THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL SUIT NO. 611 OF 1993

RHODAH KALEMA:::::::::::::::: PLAINTIFF

VERSUS

WILLIAM PIKE::::::::::::::::::DEFENDANT

BEFORE: THE HON. MR. JUSTICE J.B.A KATUTSI

JUDGEMENT

The Plaintiff is a member of the National Resistance Council (NRC) for Kiboga county, a member of the National Executive Committee (NEC) for Kiboga District, a former Deputy Minister for Public and Cabinet Affairs in the National Resistance government, and a former distinguished civil servant. The Defendant is a Managing Director and Chief Editor of the New Vision Printing and Publishing Corporation which publishes the "Sunday Vision" and "New Vision" newspapers. The complaint of the Plaintiff is set out and pleaded in the plaint filed therein Paragraph. 3, 4 and 5 and 6 whereof are as follows:-

"3. In an article on pages 1 and 2 of the "Sunday Vision" Newspaper dated June 20th 1993 under the heading "POLITICIANS "SELL" OFF REQUESTS FOR 1994 VOTES" the Defendant falsely and maliciously printed and published or caused to be printed and published of the plaintiff and of her in the way of her said offices and in relation to her conduct therein the following words

> "*There is an unprecedented increase in the mortgaging of Forest Reserve for votes by Politicians as the 1994 general elections draw near according to an Assistant Commissioner for Forestry Mr. Kigenyi said this week some politicians including some incumbent Ministers were encouraging encroachers and other illegal operatives move into Forest Reserve. In Kiboga, the Forestry Department singled out Mrs. Rhoda Kalema the CM for Kiboga and A.D.A. for Kasangati Mpigi District Isegulamirambo as politicians who encouraged the occupation the above reserve early this year. The issue of*

encroachers in Luunga Forest Reserve in Kiboga was resolved towards the end of 1990 when a team from the prime Minister' a office led by Kigenyi himself visited the area and ascertained that encroachers and not have any rightful claims. The area was then surveyed and boundaries demarcated. Kigenyi said the reserve

• *was invaded early this year after Mrs. Kalema armed*

• *with a letter from a Special Assistant to the president mr.khalid kinene encouraged people to go into the reserve. She was reported to have said that the President had given them land in* the reserve."

4. On page 5 of the issue of the "New Vision" dated June 21st 1993 the defendant maliciously printed and published or caused to be published a cartoon showing the plaintiff offering to the voter end sayings "sorry I don't want notes I want votes."

5. By the said words in their natural meaning the Defendant meant and was understood to mean: —

(1) That the plaintiff her capacity as a member of the National Resistance Council and National Executive Committee of the National Resistance Council encouraged encroachers and other illegal persons to move into areas that are forest reserves.

(ii) That the plaintiff did this in bad faith and the intention of getting herself to parliament in the 1994 General Elections.

(iii) That the plaintiff being a National leader is either ignorant or disrespectful of the National Campaign to preserve forest reserve for future generations and for the good of Uganda.

(iv) That the Plaintiff is not fit to be a member of the National Resistance Council and of the National Executive Committee of the National Resistance Counci1.

6. Consequently the plaintiff has been seriously injured in her character, credit and reputation in way of her said offices and has been brought into public scandal odium contempt. In paragraphs 2,3,4,5 and 6 of his Written Statement of Defence the defendant pleaded in answer to the above averments of the plaintiff as fol1ows.-

“2. Save that the defendant admits that the said article was published as pleaded, it is specifically denied that the article was published falsely or maliciously of the plaintiff or in her way of her office end paragraph 3 is accordingly denied to that extent,

3. The defendant admits publishing the said cartoon but denies that he published printed or caused to be published the same falsely or maliciously and paragraph 4 of the plaint is denied to that extent.

4. It is denied that the article meant or was understood to bear the meanings ascribed to them in paragraph 5 of the plaint which is denied than the plaintiff shall be put to strict proof there of

6. The defendant shall without prejudice to the above contend that the said article was published honestly end without malice as a matter of great public interest being; the conduct of public officers .The case for the plaintiff is that she very well understood the Government policy on Forest reserves and she could not have acted contrary to it. The people concerned had been in the area for a long time without them or the forestry department realising that they were on the forest reserve. While her first concern was the Preservation of forest reserves, she had a second concern and that was the plight of those people. These people had approached her in her capacity as their representative, and for them she had contacted several offices and authorities. She had seen the A.D.A. of the area, written a statement to the I.G.G and talked to the Commissioners for Forestry she had also requested to be availed the map of the areas the people concerned had a ruling of the court in their favour where the Court had ruled that while these people were reserve, they were entitled to compensation. She had therefore also made contacts with the Attorney General’s chambers to find out what was happening. She had also seen the Permanent Secretary of the Ministry concerned and requested for a team to be sent to the area to diffuse the tension. Then she saw a cartoon in the New Vision which people told here resembled her. Her name was written on the cartoon. She was deeply upset and embarrassed. Her colleagues who saw the cartoon also talked to her which further upset and embarrassed her. Miriam Kawuma is her relative. She said she read the article in the Sunday Vision and saw the cartoon which surprised her. She tried to find out the truth. Her colleagues also showed her the cartoon while commenting that these days politicians were not stopping at anything in bid to get votes. One of them told her that he was deeply disappointed by the plaintiff. Flavia Namutamba calls plaintiff “mother”. One

