

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
LAND DIVISION

CIVIL SUIT NO. 128 OF 2003

CHARLES MAKURU ::::::::::::::::::::::::::::::::::::::: PLAINTIFF

VERSUS

- 1. THE EDITOR OF ORUMURI NEWSPAPER**
- 2. THE ORUMURI NEWSPAPER**
- 3. THE NEW VISION PRINTING & PUBLISHING CORPORATION** :::::::::::::: **DEFENDANTS**

BEFORE: HON. JUSTICE RUBBY AWERI OPIO

JUDGMENT

The Plaintiff Charles Makuru sued the Defendants jointly and severally for general damages for libel, falsely and maliciously printing and/or publishing and/or causing to be published an Article in Orumuri Newspaper Vol. 13 No. 43 of 4th-10th November 2002 on page 9 under the headline “ABASIRAMU KUTTWARA MAKURU OMUKOTI.”

The English translation of the Article needs as follows:-

The Chairman of the Rukungiri Mosque Ahmed Begumanya threatened to take Chairman Rukungiri Town Council, Charles Makuru to court if he does not apologise to Moslems for taking his dogs to the mosque in Town.

Begumanya said that Makuru as a leader did this intentionally on the 20th October 2002 when he went with his dogs in his car to the mosque contrary to the Islamic belief.

Begumanya said that as a prominent person in the Town, he was not supposed to visit the mosque with the dogs.

However, Makuru said that he never intended to contravene the practices of Islam but on the contrary, he was on his journey with his dogs when he wanted to see someone near the mosque and passed by.

However, Moslems in the Town said Makuru intended to take his dogs to the mosque.

They threatened to drag him to court if he does not apologise.

The Plaintiff averred that the gist of the article was that:

- (a) As Mayor of the Rukungiri Town Council, he took his dogs to a mosque in Rukungiri Town on the 20th October, 2002.
- (b) As a leader of all the people in Rukungiri Town Council he committed acts of blasphemy and religious segregation when he went to the mosque with his dogs.

Lastly the Plaintiff averred that the right thinking members of Rukungiri town Council which he is their political and opinion leader read the above article and understood it to mean:

- (i) That he is not fit to be Mayor and Chairman of the Town Council.
- (ii) That he is guilty of blasphemous conduct and religious segregation.

The Defendants did not deny the publication but contended that the Article was not defamatory. In the alternative the Defendants contended that the Article was a true account of what took place and also that the publication was justified because it was of public importance. Lastly Defendants pleaded qualified privilege and concluded that the Plaintiff was not entitled to the remedies pleaded.

At the scheduling conference the following were agreed upon:

Agreed Facts:

- (1) The fact of publication of the Article.

Agreed Issues:

- (1) Whether the words in the Article complained of were defamatory of the Plaintiff.
- (2) Whether there was any justification for the publication.
- (3) Whether there was qualified privilege.
- (4) Remedies available to the parties.

The Plaintiff Charles Makuru Pw1 testified that on the 4th November 2002 he got a call from a one Rutaro asking him about an article that had appeared in the Orumuri Newspaper. That he looked for the paper and read it and the gist of the paper was that he had taken dogs to the mosque with the intention to ridicule the Moslems. He was shocked because the allegations were unheard of and were untrue. He received many calls from his friends, supporters and relatives. He testified that other religious leaders like: Bishop John Kahigwa and Father John

Karyerengeza contacted him and were not happy and told him that if the allegations were true it could cause a religious war.

Pw2 Sale Turyarumba testified that on 4th November 2002 he read Orumuri Newspaper where there was a running story that the Plaintiff had taken dogs to the mosque. He got concerned and tried to find out whether it was true. He stated that in Islamic traditions dogs are prohibited because of being very dirty creatures. He contacted the Imam Hussein Bataringaya who was the custodian of the mosque who told him that he had not seen any dogs in the mosque. He further contacted Ahmed Begamanya who the reporter said had given him the information but he also expressed ignorance of the matter. The Moslem community were very serious about the matter and investigated the matter very seriously but found no truth in it. Subsequently he met the Plaintiff and reassured him that he should not worry because the Moslem community was aware that he would not take dogs to the mosque because he was aware of the Islamic teachings about dogs since he had lived with the Moslem community for a very long time.

Sheikh Hassan Bataringaya Pw3, the Imam of Rukungiri Town Mosque, testified that he read the Article being complained of and had to call a meeting for the Moslem leaders and they found out that it was not true that he even contacted Begumanya who was alleged to have given the information to the reporter but the latter denied knowledge of the same. He further stated that he was contacted by a number of people on the same matter including Rev. Father Karyerengeza John, Hajji Nuru Salima.

Lastly Rutaroh Athanasius Pw4 also confirmed that he read the Orumuri Article which stated that the Plaintiff went to a mosque with dogs.

The Defendants were given chance to call evidence but failed. They had wanted to call Hajji Begumanya but he was said to be unwilling to testify. It later on turned that the Defendants were not able to call witnesses in support of their defence. The defence case was accordingly closed and the matter proceeded into submissions.

Issue No. I: Whether the words in the Article complained of were defamatory of the Plaintiff.

