

IN THE SUPREME COURT OF UGANDA

AT MENGO

(CORAM: MAYINDO, D.C.J, PLATT, J.S.C & SEATON, J.S.C.)

CIVIL APPEAL NO. 12 OF 1990

BETWEEN

DANIEL OBOH
APPELLANT

AND

THE NEW VISION PRINTING AND RESPONDENT
PUBLISHING CORPORATION

(Appeal from the Judgment and orders of the High court
of Uganda at Kampala (Byamugisha. J) dated 10.8.90)

IN

CIVIL SUIT NO.229 OF 1990

JUDGEMENT OF MANYINDO , D.C.J.

This is an appeal against the quantum of damages only, arising from a suit for defamation. The appellant is a senior Assistant co-operative Officer in the ministry's Headquarter in Kampala.

On 8.2.89 the respondent, a statutory corporation, published in its daily newspaper entitled "the new Vision", on the front page and under the heading

"Mukwano battles Wankonko" , an article which read, in part as follows:-

“ Two former officials of wankoko Co-operative society are reported to have illegally sold the disputed land Shs. 80/- million (old currency) to mukwano without the knowledge and consent of the society's late chairman , Mr. Christopher Kyazze together with over 200 members of the society. Those implicated in the deal were named as Mr. Yekomiya Mukwaya and Mr. Daniel Oboh, the former treasurer and secretary manager

respectively.....society officials say the people involved in the illegal sale are still at large.

But, according to the current office bearers of Wankoko co-operative society, namely the chairman Mr. John Lubega, the vice-chairman, Mr. Tonny Kaggwa Kyazze and Joseph Ssenyange, Co-operative society late chairman together with other officials of the society learnt of the illegal sale of their property.

They charged that the two officials sold the land without even the knowledge of the Ministry of co-operatives and marketing, a matter that contravenes the co-operatives society's Act of 1972."

Apparently Mr. Mukwya did not take the article seriously. But the appellant did as he brought the action against the respondent claiming punitive damages despite the fact that he had been accused of a criminal offence. The respondent was served with the necessary court process but chose not to defend the suit. Subsequently an inter-locutory judgment was entered and the suit was put before Byamugisha J. for formal proof and assessment of damages only.

At the hearing the appellant gave evidence and called two witnesses, Pius Mutumba (PW2) and Obullu- Akanga (PW3). The appellant's evidence was, briefly, that at the material time he had been seconded to Wankoko Co-operative society as secretary-manager. At that time the society was indebted to a bank to the tune of Shs. 26,000,000/= for which the Bank was threatening to sell some of the property of the society.

The appellant put the matter before the Executive Committee of the society and the parent Ministry. It was then resolved by the society and ministry that the society's building on plot No.6 old port Bell Road Kampala be sold for at least Shs.75,000,000/- so that the debt could be settled. That was done. That evidence was supported by that of Mutumba (PW2), who was a vice-chairman of Wankoko Co-operative society then. The learned trial Judge believed that unchallenged evidence and accordingly found as a fact that article in question was devoid of truth.

The appellant contended that the article defamed him in that it portrayed him as a criminal and dishonest civil servant who had illegally sold his employer's property and then pocketed the proceeds of the sale. Mr. Akanga (PW3), stated that after reading the article he easily formed that impression of the appellant whom he thought was "unfit to hold public office".

The trial judge found, quite rightly in my view, that the publication was defamatory of the appellant he did not think that the defamation attracted punitive or exemplary damages, so she awarded none. Instead she awarded the appellant Shs. 300,000/= as general damages.

Five grounds of appeal were presented by Mr. Owori on behalf of the appellant. They were put thus:-

- “1. Because the learned trial Judge erred in law when she reduced the damages on the grounds that the libel had not been believed and that the appellant was a man of humble beginnings.
2. Because the learned trial Judge's approach to the question of punitive damages was erroneous in law.
3. Because the award is so small as to render the learned trial Judge's estimate of the damages to which the appellant was entitled so erroneous in law.
4. Because the learned trial Judge appears to have acted on some wrong principles of law as the award departs widely from the amount recently given in a similar case.
5. And because the learned trial Judge appears not to have considered the fact of the decreasing value of money when estimating the award complained of”.

I think ground 1, 3, 4 and 5 are directed on the same point- the inadequacy of the general damages, so I will deal with them together. But first I will deal with ground 2. At the trial Mr. Ekirapa who represented the appellant made a brief submission in his final address to the court on damages. He ended his submission thus:-

“The publication was aggravated. This calls for punitive damages against the defendant. In the circumstances my prayer is that a round of 5 million (sic) be awarded as adequate compensation for the injury suffered by the plaintiff”.

