

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(CIVIL DIVISION)

CIVIL SUIT NO. 0301 OF 2014

HON. ABDU KATUNTU

=====

PLAINTIFF

VERSUS

1. THE EDITOR IN CHIEF OF THE REDPEPPER NEWSPAPER

2. THE PEPPER PUBLICATIONS LTD

=====

DEFENDANTS

BEFORE HON. MR. JUSTICE SSEKAANA MUSA

JUDGMENT

BRIEF FACTS

The facts of this case are that the Defendant published articles on Tuesday August 05, 2014, at Page 5, Thursday August 07, 2014, at Page 27 and Saturday August 09, 2014, at Page 1 entitled *“WEALTH OF PRO GAY MPS REVEALED-THE GROUP IS WORTH BILLIONS OF SHILLINGS,” “KADAGA, KATUNTU FRIENDSHIP ON EDGE-HOMOSEXUALITY IS THE MAIN CAUSE,” AND “UGANDA’S HOMO MPS, TYCOONS NAMED- MPS WHO ARE IN BED WITH HOMOS AND GAYS ARE TODAY NAMED,”* respectively in the Red Pepper Newspaper.

It is the Plaintiff's contention that the above articles depict that the Plaintiff;

- a. Attained a status of a wealthy person through his being pro-homosexuality.
- b. Is at the fore front of promoting Homosexuality and immorality.
- c. Is a Homosexual.

The Plaintiff claims and orders that:

- I. *General damages for libel.*
- II. *Aggravated, exemplary or punitive damages.*
- III. *Interest on (a) & (b) above at court rate from the date of filing this suit until payment in full.*
- IV. *An order directing the Defendant to publish an apology to the Plaintiff in all Newspapers of wide circulation in Uganda including the Defendants Newspapers.*
- V. *A permanent injunction restraining the Defendants from publishing false and malicious allegations of the Plaintiff being a homosexual and or Pro-Homosexuality.*
- VI. *Costs of litigation*
- VII. *Any other relief Court may deem fit.*

On the other hand the Defendants admitted having published the articles complained of although they deny that the publication is false or malicious or defamatory of the Plaintiff because the articles were misinterpreted.

The Plaintiff was represented by Counsel Najibu Mujuzi of Mujuzi & Co. Advocates whereas the Defendants were represented by Counsel Emmanuel Turuwomwe of Okua & Associates Advocates.

ISSUES FOR DETERMINATION

At the scheduling conference the following issues were raised:

1. *Whether the publications were defamatory of the Plaintiff?*
2. *Whether the Plaintiff is entitled to the remedies sought?*

The parties filed written submissions which were considered by this court.

ISSUE 1

Whether the publications were defamatory of the Plaintiff?

In his submissions, counsel for the Plaintiff stated that the Red Pepper Newspaper articles of Tuesday August 05, 2014, at Page 5, Thursday August 07, 2014, at Page 27 and Saturday August 09, 2014, at Page 1 entitled; ***"WEALTH OF PRO GAY MPS REVEALED-THE GROUP IS WORTH BILLIONS OF SHILLINGS," "KADAGA, KATUNTU FRIENDSHIP ON EDGE-HOMOSEXUALITY IS THE MAIN CAUSE," AND "UGANDA'S HOMO MPS, TYCOONS NAMED- MPS WHO ARE IN BED WITH HOMOS AND GAYS ARE TODAY NAMED,"*** respectively, all of which are in turn published on website of www.redpepper.co.ug were false and defamatory in nature because it lowered the status of the Plaintiff before right thinking members of society and portrayed him as an immoral person promoting unnatural activities which are against his

culture and all cultures of Uganda and his Islamic faith and thereby greatly injuring his hitherto good reputation.

Plaintiff's counsel also submitted that the Defendants jointly and severally, falsely and maliciously uttered and or published defamatory, libelous and demeaning statements and photographs portraying the Plaintiff before his constituents, clients, business associates in particular and the rightful thinking members of the society both local and international generally as a person at the fore front promoting homosexuality in Uganda, irresponsible and disrespectful to the African culture and heritage.