The term libel was ably defined by Hon. Justice Tinyinondi in the case of **Nekemia Matembe & others vs Teddy Ssezi Cheeye & Another HCCS No. 1047/1998** where he observed as follows:-

“The gist of the tort.... Is the publication of matter (usually words) conveying defamatory imputation a defamatory imputation is one to a man’s discredit, or one which tends to lower him in the estimation of others or expose him to hatred, contempt or ridicule, or to injure his reputation in his office, trade or profession or to injure his financial credit. The standard or opinion is that of a right thinking persons generally. To be defamatory an imputation need have no actual effect on a person’s reputation. The law looks only to its tendency....

The Judge has to decide whether the publication complained of is capable of being understood by reasonable people as bearing the meaning alleged or a defamatory meaning. He is not to decide what its meaning is but what it is capable of bearing to reasonable people.”

The Article which was published alleged that the Plaintiff who was Mayor of Rukungiri Town took his dogs to the Town mosque contrary to the Islamic practices and tradition. The Article alleged that the Plaintiff who was a very prominent member of society took three dogs intentionally. The evidence adduced by the Plaintiff proved that its publication was meant to discredit the Plaintiff and to lower him in the estimation of the Moslem community and to expose him to hatred and contempt for abusing their sacred place of worship by taking there prohibited creatures intentionally. That conduct was least expected from the Plaintiff who had lived long with the Moslem community and knew their tradition and practices against dogs.

Issue No. 2: Whether there was any justification for the publication and Issue No. 3: Whether there was qualified privilege.

It is trite law that justification and privilege must be clearly pleaded as to inform the Plaintiff and court precisely what meaning the Defendant would seek to justify. The words must also be true.

In their written statement of defence the Defendant contended inter alia that the article complained of was a true account based on factual occurrences and was not represented in such a way as to convey defamatory innuendo. The Defendants also contended that the Article complained of was a report of public importance and was made without any malice or ill will against the Plaintiff.

In the instant case the Plaintiff and all his witnesses stated that the Plaintiff never went with any dogs to the mosque. Their contention was that the publication was not true and was intended to alarm the Moslems to rally against the Plaintiff who was a prominent politician in the community. Once it has been shown that publication was not true the defence of justification collapses

like a pack of cards. See: **Figueredo v Editor of Sunday National [1968] EA 501.**

From the above evidence, the Article or allegations made in the article were totally untrue and no evidence was led to prove otherwise. Therefore the defence of justification fails.

As for qualified privilege the report must be of public importance made without malice or ill will against the Plaintiff. However, once a publication has been proved to be untrue, it cannot claim of being of public importance. It would lack moral authority to be of public importance because of being a false publication. Once it is proved that the publication was false, the presumption that the publication was motivated by ill will or malice cannot be resisted. In this case the Plaintiff has proved that the said publication was intended to undermine his political support from the Moslem community and to create a religious antagonism between the protestant religion which he professes and the Islamic religion which he was said to have derogated by defiling its place of worship with dogs.

Issue No. 4: Remedies available to the parties.

The principle which court should take into account on award of damages was discussed in the case of **BIWOTT v CLAYS Ltd. [2000] EA 334** as follows:

In awarding damages for libel a court had to be guided by the principle that damages must compensate the Plaintiff for the injury to his reputation and the hurt to his feelings such damages were known to be compensatory damages and were aimed at

vindicating the Plaintiff in the public and consoling him for the wrong done.”

The court went on to set the principles governing assessment of compensatory damages as follows:-

- “(i) The award must compensate the Plaintiff for pain and suffering caused to him by the publication.***

- (ii) The award should vindicate the Plaintiff’s reputation in the eyes of the public.***

- (iii) The whole conduct of both the Plaintiff and Defendants had to be considered from the publication to the time of judgment. The damages would be aggravated if the Defendant pertook in malicious and insulting conduct with such aggravated damages being aimed at compensating the Plaintiff for additional injury going beyond that which flowed from the words alone.***

- (iv) The court would consider any previous damages recovered by the Plaintiff in order to ensure that he was not compensated twice for the same loss.***

- (v) Court would consider the manner of the publication and the extent of circulation.”***

In the instant case, and basing on the above principles, this court should award the Plaintiff compensatory damages for injury to his feeling and dear reputation

in the eyes of the right thinking members of society which included religious people, people of high moral integrity. The publication did put the Plaintiff's political career in jeopardy. Political careers in this country have become yellow Gold. Therefore any person who by reckless publication tries to put such a life line into jeopardy must be prepared to square it out by way of damages. It must be known that this was the second time the Defendant was writing a defamatory story against the Plaintiff. They did not offer any apology but only to put up the defence of justification and qualified privilege which they failed to prove. The above went to further hurt the feelings of the Plaintiff. For the above reasons I find that the Plaintiff should be awarded damages. Applying the above principles and the case of **Matembe v Cheyee** and since Matembe appears to be in the same status of the Plaintiff, I would award the Plaintiff Shs.15 million (fifteen) in damages. Judgment is accordingly entered for the Plaintiff in the tune of fifteen as general damages. The Plaintiff is entitled to interest on the above sum at court rate from the date of this judgment until payment in full. The Plaintiff is also entitled to costs of this suit.

HON. JUSTICE RUBBY AWERI OPIO

JUDGE

25/11/2009

26/11/2009

Mr. Babigumira for Plaintiff.

Joseph Mwenyi for Defendant.

Judgment read in Chambers.

**HON. JUSTICE RUBBY AWERI OPIO
JUDGE**

26/11/2009