



**IN THE HIGH COURT OF UGANDA SITTING AT GULU**

Reportable  
Civil Appeal No. 078 of 2016

In the matter between

**OKOT G. M. .... APPELLANT**

**VERSUS**

**LAKER NANCY ..... RESPONDENT**

**Heard: 18 April, 2019.**

**Delivered: 16 May, 2019.**

***Torts** — Defamation Imputation of commission of a criminal offence is actionable per se — the defence of qualified privilege — The actual malice standard applies when a defamatory statement concerns public officials — Assessment of general damages for libel.*

***Civil Procedure** — a new point of law not argued at the trial will not be permitted on appeal except if court is satisfied that had it been raised at the trial, no new evidence could have been adduced by the adverse party at the trial to contradict it.*

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**JUDGMENT**

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**STEPHEN MUBIRU, J.**

Introduction:

[1] The respondent sued the appellant for recovery of general damages for libel, a permanent injunction against further publication of libellous material, interest and costs. The respondent at all material time was the Secretary to the Chief Magistrate in Gulu. Her claim was that the appellant in a letter dated 22<sup>nd</sup> April, 2013 addressed to the Resident District Commissioner and copied to diverse other persons, the appellant falsely accused her of tampering with files in matters pending before that court in relation to disputes among sitting tenants arising out of acquisition of houses in a housing estate, by removing vital documents from

the files. She was also accused of having acquired one of the houses by illicit means. She contended that the accusations were false and defamatory.

- [2] In his written statement of defence, the appellant refuted the respondent's claims stating instead that the words complained of are not defamatory of the respondent, are true, were published on a privileged occasion, are matters of public concern and constituted fair comment made without malice. He refuted the meaning attributed to them by the respondent. He prayed that the suit be dismissed with costs.

The respondent's evidence;

- [3] In her testimony as P.W.1, the respondent Laker Nancy testified that the appellant was her close neighbour at her place of residence. The appellant wrote a letter (exhibit P. Ex.1) concerning her, alleging that she was pilfering documents from a file relating to a case then pending before the Chief Magistrate of Gulu. The file was in respect of suit relating to a dispute over the sale of a house in a government housing estate. At the time the appellant wrote that letter the respondent was the Secretary to the Chief Magistrate. The letter was addressed to the Permanent Secretary of the Ministry of Lands and Housing but copied to several other people including; the CAO Gulu, the L.C.5 Chairman Gulu, the IGG, the DPC Gulu, the Chief Magistrate of Gulu, and so on. On receiving a copy of the letter, the Chief Magistrate was upset and summoned her to explain. She was shocked and distressed by the content of the letter. The documents allegedly pilfered from the file were found not to be missing. The accusation therefore was false. She attempted to have the matter settled amicably with the appellant who failed to meet her terms, hence the suit.
- [4] P.W.2 Ogwang Paulino testified that he was a court clerk at the time the allegations were made against the respondent. He was the respondent's supervisor at the time. The document alleged to have gone was missing was a

written statement of defence which was in fact kept by one of the court clerks. He had received the document but never noted that on the file cover and therefore it was filed wrongly but was recovered after the judgment had been delivered. The respondent was wrongly implicated.

The appellant's evidence;

[5] The appellant, Okot George, testified as D.W.1 and stated that he wrote the letter complained of dated 22<sup>nd</sup> April, 2013. He acknowledged the content of the letter. D.W.2 Labeja Jackson testified that as tenants interested in the suit then pending in court, they concerned when a document went missing from the court file. They suspected the respondent to be responsible for its loss and instructed the appellant to complain on their behalf.

The judgment of the court below;

[6] In his judgment, the trial Magistrate found that although there was evidence that some documents had gone missing from the relevant files, there was no evidence to connect the respondent to that loss. The appellant implicated her based on unfounded suspicion. The letter emphatically attributed loss of the documents to the respondent without any justifiable reason. None of the defences pleaded were available to the appellant. Judgment was entered for the respondent against the appellant. A permanent injunction was issued against the appellant. The respondent was awarded general damages of shs 10,000,000/= and the costs of the suit.

