

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL SUIT NO. 114 OF 2009

**HONOURABLE JUSTICE PETER
ONEGA ::: PLAINTIFF**

VERSUS

JOHN JARAMOGI OLOYA ::::::::::: DEFENDANT

BEFORE: HON JUSTICE V.F. MUSOKE-KIBUUKA

JUDGEMENT

Introduction

Through this suit, the plaintiff seeks, from this honourable court, the following reliefs:-

- a) general damages for defamation;
- b) exemplary damage;
- c) interest on the decretal sum at 25% per annum;
- d) a permanent injunction; and
- e) costs of this suit.

FACTS:

In brief, the background from which this suit arose are as set out below.

The plaintiff is a honourable Judge of this court. He is also the chairperson of the Amnesty Commission. Mrs. Florence Onega, PW3 was previously married to the late Richard Okirowoth, who was employed by Gulu District Local Government as a welfare Office for that District.

The late Okirowoth, on 28th February, 1996, during the process of selling of the Civil Service Pool Houses, was allocated the house at plot No. 18/20, Airfield Road, Gulu Municipality, for purchase at the purchase price of Shs. 14,000,000/= through a mortgage arrangement with Housing Finance Co. (U) Ltd. He unfortunately, died shortly afterwards before completing the purchase. After the demise of Mr. Richard Okirowoth, the mortgage was transferred into the names of Florence who was the administrator of the estate of her late husband.

Because Florence found herself in a lot of difficulties, following the death of her late husband, she decided to obtain goodwill from the house and relieve herself from the burden of paying the installments to Housing Finance Company in respect of the mortgage. In that endeavour, on 3rd January, 1996, she executed a memorandum of understanding, with her friend Elizabeth Oloya, PW2, wife to John Jaramogi Oloya, the defendant to this suit. Under that memorandum of

understanding exh.P.5, Mrs. Oloya was to pay to Housing Finance monthly installments towards the purchase price of 14,000,000/=. She had also to pay Shs. 3,000,000/= to Florence Onega, as the transfer fee and Shs. 3,000,000/= as refund to Mrs. Onega of money already paid to the Bank by her towards servicing the mortgage. On 19th April, 1997, Mrs. Florence Onega granted power of attorney, exhibit P7, to Mrs. Oloya to enable her proceed with the arrangement.

After paying installments amounting to 3.9/=million Mrs. Oloya became unable to continue paying the monthly instalments. She asked Florence Onega to assist her in making the payments. She promised to refund to Florence any money paid by her. Mrs. Onega paid three installments of Shs. 500,000/=, Shs. 200,000/= and 550,000/= at different intervals and upon demand by the bank. Of the goodwill of Shs. 3,000,000/=, Mrs. Oloya managed to pay only 1.5/= million and defaulted.

At one stage, in January 1996 in apparently an effort to assist his wife, the defendant wrote a cheque in the sum of 16,377,331/= which Mrs. Oloya took to that cheque to the bank with the intention of paying off all the outstanding amount, but the cheque was not

honoured by the defendant's bank. The defendant left matters at that.

In 2008, Florence Onega, at the request of Mrs. Oloya and also prompted by the threats from Housing Finance which had published in the news papers her name among other defaulters, revoked the power of attorney she had given to Mrs. Aloyo. She paid off the entire outstanding loan. She then served a notice to the tenants who were in the house and finally sold off the house to a third party. Florence Onega off-set the entire amount due with a sum of Shs. 12,000,000/= lent to her by the plaintiff.

PLEADINGS:

The plaintiff pleaded that the defendant, on 15th January, 2009, wrote a letter which he alleged to have been defamatory of him. The letter was referenced as below:-

“LAND AND PROPERTY COMPRISED IN LEASE HOLD REGISTER VOLUME 3209 FOLIO 20, PLOT 18, HIRFIELD ROAD GULU” . It was addressed to the Director, Directorate of land matters, State House. The letter was copied to the principal Judge and the plaintiff's advocates, among other people.

It is that letter which contains the cause of action for this suit. The plaintiff has, in the plaint, set out what

he regards as the defamatory words. They are as set out below.

