

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT ARUA

CIVIL SUIT NO. 0004 OF 2022

1. DR. RONALD MIRIA OCATRE:..... PLAINTIFF

VERSUS

1. EZATI TIMOTHY MALUMAH

2. MOSEKA MIKEILA:..... DEFENDANTS

BEFORE HON. JUSTICE COLLINS ACELLAM

JUDGEMENT

Background

- 15 The Plaintiff sued the Defendants jointly and severally for defamation, general and punitive damages, an order for defendants to make public apology and withdraw the defamatory words made against the plaintiff, that a permanent injunction be issued against the defendants restraining them from uttering and publishing further defamatory statements against the plaintiff, interest and costs of the suit.
- 20 The facts giving rise to the cause of action are that the Plaintiff is a distinguished and acclaimed Medical Doctor working with Ministry of Health Kampala. It is alleged that on or about the months of March -April, 2021, the Defendants without any colour of right and justification made and issued numerous spiteful, untrue and defamatory statements against the Plaintiff on the allegation that the Plaintiff wanted to hire the Second Defendant to kill the 1st Defendant. The
- 25 Plaintiff relates that the police investigated the Defendants' allegations and the same were found to be false, which subsequently led to the charging of the 1st Defendant with giving false information to a Public Officer. The Plaintiff contends that the allegations made by the Defendants were not true but only intended to ridicule and tarnish the otherwise good reputation of the Plaintiff.
- 30 The Defendants in their WSD deny the Plaintiffs allegation and relates that the 1st Defendant is a Civil Engineer working for Maracha District Local Government as a District Engineer whereas the Plaintiff worked at Maracha District Local Government as a Senior Health Educator and

5 acting District Health Officer from 2010 to 2013. The Defendant alleges that while the Plaintiff
was away on further studies, the district recruited a substantive officer for the office of DHO
Maracha district which meant that the plaintiff lost the office of the DHO in which he acted.

The Plaintiff blamed the 1st Defendant for the recruitment of a DHO which should have been
ring-fenced for him and for this reason, the Plaintiff teamed up with a one Eng. George Olege
10 who had been interdicted from the office of the District Engineer Maracha. The defendant
further asserts that the climax of the plaintiff's war against the 1st Defendant was in March 2021
when the Plaintiff and a one Abindua Juma convened a meeting with the 2nd Defendant at
Maracha Hospital Restaurant and in the said meeting, the Plaintiff asked the 2nd Defendant to
kill the 1st Defendant to wit the 2nd Defendant refused and instead reported the threat to the 1st
15 Defendant. The First Defendant then reported the death threats to the DISO & RDC Maracha
District who advised him to report the threats to the police which he did vide *GEF 001/2021*.
The statements of the Defendants were recorded and as investigations were on going, Lumago
Sam, the then OC CID, Maracha District without notice to the 1st Defendant charged the 1st
Defendant with Giving False Information to a Public Officer vide *MAR/CRB /214/2021* and
20 demanded, through the 1st Defendant's Advocate that the 1st Defendant admits having
committed the offence or police will make him lose his job. Reconciliation was encouraged by
court that handled the matter but to no avail until the matter was dismissed for Want of
Prosecution due to the non-attendance of the said Police Officers and their witnesses.

The defendants assert that reporting crime to police and making statement at the police in the
25 course of investigating a crime is a privileged occasion and the same doesn't amount to
defamation.

Representation

During the hearing, the Plaintiff was represented by Counsel Osungoi Sam from *M/S Kigenyi -
Opira & Co. Advocates* whereas the Defendants were represented by Counsel Bundu Richard
30 from *M/S Bundu & Co. Advocates*.

At the hearing, when the defence closed their case, court issued directives for both parties to file
in their submissions and rejoinders if any. The said directives were fully complied with,
appreciation goes to the two learned counsel for their diligence exhibited throughout the
hearing.

5 I wish to note that I have perused the file, all pleadings and their constitutive annextures were critically analysed, I have also considered submissions of both parties to come up with this Judgment.

Issues

The Agreed issues for determination are;

- 10 1. *Whether the Defendant published or made defamatory statements against the plaintiff?*
2. *Whether the statements made by the defendants were made in a privileged occasion?*
3. *What remedies are available to the parties?*

15 I shall proceed to examine and resolve the issues in the above order. However, for purposes of convenience, I shall resolve issues 1 & 2 concurrently.