The grounds of appeal;

[7] The appellant was dissatisfied with the decision and appealed to this court on the following grounds, namely;

1. The learned trial magistrate erred in law and fact when he found that the respondent had been defamed by the appellant.
2. The learned trial magistrate erred in law and fact when he failed to consider the defence of qualified privilege.
3. The learned trial magistrate erred in law and fact in awarding excessive and exorbitant general damages without following the set principles.

Submissions of counsel for the appellant;

[8] In his submissions, counsel for the appellant argued that it was incumbent upon the respondent to prove that the statements made of the respondent were made with actual malice, which she failed to do. It is a fact that the respondent had access to the court file and that records kept on the file went missing. The appellant was entitled to comment and raise the issue with concerned public officers. He prayed that the appeal be allowed.

Submissions of counsel for the respondent;

[9] In response, Ms. Kunihiro Roselyn counsel for the respondent submitted that the letter complained of categorically stated that the respondent had removed important documents from the court file, yet that was false. The trial magistrate came to a correct decision and the appeal should be dismissed.

The duties of this court;

[10] It is the duty of this court as a first appellate court to re-hear the case by subjecting the evidence presented to the trial court to a fresh and exhaustive scrutiny and re-appraisal before coming to its own conclusion (see *Father Nanensio Begumisa and three Others v. Eric Tiberaga SCCA 17of 2000; [2004] KALR 236*). In a case of conflicting evidence the appeal court has to make due allowance for the fact that it has neither seen nor heard the witnesses, it must

weigh the conflicting evidence and draw its own inference and conclusions (see *Lovinsa Nankya v. Nsibambi* [1980] HCB 81).

- [11] This court may interfere with a finding of fact if the trial court is shown to have overlooked any material feature in the evidence of a witness or if the balance of probabilities as to the credibility of the witness is inclined against the opinion of the trial court. In particular this court is not bound necessarily to follow the trial magistrate's findings of fact if it appears either that he or she has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on demeanour of a witness is inconsistent with the evidence in the case generally.

Imputation of commission of a criminal offence is actionable *per se*;

- [12] The first ground of appeal faults the trial magistrate for having found that the respondent had been defamed by the appellant. In *Ssejjoba Geoffrey v. Rev. Rwabigonji Patrick* [1977] H.C.B 37 a defamatory statement was defined as one which has a tendency to injure the reputation of the person to whom it refers by lowering him or her in the estimation of right-thinking members of society generally and in particular to cause him or her to be regarded with feelings of hatred, contempt, ridicule, fear, dislike and disesteem. If words have been proved to be defamatory of the plaintiff, general damages will always be presumed. Imputation of commission of a criminal offence is actionable *per se* without any need of proving damage on the part of the plaintiff (See *Blaize Babigumira v. Hanns Besigye* HCCS No. 744 of 1992). In *Gatley on Libel and Slander* (9<sup>th</sup> edition) where (at p 7 para 1.5) the learned authors state:

What is defamatory? There is no wholly satisfactory definition of a defamatory imputation. Three formulae have been particularly influential: (1) would the imputation tend to "lower the plaintiff in the estimation of right-thinking members of society generally?" (2) Would the imputation tend to cause others to shun or avoid the plaintiff? (3) Would the words tend to expose the plaintiff to "hatred, contempt and ridicule?" The question "what is defamatory?" relates to the nature of

the statement made by the defendant; words may be defamatory even if they are believed by no one and even if they are true, though in the latter case they are not of course actionable.

- [13] A defamatory statement is one which imputes conduct or qualities tending to disparage or degrade any person, or to expose a person to contempt, ridicule or public hatred or to prejudice him or her in the way of his or her office, profession or trade. It is a statement which tends to lower a person's reputation in the eyes of or the estimation of right thinking members of society generally or which tends to make them shun and avoid that person. The typical form of defamation is an attack upon the moral character of the plaintiff attributing to him or her any form of disgraceful conduct such as crime, dishonesty, untruthfulness, trickery, ingratitude or cruelty. The person defamed does not have to prove that the words actually had any of these effects on any particular people or the public in general, only that the statement could tend to have that effect on an ordinary, reasonable listener or reader.
- [14] Once a statement is capable of being interpreted as an assertion of fact, the question then will be whether it imputes any moral fault or defect of personal character. For professional aspects, it will be deemed so if it imputes lack of qualification, knowledge, skill, capacity, judgment or efficiency in the conduct of one's trade or business or professional activity. There are certain established rules to determine whether statement is defamatory or not.
- [15] The first rule is that the whole of the statement complained of must be read and not only a part or parts of it. The second is that words are to be taken in the sense of their natural and ordinary meaning. The Court must have regard to what the words would convey to the ordinary man. In *Ssonko Gerald v Okech Tom [1978] HCB 36*, it was held that the test is the general impression of the words on the right thinking person and it is from that perspective that the words are to be considered before determining whether they are defamatory or not. The

determination depends on answering the question; “would the words tend to lower the plaintiff in the estimation of right-thinking members of society?”

