

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL SUIT NO. 261 OF 1992

ABUBAKAR K. MAYANJA:.....:PLAINTIFF

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VERSUS

TEDDY SEEZT CHEEYE

UGANDA CONFIDENTIAL INFORMATION SERVICE:.....:DEFENDANTS

BEFORE: THE HON. MR. JUSTICE G.M. OKELLO

JUDGMENT

This action is in libel. The first defendant is the Editor of the 2nd defendant, a monthly Newspaper known as Uganda Confidential. The plaintiff, a lawyer by profession and an advocate of this court, a third Deputy Prime Minister, Minister of Justice and Constitutional Affairs and Attorney General of the Republic of Uganda, complained of an Article entitled "Abu Mayanja; The disorganised Deputy" which appeared on page 6 of Vol. 12 of Uganda confidential of December 1991. The Article Complained of reads as under:-

"(a) Abu Mayanja; The disorganised Deputy?\_\_\_\_\_

The Baganda have a saying that "Omulungi tabulako kamoggo" meaning that every good person has his or her weakness. It appears, that saying holds true for Abu Mayanja who is also third Deputy Prime Minister. Recently Tom Butime Minister of State for Internal Affairs led a delegation that included the Deputy Director of CID, Herbert Karugaba and the Permanent Secretary-of Internal Affairs to a UN security Meeting in Paris. The Tom

Butiime group had done a lot of ground work, and they were equal to the task of the Meeting, (b) After only one day, and out of the blue, Abu Mayanja arrived at Paris<sup>2</sup> Airport.

"Then immediately the Uganda Embassy organised transport and went to meet the big man. But apparently (c) the big man seems to have had other programmes. To start with, at the air port, there was a white man waiting for the big man and the big man seemed to be well at home with the white man.

(d) Then hell broke loose. Abu Mayanja said he had come to attend the Security Meeting. (e) Although he was uninformed, by virtue of his position, he automatically took over the leadership of the delegation. For a while,

(f) Abu Mayanja appeared to be the buffoon of the day. Then came more discrepancies, he said he was going to Brussels to investigate a Company called "Heaven on Earth".

(g) He then, asked embassy officials to book him a ticket to Brussels. He then rung and asked them to cancel the Flight because he was going by road. At the end of it all, Abu Mayanja left a bad name in France as one of the most disorganised foreign dignitaries in recent years."

The Plaintiff claimed that the above article was defamatory of him

(a) He argued that the Title of the Publication - Abu Mayanja; the disorganised deputy meant and was understood to mean that he is a confused or disorganised person. He submitted that this is discreditable to his reputation and therefore defamatory of him. He further argued that the introductory proverb in Luganda but which was translated in English was meant to put the readers on their alert to read and perceive his (plaintiff's) bad side. (b) That the statement "After only one day and out of the blue, Abu Mayanja arrived at Paris Airport" in the context in which it was used meant and was understood to mean that he (Plaintiff) went to Paris to attend an official junction without any invitation. The plaintiff argued that these words are a depiction of a dishonorable conduct on his part and therefore defamatory of him.

(c) That the phrase "the big man seemed to have had other programmes" in the article meant and was understood to mean that ho (plaintiff) had a concealed, hidden or private agenda when he went ostensibly to attend the official function. The Plaintiff contended that this is discreditable to his reputation. That it portrayed him as an unpatriotic Minister. That this is defamatory of him.

(d) Further that the phrase "then hell broke loose", in the article meant and was understood to mean that all of a sudden he (Plaintiff) fell into confusion, conducting himself in a dishonorable manner. He contended that this tended to disparage his reputation and therefore defame story of him.

(i») The plaintiff again claimed that the statement that "although he was uninformed by virtue of his position, he automatically took over the leadership of the delegation" in the article meant and was understood to mean that he (plaintiff) was unprepared for the conference but he nevertheless hijacked the leadership of the delegation and that his contribution to the conference was a trash. The Plaintiff contended that the effect of the above statement is

discrediting, diminishing or lowering of his reputation and therefore defamatory of him.

(f) The Plaintiff further claimed that the most damaging in the article was the statement that "Abu Mayanja appeared to be the baffoon of the day". He contended that the above statement meant and was understood to mean that he is a person without self respect. That he behaves in a foolish and undignified manner. That this statement tended to expose him to contempt and ridicule and therefore defamatory of him.