Mr. Ekirapa cited no authorities in support of his proposition that punitive damages should be awarded. The learned trial judge considered the matter in these terms:-

“First, i will deal with the question of when punitive damages may be awarded in actions for libel . The principles to be followed in the assessment of punitive damages were set out in the case of Davies Vs Shah (1957) E.A. 352 BY Briggs J.A. (as he then was) where the Judge said that punitive damages as the name suggests are deterrent and they are given without reference to any proved actual loss suffered by the plaintiff. The conduct of the defendant and his persistence in repeating the libels complained of were relevant consideration.

In the instant case apart from the fact that the defendant ignored court summons when it was served, there is no other ground on which the court can punish it. There was also no evidence to show that it refused to apologize to the plaintiff when asked to do so or that it repeated the story after it had been pointed out that the original one was false.

Moreover, it does not appear to me that the story was published to increase the sales of Newspaper. So in the circumstances I will decline to award punitive damages”.

At the hearing of the appeal Mr.Owori submitted that the appellant should have been awarded punitive damages because (a) the respondent never apologized to the appellant for the defamatory publication, (b) they did not bother to defend the suit an indication of malice (c) of deterrent effect of punitive damages as the respondent’s newspaper in question has a wide circulation.

As I understand it ,the underlying principle of damages is restitution , restore ,so far as money can do so , the plaintiff to the position he or she would have been in if the contract with him had been duly implemented , or ,as in this case ,if the tort in question had not been done to him . Punitive or exemplary (I prefer the latter term) damages may be awarded not merely to compensate the plaintiff but to punish the defendant and mark the outrageous nature of his conduct. I think the court should not be concerned with the conduct of the defendant per se but with the effect which that conducts had on the plaintiff’s feelings and pride.

In **Davies v shah** (supra) the appellant , who was a Deputy Registrar of the then Supreme Court of Kenya was defamed by the respondent in libels published by him by way of letters to a small number of people. The allegations against the appellant were extremely serious ,alleging dishonesty ,willful misconduct in the course of his duties and professional misconduct . The trial judge awarded the appellant Shs 2000/= only on the grounds (a) that the extend of publication was small (b) that the libels had not been believed and (c) that the damage to the appellant “cannot be such as to merit a punitive or exemplary award”.

On appeal it was held that the trial judge had failed to appreciate that punitive or exemplary damages are meant to punish the defendant for the wrong done and or to act as a deterrent. The court of Appeal decided that the respondent had repeated the outrageous allegations against the appellant he had to pay higher damages it mattered not that the appellant had not suffered actual loss .It was on that ground that the court increased the damages from Shs 2000/= to Shs 10,000/=.

In the case before us the respondent published the offending article only once. There was no evidence that they were asked to apologize but refused to do so .In any case failure to apologize would not in my view be a good reason for awarding aggravated damages. See: **E.A. Newspapers v Opondo (1974) E.A. 36 at 37**. I cannot agree with Mr.Owori that the respondent should be punished for not defending the suit. I think that it would be wrong for courts to drag defendants to court even when they have no defence to the action. Infact courts should be wary of defendants who insist on defending undefendable actions as this would waste both time and money.

I now consider the question whether the publication was so outrageous as to warrant punitive damages. It is clear that opinion was divided in wankoko Co-operative Society. Some officials were claiming that the society had been cheated. They told their side of the story to the respondent .Was the respondent wrong to put their story to its readers? I think not.

The problem is **Davis V Shah** (Supra) was that the appellant persisted in repeating the wild allegations against the appellant in letters and petitions addressed to the secretary of state for the

colonies, with copies to members of the British House of commons and the chief Justice of Kenya. In the instant case the respondent published the article only once and the language used was not violent. The case is therefore distinguishable from **Davie v Shah** in my judgment. if every time the press published something untrue they are ordered to pay punitive damages then this might have the adverse effect of muzzling the press which would be unhealthy situation in a democratic society. It is for these reasons that I would uphold the trial judge's decision not to award exemplary damages to the appellant. The facts and circumstances of the case did not justify such damages.

I now turn to the quantum of the general damages (grounds 1 ,3 ,4 & 5) , but first a word about some of the grounds. The claim in the first ground that the learned trial judge reduced the damages is not correct. That claim would be tenable if the trial judge had awarded a small claim of punitive or exemplary damages for some reason. What happened here was that the claim for exemplary damages was rejected completely. Again the fourth and fifth grounds are defective in that they are argumentative. This contravenes Rule 84 (1) of the Rules of this court.

