

Defamation
Shs 2500,000/-

IN THE HIGH COURT OF UGANDA

HOLDEN AT MBALE

HIGH COURT CIVIL SUIT NO. 14 OF 1991

S.E. ISIAGI PLAINTIFF

VERSUS

THE ECONOMY NEWS PAPER

UGANDA LIMITED DEFENDANT

BEFORE: THE HONOURABLE MR. JUSTICE S.C. ENOMAU.

J U D G M E N T.

The plaintiff's claim against the defendant is for general damages for defamation/libel arising from an article that appeared on the front page of "The Economy news paper of May 28th, 1991 volume Number 14 where under the heading "POLITICIANS BACK-UP REBELLION IN Teso," the defendant made inter alia the following publication:-

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....."as operation to rid off insurgency in Teso is quite eminent, it has been reported that one former politician originating from the district of Kumi is allegedly urging the UPA rebels to continue fighting he is said to be one ISIAGI S.E. by names, a former UPC staunch supporter and a Lint Marketing Board Chairman sometime back in 1984 - 85.

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.....According to reliable sources from Kumi district some of the UPA commanders like Ikuret and Okiror-Opei, could have surrendered sometime back, if it were not for the constant lobbying by this former politician.

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.....The sources further disclosed that as the NRA troops are being deployed to most of the areas in Teso, this former politician is reported to have changed his position; he is said to have moved to Mbale."

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The said words in their natural and ordinary meanings and/or by innuendo, the defendant meant and was understood to mean that the plaintiff is perpetuating insurgency and withholding the key to peace in the area;

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the plaintiff is liable to criminal prosecution and should be charged, convicted and punished for treason; the plaintiff is an untrustworthy person who is not fit to lead the community in which he lives; the plaintiff is a person bent on creating trouble then running away from the trouble and that the plaintiff is an anti-NRM government agent who supports violence to overthrow the said government.

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The intended effect of the said publication is to disparage the plaintiff in the way of his conduct, reputation, public image and profession and the plaintiff has been so injured.

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On 18.12.92, the plaintiff's Counsel personally served the defendant's Counsel in their Chambers of M/S Sabalu & Lule Advocates situate at the East African Development Building at 12.45 p.m. and service was accepted by signing and fixing thereon the office seal. By consent of both counsel of the parties to the suit, the hearing date was fixed for 20.1.93.

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On that date, however, neither the defendant through its representative nor its Counsel appeared in court. No reason was communicated either to the court or the plaintiff's Counsel.

Whereby the case proceeded ex-parte under O.9 r 17 (1) (a) C.P.R. 20

In his testimony, the plaintiff gave a long detailed curriculum vitae. From 1951 - 1959, he was a school teacher. In 1959, he was elected a member of Teso District Council. In 1961, he was elected to the Legco, representing Teso South-East. In 1962, he was elected to Parliament for the same area/ constituency. He was appointed a Parliamentary Secretary to the Ministry of Internal Affairs in 1965 and in 1966, he was appointed Deputy Minister in the Ministry of Regional Administration which post he held until Amin's coup in 1971.

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While at home in Teso, he was a Vice-President of FUFA, a member of Sports National Council and also the President of Teso Primary Schools Music Festivals. In Gbote II, he was made Chairman Lint Marketing Board from 1984 - 1985 when again a military coup of Tito Okello was successfully staged. However, 5 when N.R.M. came to power, the plaintiff indulged himself into the translation of government statutes from English into Teso language. In addition, he has been attending pacification meetings and other important meetings in Kumi district. 10

In consequence thereof, as an elder, the plaintiff received and treated one Patrick Oryana, a rebel leader who then abandoned rebel activities. The climax of the plaintiff's participation was on 10.5.91 when an extra-ordinary meeting took place in Kumi district. The said meeting was convened by the 15 Chairman R.C.5 attended by a record crowd of about 2000 people including the D.A., the Brigade Commander all of Kumi. Exhibits P1 and P2 are photographs when the plaintiff was addressing the meeting. All the speeches were centred on urging all the rebels to surrender for the sake of peace. In fact the 20 plaintiff made four proposals which were adopted wholesale, namely:-

The registration of the people in Kumi district as per their cells in order to know who was where; the resurrection of elders organisation to liaise with rebels on the one hand and government 25 on the other ; setting up committees at Parish, Sub-County and district levels for co-ordination purposes with the rebels and to set up a committee to draft an appeal message to the rebels and also for mass media coverage. The plaintiff was elected Chairman of the last but not least committee. 30

As a keen reader of newspapers, the plaintiff got The Economy paper only to be surprised by the headline on the front page as quoted elsewhere in the judgment and herein tendered as exhibit P3. Immediately the plaintiff felt that the newspaper had cut across his participation in the pacification exercise among Iteso. He felt also that he was being abused and libelled in his efforts to bring peace in Kumi district. He further felt that Government officers were underrated in trusting him who is alleged to be engaged in the promotion of activities of insurgency. He also felt his life and that of his family were in danger. At the material time there was a tough operation going on in the Northern Uganda where people with such allegations were picked up and killed and some were charged with treason, for example one Tiberio Okeny. Even in Kumi and Soroti districts some people fell victims in the same way. No doubt the plaintiff felt he would also be picked up and his destiny would be unknown. However, he denied ever urging UPA rebels to continue fighting but to surrender. He never lobbied any rebel leaders including one Ikuret or Okiror-Opci to continue with rebel activities. He also denied ever changing his position by moving to Mbale at the material time or at all.