The Plaintiff further claimed that the statement that "He then asked embassy officials to book him a ticket to Brussels. He then rung and asked them to cancel the flight because he was going by road when read together with the phrase "then came more discrepancies" and concluding the article with the statement "Mayanja left a bad name in France as one of the most disorganised foreign dignitaries in recent years" meant and is understood to mean that he (the plaintiff) is a disorganised and confused person. The plaintiff contended that the above statement impeaches his reputation and therefore defamatory of him.

..A.

From the above, the Plaintiff claims

- (a) General damages for libel.
- (b) Interest thereon at 41% P.A from the date .of judgment till payment in full.
- (c) Cost of the suit.

When summons to Enter Appearance with copy of the plaint was served on them, the defendants did not enter the necessary appearance nor filed in their W.S.D. At the application dated 12/5/92 by counsel for the Plaintiff, interlocutory judgment was entered against the defendants under 0.9 r.6 of the CPR. In entering the interlocutory judgment, the Deputy Registrar relied on the affidavit of service which was deponed to by Habbey Sewakiryanga on 4/5/92. The case was then set down for formal proof and the file was placed before me on 6/7/92 at 9.05 a.m.

At the hearing, the plaintiff called the evidence of four witnesses including himself. But the defendants did not attend and therefore gave no evidence. The proceeding was thus exparte. The evidence given by the Plaintiff and his witnesses in support of his case are therefore not challenged or contradicted on oath or at all\* The statements of facts contained in those evidence save where it is intrinsically false shall therefore be taken as proved and truthful.

Defamation has been defined to mean the publication of a statement which tends to injure the reputation of the person to whom it refers.

One that tends to lower him in the estimation of right thinking members of society generally and in particular which cause him to be regarded with feelings of hatred, contempt, ridicule, fear, dislike or disesteem. See Solmond on the law of Tort 17th Edn P. 140. See also the case of Didi vs. The AG (1976) HCB 328 and Ssejjoba vs, Rwabigonji (1977) HCB 37.

To establish the tort of defamation therefore, it is essential to prove the following ingredients on the balance of probabilities. They are:-

- (1) There must be publication of false statement about the plaintiff by the defendant. .

- (2) The words published must bear defamatory meaning in that they must tend to lower a person's reputation in the estimation of right thinking members of society generally.
- (3) That the statement is defamatory must be judge objectively based on the standard of right-thinking members of society generally. The issues to be considered in the instant case are the followings:-
  - (1) Whether or not there was publication of a false statement about the plaintiff by the defendants.
  - (2) Whether the words complained of in their natural and ordinary meaning are defamatory of the plaintiff and
  - (3) If so what is the quantum of damages if any.

As regards to issue No.1 above-which is whether or not there was publication of a statement above the Plaintiff by the defendants, counsel for the plaintiff contended that there was a publication of such a statement. He relied on a copy of page 6 of Vol. 12 of Uganda Confidential of December 1991. This was received in evidence and marked Exh P1.

I do agree with the above submission that there was publication of a false statement about the plaintiff by the defendants. This finding is supported by a copy of Page 6 of Vol. 12 of Uganda Confidential of December 1991. This was received in Evidence and was marked Exh P1.

The evidence of PW1 and of PW3 shows that the article complained of in Exh. P1 about the plaintiff is false. The law however presumes in favour of plaintiff the falsity of the statement.

In the instant case, the article in question has already been reproduced earlier in this judgment. The plaintiff (PW1) testified that he did not to the conference out of the blue. That he was duly appointed by the Prime Minister by Instrument dated 18/11/91 (Exh. P10) to lead the Uganda delegation to the conference. He also denied that he went to the conference unprepared because he was duly briefed of the conference by the DPP who had attended the preparatory Meeting to the conference. That at the conference he presented a speech which was prepared by officials of the Uganda Embassy in Paris. He further denied his that he ever cancelled the prearranged mode of travel during that trip. This evidence was corroborated in all material particulars by the evidence PW3, the Personal Assistant to the Plaintiff; He travelled

with the Plaintiff to the conference.

I believe the above evidence and from it X find as a fact that there was publication by defendants of a false article about the Plaintiff.

This answers the first issue in the affirmative.