Issue 1 & 2

20 It is trite law that the burden of proof in civil matters is on the plaintiff to prove his or her claim on the balance of probabilities as laid down under Section 101(1) of the Evidence Act, Cap. 6 which states that *whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he or she asserts must prove that those facts exist*. Subsection 2 also envisages that when a person is bound to prove the existence of any fact, it is said that the burden of proof lies on him/her.

Position of the Law on Defamation.

25 The right to freedom of expression, like most other rights is not absolute. There are recognized restrictions and exceptions to this right. One of which is to be found in the law of defamation. Thus, the enjoyment of the right to freedom of expression must take into consideration the right of other citizens to protect their reputation. The rationale of this law is to protect the good reputation of a person from being damaged by another.

30 The law recognizes in every person a right to have the estimation in which he or she stands in the opinion of others unaffected by false statements to his credit. Under all civilized jurisdictions, a person is entitled to his good name and to the esteem in which he or she is held by others.

Breach of this right gives rise to liability to the tort of defamation.

- 5 Defamation has been sufficiently defined in both the Court of Appeal cases and In *Winfield & Jolowicz on Tort* (13th edition, 1989) W.V.H Rogers (ed) Sweet & Maxwell, London, (International Student edition) 1990, atp.294, Defamation is defined to be,

10 *"The publication of a statement which reflects on a person's reputation and tends to lower him in the estimation of right-thinking members of society generally or tends to make them shun or avoid him."*

In order to establish an action in defamation, the claimant must prove three things;

- a) *That the words were defamatory.*
- b) *That they referred to themselves*
- c) *And that they were published by the defendant (s).*

- 15 Three things must be noted at this stage, firstly, defamation is an attack on reputation, secondly, defamation need not impute moral turpitude and thirdly, words must be interpreted in their context and the claimant is not allowed to select passages which are *prima facie* libellous if the passage taken as a whole is not defamatory.

- 20 The words must tend to give rise to the feelings mentioned in the definition. But on the part of whom? The answer is the reasonable man. The standard must be that of the ordinary citizen who is "neither unusually suspicious nor unusually naïve and [who] does not always interpret the meaning of words as would a lawyer for he is not inhibited by a knowledge of the rules of construction. He may thus more freely read an implication into a given form of words and, unfortunately as the law of defamation must consider, is especially prone to do so when it is derogatory". See *Winfield & Jolowicz on Tort* (13th edition, 1989) W.V.H Rogers (ed) Sweet & Maxwell, London, (International Student edition) 1990, at pg. 2950

- 25 The case of *Owusu-Domena v Amoah* [2015-2016] 1 SCGLR 790, laid out the principles of that tort at Common Law. At p.801-802 of that Judgment, Benin JSC restated the Common Law Principles on the definition and law of Defamation by quoting *Halsbury's Laws of England* (4th ed) (Reissue) Vol 28 page 7, para 10, Court defined the tort as follows:
- 30

"A defamatory statement is a statement which tends to lower a person in the estimation of right-thinking members of society generally or to cause him to be shunned or avoided or to expose him to hatred, contempt, or ridicule, or to convey an

5 *imputation on him disparaging or injurious to him in his office, profession, calling trade or business."*

Benin JSC then went on to explain that;

10 *"There are two steps involved in establishing that the publication was defamatory: first, whether the publication was capable of a defamatory meaning... next the defamation complained of may be established from the prevailing facts and/or circumstances. Proof of either would suffice for the plaintiff."*

From these, he teased the principles that in establishing that a publication was defamatory, the plaintiff must plead and lead evidence on the following matters in order to succeed:

- i. *there was publication by the Defendant.*
- 15 ii. *the publication concerned the Plaintiff.*
- iii. *the publication was capable of a defamatory meaning in its natural and ordinary sense.*
- iv. *alternatively, or in addition to (iii) above, that from the facts and/or circumstances surrounding the publication, it was defamatory of her, the Plaintiff and*
- v. *if the defendant sought the defence of qualified privilege or fair comment that the*
20 *defendant had been actuated by malice, and malice in such matters would be said to exist if there was spite or ill will on the part of the Defendant or if the court found indirect or improper motive against the Defendant in publishing the words complained of.*

• Typical examples are an attack upon the moral character of the plaintiff, attributing to him any
25 form of disgraceful conduct, such as crime, dishonesty, cruelty and so on.

In the instant case, PW1 told court on oath that on or about March to April 2021, the Defendants issued numerous malicious untrue and defamatory statement against him that he wanted to kill the 1st Defendant. That the 1st Defendant alleged that PW1 together with a one Juma Abindua met with the 2nd Defendant at Maracha Hospital Restaurant and asked her to
30 help kill the 1st Defendant and that the 1st Defendant without verifying the information informed several people that the Plaintiff wanted to kill him. The people included Butele Tom, Juma, DISO and RDC Maracha District and reported the matter to police.