As a result of the defamatory article in the said newspaper, the plaintiff promptly reported the matter to D.M. Kumi and R.Cs of his area, after which he decided to file this suit. He seeks for general damages for defamation with interest thereon and costs of the suit.

At the end of his testimony, the plaintiff called 3 witnesses in support of his case. PW2 is the Chairman R.C. 1 and the plaintiff is his subject. He knows that the plaintiff had held different posts in the previous regimes. He was a Deputy Minister and an M.P. of the area. He was also made Chairman of Lint Marketing Board.

He was also elected Chairman of elders in Kumi district and highly involved in christian activities including Music Festivals in the district. The plaintiff actively at all times involved himself in peace making process whereby the rebels even burnt down his home and looted therein movable property. He denied ever 5 learning that the plaintiff was lobbying rebel leaders like Ikuret or Okiror - Opei to fight against the NRM government or at all. He also never saw the plaintiff move to live in Mbale or at all.

This witness though did not attend the pacification meeting on 10.5.91, but was totally surprised to read the story 10 against the plaintiff in The Economy newspaper in question. He felt the plaintiff's life was at stake yet he is a good man in the village who enjoys respect and co-operation from his village-mates. The article in the Economy paper is untrue.

On the other hand PW3 is the Parish Chief of the area and 15 the plaintiff is his subject. He too gives the same evidence regarding the curriculum vitae of the plaintiff. According to the witness, the plaintiff has all along been their elder who is very instrumental to peace and development in the area and often attends meetings in that regard. He worked tirelessly to 20 persuade rebels to surrender and indeed very many of them did surrender and there is normal peace in the area.

As a Parish chief of the area, he has never received any report that the plaintiff collaborates with rebels in the area or at all. The plaintiff has never associated himself with 25 rebel leaders like Ikuret or Okiror or any at all. To the best of his knowledge, the plaintiff has never at one time or at all moved to Mbale. He was also shocked when he read the article in the Economy newspaper. He felt that not only was the plaintiff's life in danger but also the lives of the chiefs of the area as 30 collaborators with rebels.

The last witness for the plaintiff's case was PW4. This witness is the Chairman R.C.111 of the area and the plaintiff is under him. The witness attended the meeting of 10.5.91. He fully confirmed the evidence of the plaintiff in as far as what transpired at the said meeting. He was later shocked to read the article in the Economy and feared the plaintiff and his family were in danger. He strongly denied that the plaintiff ever supported UPA rebels to continue fighting the NRM government. Not true that the plaintiff was lobbying rebel leaders like Ikuret or Okiror or any at all. Also completely not true that the plaintiff ever changed his position and went to live in Mbale.

To the contrary, the witness testified that after his investigations together with his junior R.Cs, he found that the allegations against the plaintiff were untrue. The plaintiff is a peace lover, musician and an advisor for developments in the area. He is loyal to the present government and had been so even with the previous regimes.

In his long submission which can be summarised here is based on the issues for determination in this case namely:-

Whether there was publication, whether the publication was defamatory; whether the publication was privileged or there was justification for it or that it was a fair comment and if not, whether the plaintiff suffered any damage and if so what quantum.

Whether there was publication in the instant case, it is the submission of the Counsel for the plaintiff that the Economy Paper is a newspaper published in English for the consumption of the 17 million Ugandans and people in the neighbouring countries. In that regard the principle laid down in Odongkara Vs. Astles (1970) E.A. 374 that publication must be to someone other than the plaintiff is proved.

The printing and publication of the paper starts in Kampala where the sale and readership is concentrated and then it spreads throughout the country and far beyond the borders. In the absence of the defence story in this regard, I'm inclined to agree with the submission that there was publication of the article complained of by the plaintiff.

As regards whether the publication was defamatory of the plaintiff, it is submitted that the statements complained of are flagrantly defamatory. There is no evidence to prove that those words complained of were true in substance and in fact. The plaintiff never indulged himself into rebel activities which is prama facie criminal in that context but instead actively on 10.5.91 participated in the pacification meeting. The person of the plaintiff was put at stake. He could have been picked up anytime and be charged with any criminal offence. According to COMMENTARY ON GATLEY ON LIBEL AND SLANDER (6th Edition, para 154 at page 85) the exact offence need not be specified, words involving a general charge or criminality will suffice provided they impute some offence for which the plaintiff can be made to suffer corporally or by way of punishment.