“.....I met and agreed with Mrs. Okirwoth (widow, then freshly bereaved) to buy a residential house located at plot No. 18/20 on Airfield Road..... I personally made all paymentsto Mrs Okirwoth..... I instructed my lawyers to lodge a caveat on the property..... Clearly, Mrs. Florence Okirwoth without any right whatsoever purportedly sold our family property above without my notice, and in a manner that was evidently fraudulent.....

I have personally spoken to Justice Onega after the Amnesty Commission Police went to threaten and harass tenants on the property on two separate occasions I was disappointed that his only responses was a blatant denial that he is not involved! How could the Amnesty Police who are assigned to him have got involved without his knowledge? In fact, on the second visit, Mrs. Okirowoth herself accompanied the policeman! In the same conversation, Justice Onega also told me that he was the

one who had in fact advanced the money to Mrs. Okirowoth his wife, to pay off the mortgage. I have good reason to believe that he is involved..... Mr. Justice Onega is eminent member of the Judiciary,..... and I am concerned.... That his lordship is likely to interfere in the conduct of the suit and deny me justice and fair treatment before the law.....

The purpose of this letteris to request that you intervene to maintain the status quo..... and generally to maintain the integrity of all institutions involved in handling this matter. By copy of this letter, the Principal Judge, his Lordship James Ogola, is informed, with a humble request that he prevails upon his brother to desist from abusing the judicial oath by interfering in my rights to the above property andthwartthe cause of justice in the process.”

The plaintiff contends that by the words contained in the letter, in their natural and ordinary meaning or by innuendo, the defendant meant or was understood to mean:-

- that the plaintiff is a fraudster, a thief and an evil genius and criminal who fraudulently or illegally deprived the defendant of his property;
- that the plaintiff is a person who uses his office for his gain abuses his office and interferes with justice and the rights of other people negatively'
- that the plaintiff is not a fit and proper person to hold the office of a judge and chairman of the Amnesty Commission or any other public office and ought to be removed from his current offices.

The plaintiff denied participating in any fraud with regard to the property in question or abusing his office or interfering with the cause of justice. He denies being a criminal and being unfit to hold public office. He also denies using any police officer at the Amnesty Commission officers to harass anybody. The plaintiff pleaded that the words contained in the letter seriously and severely injured his reputation and character as a public officer and he is regarded with contempt, mistrust, ridicule, fear, dislike and hatred. He pleaded that he had experienced mental pain

anxiety, emotional stress, irritation and annoyance because of the false accusations.

The defendant, in his defence, admitted having written the letter complained of by the plaintiff. He, however, denied that the contents were capable of the meaning or could be understood as the plaintiff alleged in paragraph five of the plaint.

The defendant pleaded that he published the contents of the letter to the Directorate of Land Affairs as a reasonable and necessary measure to protect his interests in the property. He averred that the impugned words were published on an occasion of qualified privilege.

ISSUES:

There are three issues to be resolved.

- whether the letter complained of was defamatory of the plaintiff;
- whether the words complained of were published on an occasion of qualified privilege; and
- whether the plaintiff is entitled to the reliefs sought by him.

Whether The Letter Was Defamatory Of The Plaintiff

A defamatory statement is one which tends to lower or injure the reputation of the plaintiff in the estimation of the right-thinking members of society or which tends to cause right thinking members of society to shun or avoid him or her. This is so because it brings him or her into hatred or contempt or ridicule, because it alleges criminality or dishonesty or cruelty on his or her part. The statement need not impute mis-conduct or moral turpitude. For instance, a statement may be defamatory which shows the plaintiff as being merely ridiculous. **Sim Vs. Stretch [1936] 2 All E.R.123 A.C.**, per Lord Atkin.

