

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
HCT-00-CV-CS-0388-2001

ANGELLA NAJEMBA MUWANGA PLAINTIFF

- VERSUS -

NILE BANK DEFENDANT

BEFORE: HON. MR. JUSTICE RUBBY AWERI OPIO

JUDGMENT:-

The plaintiff brought this suit for damages for defamation from the defendant. The brief facts giving rise to the suit are that at all material times from November 1997 to March 2001, the plaintiff was an employee of the defendant Bank in different capacities. Before her resignation from the employment, the plaintiff sought a one-month study leave to attend two short courses organized by the Management Training and Advisory Centre (MTAC).

The application for study leave was rejected by the defendant for the reason that staff applying for the leave for such a long period of time and for a course not sponsored by the defendant were to resign from the bank and reapply after

completion of the course. As a result of the above policy, the plaintiff tendered in her resignation which was accepted by the defendant with much regret. However, upon her resignation, the defendant bank placed an advertisement in the New Vision Newspaper by which they notified the public that the plaintiff was no longer an employee of the defendant and thus whoever deals with her on matters regarding the defendant bank does so at his/her own risk. As a result of the said publication the plaintiff sued the defendant for libel. The plaintiff averred that the words contained in their above advertisement in the natural and ordinary meaning or by way of innuendo, the defendant meant or was understood to mean that the plaintiff had left its employment dishonestly, was a criminal and fraudster, who is not a fit and proper person to hold employment or be employed by any organization and that the same severely injured her reputation and character and has further been regarded with contempt hatred, mistrust and ridicule by all her peers and right thinking members of society.

The defendant denied the claim and contended that the said advertisement was done in good faith and it was true/justifiable since the plaintiff was no longer working for the defendant, and that the said words were not defamatory at all in their natural and ordinary meaning by way of innuendo. In the alternative but without prejudice, the defendant contended that it had reasonable grounds to warn

its customers who could be prejudiced in case they continued to deal with the plaintiff.

The following were agreed to during the scheduling conference:

Facts:

That the plaintiff sought a one-month study leave to attend a course at Management Training and Advisory Centre (MTAC). The defendant declined to grant the plaintiff study leave but advised her to resign and later reapply after completion of the course. The plaintiff accordingly resigned and her resignation was accepted by the defendant with regret. The defendant thereafter posted an advertisement in the New Vision and the Monitor Newspapers dated 23rd March 2001 in which they informed the public and esteemed customers of the bank not to deal with the plaintiff as she was no longer an employee of the bank and that whoever dealt with her concerning its business was at his or her own risk.

Issues for determination:

1. Whether the advertisement of 23/3/2001 was defamatory of the plaintiff.
2. Whether the plaintiff is entitled to remedies sought in the plaint.

The following evidence was led during the hearing of the case:

Angella Najjemba Muwanga PW1 testified that she joined the defendant bank in 1997 as a banking Assistant. At the time she left in March 2001 she had risen to the position of Credit Administration Manager. She testified that she resigned because the defendant had refused to accept her application for study leave. That her performance during her stay with the bank was commendable as proved by her achievements and rapid promotions.

She further testified that after leaving the bank the next thing she saw on 23/3/2001 was an advertisement in the New Vision Newspaper in which the bank placed a public notice with her photo warning the public not to deal with her concerning bank matters. She stated that many staff members had left the bank but they were not published in the newspapers unlike her case. That the advert shocked her because she had resigned honourably and in good faith to pursue further studies upon which she was to return to the bank. So the advert meant that she was a dishonest and fraudulent person and that she was still disguising as a bank staff. As a result people who knew her thought she had stolen some money from the bank. The advert also led to the termination of her employment by African Foundation who happened to be customers of the Bank after seeing the said advert.

After that she applied for jobs in various places but she could be taken because of the effects of the advert. She was turned by Vision for Development, Emma Consult Ltd and Bintu Services. She prayed court to have the advert withdrawn or retracted.

During cross-examination, she stated among other things that her work as Credit and Administration Manager involved dealing with the public and that after her resignation people could come looking for her thinking that she was still with the bank. She stated that the advert made her appear as if she had done something wrong for the bank, like a fraud. When the advert was released she went to the bank to seek for clarification whereby she was told that two staff members from the bank had informed the bank that she was going around telling customers to close their accounts with the bank. She concluded that those who rejected her applications did not write to her saying that they had rejected her because of the advert but that it was her feeling that they had rejected her because of the advert.

