

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT GULU
CIVIL SUIT NO. 0010 OF 2007

1. DAVID OPWONYA
2. ANDREW AJURE :::::::::::::::::::::::::::::::::::::::PLAINTIFFS

VERSUS

1. ATTORNEY GENERAL
2. THE NEWS EDITOR MEGA F.M.–GULU::::::::::::::::::::ACCUSED

BEFORE: HON. JUSTICE REMMY K. KASULE

JUDGMENT

The plaintiffs sued both defendants jointly and severally to recover damages for defamation arising out of a broadcast edited by second defendant and aired on radio popularly known as “**Radio Mega**”, of which the second defendant is a News Editor.

The statement that was aired on 24.01.2004 and is the subject of the suit was headed

“ Gulu Deputy Town Clerk Faces suspension 24.01.2004- Arthur Okot”. It then stated: “Gulu Municipal Council has recommended that the Deputy Town Clerk, David Opwonya and three other officials be suspended for causing financial loss of over 23 million shillings to the council. The money accrued from hiring out a cess pool emptier truck. The committee set up to investigate the issue reported that the officials collected 630,000 shillings using unofficial receipts, spent 250,000 without authority pocketed over 3.5 million and failed to collect over 19 million from organizations that leased the truck.

The committee led by the chairman of works, Environment and Technical services, Edward Otim Kitara recommended that Opwonya, together with the Municipal cashier Andrew Ajure, driver Santo Okello, and mechanic Julius Okeny be suspended as further investigations are conducted. The committee also recommend that the matter be referred to the Public Accounts Committee”

Each of the defendants filed a written statement of defence denying liability.

At the hearing six issues were framed:

1. whether the second defendant broadcast the words complained of touching the plaintiffs.
2. whether words complained of were defamatory of the plaintiffs.
3. whether the defence of justification and fair comment are available to defendants.
4. whether the defendants are jointly and/or severally liable to the plaintiff.
5. whether the suit of the plaintiffs is time barred.
6. what are the remedies available.

The hearing of the case proceeded on 07.07.08 in absence of defendants and their respective legal counsel since, though aware of the hearing date, counsel for 1st Defendant having been present when the hearing date was fixed, and the second defendant having been duly served with the hearing date, with an affidavit of service filed on court record, they absented themselves, without any lawful excuse to court for the absence.

As to the first issue each of the plaintiffs testified having heard the news on Radio Mega on 24.01.2004 to the effect that each one of them had been interdicted for causing financial loss to, and embezzling Gulu Municipal Council funds, in connection to the services of the Municipal cess pool emptier.

The first plaintiff was at the material time employed as Deputy Town Clerk, and the second plaintiff as senior accounts Assistant/Cashier by Gulu Municipal Council.

On the same day of 24.01.2004, family members, relatives and friends of each of the plaintiffs inquired from them as to whether they had heard the said offending news item on Radio Mega.

The first plaintiff later obtained the news item print from Radio Mega, Exhibit P2. Each of the plaintiffs confirmed in testimony that the contents of exhibit P2 is what constituted the news item each one heard on radio Mega.

The above evidence of both plaintiffs was not in any way rebutted nor contradicted.

Court accepts the evidence of the plaintiffs and finds that the words complained of were edited and broad cast by second defendant and that the same touched on both plaintiffs.

The second issue is whether the words complained of were defamatory of the plaintiffs.

A defamatory statement is one that tends to lower the reputation of some one in the eyes or opinion of the right thinking members of society.

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. The court must look at the general impression that the words are likely to create in the minds of reasonable persons: see **EAST AFRICAN STANDARD VS GITAU (1970) EA 678**

See also **HCCS NO. 516/97 CHARLES SABITI AND OTHERS VS TEDDY SEEZI CHEEYE**, unreported.

The testimonies of the plaintiffs were to the effect that the words complained of portrayed them as thieves, criminals, untrustworthy and not fit for the public offices which they held. The words, according to plaintiffs, were defamatory by the very reason that they imputed upon them commission of Criminal offences of causing financial loss of shs. 23 million, stealing shs 3,500,000/= and embezzling shs 19,000,000/= .