- [16] The defamatory nature of a statement is its tendency to excite against the plaintiff the adverse opinions or feelings of other persons. A typical form of defamation is an attack upon the moral character of the plaintiff attributing to him any form of disgraceful conduct, such as crime, dishonesty, untruthfulness, trickery, ingratitude or cruelty (see *Ssejjoba Geoffrey v. Rev. Rwabigonji Patrick* [1977] *H.C.B* 37). Although a statement need not be perfectly true, it should be substantially true in order not to be false. Slight inaccuracies of expression are immaterial if the defamatory statement is true in substance.
- [17] Allegations are defamatory of the plaintiff if they impute the commission of a criminal offence for which the plaintiff would be liable to imprisonment under the laws of Uganda (see *Odongkara v. Astles* [1970] *EA* 377). *Gately on Slander and Libel* (supra) 8<sup>th</sup> Edition at page 114 paragraph 115 states that; “where words complained of are defamatory in their natural and ordinary meaning, the plaintiff need prove nothing more than their publication. The onus will then lie on the defendant to prove from the circumstances in which the words were used, or from the manner of their publication, that the words would not be understood by reasonable men to convey the imputation suggested by the mere consideration of the words themselves.”
- [18] Then, it must be proved that the statement referred to the plaintiff. In *Onama v. Uganda Argus* [1969] *EA* 92, the Court of Appeal of Eastern Africa held in deciding the question of identity, the proper test is whether reasonable people who knew the plaintiff would be led to the conclusion that that the report referred to him. The question is not whether anyone *did* identify the plaintiff but whether persons who were acquainted with the plaintiff *could* identify him from the words used. In the instant case, the words were not only used in reference to the defendant but they were uttered directly at her in her presence during a series of

incidents. They were capable of being regarded as referring to the plaintiff since there was no evidence that they were directed at any other person. These words would lead reasonable people who know the defendant to the conclusion that they referred to her.

[19] In the instant case, the words complained of contained in the letter dated 22<sup>nd</sup> April, 2013 (exhibit P. Ex.1), written by the appellant, of and concerning the respondent, read as follows;

[As] sitting tenants, we have learnt of the abnormality being caused to our files in the court by the Secretary to the Chief Magistrate, Ms. Laker Nancy who is Chairperson of the claimants and through this court, she acquired block 3 of the said houses and secondly with big concern we notice that right from the time the Chief Magistrate Omondonyango, applied to the current Chief, Nancy has removed important correspondence from the tenants' files coming to the district, and Permanent Secretary Ministry of Lands, Housing and Urban Development which could have been used as evidence by the Chief Magistrate.....(Sic).

[20] The words complained of specifically referred to the plaintiff for she is not only named, but also her position as Secretary to the Chief Magistrate is stated. Since the question is not whether anyone *did* identify the plaintiff but as the person referred to but rather whether persons who were acquainted with the plaintiff *could* identify her from the words used, I hold the view that any reasonable person who knew the respondent would be led to the conclusion that that the letter referred to her.

[21] It is contended that the allegations made against the respondent in that letter were defamatory of her in so far as they imputed the commission of a criminal offence for which the respondent would be liable to imprisonment under the laws of Uganda. The meanings attributed to the expressions complained of are that;- the respondent is a thief, corrupt, unprofessional, unethical and not fit to hold the position of Secretary to the Chief Magistrate. Indeed I find that the



words complained of in their natural and ordinary meaning are capable of bearing the meanings attributed to them. Under section 102 of *The Penal Code Act*, any person who, knowing that any book, document or thing of any kind is or may be required in evidence in a judicial proceeding, removes or destroys it or renders it illegible or undecipherable or incapable of identification, with intent thereby to prevent it from being used in evidence, commits an offence and is liable to imprisonment for a term not exceeding seven years. The allegations therefore imputed onto the respondent, the commission of a criminal offence.