Rev. Dr Kefa Ssempangi PW2 testified that he was Director of Africa Foundation which takes care of children. He stated that in January 2001 Africa Foundation was in need of a Financial Manager. An advert was placed for the job and the plaintiff applied for it. She was interviewed, and performed well and was accepted

in writing. (Exhibit P7). She was to take on the job on 12/4/2001 with a gross salary of 5,500,000/= per month. However she could not take up that job because of an advert which appeared on 23/3/2001 in the New Vision and Monitor Newspapers with the picture where the general public and customers of the defendant bank were being warned against dealing with her (exhibit P6). On seeing the above advert as a customer of the defendant bank and dealing with an international Non-government organization, his feeling was that the plaintiff was a fraudulent person who could not be trusted with a job in their organization. So on 26/3/2001 he wrote to the plaintiff a letter (exhibit P8) terminating her offer of appointment.

On receipt of the termination letter the plaintiff wrote an appeal (exhibit P9) for reconsideration where she requested the Africa Foundation to seek clarification about her character from the defendant.

In their reply (exhibit P11) the defendant stated that the advert was indicating that the plaintiff should not be dealt with on matters concerning the defendant bank and that it did not express any other opinions.

During cross-examination he stated that the notice was important because it was a warning that plaintiff had left the services of the defendant bank. He stated that the bank is a very sensitive institution because it deals with finances of the public so it was important for banks to warn customers of the employee who had left. He concluded that the notice did not mention fraud on the plaintiff.

Anthony Wakabi PW3 testified that he used to work with the defendant but now he is with DFCU as Corporate Manager. He stated that he left the bank in 2001 around the same time as the plaintiff but his resignation was never advertised in the Newspapers and that several other people had also left the bank without being advertised. He stated that during the time he was with the defendant the plaintiff excelled as a superior performer in 2000 whereby she was given a bonus of three months salary. He stated that banks make adverts under fraudulent circumstances. He concluded that he could not think of any reasons which prompted the defendant to advertise the plaintiff because she was not a fraudulent person.

During cross-examination he stated that such an advert could be put if an employer left in disgrace and where fraud was imputed. He concluded that the advert imputed fraud on the plaintiff.

Susie Baguma (DW1) testified for the defendant and stated that she was the Head of Human Resource with the defendant bank. She testified that she knew the plaintiff as a former employee of the defendant where she used to work in the Credit Department as Credit and Administration Manager.

The plaintiff was responsible for monitoring loans and security provided by the customers i.e. land titles etc. She further testified that the plaintiff resigned on 13/3/2001 so as to undertake a course at Management Training and Advisory Centre (MTAC). Earlier on the plaintiff had requested to be granted study leave to enable her undertake the above course but the same was rejected because the policy of the bank could not allow study leave for such a long course, which was not sponsored by the bank. The plaintiff was advised to resign and apply to rejoin the bank after completion of her course. She testified that the defendant did put up a public notice (exhibit P6) to her customers and the general public that the plaintiff was no longer their employee and that she should not be dealt with in matters regarding the bank. She testified that the bank made the above notice because of many circumstances. She explained that whenever an employee leaves for study and is afforded an opportunity to reapply after completion, the bank normally finds out about the course and its relevance. In this case the defendant contacted Management Training and Advisory Centre (MTAC) to find out the

course contents and whether the plaintiff had been enrolled for those courses whereupon it was found that the plaintiff had not been enrolled for any course between 12th March and 12th April 2001. The above was an instance of dishonesty which forced the defendant to make further investigations into the plaintiff's resignation which revealed that the plaintiff had done an interview with Africa Foundation in February 2001 and had passed. That was further dishonesty on the plaintiff's part.

She testified further that the plaintiff had also not handed over property of the bank as expected. She left her desk drawers locked with a customer's land title and that despite calls on her to come and open it she refused, forcing the defendant to break into her drawer to retrieve the customer's land title. The plaintiff also had some bank property in her possession, which was information on diskettes, which she also refused to handover to the defendant. Lastly she testified that the bank received information from some customers that the plaintiff was causing alarm by telling them to close their accounts because the bank was going down. With all those the defendant thought that the plaintiff was a dishonest person and was misleading her customers and therefore found it right to caution the customers. She concluded that after the advert, the defendant received a letter from Africa Foundation asking for information about the plaintiff which the bank responded to

by explaining that their advert was only stating that the plaintiff should not be dealt with on matters concerning Nile Bank and that they put notices only when they have concern that their customers would be misled.