morning when she reported to her office she found her workmates in deep discussion. Those people1 knew her as the plaintiff's daughter. One of them told her point blank that her mother had sold forests. When she asked which mother she *was* asked whether she had not read the "Sunday Vision." She was then referred to the cartoon in the "New Vision."

In his defence defendant said that the plaintiff was a friend who had assisted him greatly. her son William was also his friend. He saw the Sunday Vision which carried the article complained of. It is under tile Editorship of Omoding who selects the articles. He vets stories for this paper but had not been responsible for inserting it in the paper. He also saw the cartoon. He thought the cartoon was inserted by way of a joke. Because the story had come from the forestry department he thought *it* was factual. Though William Kalema and the plaintiff's lawyers demanded for an apology ho could not simply provide an apology without getting the other side of the story. In this the plaintiff and her son William Kalema had refused to cooperate. In cross examination he said both the headline and the article were damaging. He did not know of any attempts made to verify the story before it was published. He did not believe that the plaintiff could sell forests as alleged the defence examined (DW2) the reporter responsible for the article. He said during the course his duties he had contacted the Assistant Commissioner for Forestry who had given him the story complained of. he had tried to check the truth with plaintiff but failed. In cross-examination he said he did not believe that the plaintiff could sell forests as alleged. He had interviewed her before on similar allegations. He did not say what plaintiff had told him during the previous interviews.

Robert Nabuyumya was the forestry officer of Kiboga at the time material to the article complained of. He said his department was faced with the problem of evicting encroachers from the reserve who were resisting every attempt to evict them.

The Government had put December 1989 as the D. day for the eviction of these encroachers. However, by that time not all the boundaries had been re-opened, only those who were in areas where the boundaries had been re-opened were being asked to vacate. In luunga forest reserve people were disputing the boundaries. This led to a team from the District Administration to visit the area to try to explain the position to these people. Still they were not satisfied. This led to the appointment of an independent stiff surveyor to open the boundaries; he finished his assignment

in February 1991. Some of the people left but others remained. In 1991 a team from the prime minister's office visited the area to diffuse the tension. The NRC member of the area who is now the plaintiff had also reported on the issue of encroachment. The team from the prime minister's office verified the boundaries. Still some people insisted that they could not leave before getting a word from their NRC Representative. These people were being encouraged by an A.D.A. Nsegulamambo who also had land on the reserve.

In summary that was the evidence from both parties. In his address to the court counsel for the defendant submitted that to be malicious a publication must have been actuated by malice and malice connotes the presence of improper motives, or even gross reasoning. For the plaintiff to succeed she must show that there was ill-will or resentment or dislike on the part of the defendant. The three witnesses called by the defence had proved that there was no ill-wills resentment or dislike of the plaintiff, the story coming from a high ranking Government officer was privileged and this privilege extended to the publication in the paper he referred to several authorities.
In reply to these submissions counsel for the plaintiff argued that the words used in the article, Were defamatory of the plaintiff and this had been admitted by the defendant.

There had no attempt on the Part of the defence to justify the allegations and as such it should be taken for granted that they were false. It was astonishing to see that the story was published before cross-checking with the plaintiff. The mere fact that the story came from a high ranking officer did not in itself constitute a defence The plea of qualified privilege had not been raised, but even if it had it was not absolute, and it is lost if it is shown that the defendant did not believe in what he wrote he referred to several authorities at the commencement of the hearing three issues were agreed upon for the determination of this court.

These were

(1) Whether the defendant falsely and maliciously defamed the plaintiff.

(2) Whether the words used in the publication were understood to bear the meanings ascribed to them in the plaint.

(3) Whether the publications were made honestly and without malice and on a matter of public interest.
(4) Damages.

I will go through them seriatim.