The court of Appeal for East Africa in **East African Standard vs. Gitan [1970] 678, at page 681**, Spry, Ag. P, as he then was, gave the test a court would apply in determining whether a statement is defamatory or not. He did so in the following words:-

“ 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 analyzed too closely. I think we should look at the general impression they are likely to create in the minds of

reasonable persons.” Also See **Lewis Vs. Dairly Telegraphy [1963] 2 All E.R. 151.**

When the statement complained of is libelous per se, the plaintiff need not prove that he or she was degraded in the estimation of those who know him or her or the public or that he or she suffered any other loss either in his property, character reputation or business or in his domestic or social relations. In such case, general damages for loss of personal or business reputation is recoverable. A publication is libelous per se when the words used in the publication are of such a nature that an action may be brought without the necessity of showing any special damage.

In the instant case, it is quite clear that the defendant in the publication, attributed fraudulent conduct on the plaintiff. Even in his evidence in court, the defendant could not hide his continued stand on this. He stated, **“In my understanding, Florence sold the house fraudulently. I believe justice Onega had a hand in this and in filing the suit. He was condoning fraud as it were.”**

Similarly, the plaintiff, in the publications attributed criminal conduct upon the plaintiff alleging that what he called “Amnesty Police” had gone and harassed his

tenants, a fact which he failed to prove in court. He also attributed dishonest conduct of possible interference with the course of justice to the plaintiff. Words which impute to the plaintiff the commission of a crime or which charge him with fraudulent, dishonest or dishonorable conduct or motives, are beyond question defamatory and are actionable per se. **Bendle vs. United K. Alliance (1915) 31 TLR 403 C.A. and Odongokara vs. Bob Astles [1970] EA 374.**

Court has no doubt whatever, that any reasonable person reading the letter in question would most probably understand those words to be defamatory of the plaintiff. **See Ntabgoba vs. Editor In-Chief Of The New Vision Newspapers And Another 2004 2 E.A. 234.**

In order to prove that the statement complained of by the plaintiff was defamatory, even where it is not defamatory per se, there is no need to show that any person believed that statement. In the words of Lord **Goddard, L.J.,** as he then was, **“if words are used which impute discreditable conduct of my friend, he has been defamed to me, although I do not believe the imputation and may even know that it is untrue.”** **Hough vs. London Express (1940) Ac.....**

In the instant case, the letter being complained of was written to the Director, Directorate of Land Matters in State House. A copy was sent to the Honourable, the Principal Judge and to the plaintiff's lawyers. The defendant agrees that he sent the letters to all those people among others. Court, upon the principal set out above finds that the plaintiff was defamed to those people.

In the view of court, the plaintiff has duly shown that the statement complained of was defamatory per se. He has also shown that the defamatory letter referred to him because he was mentioned by his name and title. He has also shown that the statement was published by the defendant. The defendant himself states that he published it. Publication need not to the public at large or to the entire world.

Court, accordingly, answers the first issue in the affirmative.

Whether The Publication Was Made On An Occasion Of Qualified Privilege.

In his defence, the defendant pleaded conditional or qualified privilege. It is, indeed, the position of the law that qualified privilege will protect the publisher of a defamatory statement unless actual malice and knowledge of the falsity of the statement is shown.

Qualified privilege may be claimed where the communication related to a matter of public interest or where it was necessary to protect one's private interest and the statement was made to a person having interest in the same matter.

In the instant case, it is clear that the defence of qualified privilege is not available to the defendant. In the first place the plaintiff had no proved interest in the property in question. In his evidence, and indeed, in the impugned publication, he claimed that he was the person who had purchased the house from Florence Onega. However, that claim stands out as a clear lie on his part. It is a malicious claim as well.

Both Elizabeth Aloya, PW2 and Florence Onega, PW3, deny that the defendant even purchased or negotiated the purchase. It is true that he issued the cheque of Shs. 16,371,331/= to enable his wife, PW2, pay off the mortgage. But this did not make him a purchaser. In fact it even never made his wife a purchaser because that cheque bounced in January, 1996.

The defendant never did anything beyond that. DW1, a witness for the defendant, testified that he used to collect the rent from the tenants in the house in question on behalf of PW2. He used to bank the

money on the account of PW2 and not that of the defendant. PW2, on her part, told court that all the money that she paid, either towards payment of the goodwill or towards the settlement of the mortgage was her own money derived from her private retail business. It was therefore, a lie for the defendant to state before court that he had paid all that money. The money had not been provided by the defendant. The defendant, therefore had no private interest to protect in the property. His claims in the publication were clearly actuated by actual malice. Issue number two is answered in the negative.