In cross-examination, she revealed that other staff had left the bank before but because they left under clear circumstances and did not cause any threats to the defendant and its customers, there was no need to put notices in the Newspapers against their names.

RESOLUTION OF ISSUES:

- 1) Whether the advert of 23rd March 2001 was defamatory of the plaintiff.

Before I start on the above issue, it is instructive to recite the words of Hon. Justice Tinyinondi in J.H. Ntabgoba Vs The Editor In-Chief The New Vision Newspaper and another Civil Suit No. 113 of 2003 (unreported).

“Under our law and, I believe, in all civilized jurisdictions a man is entitled to his good name and to the esteem in which he is held by others. He also has a right to claim that his reputation shall not be disparaged by defamatory

statements made about him to a third person or persons without lawful justification”.

From the above passage it can be rightly stated that the most valuable investment is a person’s reputation irrespective of his station in life. Be him poor or rich, read or unread, a man’s reputation is his crown.

According to Halsbury Laws of England, 4th Edition Volume 28 paragraph 42 the essence of a defamatory statement is its tendency to injure the reputation of another person. There is no complete or comprehensive definition of what constitutes a defamatory statement since the word ‘defamatory’ is nowhere precisely defined. But generally speaking a statement is defamatory of the person to whom it is published if it tends to lower him in the estimation of the right thinking members of society generally or it exposes him to public hatred, contempt or ridicule or it causes him to be shunned or avoided: See also **Geofrey Ssejjaba Vs Rev. Patrick Rwabigongi Civil Suit Np. 1 of 1976** per Allen J (as he then was).

In deciding whether or not a statement is defamatory, the court must first consider what meaning the words could convey to the ordinary man. Having determined the meaning, the test is whether under circumstances in which the words were

published, a reasonable man to whom the publication was made would be likely to understand it in a defamatory sense: See Tolly Vs J.B. FRY & Sons Ltd [1930] **1 KB.**

According to **GATLEY ON LIBEL AND SLANDER 8th Edition** where the words complained of are defamatory in the natural and ordinary meaning the plaintiff need prove nothing more than their publication. The onus will lie on the defendants to prove from the circumstances in which the words were used, or from the manner of their publication or other facts known to all those to whom the words were published, that the words would not be understood by reasonable men to convey the importation suggested by the mere consideration of the words themselves.

The test of a reasonable man was laid down in Winfield and Jolowicz on Tort 9th Edition at page 246 as follows:-

“The answer is the reasonable man. This rules out on the one hand persons who are so lax or so cynical that they would think none the worst of a man whatever was imputed to him, and on the other hand those who are so censorious as to regard even trivial accusations (if they were true) as

lowering another's reputation, or who are so hastily as to infer the worst meaning from an ambiguous statement. It is not these, but the ordinary citizen, whose judgment must be taken as the standard. He is unusually suspicious nor unusually naïve and he does not always interpret the meaning of words as would a lawyer for he is not inhibited by a knowledge of rules of construction”

With the above principles I now proceed to resolve the issue whether the advert was defamatory of the plaintiff. The said advert ran as follows:-

“This is to notify our esteemed customers and the general public that M/S Angela Najjemba Muwanga whose photograph appears above is no longer an employee of Nile Bank Ltd. Whoever deals with her on matters regarding Nile Bank does so at his or her own risk”

The above publication was therefore between an employer and employee. According to GATELY on libel and slander (supra) it is not in itself defamatory for a person to publish of one who has ceased to be employed by him that he is no longer so employed and is no longer authorized to do business or to received moneys on behalf of the person lately employing him. Gately observed that such a

publication is only actionable if the context or extrinsic circumstances make the words to be understood in a defamatory sense by those to whom they were addressed. Thus in **Tolley Vs Fry** (supra) Greer L.J. had this to say:

“If special facts were proved to have been known to the persons to whom the words were published which would lead a reasonable person knowing those facts to conclude that the words impliedly stated that the plaintiff had been discharged for misconduct, an action for libel would lie”.