[22] Defamation does not take place until the words complained of are published. Publication occurs when information is negligently or intentionally communicated in any medium. To succeed, the plaintiffs must prove that the defendant deliberately communicated the libelous material to a third party or that the defendant was at fault when he or she published the defamatory statement, i.e. that the defendant failed to do something he or she was required to do that resulted in the material being published to a third party. In the instant case, the respondent testified that a copy of the letter was received by the Chief Magistrate who summoned her to explain its content. In his defence, the appellant admitted publishing the letter complained of to the Permanent Secretary of the Ministry of Lands, Housing and Urban Development, and to the several other persons to whom it was copied.

[23] In his defence, the appellant asserted the truthfulness of those accusation but failed to adduce any evidence to that effect. To the contrary, it was the testimony of P.W.2 Ogwang Paulino that although it was true that a document alleged to have gone was missing had been wrongly filed and was recovered after the judgment had been delivered, the respondent was wrongly implicated. The respondent herself denied any involvement. It is a settled principle of the law of evidence that he who asserts must affirm. The onus is on a party to prove a positive assertion and not a negative assertion. It therefore means that, the burden of proof lies upon him or her who asserts the affirmative of an issue, and

not upon him or her who denies, since from the nature of things he or she who denies a fact can hardly produce any proof (see *Jovelyn Bamgahare v. Attorney General S.C. C.A. No 28 of 1993*). The appellant failed to discharge that burden and the trial court correctly found the words complained of to be defamatory of the respondent. Therefore the first ground of appeal fails.

The defence of qualified privilege:

[24] The second ground of appeal faults the trial magistrate for failed to consider the defence of qualified privilege. In the first place, the appellant did not plead this defence. It is not open to a litigant to rely on a defence that was not pleaded save where, without objection of the other party, it is brought in issue during the trial, and both the other party and the court had opportunity to address it. It certainly cannot be raised on appeal as a new argument for the first time. There is general prohibition against new arguments on appeal due to the overarching societal interest in the finality of litigation. Were there to be no limits on the issues that may be raised on appeal, such finality would become an illusion.

[25] Despite this general rule, there have been exceptional cases in which courts have entertained issues on appeal for the first time. Consequently, a new point of law not argued at the trial will not be permitted on appeal except if court is satisfied that had it been raised at the trial, no new evidence could have been adduced by the adverse party at the trial to contradict it. Where it is evident that evidence could have been gathered and introduced to rebut the issue in the trial court, this establishes the likelihood of prejudice to the adversary and the appellate court will not permit such a point to be raised for the first time on appeal. The bottom line is that appellate courts are not designed, nor permitted, to receive evidence. They will only look at the evidence that was properly admitted at the trial court and properly made part of the record on appeal.

- [26] Having perused the record of proceedings, this court is satisfied that had the point been raised at the trial, no new evidence could have been adduced by the respondent to contradict it. The evidence that was adduced by the respondent covers it and on appeal it is being presented as an alternative argument, dependent on the same facts as those presented to the trial court. Consequently the court has not found any likelihood of prejudice to the respondent and for that reason will consider the availability of the defence as a point raised for the first time on appeal.
- [27] When a person goes into public life, he or she must understand that certain issues that might be considered private, for a private individual, can become matters of reasonable public interest, especially where such private matters affect the performance of the officeholder's duties. Behaviour that might impede performance, like substance abuse, is a matter of public interest. The public should also be aware of ways in which a public figure or official may use his or her office to gain advantage in personal life. Therefore, public figures and officials are fair targets for criticism and critics deserve extra protection, hence the requirement of actual malice. Public officials must expect and are deemed to have accepted a degree of public interest in the performance of their duties, and thus that they have accepted the risk of being involved in public speech.
- [28] Since article 29 (1) (a) of *The Constitution of the Republic of Uganda, 1995* guarantees freedom of speech and expression which include freedom of the press and other media, a public figure or official may succeed in a suit for defamation only if he or she proves on a balance of probabilities that that the publication was made with "actual malice," as a compromise between the law of defamation and the Constitutional privilege.
- [29] A public official is a person who occupies a position in government that is of high apparent importance, or one that appears to have substantial responsibility for or control over some aspect of government that attracts society's interest. The

actual malice standard applies when a defamatory statement concerns public officials (which includes politicians and high-ranking governmental figures, but also extends to government employees who have, or appear to the public to have, substantial responsibility for or control over the conduct of government affairs) since it is generally accepted that they occupy positions that invite attention and comment. These are people who hold positions of such persuasive power and influence that they are deemed public figure for all purposes. Among the plaintiffs, it is the third plaintiff that fits the description and therefore he bears the burden of proving that the defendant was motivated by actual malice.