In response, the 1st Defendant contends that he reported a crime of death threats against him to police as per *DE7 & DE8* which is dated 24th March 2021 & 8th April 2021 respectively. 1st

5 Defendant contends that the report is a privileged statement made by the defendants at police in the course of investigating the crime and doesn't amount to defamation and unless actuated by malice, reporting crime, recording statements at police and giving evidence in court as privileged occasions for which the defendants shouldn't have been sued because it's their constitutional duty to do so as per Article 17 of the Constitution in respect to duties of a citizen.

10 *On hearing from both sides, the point of contention is whether the statements recorded at Police amounted to malicious publication that tantamount to defamation or whether the same can be quantified as privileged occasion.*

The starting point is that an allegation of criminal conduct is nearly always prima facie defamatory. If written it is a libel, if spoken it is a slander. If the offence alleged is one that carries a prison sentence, then a slander is actionable *per se* (this means it is not necessary to prove damages; they are presumed, as in an action for libel). However, a Defendant will have a complete defence to a claim if he/she can show that the statement was made on an occasion covered by absolute privilege.

The doctrine of absolute privilege is a relatively straightforward one. If absolute privilege applies, then it makes no difference whether the statement was made maliciously. This means the protection of the privilege applies if such statements are made recklessly or even where the defendant knows the statement to be false. There are a limited number of situations where absolute privilege applies, for example, in Parliamentary Debates and the accurate reporting of Court Proceedings. Another well-established area in which the defence applies is in connection with Judicial Proceedings - giving evidence in court and within the context of proceedings. The logic for this immunity is that parties, witnesses, lawyers and judges should be able to litigate, advocate, adjudge and give evidence freely without fear of a flank attack and becoming involved in costly litigation. It is an extension of this type of absolute privilege which protects criminal complainants, and the policy reasons are much the same; it is important that individuals should not be deterred from making criminal complaints out of fear of being sued for libel if a conviction does not follow.

In the recent case of *WESTCOTT VS WESTCOTT [2008] CIV 818*, it was confirmed that this form of privilege applied to complaints made to the police. In *Westcott*, Richard Westcott (a Justice of the Peace) sued his daughter-in-law Sarah Westcott (a doctor) for making an allegation of assault against him to the police. The assault was alleged to have taken place against the

5 unhappy backdrop of the breakdown of her marriage to Edward Westcott (the Claimants son). In a witness statement made to the police Sarah stated that Richard lashed out at her and struck the young baby she was holding. In bringing proceedings for libel and slander against Sarah, Richard stated that his position as a Justice of the Peace and member of the Family Panel of the Family Proceedings Court had been seriously compromised. He also indicated that social
10 services had learnt of the allegation and without any investigation of the facts, appeared to regard him as someone from whom his grandchild should be protected.

The preliminary issue for the Court of Appeal to determine was whether Sarah's complaint to the police was protected by absolute privilege or, as Richard said, only qualified privilege. The defence of qualified privilege, unlike absolute privilege, is defeated by malice. Richard stated
15 that Sarah had acted maliciously as she had made the allegations knowing them to be false. The judgment contains a comprehensive review of the development of the principle of absolute privilege in the context of court proceedings and whether the principle extends to complaints to the police. Lord Justice Ward summarised the problem as follows: -

20 *"The justification for absolute immunity from suit will depend upon the necessity for the due administration of criminal justice that complaints of alleged criminal conduct should always be capable of being made to the police free from fear that the person accused will subsequently involve the complainant in costly litigation. There is a countervailing public interest in play which is that no-one should have his or her reputation traduced, certainly not without affording him or her a remedy to redress
25 the wrong. A balance has to be struck between these competing demands: is it necessary to clothe the occasion with absolute privilege in which event even the malicious complainant will escape being held to account, or is it enough to allow only the genuine complainant a defence? Put it another way: is it necessary to protect from vexatious litigation those persons making complaint of criminal activity even at the
30 cost of sometimes granting that impunity to malicious and untruthful informants? It is not an easy balance to strike. We must be slow to extend the ambit of immunity.*

In dismissing the appeal, Ward LJ concluded that the need for individuals to report crimes without fear of suit was overriding: -

5 *"The police cannot investigate a possible crime without the alleged criminal activity*
 coming to their notice. Making an oral complaint is the first step in that process of
 investigation. In order to have confidence that protection will be afforded, the
 potential complainant must know in advance of making an approach to the police that
10 *her complaint will be immune from a direct or a flank attack. There is no logic in*
 conferring immunity at the end of the process but not from the very beginning of the
 process.