According to the plaintiff the adverts, which the defendant ran on the Monitor and New Vision Newspapers, affected her in that the people who knew her thought that she had stolen money from the bank. She stated that because of the advert she lost her job, which she had got from Africa Foundation. She concluded that she was ridiculed as being a thief.

Dr Kefa Ssempangi (PW2) testified inter alia that on seeing the adverts and as a customer of the bank and dealing with an international Non-government Organization his feeling was that the plaintiff was a fraudulent person who could not be trusted with a job with their organization. They thought she was dishonest.

So on 26th March 2001, they wrote her a letter terminating that offer because the advert had given them a very bad impression.

On the other hand the defendant contended that the words as they appeared in the notice were not defamatory of the plaintiff in their natural and ordinary sense. The notice was just a prudent notice to the public especially the customers of the defendant not to deal with the plaintiff regarding their business as she was no longer their employee.

From the evidence on record I am constrained to believe that the words used in the notice were meant to warn the defendant's customers and the whole world not to strike any dealings with the plaintiff in matters connected to banking business. They were therefore not defamatory in their natural and ordinary sense.

The above words could only be actionable if the context or extrinsic circumstances make them to be understood in a defamatory sense by those to whom they were addressed. Dr Kefa Ssempangi (PW2) testified that the notice was very important in that it was a warning to the customers that the plaintiff had left the bank. He stated that the notice was more important because the banking sector was sensitive as it deals with finances of the public. He added that the notice did not mention

any fraud on the plaintiff's part. Moreover the notice did not make any reference whatsoever or the plaintiff's character or her official or professional reputation.

Furthermore the defendant in their evidence gave circumstances that necessitated the publication of the notice in the Newspapers. It was discovered that the plaintiff was a dishonest person who had lied to the defendant that she was pursuing further studies and yet she was seeking leave to enable her settle on a new job with the African Foundation. Worse of all the plaintiff was going about telling the defendant's customers to close their accounts that the defendant bank was going down. Further more, while leaving the bank, the plaintiff refused to handover properly including diskettes, which contained important information. She also left her desk locked with customer's land titles and refused to come and open it despite requests from bank officials. In the circumstances the plaintiff had become a very big threat to the business of the defendant. As a prudent person the defendant had to publish the name of the plaintiff to protect its business.

The notice was explicit in that it limited itself to the bank's business and no more. For the above reasons I find that the advert did not convey any defamatory imputation and no reasonable man would have thought so. I am therefore in agreement with the defence that Dr Rev. Kefa Sempangi (PW2) did not act

reasonably as a reasonable man would have done. He was so censorious and acted suspiciously and hastily that he did not satisfy the test of a right thinking member of society especially considering the fact that he received information (exhibit P9) from the defendant that the notice was concerning Nile Bank matters and expressed no further opinions about the plaintiff. This is a witness who had personal knowledge of the plaintiff as his banker and also through her sister who was his family friend. Above all she appeared before him for an interview where she performed very well. He would have opted to inquire from her what was wrong rather than hastily concluding that the plaintiff was a person of mischief.

For the above reasons, I find that the alleged advert was not defamatory of the plaintiff.

In conclusion it was a normal course of event for the defendant to warn its customers of their former employee whom they suspected was threatening the business of the bank. The defendant acted in good faith and without any malice. That was why they did not advertise other employees who had left honestly and were not intermeddling with their business. I therefore dismiss the claim with costs.

If I had found for the plaintiff I would have proceeded to discuss the second issue of quantum of damages. I have looked at the recent case of **J.H. Ntabgoba Vs the New Vision and others** (supra) where principles for assessing damages in defamation were discussed. I have also perused the submissions of the plaintiff's counsel where he proposed a sum of shs.20 million in damages. That amount is on a higher side. Shs. 10 million would have been adequate enough to redress her reputation. Of course she would have been entitled to costs of the suit and interest at court rate from the date of judgment until payment in full. Otherwise the suit is dismissed with costs to defendant.

RUBBY AWERI OPIO

JUDGE

28/09/2004.

29/09/2004:-

Kiapi for plaintiff.

Musisi for defendant.

Plaintiff present.

Court:-

Judgment read .

GODFREY NAMUNDI

DEPUTY REGISTRAR (CIVIL)

29/09/2004.