According to evidence on record the plaintiff is backed by all his witnesses. He is a well respected elder in the village who is all the time on the move for development and regularly attends village and district meetings for any purpose. He tirelessly fought for peace and he has secured it as so many rebels surrendered in response to his efforts. In the premises I find without hesitation that in the light of evidence before me, the publication in question is defamatory of him and the article was not only of its plain and ordinary meaning defamatory of the plaintiff, but was also capable of bearing and understood to bear the meaning ascribed to it by the plaintiff.

In the light of my holding that the statement complained of is defamatory, it is convenient at this stage to reflect my mind on the possible defences open to this case:-

In the first place, it is necessary to find out whether the publication is privileged. I concede to the submission made 5 by the plaintiff's Counsel that the onus to prove that the article published was privileged lies on the defendant. He must prove that the article complained of was published to inform the general public who had interest in it. The court must be satisfied that the defendant also had interest in it or duty to publish the 10 article complained of or that there was corresponding interest or duty in the public to whom it was published to receive it.

As the defendant failed to turn up on the hearing date, the aforesaid burden of proof is not discharged. It may be presumed 15 that the reporter of the Economy Paper was anxious to obtain a story for his newspaper. Further, it is not sufficient that the maker of the statement honestly and reasonably believed that the public to whom it was made had such an interest or duty save only if it is proved: Farmer & Another Vs. Uganda Argus (1964) E.A. 568. The 20 defence of privilege therefore does not arise in the instant case without proof to that effect.

Another available defence open to the defendant here is whether there was justification for publication. Again the burden of proof lies on the defendant. He must prove that the 25 statement is true in substance and in fact. The degree of proof must be high though not as in a criminal case: United Africa Press Ltd., Vs. Z.K. Shah (1964) E.A. 336. In the instant case, again I am in agreement with the learned Counsel for the plaintiff that the defendant has not discharged this 30 burden, hence this defence fails.

Finally, the court is to consider whether the publication was a fair comment. To succeed the defendant must prove that each and every statement of fact in the words complained of is true. In the instant case, the defendant is required to prove that the plaintiff in fact had urged the U.P.A. rebels to continue fighting 5 and that they should not surrender to the N.R.A. That the U.P.A., commanders like Ikuret and Okiror-Opei could have surrendered sometime, if it were not for the constant lobbying by the plaintiff and that the plaintiff had changed his position and ran to Mbale. In fact the principle laid in Figuredo Vs. Editor Sunday Nation 10 (1968) E.A. 501 is that the defence of fair comment requires that the material fact or facts on which the comment or criticism is based should be truly stated and be a matter of public interest and that the comment or criticism on the fact or facts should be fair, the wide limits which the law allows. The defendant here 15 therefore cannot be availed this defence in the absence of such a proof.

Having said all that the next issue for consideration is whether the plaintiff suffered any damages. I concur with the submission that the plaintiff was injured in his credit, 20 integrity and reputation as a member of good character. He testified of how he rose through the ranks of a school teacher, headmaster, a member of Teso District Council, then a member of Legislative Council, elected a member of Parliament. He became Parliamentary Secretary in the Ministry of Internal Affairs and 25 then appointed later to become a Deputy Minister, Ministry of Regional Administration until January coup of 1971. In Obote II Government he was appointed the Chairman of Lint Marketing Board (1984 - 1985). He is an elder of Kumi district but a peace lover of both Kumi and Soroti district in general. He actively 30 participated in the pacification exercise in Kumi district to the knowledge of government officials, B.Cs and the public at large.

The publication therefore exposed the plaintiff to public odium, ricule and contempt. The plaintiff was subject to anxiety because of the allegations so serious as to endanger his life and that of his family. He was anxious that the government would arrest and charge him with treasonable felony as had been in the cases of Tiberio Okeny, Robert Nitariko and others. All his witnesses expressed their anxieties in their testimonies. In case I'm wrong in this finding, even if this libel in question is sufficiently outrageous so as not to be believed that is no ground for depriving the plaintiff here libelled of appropriate damages: W.S.O. Davies Vs. M.H. Shah (1967) E.A. 352.

The final issue now, what is the quantum of damages? In my humble view punitive or exemplary damages would be inapplicable in the instant case basing my view on the facts and evidence on record. However, injury suffered as a result of the publication is compensatory. In that regard I have considered the case of Onama Vs Uganda Argus Ltd., (1969) L.A. 92 and the most recent one of Abu Mayanja Vs. Editor Mulengera Newspaper, (1992) (unreported) and I have also considered the status of the plaintiff here and the danger the publication put to his life at the material time and in between make an award of U. Shs. 2,500,000/- (Two million five hundred thousand shillings) as adequate and reasonable compensation in the circumstances of the case. I so award with interest at court rate until the decretal amount is paid in full. The defendant is also to pay costs of this suit.

S.G. LINGAU

JUDGE

7.6.93.

15.6.93: The plaintiff present.
 No defendant or its representative.
 Mr. Wandera holding brief for Mr. Ochienghs-Wellborn for plaintiff.
 Judgment read in open court.

SGE/eg

S.G. LINGAU