

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**CIVIL SUIT NO.516/97**

**CHARLES SABIITI&OTHERS..... PLAINTIFFS**

**VERSUS**

**TEDDY SEEZI CHEEYE..... DEFENDANT**

**BEFORE: THE HON. MR. JUSTICE MUGAMBA**

**JUDGMENT**

At the time this suit was filed the three plaintiffs herein were respectively Chief Accountant, Deputy Chief Accountant and Chief Internal Auditor of the New Vision Printing and Publishing Corporation. The first defendant was at the time Editor in-chief and the second defendant was the Proprietor and Publisher of a publication called **Uganda Confidential**. This suit was brought jointly and severally against both defendants by the plaintiffs seeking general, special and exemplary/punitive and/or aggravated damages arising from an article “Eating” scandal triggers off crisis in “New Vision”. The article was contained in the publication of November 8-15, 1996. In the written statement of defence the defendants maintain the article is true in substance and fact, that it was published without malice and is a fair comment in a matter of public interest. The defence states further that the statement is not highly defamatory of the plaintiffs and that the plaintiffs’ reputation and character has not suffered at all as a result of the publication.

The following issues were agreed at the outset:

1. Whether the article complained of was true?
2. Whether the article was a fair comment on a matter of public interest?

3. Whether the article was defamatory of the plaintiffs?

4. If so what remedies are available to the plaintiffs?

Court heard the evidence of eleven witnesses called on behalf of the plaintiffs, inclusive of the three plaintiffs, in proof of their case. No witnesses were called in support of the defence. What is more on 29<sup>th</sup> August 2001 when Counsel for the defendants had declared that the defence were calling no witnesses and were therefore closing their case Counsel for both parties agreed to file written submissions. There have been no written submissions by the defendants. Consequently this case will be decided on what evidence is available.

The first issue is whether the article complained of was true. The plaintiffs tendered copy of the **Uganda Confidential** for the period November 8-15, 1996, where the article was contained, as an exhibit. It was received as Exhibit P.1. All the three plaintiffs deny receipt of the money that article alleged they did receive and the manner they allegedly got it. The plaintiffs called the evidence of PW11 William Pike who was the Managing Director and Editor in-Chief of New Vision Printing and Publications Corporation. It was his evidence that the Corporation's accounts had been in good order and no impropriety had been evident. He testified that the article was not true. The next thing one would have expected to transpire in light of the claim by the plaintiffs is evidence on behalf of the defendants trying to show that the article contained statements which were true. As such is not forthcoming, I will hold that there is no evidence to show that the article is true.

The second issue is whether the article was a fair comment in a matter of public interest. This Court in **Figuerado vs Editor, Sunday Nation & Others** [19681 EA 501 stated the position at page 505 of the report thus:

“To succeed in a defence of fair comment, the words “complained of” must be shown to be: (a) comment, (b) fair comment, (c) fair comment on some matters of public interest. At the trial it is incumbent on a defendant to prove (1) that each and every

statement of fact in the words complained of is true and (2) that the comment on the facts so proved was bona fide fair comment on a matter of public interest. If a defendant fails to prove the truth of any of the statement of facts, he fails in his defence.’

The defendants did not deem it necessary to bring evidence to show that the article was a fair comment on a matter of public interest. In the result I hold that the article fell short of the standard of fair comment.

Whether the article was defamatory of the plaintiffs is the third issue for resolution. The Court of Appeal for East Africa in **East African Standard vs Gitau** [1970] EA 678 per Spry, Acting President, stated the position thus at page 681:

“The test of what is defamatory is whether the words complained of would tend to lower the reputation of the plaintiff in the opinion of right-thinking persons. I do not think this is a case where the words used would be analysed too closely. I think we should look at the general impression they are likely to create in the minds of reasonable persons. ..”

See also **Hough vs London Express Newspapers Ltd** [1940] 2 K.B. 507 and **Lewis vs Daily Telegraph** [1963] 2 All ER 151. PW4, PW5, PW6 and PW7 knew all the plaintiffs. They read the article complained of and understood the article to mean that the plaintiffs had taken advantage of their positions and misappropriated money from their employer. They no longer held the plaintiffs in the high esteem in which they held them before. PW8, wife of the second plaintiff, after reading the article came to regard her husband as dishonest. I have no doubt in my mind that the article was defamatory of the plaintiffs. In the absence of explanation I find the article malicious also.

Before I go to the last issue agreed, I must state that evidence in this case was heard by my late brother Justice Ignatius Malinga who unfortunately was not allowed to see this case through. In the course of hearing he made two rulings reasons for which he undertook to give

on the occasion of judgment. I must turn to that unfinished business now.

On 3<sup>rd</sup> November 1997 when the first plaintiff had started testifying the second defendant protested the presence of the other plaintiffs in court as that was prejudicial to his case. Court thereafter overruled the objection promising to give reasons at the time of judgment. The plaintiffs are parties to a suit and as such have a right to be present throughout the course of the suit in court. To send them out of court at any stage would be excluding them from the hearing of their case. This cannot be done.

On 22<sup>nd</sup> October 1998 Counsel for the defendants objected to a witness quoting beyond the words put under quotation marks in the plaint within paragraph 5. I note that in a way court did give its reasons for overruling the objection. At any rate it is noteworthy that quotation from the passage objected to did not continue after the overruling.

Having reached the conclusions I have I give judgment to the plaintiffs.

There remains the question of what reliefs are available to the plaintiffs. Apart from general damages the plaintiffs claim exemplary/punitive damages. Concerning exemplary/punitive damages the position was aptly stated in **W.S.O. Davies vs Mohanlal Karamshi Shah** [1957] CA 352, 354 thus:

“The third point indicated a failure by the learned judge to appreciate that punitive or exemplary damages are, as their names imply, damages by way of punishment or deterrent. They are given entirely without reference, to any proved actual loss suffered by the plaintiff”.

The plaintiffs in their submissions pray for Shs.5, 000,000/= as exemplary/punitive damages. I want to believe that the defendants have realised the folly of printing and publishing defamatory article of the nature before court and that as a result they should be encouraged to thrive if they are to disseminate more agreeable news and ideas. In that vein exemplary

damages will be Shs.3, 000,000/= to each of the plaintiffs.

Concerning general damages counsel for the plaintiff suggests Shs.7, 000,000/= to each of the plaintiffs having reviewed various awards by this court to different people over time. The case of **Kaijuka vs Cheeye** HCCS 688/91 where an award of Shs.14, 000,000/= general damages was made to a Cabinet Minister and that of **Rhoda Kalema vs William Pike** HCCS 611/93 where Shs.4, 500,000/= was awarded to a former distinguished civil servant and then that of **Gordon Wavamuno** (without more particulars) where Shs.15, 000,000/= was awarded as general damages to a local and international businessman. Perhaps I should add that case of **Emmanuel Tumusiime Mutebile & 2 others vs Teddy Szezi Cheeye** HCCS 341/92 where Shs.4, 800,000/= was awarded to a Permanent Secretary. Taking into account all the circumstances and the value of the currency I would award Shs.6,000,000/= to each of the plaintiffs as general damages.

There shall be interest accruing at 20% per annum on general damages and exemplary/punitive damages from the date of judgment until realisation in full.

The plaintiffs are entitled to costs of this suit.

P.Mugamba

**Judge**

**15/11/2001**