[30] It is regarded sometimes right and in the interest of the public that a person should plainly state what he or she honestly believes about a certain person and speak out his or her mind fully and freely about him or her. Such occasions are regarded as privileged and even when the statement is admitted or proved to be erroneous, its publication will be excused on that ground. A privileged occasion is one where the person who makes a communication has an interest, or a duty, legal, social or moral, to make it to the person to whom it is made and the person to whom it is so made has a corresponding interest or duty to receive it (see *Adam v. Ward [1971] AC 309*). This reciprocity is essential. Both these conditions must exist in order that the occasion may be privileged.

[31] Qualified privilege operates only to protect statements which are made without malice (i.e., spitefully, or with ill-will or recklessness as to whether it was true or false). According to *Gatley on Libel and Slander* (p 328 para 14.4), the main classes of statements which come under the defence of qualified privilege at common law are:-

1. statements made in the discharge of a public or private duty;
2. statements made on a subject matter in which the defendant has a legitimate interest;
3. statements made by way of complaint about those with public authority or responsibility;

4. reports of parliamentary proceedings;
5. copies of or extracts from public registers;
6. Reports of judicial proceedings.

[32] The House of Lords in *Reynolds v. Times Newspapers Ltd* [2001] 2 AC 127, 205 required multiple factors to be considered when deciding whether defendants have established privilege, with Lord Nicholls listing 10 illustrative factors; -

1. The seriousness of the allegation. The more serious the charge, the more the public is misinformed and the individual harmed, if the allegation is not true.
2. The nature of the information, and the extent to which the subject matter is a matter of public concern.
3. The source of the information. Some informants have no direct knowledge of the events. Some have their own axes to grind, or are being paid.
4. The steps taken to verify the information.
5. The status of the information. The allegation may have already been the subject of an investigation which commands respect.
6. The urgency of the matter. News is often a perishable commodity.
7. Whether comment was sought from the plaintiff. An approach to the plaintiff will not always be necessary.
8. Whether the article contained the gist of the plaintiff's side of the story.
9. The tone of the article. A newspaper can raise queries or call for an investigation. It need not adopt allegations as statements of fact.
10. The circumstances of the publication, including the timing.

[33] The defence seeks to protect defamatory material of public importance where defendants have published responsibly, irrespective of the material's truth or falsity. It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation provided it is done in good faith. The person alleging in good faith must establish the fact that before making any allegations he had made an inquiry and necessary reasons and facts given by him must

indicate that he had acted with due care and attention and that he was satisfied about the truth of the allegation.

[34] In the instant case, the appellant made the statements on a subject matter in which he had a legitimate interest; the security and integrity of documents and pleadings submitted to court in pursuit of legal remedies. He made the statements by way of complaint about those with public authority or responsibility over such matters including the Chief Magistrate. It was therefore made on an occasion where the person who made the communication had an interest, or a duty, legal, social or moral, to make it to the persons to whom it was made and the persons to whom it was so made had a corresponding interest or duty to receive it. The letter was therefore published on an occasion of qualified privilege. The burden then shifted to the respondent to show express malice on the part of the appellant (see *Clark v. Molyneux (1877) 3 Q.B.D. 237*).

[35] Once qualified privilege is established, even when it is demonstrated that the publication is based upon facts and statements which are not true, the defendant is not liable unless the plaintiff establishes that the publication was made by the defendant with reckless disregard for truth. The defendant is protected even though his language was violent or excessively strong if, having regard to all the circumstances, he might honestly and on reasonable grounds have believed that what he uttered was true and necessary for his purpose, even though in fact it was not so (see *Adam v. Ward 119171 A.C. 309 at 339*). Malice in law, which is presumed in every false and defamatory statement, stands rebutted by a privileged occasion. In such cases, it is enough for the defendant to prove that he or she acted after a reasonable verification of the facts; it is not necessary for him to prove that what he or she has written is true.