The Plaintiff was the witness at the trial to prove his case and he testified that the contents of the said publication depicted him as a person associated with the promotion of homosexuality, a vice that is abhorred by the Ugandan society generally and his Islamic religion.

Defendants' counsel in response submitted that the articles complained of were not false and that the interpretation which has been attributed to them is not true. Counsel submitted that the articles were written as a sequel, do not expressly state that the Plaintiff is a homosexual or that he has accumulated wealth from Homosexuality but rather that his wealth is from serving as a member of Parliament and operating a Law firm. Counsel further submitted that the articles do not at all state that homosexual activities are carried out at the Plaintiff's Law Firm and that the Plaintiff's reputation was injured by the articles complained of is an exaggeration.

Determination

A defamatory publication is the publication of statement about a person that tends to lower his reputation in the opinion of right thinking members of the community or to make them shun or avoid him. *See John Patrick Machira v Wangethi Mwangi and anor KLR 532*

And also Defamation is the act of harming the reputation of another by making a statement to a third person. The wrong of defamations consists in the publication of a false and defamatory statement concerning another person without lawful justification. *Black's Law Dictionary 9th Ed. pages 479 and 480.*

The test used to determine whether a statement is capable of giving defamatory meaning was discussed in the case of *A.K. Oils & Fats (U) Ltd vs Bidco Uganda Limited HCCS No. 715 of 2005* where Bamwine J (as he then was), relied on *Sim vs Stretch [1936] 2 ALL ER 123 A.C.*, where Lord Atkins held that the conventional phrase *"exposing the plaintiff to hatred, ridicule and contempt"* is *probably too narrow. The question is complicated by having to consider the person and class of persons whose reaction to the publication is the test of the wrongful character of the words used. He proposed in that case the test: "would the words tend to lower the plaintiff in the estimation of the right thinking members of society generally?"* This position has been adopted with approval in Uganda in *Honourable Justice Peter Onega vs John Jaramoji Oloya HCCS No. 114 of 2009.*

In the present case it is true that the Plaintiff is a public figure that is a senior advocate of the High Court of Uganda of twenty –six (26) years and a Member of Parliament of the Republic of Uganda. The defendant pleaded and submitted

that the articles were published during a period when the debate about the Anti-Homosexuality Law was a hot topic.

PW1 testified that reputation damage is how people rate you and he has suffered ridicule from right thinking members of society. DW1 testified in reply to the article of Saturday, August 09, 2014 at Page 1 that the topic was the hit of the moment when the law was being educated, passed and nullified so it was that these people who didn't want one section of the society to be the law that criminalized one section of the section that it didn't mean that they were in bed as where he is sleeping. The time and manner at which the articles were published only points to the fact that the Defendant's publication of the Plaintiff in the Newspaper was only intended to malice his reputation and integrity in the eyes of the public. It was thus the Plaintiff's contention that the information in the said articles were published by the Defendant maliciously to injure the Plaintiff's reputation.

Defence Counsel cited the case of **Francis Lukooya Mukeome and Anor versus The Editor in Chief of Bukedde News Paper HCCS No. 351 of 2007**. In that case Hon. Justice Yorokamu Bamwine as he then was stated that:

“Defamation is something more than insult or derogatory comment. It is not capable of exact definition. How far a person is affected by unkind words will depend not just on the words used, but also on the people who must then judge him..... Defamation is an injury to one's reputation and that reputation is what other people think about a man and not what man thinks about himself.”

I have carefully reviewed the evidence and the submissions in this matter and I agree with counsel for the Plaintiff that the publications directly lowered the status of the Plaintiff before right thinking members of society and portrayed him as a an immoral person promoting homosexuality, the fact that the articles were published at the time of the Anti- Homosexuality debate and the fact that the Plaintiff was always stated in the articles that had demeaning headlines an aspect that caused it to be malicious. The contents of the publications were by far not true as we have seen above and there was malice proved.