First, the headline, The principle of law here is that, if a libelous article in a newspaper is introduced by a libelous heading or title evidence that the facts stated in the article are true is not in itself sufficient, The headline or title must be justified; CLEMENT V LEWIS 3 ER&B 297 In that case the "observer' a correct account of some proceedings in the insolvent Debtor court, but headed it: "Shameful conduct of an attorney". The rest of the article was held to be privileged, but the plaintiff recovered damages for the heading. In this case the heading was disowned by Amoti (DW2) who prepared the article complained of for publication. In his own words: "I did not make the headline of the story. The headline as given does not reflect my report. My report was that politicians were encouraging people to go into the forest reserves."

The Defendant in cross-examination admitted that the headline was damaging.

Said he: "If it were literally road it were damaging." In my judgment I find no difficulty in finding; that the headline was false and defamatory.

Now to the article. From the evidence I am unable to hold that the story a given in the article accurately and fully represented what had transpired during the interview which Amoti held with Kigenyi, Robert Nabuyumya who was examined by the defence did not lend credibility to the story as published of the plaintiff. Indeed he said the plaintiff had reported on the problem of encroachers on the reserve. Amoti (Dw2) who prepared the story did not believe that plaintiff could sell forests. The defendant did not believe either that the plaintiff could sell forests. He admitted that both the article and the headline wore defamatory here no evidence whatsoever to lend credibility to the story as given by the paper. I hesitatingly find that the article was as false as it was defamatory.

On the second issue in order to determine whether the article is defamatory and capable of bearing any of the meanings ascribed to it by the plaintiff it is necessary that the article be

considered as a whole. It is not sufficient to pick a phrase here and a sentence there and to conclude from such phrases and sentences that the article is defamatory. As LORD PORTER observed:

> *"It is…. the duty of the judge in the first instance to put an accurate interpretation on the words used and having done so to make up his mind whether they are capable of a defamatory meaning or not."*

TURNER V METRO-GOLDWIN MAYER PICTURES (1950) 1 All E.R. 449.

Mr. Turyakira for the defendant conceded that the article meant and was understood to be moan that the plaintiff as a member of NRC encouraged encroachers and other illegal persons to move into areas that are forest reserves. But he surprisingly submitted that that could have been so only with a section of the community who knew that the plaintiff was a member of NRC. I cannot agree the evidence shows that the plaintiff is a National figure as opposed to a local figure.

Having carefully considered the article complained of I entertain no doubt whatsoever that the article meant and was understood to bear the meaning ascribed to it in the plaint.

I now come to the third issue which I must confess is not an easy one. Paragraph 6 of the Statement of Defence seems to raise a plea of qualified Privilege. In his submission counsel or defendant submitted that the story came from a high ranking officer and was therefore privileged and that this privilege extended to the publication which was on a matter of public interest. The evidence of amoti (Dw2) is that during the course of his duties he interviewed the assistant commissioner who gave him the story as appeared in the "Sunday Vision." On the evidence which I accept on this point, I find that Amoti (Dw2) on his own initiative had gone to see the assistant commissioner of forestry. I find is a fact the article complained of was published in the "Sunday Vision' of 20th June, 1993, not specifically at the request of Kigenyi nor because Kigenyi in the course and in course discharge of his duty was himself particularly anxious to communicate the information concerning the encroachment on forest reserves throughout the medium of the press to the general public but because Amoti (Dw2) was as a reporter anxious to

obtain a story for his paper. On his own volition, Amoti (DW2) went to Kigenyi in search of news for his paper. As I have said herein above I am unable to hold that even so, the article as appeared in the Sunday Vision accurately and fully represented the report which Amoti (Dw2) had obtained from Kigenyi. For unexplained reasons Kigenyi was not called by the defence, Here I an not in any way to be understood as taking the view that Kigenyi should have appeared as a defence witness. What aspect of the defence case was the sole responsibility and at the *discretion* of the defendant.

Kigenyi is said to be an assistant commissioner for forestry. I do realize that in that position he was a person of substance within the department. But as I have observed earlier on there is no evidence that he had requested for an interview with Amoti (Dw2) On the contrary the evidence of Amoti (Dw2) and which I accept is that during the course of hi*s* duties he had a discussion with Kigenyi. His duties must here refer to his duties as a reporter for his paper.

On a consideration of the evidence as a whole I am satisfied that neither Kigenyi nor Amoti (DW2) nor the defendant had any interest or duty to publish to the public at large the article complained of in the Sunday Vision of 20th June 1993. Exhibit P1, nor was there any corresponding interest or duty in the public to whom it was published to receive it. The article was nothing more than ordinary gossip.