On whether the article complained of is defamatory of the plaintiff, counsel for the plaintiff contended that the article is defamatory of the Plaintiff. He relied on the evidence of PW2 – PW4.

As we have seen above, It is libelous to publish an article which tends to lower the plaintiff's reputation in the estimation of right thinking members of society generally and in particular one which causes the Plaintiff to be regarded with feelings of hatred, contempt, ridicule, dislike or dis-esteem. To determine whether the words complained of is defamatory of the Plaintiff, it is first to be decided whether in their natural and ordinary meaning the words are capable of defamatory meaning. The principle used in determining whether the words are capable of defamatory meaning is to construe them according to a fair and natural meaning which would be given to them by reasonable persons of ordinary intelligence. The test applicable is whether under the circumstances in which the writing was published, reasonable men to whom the publication was made would be likely to understand it in a libelous sense. (see Gatley on libel and Slander 5th Edn. Page 120 Paragraph 200).

In the instant case, the words complained of In the article in question are for ease of reference underlined by me and numbered a,b,c, d,e,f, and g. Counsel for the Plaintiff submitted that these underlined words are defamatory of the plaintiff. That each of those numbered phrase or statement in the context in which they are used, tends to lower the Plaintiff's reputation in the estimation of right-thinking members of society generally.

In my view, the underlined words numbered b,c,d,e, and g are in their natural and ordinary meaning not capable of defamatory meaning. These words are (b) After only one day, and out of the blue, Abu Mayanja arrived at Paris Airport; (c) the big man seems to have had other programmes; (d) then hell broke loose; (e) Although he was uninformed, by virtue of his position, he automatically took over the leadership of the delegation; (g) He then asked embassy officials to book him a ticket to Brussels. He then rung and asked them to cancel the flight because he was going by road.

The above words are in their natural and ordinary meaning not capable of defamatory meaning. However the words numbered a, and f are in their natural and ordinary meaning capable of defamatory meaning. They impeach the reputation of the Plaintiff. These words are (a) Abu Mayanja: The disorganised Deputy; and (f) Abu Mayanja Appeared to be the buffoon of the day. At the end of it all Abu Mayanja left a bad name in France as one of the most disorganised foreign dignitaries in recent years.

The above words are in their natural and ordinary meaning capable of defamatory meaning. To describe a man as disorganized or disorderly, buffoon or stupid and noisy is' clearly defamatory as it tends to lower his reputation in the estimation of right-thinking members of society generally.



Reading the article complained of as a whole, is likely to be understood in a libelous sense. Nkambo-Mugerwa PW2 an Advocate of this court and a member of the JSC testified that he has known the plaintiff since their school days. That he read the article in question. That his perception of it is that the description of the plaintiff in the article as "disorganised deputy" and a buffoon of the day" are defamatory of the plaintiff.

Apolo Serumaga PW3, a civil servant and personal Assistant to the Plaintiff, testified that he read the relevant article. That his perception of it is that it is false and defamatory of the plaintiff. That the plaintiff did not go to the conference uninvited but that he was duly appointed to lead the Uganda delegation to the conference. He also denied that the plaintiff went to the conference unprepared but that he was infact duly briefed by the DPP who had attended the preparatory meeting to the conference.

Yusuf Nsibambi PW4 a legal secretary of Green-land Bank testified that he knows the plaintiff as the father of his class-mate and also as heart of the Uganda Bar, That he read the article in question. That he perceived from it a defamatory message about the plaintiff. That the article portrayed the Plaintiff as one who went to attend the conference uninvited and unprepared for it. That he did not expect such a conduct from the plaintiff as head of the Uganda Bar.

The above is the evidence of opinion of right thinking members of society generally. Their opinion or perception of the article is that it is defamatory of the plaintiff. There is no rebuttal evidence to the above. The above evidence is not intrinsically false. I therefore believe it. From it, I find as a fact that the article complained of is defamatory of the plaintiff. This answers issue No.2 above in the affirmative.

Having found that the Plaintiff has been defamed in the said article the next issue to consider is the question of damages and its quantum. Libel in all cases is actionable parse Proof of damages is not necessary to entitle the plaintiff to an award of damages. Where damage is proved, this only aggravates the wrong committed and enhances the damages awardable.