The learned trial judge directed herself on the law regarding general damages as follows:-

“general damages are at large and do not need specific proof and the quantum of damages is a matter which falls within the discretion of the court .The court has to take into account the status of the plaintiff in society, the estimation in which the defamed person was previously being held and the fact that when a person is defamed not everybody who hears or reads the defamatory words will take them as they are or treat him accordingly. In the instant case it seems fairly obvious to me that the article cannot have any really serious effect upon the plaintiff's reputation . He retained his job with the ministry and he is a man of humble beginning. Nevertheless he is entitled to be compensated for the anxiety and annoyance which he naturally felt at that time.”

I would have no quarrel with the above statement save for the reference to the appellant's beginning. I think it is immaterial that the victim of defamation came from a humble beginning. The court should only consider the status of the plaintiff at the time he was defamed. In any case

there was no evidence before the court showing that the appellant is a man of humble beginning .The consideration seems to have adversely affected the quantum of damages. I think that the appellant was entitled to more than what he got. I would therefore raise his general damages by another Shs 200,000/=. The High court case of **Neudegger v The Telecast Newspaper H.C.C.S. No. 754/88** in which Taboro , J . was said to have awarded the plaintiff Shs. 3 million general damages was mentioned but was not shown to us. I do not know the basis of such a huge award. It may be justified on the facts of that case, otherwise it would appear to be on the higher side compared with the level of general damages generally awarded by the other Judges. In the result, I would allow the appeal, set aside the award of Shs. 300,000 /- and substitute one of shs 500,000/- with costs of the appeal and in the lower court and as seaton J.S.C also agrees it is so ordered.

DATED at Mengo this 27th day of February , 1991.

SIGNED : S.T MANYINDO
DEPUTY CHIEF JUSTICE

I CERTIFY THAT THIS IS A TRUE COPY
OF THE ORIGINAL.

B.F.B BABIGUMIRA
REGISTRAR SUPREME COURT

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AT MENGO
(CORAM: MAYINDO, D.C.J , PLATT, J.S.C & SEATON ,J.S.C.)
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JUDGEMENT OF PLATT, J.S.C

I have had the great advantage of considering the judgment of Manyindo, D.C.J. in draft.

I must confess that by myself I would have dismissed the appeal. The errors of the Newspaper Respondent were not great as these libel cases go, and cost had been kept to a minimum. I agree that punitive damages were not warranted.

The appellant considers that the libel was worth shs. 300,000/-. With respect I cannot agree. As there is an interlocutory judgment that the article was defamatory, I cannot go behind that judgment which has not been set aside, even though it was obtained in default of appearance. But in the nature of things, this article can hardly have caused much distress. The impugned sale took place in 1986. It was only attacked in 1989 after attempts to recover the land were made. What a remarkable situation now obtains! Instead of the Co-operative's debt of Shs. 75,000,000/= having been paid, leaving a balance in hand of Shs. 5,000,000/- this co-operative proposes to recover the land at a cost of Shs. 32,000,000/- in compensation to the buyer. One supposes that the value of land has risen greatly. Perhaps the appellant's Ministry might have published the true fact that the sale had been agreed by the ministry and had been properly utilized to pay off the debt, if he had been as aggrieved as he claimed. That would have settled the matter.

It is true that the learned judge made one observation which was unwarranted, concerning the Appellant's origins. I would not have thought that it would have made such difference to her calculations. On the other hand, the story was not repeated in any injurious way, and it is not known what negotiations about an apology took place. But if the Appellant had called for Shs. 3,000,000/- which he now claim in court, I am not surprised that there could be no settlement or an apology.

Consequently looking at all the circumstances, I would have thought that the judge had decided the matter appropriately. But I am prepared to accede to the opinions of the other members of the court that this was a more serious libel than I believe it to have been. It follows that I defer to the decision proposed by Manyindo, D.C.J. to increase for the damages to Shs. 500,000/- and the order for costs also proposed.

Delivered at Mengo this 27th day of February, 1991

SIGNED:

H.G. PLATT

JUSTICE OF THE SUPREME COURT

I CERTIFY THAT THIS IS A TRUE COPY
OF THE ORIGINAL

B.F.B .BABIGUMIRA

REGISTRAR SUPREME COURT

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JUDGEMENT OF SEATON, J.S.C

I have had the advantage of reading in draft the judgment of Manyindo , D.C.J. with which I concur and have nothing to add.

DATED at Mengo this 27th day of February, 1991.

SIGNED:

E.E. SEATON

JUSTICE OF THE SUPREME COURT

I CERTIFY THAT THIS IS A
TRUE COPY OF THE ORIGINAL.
B.F.B BABIGUMIRA
REGISTRAR SUPREME COURT.