

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL SUIT NO. 648 OF 2002

MARIAM MUKASA alias }
NALONGO KITEREDDE } :::::::::::::::::::::::::::::: PLAINTIFF

VERSUS

THE NEW VISION PRINTING &}
PUBLISHING CORPORATION } :::::::::::::::::::::::::::::: DEFENDANT

BEFORE: THE HON. MR. JUSTICE R.O. OKUMU WENGI

JUDGMENT:

The plaintiff, a widow, whose husband is said to have been slain in Mbarara, in the wake of countrywide crackdowns then called Operation Wembley, against criminal syndicates, sued the defendant for defamation. It is alleged that the defendant's papers Bukedde and Orumuri variously published of and about the plaintiff reports referring to her or associating her to "enemies" guns and thieves, some of whom were killed. The papers also caricatured the plaintiff and her daughter in a Pyrrhic victory celebration amid these operations when the child excelled in her PLE mock exams. The papers then reported that Salongo Aziz, the late husband of the plaintiff, had been gunned down for terrorism. It is also said that the publications allege that the plaintiff was arrested for alleged acts of terrorism and armed thuggery. In a rather detailed plaint the plaintiff contended that these articles depicted her in very bad light as a dangerous

thug whereas she is a bona fide businesswoman whose reputation has been greatly injured by the publications. She contended that the defendant should be held liable for libel and the plaintiff be awarded general damages, an injunction and costs of the suit.

The defendant denied liability and claimed justification and alternatively qualified privilege. The defendant also contended that the publications complained of were not defamatory as such and were made in the public interest and without ill will or malice. All the publications were admitted and exhibited as P1 to P4 and four issues were framed for the trial namely:

1. Whether the publications were defamatory of the plaintiff.
2. Whether the plaintiff suffered damages.
3. Whether the publications were justified and or made in circumstances of qualified privilege.
4. Remedies.

During the trial the plaintiff called 4 witnesses including herself while the defendant also called 4. Both counsel filed written submissions. I agree with the submissions by counsel for the defendant where he writes:-

“From the combined testimony [PW1, PW2, PW3 and PW5] above, it is evidently clear that there was a security operation in Mbarara around the period of June – August 2002 in which the plaintiff’s husband was killed. It is clear that a search of the plaintiff’s house was carried out by security operatives... the plaintiff with 3 other (sic) male members of her family were arrested and taken to Mbarara

police station. It is evident that whilst this was going on several journalists were on site to witness these events... It is further evident that the plaintiff was detained in Mbarara and was subsequently taken by Wembley (Kayanja's men) to Kampala where she was further detained... she was released on bond...".

The above issues arise from the evidence given on both sides. It is however the nature of the publications of the Wembley exercise in Mbarara that has caused this dispute. Reading the exhibits, one gets the feeling, right away, that the reports were sensationalized or sexed up. The reporters seemed to have been sucked up into the euphoria that paradoxically accompanied the Wembley Crackdown. The reporters and their esteemed editors would have been alive to the possibilities of probable innocence of those affected and avoided rendering a media trial in which all the suspects rounded up were thugs, robbers and such adjectives that clearly labeled them with blues collar criminality. Such media trial in my view was displayed fully in the publications complained of and the plaintiff decided to take out these proceedings for redress.

From the exhibits presented and the oral evidence adduced in court, the publications referred to the plaintiff and were published without due regard to the presumed innocence of the plaintiff as an individual notwithstanding that her husband was eventually unable to explain his alleged misdeeds as he perished in these operations. For instance when it is published that "over 70 thieves, Kiteredde inclusive, were arrested" the implications is that the one is also a thief. The headlines complained of in the plaint contain similar innuendos. The gist, of one of the articles under the said headlines

also refer to and brand the plaintiff as an enemy. The facts of her arrest as a suspect would not have, if accordingly reported, conveyed the meaning it had from a reading of exhibit P1. Similarly there is an accusation against the plaintiff of having been found with a gun or that the said guns were used to terrorise people in Kampala, Iganga and Soroti in exhibit P3. However the same level of untruth cannot be said of exhibit P2 except when it is reported that they found “other guns in the chairs (sofa sets”. While the body of the article states what Col. Elly Kayanja told reporters, the issue of sofa sets teaming with other guns is incorrect and not true from the evidence. Similar statements with untruths waxed over pieces of fact appear in Bukedde and Orumuri papers exhibited in court. The cartoon featuring the plaintiff’s child and herself exhibiting happiness at the child’s performance in the mock examinations is quite loaded with literary sarcasm. Indeed one journalist in Mbarara who seemed to be uniquely empathizing with the plaintiff was also castigated in the Orumuri (exhibit P4). His empathy was described in terms of a despised cohort or Chaperon. He was mockingly nicknamed her PPU (read either “Presidential Press/Protection Unit”). Such an industry description of any journalist seen as siding with the plaintiff was clearly not friendly. It depicted the mood of the rustic press complained of by the plaintiff. They were hostile and were not ready to report much of any aspect of the plaintiff’s troubles that were favourable or value neutral to her.