[36] But where the publication is proved to be false and actuated by malice or personal animosity, the defendant would have no defence and would be liable for damages. The defence of qualified privilege therefore can be assailed if the

defendant was actuated by an improper motive that is to say by "express malice" (see Lopes C.J. in *Royal Aquarium and Summer and Winter Garden Society Ltd. v. Parkinson* [1892] 1 Q.B. 431 at p.454).

[37] Express malice, unlike legal malice, is never presumed; it must be proved as a fact. In such a case, in order to make a libel actionable, the burden of proving actual or express malice is always on the plaintiff. It may be proved either extrinsically or intrinsically of the document and such words in the document are apt as evidence (see *Adam v. Ward* [1917] AC 309, [1917] All ER 151). The motive of the defendant becomes material where privilege is established and the burden has shifted to the plaintiff to show actual malice. Improper motive is the best evidence of malice. Malice in this sense means making use of a privileged occasion for an indirect or improper motive. Such motive can be inferred from evidence regarding the defendant's state of mind. If the defendant did not believe in the truth of what he stated, that fact is conclusive evidence of express malice, for no man can legitimately claim privilege if what he stated was a deliberate and injurious falsehood about another.

[38] Malice does not necessarily imply personal hatred, a spiteful or malignant disposition or ill feelings of any nature, but rather, it focuses on the mental state which is in reckless disregard of the law in general and of the legal rights of others. The defendant would be found to have made the statements with "express malice" if he acted with knowledge that the statement was false or with reckless disregard of whether it was false or not. Evidence of inadequate investigation would show intent to inflict harm through falsehood. Such evidence would suggest that, because of his bias, the defendant knowingly or recklessly avoided the truth by performing an inadequate investigation. Deliberate or reckless falsity is evidence of express malice. Malice is present if the acts were done in the knowledge that the statement is invalid and with knowledge that it would cause or be likely to cause injury. It also exists if the acts were done with reckless indifference or wilful blindness to that invalidity and that likely injury.

[39] It was argued by counsel for the appellant that the intention of the appellant was to cause an investigation into the loss of documents on court files, but it is well-settled that the fact that the defamatory publication might have been calling for an inquiry or investigation is no defence (See *"Truth" (N.Z.) Ltd. v. Holloway* [1960] 1 W.L.R. 997, P.C). In the instant case, the appellant never sought to confirm these allegations. At the time he wrote the letter, either knew the information was false or entertained serious doubts as to the truth of that content, yet he never took steps to verify his suspicion. Indeed he did not present it as a suspicion but rather as an assertion of fact. The desire to injure the respondent was shown to be the dominant motive for the appellant's defamatory statement on account of the fact that he acted impulsively and illogically and perhaps irrationally in arriving at the belief he did that the respondent was responsible for the missing document. Had the trial court considered this defence, it still would found in favour of the respondent. Therefore the second ground of appeal fails.

The general damages awarded are inordinately high;

[40] The last ground of appeal faults the trial magistrate for awarding excessive and exorbitant general damages without following the set principles. An appellate Court may not interfere with an award of damages except when it is so inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the trial court proceeded on a wrong principle or that it misapprehended the evidence in some material respect, and so arrived at a figure, which was either inordinately high or low. An appellate court will not interfere with exercise of discretion unless there has been a failure to take into account a material consideration or taking into account an immaterial consideration or an error in principle was made (see *Matiya Byabalema and others v. Uganda Transport company (1975) Ltd.*, S.C.C.A. No. 10 of 1993 (unreported) and *Twaiga Chemicals Ltd. v. Viola Bamusede t/a Triple B Enterprises*. S.C.C.A No. 16 of 2006).