As to the quantum of damages to be paid, it is pertinent to bear in mind that in defamation, damages are awarded for injury to the feelings of the Plaintiff. It is thus no easy job to assess in monetary term any injury to one's feelings. The established principle, of assessing the quantum of damages for defamation is set down in Gatley on Libel and Slander 5th -Edn Page 625 paragraph 1145. Under this principle, in assessing the quantum of damages in defamation, the following factors must be taken into account:- the conduct of the Plaintiff, his position and standing in society, the nature of the libel, the mode and extent of

publication, absence of any retraction or apology and the whole conduct

the defendant from the time when the libel was published down to the very moment of the Judgment,

It is observed that a plaintiff who puts himself in public life must expect public scrutiny of his conduct as a public figure. The Public expect transparency in the manner he conducts himself. No public figure is expected to conduct himself in a manner which puts his reputation in question. Such a conduct attracts comment from the public. However, the public right to scrutinize the conduct of their leaders does not give any member of the public a licence to publish unjustifiable defamatory matter about a public figure. The established principle is that the higher the Plaintiff's social status, the greater is the likely injury to his feelings by a defamatory publication about him and therefore the greater is the amount of damages awardable. This amount is even enhanced where the publication is extensive and where the defendant acted maliciously in the publication.

In Andrew Adimola Vs. Uganda Times News Paper Ltd. HCCS No. 537/79 the plaintiff was a former UNLA Minister. He was reported by the defendant Newspaper in 1979 as having taken part in forming a new political party at a time when political parties were banned in Uganda. This was found to be libelous of him and he was awarded damages of shs. 75000/=.

In Lt Col Bozalaki vs. Ilakut and Uganda Times Newspaper (1981) HCB 36 the Plaintiff was an army officer. It was published on the front page of the Uganda Times Newspaper that the NCC (Parliament) was passing a law making it a crime to have been a member of state Research Bureau or Public safety unit. On page 4 photos were printed of those who were members of those organisations and were wanted by police. One of the photos was identified as that of the Plaintiff though the name underneath it was different. This was found to be defamatory of the plaintiff. No apology was offered and he was awarded damages of 50,000/=.

In the instant case, the evidence on record shows .that the plaintiff

In the third Deputy Prime Minister of Uganda a highly placed person socially. Evidence was also given of malice on the part of the defendants. That they refused to publish apology when demanded by Exh. P5 That instead they persisted to publish further defamatory matter of the plaintiff in the subsequent issues of the same paper. Page 8 of the January 1992 issue of the Newspaper was tendered in evidence as Exh p6. This imputed immoral conduct to the plaintiff. Page 4 of the Uganda confidential issue of February 1992 was also received in evidence as Exh. P6. This described the Plaintiff as a sycophant who enjoys back biting his colleagues while in

state House. These are evidence of malice on the part malice on the part of the defendant in publishing of the defendants. malice on the part of the defendant in publishing a further defamatory matter of the plaintiff aggravates the wrong just like his refusal to publish apology. These enhance damages.

The evidence on the extent of the publication is however conflicting.

The Plaintiff does not know the extent of publication or circulation of the Newspaper-

Uganda Confidential. He testified that the circulation of the Newspaper may not be very wide but all the people who matter like the foreign Embassies read it. Nkambo-Mugerwa PW2 testified that the readership is fairly wide particularly among people of his taste PW2 Serumaga testified that the circulation is fairly wide that they are got in Mbarara, Fort portal and in Baikwe. According to Nsibambi PW4 the circulation is high. That it is found in every corner of Uganda. But he has not travelled to every corner of the country to substantiate his claim. Exh. P7 shows the distribution centres of the Newspaper as being in Kampala, Fort Portal, Mbarara and Jinja. These are certainly not every corner of the country. From these evidence, a fair deduction is that the circulation of the Newspaper is limited to Kampala, Jinja and few main towns in Western Uganda. In the circumstances the Plaintiff is awarded damages in the sum of shs.2,000,000/= with cost of the suit.

G.M. OKELLO

JUDGE.

7/8/92.

12/8/92. Benard Bamwine from Sebalu & Lule Advocates for the plaintiff present- exparte Plaintiff absent.

Judgment delivered as directed by the Hon. Mr. Justice G.M. Okello.

S. MUSOTA

AG. DEPUTY REGISTRAR (CIVIL)

12/8/92.