 In my judgment, any inhibition on the freedom to complain will seriously erode the rigours of
the criminal justice system and will be contrary to the public interest. Therefore, immunity must
be given from the earliest moment that the criminal justice system becomes involved. It follows
15 that the occasion of the making of both the oral complaint and the subsequent written complaint
must be absolutely privileged.

 The question is what recourse is there for those who have been falsely accused of committing
criminal offences? Well, defamation is still an option if the allegations have been made to a third
party not involved in the criminal proceedings. However, often the allegation will have only
20 been made to the police. In exceptional cases there may be scope for a claim for malicious
prosecution. Such claims are normally made against the police, but they have succeeded against
complainants in circumstances where it has been held that the complainant has procured the
prosecution by deliberately manipulating the police/prosecuting authorities into taking a course
of action they would otherwise not have taken.

25 In addition to establishing that the defendant had procured the prosecution by effectively
initiating it, the claimant will need to show that there was an acquittal, the prosecution caused
damage, the defendant acted without reasonable and probable cause and that the defendant
acted maliciously. Such claims will be very fact sensitive, as demonstrated by two Court of Appeal
cases in 2009 (*Hunt Vs AB [2009] EWCA CIV 1092 & The Ministry of Justice vs Scott [2009]*
30 *EWCA CIV 121*

 In my view, the fabrication of criminal complaints and/or knowingly giving false evidence are of
course serious criminal offences in their own right. For various reasons, not least the criminal
burden of proof, it does not follow that an acquittal or a discontinued investigation/prosecution
automatically means that an allegation has been fabricated. However, if credible evidence exists

5 that an allegation has been fabricated then the police are duty-bound to investigate such a complaint and if there is no potential evidence to lead such a file, it's on their right to close such a file, this does not in any way render statement recording at police defamatory.

In all honesty, the step taken by the 1st Defendant to communicate to the authorities such as DISO, RDC was a mere pre-cautionary step taken genuinely out of fear, any reasonable person
10 would have done so without spite or malice.

The recordings of statements or communication made to Police are all extensions of the Criminal Justice System, I am not convinced that there was malice or spite on the allegation made by the 1st Defendant at police. He made a complaint with great concern for his life, investigations are alleged to have been carried out and since there was no viable evidence to
15 prosecute, the file was closed, this did not mean that the Defendants fabricated or with spite or untruthfulness imputed an offence against the plaintiff.

I note that the test for determining if a statement is defamatory in nature is an objective one, i.e it is based on the view of the "ordinary reasonable person" who is not unduly suspicious or avid for scandal. The judicial perspective of how the ordinary reasonable man views particular statements
20 or words essentially determines the defamatory nature or otherwise of the impugned state.

See *Dr. Wasswa Joseph Matovu Vs Prof. Venansius Baryamureeba & 4 Ors Corporation, Civil Suit No. 391 of 2012.*

In *Egbuna v Amalgamated Press of Nigeria Ltd.*¹⁶, the court made a clarification that the standard of determining a right-thinking member of the society is that of a normal reasonable
25 man not polluted by extra-conscientious or censorious characteristics.

Accordingly, and in light of the above, this ground therefore fails.

ISSUE 3

What remedies are available to the parties?

If a plaintiff can prove that a libel has been published of him without justification, his cause of
30 action is complete, and he need not prove that he has suffered any resulting actual damage or injury to his reputation for such damage is presumed. This is so because every person is entitled to his or her reputation and good name. It therefore follows that if one person destroys another

5 person's reputation without justification, the latter is entitled to be compensated. *See Inland Bank (Nig) Plc v F & S Co. Ltd (2010) 15 NWLR (pt 1216) p. 395*

The principle of law applicable is that: - *"The successful plaintiff in a defamation action is entitled to receive, as general compensation damages, such sum as will compensate him for the wrong he has suffered. That sum must compensate 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."* See *JOHN VS MGM LTD [1996] ALLER 35 at 47,*

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However, having confirmed issued 1&2 to be in the negative and the plaintiff having not succeeded in his claim, the suit is hereby dismissed with costs to the Defendants.

15 I SO ORDER.

Delieverd at Arua this 10th day of Feb 2024


COLLINS ACELLAM

20 JUDGE