against a registered Trade Union in respect of any tortious act committed by it or on its behalf. In the instant case the first

respondent is a registered Trade Union.

The defamatory letter was written and published by its officer on its behalf. It follows that the appellant had no cause of action against the first respondent.

Miss Kadaga, relying on the decisions in (1) Vacher and Sons Ltd. v. London Society of Compositors and Others (1912)3 KB 547 and (2) J.T. Stratford & Son v. Lindley and Others, (1965) A.C. 269, contended, quite rightly I think, that a Trade Union can be liable in some cases where it is proved to have acted outside its legitimate functions.

In the case before us the Union official wrote to the Chief Security Officer of the Railways Corporation telling him inter alia, that some members of the Union who had planned and executed an illegal strike would be resorting to killing Union Officers. Like the trial judge, I think that preventing illegal strikes as well as protecting the lives of Union officials is a legitimate function of a Trade Union. Accordingly, I see no merit in the first ground of appeal.

With regard to the second ground of appeal, I should perhaps straightaway make the point that; during the hearing in the lower court section 42 of the Interpretation Decree was not mentioned by anyone - not even by Miss Kadaga who was present. The said section states:-

> "42. Every Act or Decree, which affects or benefits some particular person or association or body corporate, shall be deemed to contain a provision saving the rights of the government, of all bodies o1itic and corporate and of all other persons except persons affected or benefited by the Act or Decree and those claiming by or under them."

Miss Kadaga's submission was that that section saved or preserved her client's right to sue bodies like the Trade Union (second respondent). To that Mr. Sengoba retorted that the

subsequent legislation in section 19(1) (b) of the Trade Union Decree (supra) which specifically protects Trade Unions from being sued for any tortious acts must be preferred, in accordance with the well established rules or principles of interpretation of statutes.

I do not see any real problem here. It is obvious that in its own wisdom the legislature decided to make a law specifically for Trade Unions. In that same law registered Trade Unions, like the first respondent were exempted from being sued for tortious acts. I do not see any conflict between that law and section 42 of the Interpretation Decree.

If there had been such a conflict I would have been inclined to uphold the immunity granted to the first respondent by the subsequent legislation. And in view of the weight he attached to section 19(l) (b) of the Trade Unions Act I doubt if the learned trial judge would have decided the matter differently had his attention been drawn to section.42 of the Interpretation Decree. I thus see no merit in the second ground of appeal.

The third and fourth grounds were argued together. Counsel for the appellant submitted that as the appellant was claiming that the respondents and Katabulingi had conspired to defame him, the learned judge was wrong to reject that claim before hearing evidence. In short, that the dismissal was premature.

As already pointed out, the learned trial judge had found that Katabulingi had written the Suit letter on behalf of the Trade Union and not on behalf of the Railways Corporation. Mr. Sengoba for the respondents contended that that fact, together with the fact that as a registered Trade Union. The first respondent is a separate legal entity from the second respondent, meant that the latter could not be liable for the acts of the former.

I agree with Mr. Sengooba that the learned trial judge decided this issue correctly. Clearly, the Union is not an employee of the Corporation. In fact it was formed in order to bargain with the Corporation and thereby secure favourable terms for the workers of the Corporation. The Union is a separate legal entity. I reject Miss Kadaga’s submission that the Union was an agent of the Corporation. It follows, in my view, that the Corporation could not be vicariously

liable to the appellant for the tortious act of the Trade Union.

It would of course be a different matter if the Corporation were shown to live published the defamatory letter. The learned trial judge was alive to the point and dealt with it quite comprehensively in his Ruling when he said:-

> "…..What must be proved that the defendant published the defamatory matter. In this case quite clearly the Corporation had nothing whatsoever to do with publication of the letter. Quite the reverse in fact. A copy of the letter was sent to the Managing Director of the Corporation and so it was the 1st defendant (Katabulingi) who published the document to the plaintiff and the Corporation. Thus the Corporation was the receiver of the documemt, not the publisher of it. I cannot find any way in which the Corporation can be held liable for the letter or its contents."

I respectively agree with him. Whether or not the appellant could sue the second respondent was a question of law and in my view it was not necessary for the trial judge to hear all the evidence on the case before he could determine that question. I am satisfied, therefore, that the learned trial judge rightly struck out the appellant's suit against the second respondent for want of a cause of action.

In the result I would dismiss this appeal with costs to the respondents here and in the lower court an as Lubogo, Ag. J. A. and Odoki, J.A. agree, it is so ordered.

DATED this 12th day of December, 1986 at Mengo.

S.T. Manyindo,
VICE PRESIDENT.

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JUDGMENT OF LUBOGO AG. J.A.

I have had the opportunity of reading in draft the judgment of Manyindo, V-P., I agree with him on decision for the rejection of the preliminary objection and also on the dismission of the appeal and the order made as to costs.

DATED at Mengo this 12th day of December, 1986

D. L. K. Lubogo,
AG. JUSTICE OF APPEAL.

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JUDGMENT OF ODOKI J.A.

I have had the opportunity of reading in draft the judgment delivered by the learned Vice-President and I agree with it.

DATED at Mengo this 12th day December, 1986

B. J. Odoki,

JUSTICE OF APPEAL.

Mr. Sengooba assisted by Mr. Bwenje counsel for respondents.

Counsel for appellant absent.