I am satisfied that the blend of strands of fact within the wool of rather hostile and wanton exaggeration or perception robbed the exhibited pieces of fair media presentation of the plaintiff’s experience with the Wembley Operatives. It is rather typical of the case where an otherwise innocent

person or one given to little indiscretion or even a simple suspected association with a hated person or political party can be spontaneously convicted in the whirlwind of the oral literature of local and official mobs. Such person or persons may be suppressed by an overarching Media or mob perception. Such that his suspected individual misdemeanor could result in death, imprisonment or expulsion from office. This is the problem not only in a rumour driven society, but also where Law and Order, which the Wembley Operation was designed to uphold, was essentially put in jeopardy. Suspects get held and detained in a period and area of relative prevailing peace, there being no state of emergency or disaster in Mbarara at the time. an unguarded media will follow the boots of the operatives and the many rumour millers and described suspects as monsters, heaping all and sundry in their case profiles.

I am of the view that the Mbarara Press of the day was taken up by the excitement surrounding Operation Wembley, if I may call it that, and overstepped its professional bounds. The reporters themselves were literary artisans who had learnt on the job and worked for the defendant in the vernacular sector. They perhaps did not appreciate the legal and ethical aspects of professional journalism in the context of its legal regulation. They succumbed to the spontaneity of local public opinion, which was highly biased by the idea of civic vigilantism capitalized on by Operation Wembley.

I find that the publications complained of were defamatory of the plaintiff. The factual content in most of those articles did not make the texts, flawed and bloated as they were, substantially correct. On the other hand they

were used to malign the plaintiff's person and lost the description of having been true in substance but rather grossly exaggerated and spiced. **Hoare Vs Jessop** (1965) E.A. 218. Moreover the reporters have not shown by evidence that they did attempt to check out the correctness of their hot stories with the plaintiff before they filed their scoops: **Sarah Kanabo Vs Ngabo** HCCS 121/91. I think the Code that governs journalists today requires this of reporters of editors. I also find and hold that the plaintiff was injured in her dignity as a female human being and has suffered loss and damage.

In saying the above I have been unable to say that the defences put forth by the defendant, namely justification or qualified privilege, are available to him. This being libel, it is quiet possible to discern the substantial facts from the text of the articles complained of and separate these from the excesses that stung the plaintiff. The defendant had the duty on a balance of probabilities to disprove falsehood. I do think he could not have done it given the quality of his reporters at the disputed events, its refusal to apologise and also its suggestion that the framework facts were sufficient to neutralize the innuendos and depictions made out by the stories: See **Geofrey Ssejaba Vs. Rev. Patrick Rwabigonja** (1977) HCB 37.

The other defence of qualified privilege also fails as what was reported went beyond the facts as they unfolded, even given the context that the public interest was in the eradication of thugs, thieves, robbers, terrorists and enemies. I do not see that the statements were made honestly without any indirect or improper motive, in other words in the absence of malice. The plaintiff may have been associated to a person who was slain as an

undesirable person. But the widow and the children, like many wives and children of evil men are different individuals and deserve fairness even in the media.

The source of the information as stated by D.W.2 was one Rutahigwa an LDU man implicated in the extra judicial killing of Aziz, the plaintiff's husband. He surely was not an independent or reliable source even if Mr. Ali Wasswa (DW2) dressed him up as his "security source" who told the witness how they had killed Aziz. All in all I would find in favour of the plaintiff who would be entitled to Judgment.

I have considered the submissions of both counsel. I consider that the sum of shs 4,000,000= (Four million shillings only) will be adequate relief to the plaintiff. In the result I enter judgment for the plaintiff against the defendant for the sum of shs 4,000,000= with interest at 15% from the date of filing as general damages for defamation. The defendant will also pay costs of this suit to the plaintiff.

R.O. Okumu Wengi

JUDGE

29/3/2004.

30/6/2004

Kandebe for plaintiff

Denis Owor for Defendant.

Court:

Judgment read.

Sgd by: Namundi Godfrey

DEPUTY REGISTRAR.