The plaintiffs also testified that the alleged words were all false and were never discussed at the time or at all, in council of Gulu Municipality.

In absence of any defence evidence to prove otherwise, court accepts the evidence of both plaintiffs on the second issue. Court thus holds that the words complained of were defamatory of each of the plaintiffs.

The third issue is whether the defences of justification and fair comment are available to the defendants.

For the defence of justification and fair comment to succeed the words complained of must be devoid of falsehood and malice. This is because justification is a technical word for truth. See **JOHN NAGENDA VS EDITOR OF THE MONITOR AND ANOTHER: SCCA NO. 5/94.**

Both justification and fair comment, to succeed as a defence in defamation, the words complained of must first be true and must be comments which are fair on matters of public interest. The onus of proof is on the defendant to prove the defences: see **FIGUERADO VS EDITOR, SUNDAY NATION (1968) EA 50.**

There was no evidence from the defence to explain the source of the words complained of by the plaintiffs. The minutes of Gulu Municipal council meeting of 24.01.2004 were exhibited and do not mention anything about the words complained of. The plaintiffs were

never the subject of discussion by the council meeting. Court therefore holds that the defences of justification and fair comment are not available for the defence.

The fourth issue is whether the defendants are jointly and/or severally liable to the plaintiffs. Court received no evidence from the plaintiffs, and the first defendant pleaded and submitted in his written submissions that there was no evidence establishing liability of the first defendant in respect of the words complained of. This is notwithstanding the claim, unsupported by any evidence, in the written statement of defence of the second defendant.

On the other hand uncontroverted evidence, was adduced to the effect that the second defendant edited and allowed to be broadcasted the words, the plaintiffs complained of.

It is therefore the holding of this court that the first defendant is not liable to the plaintiffs, but the second defendant is.

The fifth issue is whether the suit of the plaintiffs is time barred.

Under section 3 of the Limitation Act, the Limitation period within which to bring this action against the second defendant is six years. On the evidence the cause of action took place on 24.01.2004 and the suit was filed on 28.03.2007. This is within the period of six years. The suit is therefore not time barred against the second defendant. It is unnecessary to consider the issue of limitation with respect to the first defendant since no liability has been established against him.

As to remedies available to the plaintiffs, which is the sixth issue, the law is that a person who is injured must be put in as good a condition or position by way of being awarded damages as that person was in before suffering the wrong.

The plaintiffs were injured in their respective reputations and standings in society by being described as criminals. Each one of them is entitled to general damages to atone the wrong done to him.

The first plaintiff aged 40 years, is a holder of a Bachelor's degree and a Masters degree in Public Administration and Management. He is married with children.

The second plaintiff also aged 40 years old, holds a diploma in business studies and is currently pursuing a professional course in accountancy. He too is a married man with children.

The evidence of plaintiffs is that Mega F.M radio covers Luo and English speaking public in Northern Uganda. No apology was offered to them when they demanded for the same. The news item was repeated several times over time.

In the case of Charles Sabiti and Others vs Cheeye (supra), the plaintiffs were employed as Chief Accountant, Deputy Chief Accountant and Chief Internal Auditor respectively. They were alleged to have accepted a bribe. Each one was awarded shs 6,000,000/- in 2001, which is seven years ago.

In this case, the status and responsibility in society of the first plaintiff is higher than that of the second defendant

Considering the above factors and the case authority referred to above, court awards shs 7,000,000/= to the first plaintiff, and shs 5,000,000/= to the second plaintiff as general damages.

Judgment is therefore entered for the plaintiffs against the second defendant in the sums of shs 7,000,000/= for the first plaintiff, and shs 5,000,000/= for the second defendant as general damages.

The amounts awarded are to carry interest at the court rate from the date of judgment till payment in full.

The plaintiffs suit is dismissed as against the first defendant.

The plaintiffs are awarded costs of the suit as against the second defendant.

The first defendant is awarded costs of the dismissed suit jointly and/or severally as against the plaintiffs.

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Remy K. Kasule

Judge

28th November, 2008