Whether The Plaintiff Is Entitled To The Reliefs He Seeks.

Court did state earlier that the position of the laws seems to be that when a publication is libelous per se (defamatory upon it's face) the plaintiff need not prove that he or she received any injury as a result of the publication, in order to recover damages. In such a case, general damages for injury to personal or business reputation are recoverable. The law presumes that she or he did suffer that injury.

The plaintiff sought to recover general damages. In determining the quantum court has to consider the plaintiff's standing as a judge of the High Court. It

has also to consider the extent or the level of the publication as a material factor.

The other consideration by court, goes to the defendant's conduct. It is a pleading by the plaintiff that the defendant failed or refused to apologize to the plaintiff. The defendant however, on 17th February, 2009, did write what appears to be an explanation of his conduct and which contained only half-hearted regrets which the plaintiff refused to accept.

Although Mac Kinnon L.J. in **Groom Vs. Crocker (1939) K.B. 194, at p. 231**, expressed abundant generosity by courts in matters of defamation when he stated, **"A soiled reputation seems assured of more liberal assuagement than a compound fracture,"** it may never be possible for money alone to assuage adequately a tarnished reputation or standing in society. Money in the form of damages, is an inadequate human effort towards compensating the injury whose fathom courts are often unable to accurately determine.

However, it remains the accepted principle that, **"the plaintiff in a defamation action is entitled to recover, as general damages, such sum as will compensate him or her for the wrong he or she**

has suffered. That sum must compensate for the damage to his or her reputation vindicate his good name, take account of the stress, hurt and humiliation suffered.” See John Vs. MGN Ltd. 1996 (2) All E.R. 35.

Be that as it may, in **Kaijuka vs. Cheeye, HCCS No. 688/1991**, the court awarded Shs. 14,000,000/= to the plaintiff as general damages. In **Gordon Wavamuno Vs. Ssezi Teddy Cheeye, HCCS No. 651 of 1995**, this court awarded Shs. 15,000,000/= as general damages. The trend, however has turned upwards in accordance with their economic changes in the county. Thus in **Jeremiah Herbert Ntabgoba Vs. The New Vision And Another, HCCS, No. 113 of 2003**, the court awarded the plaintiff Shs. 25,000,000/= as general damages.

In the instant case, considering all the relevant facts and circumstances, court would award a sum of Shs. 20,000,000/= to the plaintiff as general damages.

The plaintiff also sought exemplary damages. In the words of Allen J., as he then was, in **John Ngura, HCCS No. 50 of 1980** “The law regarding exemplary damages was held by the court of Appeal for Eastern Africa in **Odongo And Another Vs. Municipal**

Council of Kisumu [1971] E.A. 91, to be authoritatively set out in **Rookes vs. Bernard And Others (1964) A.C. 1129,** that exemplary damages were generally objectionable and should only be awarded in exceptional cases which should come within one of three special instances that is to say, where government servants have been guilty of oppressive, arbitrary or unconstitutional, conduct or action. Exemplary damages must be specifically pleaded. Clearly, the instant case falls outside the principle upon which exemplary damages can be awarded. None are, therefore, awarded.

Similarly, court does not consider it proper to issue a permanent injunction against the defendant in this case. The facts and circumstances do not seem to warrant one.

The general damages shall carry interest at 8% per annum from the date of judgment till payment in full.

The plaintiff shall recover the costs of this suit from the defendant.

RESULT.

In the result, court enters judgment in favour of the plaintiff against the defendant. It makes the following orders:-

- a) an order awarding Shs. 20,000,000/= to the plaintiff as general damages;
- b) an order awarding interest at 8% per annum on the general damages;
- c) an order awarding the costs of this suit to the plaintiff.

V.F. Musoke-Kibuuka

(Judge)

5.12.2012

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