- [41] It is trite that a person's reputation has no actual value, and the sum of be awarded in damages is therefore at large and the Court is free to form its own estimate of the harm taking into account all the circumstances (see *Khasakhala v. Aurali and Others [1995-98]1 E.A. 112*). General damages are to be determined and quantified, depending upon various factors and circumstances. Those factors are (i) the gravity of allegation, (ii) the size and influence of the circulation, (iii) the effect of publication, (iv) the extent and nature of claimant's reputation and (v) the behaviour of defendant and plaintiff. It is not enough to consider the social status of the defamed person alone in assessing award of damages. It is necessary to combine the status with the gravity of or the seriousness of the allegations made against the Plaintiff. Anyone who falsely accuses another of a heinous crime should be condemned heavily on damages. Once an ordinary person is defamed seriously and is shunned by the public then it does not matter whether he or she is of high or low status (see *Kanabo Sarah v. Chief Editor Ngabo Newspaper and others, [1997] H.C.B 27*).
- [42] In its assessment of general damages, the trial court did not advert to any of the said principles yet it came up with a sum, which based on the facts before it, which is so inordinately high that it evinces the fact that there was a failure to take into account a material consideration or taking into account an immaterial consideration or an error in principle was made. It is for that reason that this court will intervene.
- [43] I have drawn comparisons between the award in this suit and those made in similar suits before. For example in *David Kachontori Bashakara v. Kirunda Mubarak, H.C.C.S No. 62 of 2009*, general damages of Shs.45,000,000/= were awarded to a plaintiff who had been a public servant for a period of 33 years and had during the course of his service been to various parts of Uganda. He had a family of seven mature children and lots of friends in many parts of the country who were saddened and scandalized by the utterances complained of made in Lusoga, imputing a criminal offence (the words were "corrupt, thief, embezzler,

unfit to hold public office”) and broadcast in many parts of the country where the language is understood. He had as a result lost the Mayoral race in Mbarara.

[44] In the case of *Joseph Kimbowa Lutaaya v. Francis Tumuheirwe H.C. Civil Suit No.862 of 2001*, general damages of shs 10,000,000/= were awarded to a plaintiff, a manager with Allied Bank, in respect of a defamatory memo written by the defendant to the Permanent Secretary to the Treasury explaining the reasons why the plaintiff’s wife had been suspended. In that memo the defendant alleged inter alia that the plaintiff while still working with the Standard Chartered Bank connived with his wife to steal shs.50,000,000/= (fifty million) and was as a result dismissed from the Bank while his wife was dismissed from USAID. In that case the publication was made only once and there was no repetition. The publication did not capture a wide publicity.

[45] Lastly in *Abu Bakr K. Mayanja v. Tedi Seezi Cheeye and another, H.C. Civil Suit No. 261 of 1992*, the plaintiff who by then a Minister of Justice and Constitutional Affairs and Attorney General, was awarded a sum of shs 2,000,000/= in general damages for libel for an article published by the defendants alleging that he was a confused “third deputy Prime Minister.” The court observed that a plaintiff who puts himself in public life must expect public scrutiny of his conduct as a public figure. The established principle though is that the higher the Plaintiff’s social status, the greater is the likely injury to his feelings by a defamatory publication about him and therefore the greater is the amount of damages awardable. The amount is enhanced where the publication is extensive and where the defendant acted maliciously in the publication. In that case, it was found that the circulation of the Newspaper was limited to Kampala, Jinja and few main towns in Western Uganda.

[46] In comparative terms, the award made in this suit is at a scale of cases in which defamatory material was published nationwide. I have considered the gravity of the allegations. The respondent was technically accused of destroying evidence;

an attack upon her moral character, attributing to her disgraceful conduct, criminal conduct, dishonesty, untruthfulness, fraud, and lack of professionalism and integrity. I have also considered the range of impact in terms of the respondent's different aspects of life affected such as her social and professional life. The defamatory letter though was limited in circulation, to the addressees of the letters and the persons to whom copies were furnished. On account of all those factors, I have made an assessment of what would be adequate compensation to the respondent as general damages and find the sum of shs. 5,000,000/= to be a more reasonable estimate. I therefore find merit in the third ground of appeal.

Order :

[47] In the final result, the appeal succeeds in part. The amount awarded by the trial court as general damage is accordingly set aside. In its place the respondent is awarded the sum of shs. 5,000,000/= as general damages for libel. Since the appeal has succeeded in part, half of the costs of the appeal are awarded to the appellant.

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Stephen Mubiru  
Resident Judge, Gulu

Appearances:

For the appellant : Mr. Michael Okot.

For the respondent : Ms. Kunihiro Roselyn.