I am fortified in this view by the case of TRUTH (No.2) ltd. v, HOLLOWAY 1960 NZ BR 69 where it was said that a journalist who obtains information reflecting on a public man has no more right than any other private citizen to publish his assertions to the world at large such assertions it was said are not privileged merely because the general topic developed in the article is of public interest. Again in CHAPMAN V DELSMOREV.1932 2 KB LORD ROMER said

> *It may be true in one sense to say that newspapers owe a duty to their readers to publish any and every item of news that may interest them. But this is not such a duty as makes every communication in their paper relating to a matter of public interest as privileged one if it were the power of the press to libel public men with impunity would in the absence of malice be almost unlimited.*

And in HODDITCH V. MACIWALE[(1894) 2 QB 54 it was laid down as a matter of law that in order that the occasion upon which a defamatory statement is made may be privileged it is necessary that the person to whom such statement is made, as well as the person making it should have an interest or duty in respect of the subject matter of such statement it is not sufficient that the maker of the statement honestly and reasonably believes that the person to whom it is made such an interest or duty.

Learned counsel for the defendant submitted that the issue of encroachment on forest reserves was a matter of great public interest. Indeed this is clearly pleaded in para 6 of the statement of defence. The basis of these submissions is by means clear.

There is no evidence to show that the issue of encroaching on forest reserve was currently a subject of public debate. There is no evidence to suggest that the Government had appealed to the public not to. Encroach on forest reserves. There is nothing whatsoever to suggest that the general public had an interest at the time of publication of being informed of what was going on the reserves, Again in CHAPMAN V ELLESMORE 1931 2 KB 431 LORD HANW0RTH, M.R. said:

> *"There remains the question whether the pleas of privilege can afford protection to the defendants in respect of these paragraphs. But though the vehicle of the public press had been held to a proper and protected one, so as to defeat a claim for libel, where it has been used "as the only effective mode" to answer a charge which had already received as wide a circulation (see ADAM V. WARD and BROWN v ROOM) there is no authority which protects the statement in the newspaper where it is made not in answer, but a fresh item on which a General interest as distinguished from a Particular interest already aroused, prevails."*

Holding as I do that the occasion of the publication of the article Exh. P1 and the cartoon exh. P2 the subjects of this action was not privileged it is therefore unnecessary for me to consider the

question of express malice. Suffice it to say, that the defendant published the article complained of Reckless and careless whether what he published was true or false. As a matter of fact both the reporter and the defendant had no Genuine and honest belief that the plaintiff could sell forests, and, they did say so. In WATT V. LONGSDON 1929 ALLER. (2) 284 GREER, L.J., observed:

> *"A man may believe in a defamatory statement, and yet when he publishes it be reckless whether his belief be well founded or not ….." and if he does so the publication will be maliciously made, even though he may believe the defamatory statement to be true."*

I now come to yet another difficult question, Damages.

Learned counsel for the defendant proposed a sun of shs. 100.000/= because he submitted the plaintiff had not suffered any loss or injury. From the evidence on record the "Sunday Vision" at the time of libel complained of had a daily circulation of 19,000 copies. While the "New Vision" boasted a daily circulation of 27,000 copies.

In DE. CRESPIGY V. WELLESLY 5 B in pp 402 — 406 BEST C.J., said:

> *Publication in a news paper circulate the calumny through every region of the globe..but if the report is spread over the world by means of the press the malignant false hoods of vilest mankind which would not receive the least credit where the author is known, would make an impression which it would require much time and trouble to erase, and which it might be difficult if not impossible, ever completely to remove Before he gave it general notoriety by circulating' it in print he should have been prepared to prove its truth to the letter; for he had no more right to take away the character of the plaintiff without being able to prove the truth of the charge that he had made against him, than to take away his property without being able to justify the act by which he possessed it. Indeed if we reflect on the degree of suffering occasioned by loss of character and compare it with suffering occasioned by loss of property; the amount in the former far exceeds the latter."*

Learned counsel for the plaintiff proposed a sum of 10/=. I would re-echo the words of WINEYER J, in UREN V JOIN FAIR FAX {1967}117 C.L.R. 118.

> *"A man defamed does not get compensation for his reputation. He gets damages because he was injured in his reputation."*

I was referred to several decisions of this court on the issue of damages each case must be decided on its merits. Though of course recent decisions are of immense assistance. The Plaintiff is a former distinguished civil servant I think there is no doubt about that. She is former Deputy Minister. Her integrity has been brought into question. It is said she was able to go through the recent CA elections.

But no one can tell what her political opponents might make of the false reports in future. Those who have caused her all the anguish have not shown any slightest remorse. They say instead, that it is for her to clear her name. While the issue of exemplary damages does not arise under the circumstances of this case, I feel that she deserves some substantial damages.

I enter judgment in her favour for Shs. 4.5m/= with interest at court rate and costs of this suit.
I order accordingly.

Judge

14/6/1994.