Issue 1 is resolved in the affirmative.

ISSUE 2

Whether the Plaintiff is entitled to the remedies sought?

The Plaintiff prayed for the following orders;

- I. *General damages for libel.*
- II. *Aggravated, exemplary or punitive damages.*
- III. *Interest on (a) & (b) above at court rate from the date of filing this suit until payment in full.*
- IV. *An order directing the Defendant to publish an apology to the Plaintiff in all Newspapers of wide circulation in Uganda including the Defendants Newspapers.*
- V. *A permanent injunction restraining the Defendants from publishing false and malicious allegations of the Plaintiff being a homosexual and or Pro-Homosexuality.*
- VI. *Costs of litigation*

VII. *Any other relief Court may deem fit.*

In the Defendants' submissions they invited this Honorable Court to seek guidance from the case of *Hon. Rebecca Kadaga vs Richard Tumusiime & 2 ors HCCS No. 56 of 2013* because the circumstances of the Plaintiffs are similar in their capacities as Members of Parliament.

However, Plaintiff's counsel cited the case of *Rtd Chief Justice Samuel William Wako Wambuzi versus Editor in Chief Red Pepper Publications Limited & anor HCCS No. 305 of 2015* focusing on the factors that were laid out to be considered in assessing damages.

Counsel for the Defendants further distinguished the two cases in regards to the award of the damages based on the rankings wherein in the latter, the Plaintiff was a Chief Justice, 4th in the hierarchy of power in Uganda and in the former she was a Member of Parliament which positions are not ranked.

DETERMINATION

I cannot agree with counsel for the Defendants on the distinction made while contrasting the different cases, simply because in the case of *Hon. Rebecca Kadaga vs Richard Tumusiime & 2 ors HCCS No. 56 of 2013*, Hon. Justice Nyanzi Yasin while awarding general damages stated that;

"In the same spirit, the Plaintiff being a third ranking citizen of this country an award of shs 80 million is appropriate as general damages to compensate her for the damage caused to her reputation"

In the case of John vs MGN Ltd (1997) Q.B 586, it was stated by Thomas Bingham MR in giving the judgment of the Court of Appeal that;

“The successful Plaintiff in a defamation action is entitled to recover, as general compensatory damages such sum as will compensate him for the wrong he has suffered. That sum must compensate him for the damage to his reputation, vindicate his good name and take account of the distress, hurt and humiliation which the defamatory publication has caused.”

GENERAL DAMAGES

I have reviewed the evidence adduced and the submissions of all parties and I find that the Plaintiff suffered damage on his reputation. I therefore grant general damages amounting to 70 million to compensate for the damage caused on the Plaintiff's reputation.

EXEMPLARY DAMAGES

And since the punitive damages are awarded to serve as a punishment to the defendant so that he does not repeat the same mistake, an award of 20 million is appropriate as exemplary damages to punish the defendants and discourage them from publishing any further defamatory statements about the Plaintiff.

INTEREST

I award interest at the rate of 6% on both general and punitive damages from the date of judgment to the date of payment in full.

APOLOGY

In regards to the order directing the Defendant to publish an apology to the Plaintiff in all Newspapers of wide circulation in Uganda including the

Defendants Newspapers, I hereby order that since the defamation in question was made in the Defendant's newspaper only, I find it just enough for the apology to be made in the same.

INJUNCTION

As held in the case of *Hon. Rebecca Kadaga vs Richard Tumusiime & 2 ors HCCS No. 56 of 2013*, this court also issues a permanent injunction restraining the defendants jointly or severally by themselves, their agents and assignees from publishing further defamatory statements about the Plaintiff being a homosexual and or Pro- Homosexuality.

COSTS

The Plaintiff is awarded the costs of the suit.

I so order.

SSEKAANA MUSA
JUDGE
20th December 2019