

UGANDA / JUDGMENT

Dr. Ekure v Odaet (Civil Suit No. 41 of 2019) [2023] UGHC 32 (17 January 2023)

[2023] UGHC 32

COURT

High Court of Uganda

BEFORE

Adonyo, J

CASE / FILE NUMBER

Civil Suit No. 41 of 2019

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The Republic of Uganda In the High Court of Uganda Holden at Soroti Civil Suit No.41 of 2019

..... Dr. Ekure John

Versus

<table>

Dinah Odaet

Before: Hon. Justice Dr Henry Peter Adonyo

Judgment:

1. Background:

Dr Ekure John (hereinafter referred to as "the Plaintiff") feeling defamed, filed this suit against four defendants, that is the New Vision Printing and Publishing Co. Ltd, the Editor Etop Newspaper, Tolbert Edait and Dinah Odaet, who are the \$1^{st}\$, \$2^{nd}\$, \$3^{rd}\$, and \$4^{th}\$ respectively.

The Plaintiff's claim against the 1st, 2nd and 3rd defendants was settled by a Consent Judgment entered on the record on the 16th day of September, 2020.

No settlement was achieved with the 4th defendant's and so the suit proceeded against the 4th defendant.

The Plaintiff claim against the 4th defendant is she is liable in defamation for having caused to be published statements about the plaintiff in the Etop Newspaper dated 18th - 24th July, 2019 and 1st - 7th August, 2019.

As a result of the alleged defamation, the plaintiff seeks for orders of this court for;

a) Payment of general damages for defamation and libel,

- b) Damages for falsehoods,
- c) Damages for mental torture, distress, embarrassment and loss of trust caused.
- d) Punitive damages for writing and widely distributing defamatory
- e) Aggravated damages for publication/distribution of the defamatory article widely,
- f) Interest on (a), (b), (c), and (d) at the rate of \$25\%\$ per annum from the date when the cause of action arose,
- g) An injunction restraining the defendant whether by herself, her servants, or agents or otherwise from further publishing or causing to be published the said or similar words defamatory of the plaintiff or any other words,
- h) Costs of this suit.

The plaintiff also prayed for special damages but this was brought up in his submissions, yet these were never pleaded.

The 4th defendant denied the plaintiffs' case and put him to strict proof thereof of the said allegations.

2. <u>Representation:</u>

The Plaintiff was represented by M/s Omongole and Co. Advocates and the 4th Defendant was represented first by BKA Advocates and then later by Alvarez Advocates.

3. Witnesses:

The plaintiff in proof of his case led evidence of five witnesses and these are Dr Ekure John, the plaintiff (PW1), Mr. Okiria Martin Obore, (PW2), Olinga Charles Dickens, (PW3), Oscar Obore Patrick, (PW4), and Mr. Ojepa Denis, \$(PW₅).\$

The defendant led the evidence of one witness, Dinah Odaet, the 4th defendant (DW1).

4. Issues:

The following issues were framed in the joint scheduling memorandum dated 10th April, 2021 and adopted by court for resolution of the dispute. These are;

- a. Whether the defendant uttered defamatory words and caused the publication of the defamatory articles against the plaintiff?
- b. What remedies are available to the parties?
- 5. Plaintiff's case:

The plaintiff contends that following a written and widely circulated letter by the 4th defendant, the New Vision Printing and Publishing Co. Ltd, the Editor Etop Newspaper and Tolbert Edait printed and published or caused to be printed and published widely in the Ateso language in the Etop newspapers dated 18th-24th July, 2019 and 1st -7th August, 2019, and all over Uganda, the articles "Ebiror aseun ebishop" and "Etomony aasi Ilristayon Dr Ekure", details of which were defamatory of him.

The plaintiff further avers that the 4th defendant maliciously caused the said false information to be published by uttering those false statements with the intention to ridicule and damage his reputation. The plaintiff asserts that the published articles refer and were understood to refer to him.

The plaintiff, additionally, contends that the particulars of the words are;

- a. That the plaintiff is corrupt ad bribed voters for the Bishop.
- b. That the plaintiff is biased towards selecting is relative as Bishop and unadvisable.
- c. That the plaintiff is of very poor moral upbringing and a menace to the public.
- d. That the plaintiff is out of control and is not in good terms with the elders of the Anglican Church, the saved and some elders in Kumi.
- e. That the plaintiff is disrespectful to the elders of the Anglican Church and the Christian community at large.

The plaintiff avers that in their natural and ordinary meaning, the said words meant and were understood to mean that;

- a. The plaintiff is disrespectful.
- b. The plaintiff is a person not to be trusted.
- c. The plaintiff is not morally upright.
- d. The plaintiff is not in good terms with the elders of the Anglican Church, the saved and the entire Christian community.
- e. The Plaintiff's manners are unbearable.

The plaintiff contends that in consequence, his reputation both personal and as an exemplary and well known orthopedist in Uganda and the entire world was seriously damaged, and as such he has suffered considerable distress and embarrassment.

The plaintiff further avers that in the alternative, the said words were understood by various persons to bear innuendos which additional meanings, which were false and untrue about him and these are;

- a. That the plaintiff is an untrustworthy person both in his private and social life.
- b. That the plaintiff is corrupt and lacks integrity.
- c. That the plaintiff is unreliable and of bad influence to the society.
- d. That the plaintiff has frustrated the entire process of the elders of the

Anglican Church to elect new leaders.

The plaintiff contends that on 29th July, 2019, the house of Bishops held a meeting where in the 4th defendant herself admitted to having spread the false propaganda with the House of Bishops subsequently clearing his name as having not influenced the nomination of a new Bishop for Kumi Diocese as alleged by the defendant.

The plaintiff contends that the defamatory words in the articles complained of were calculated to disparage him in his positions as a highly respected and trusted orthopedic doctor in Uganda, an upright member of society and the entire world.

Accordingly, the plaintiff urged this court to find that the 4th defendant caused the defamatory and libelous publications for which she should be held liable.

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6. Defendant's case:

The 4th defendant in a written statement of defence to the Plaintiff's claim denied all his allegations, averring and contending that being one of the members of the Electoral College of Kumi Diocese, she was dissatisfied with the process leading to the nomination of two candidates for the office of the 2nd Bishop of Kumi Diocese and as such she invoked the Church of Uganda Provincial Canons and lodged a Petition dated 14th June, 2019, addressed to the Archbishop of the Church of Uganda ; His Grace The Most Rev. Stanley Ntagali bringing to his attention her grievances.

The 4th defendant contended that the said complaint was based on a factual representation of the events as perceived by her and that there was nothing defamatory of the plaintiff in the said complaint.

The 4th defendant denies having caused the publication of the alleged defamatory words published by the 1st, 2nd and 3rd defendant and contended that her complaint or minority report was never circulated by her to *Etop* newspaper or any other member of the public.

Accordingly, the 4th defendant asked this court to dismiss the plaintiff's case against her with costs.

The plaintiff in rejoinder reiterated the contention that he had a cause of action against the 4th defendant and that the defamatory articles published in the *Etop* newspaper amounted to material falsehoods and that the letter/petition written by the defendant and addressed to His Grace The Most Rev Stanley Ntagali was defamatory in nature and that the false publications in \$Etop\$ Newspaper were sourced from the 4th defendant's letter.

7. Decision of Court:

This being a civil suit, the burden of proof lies with the plaintiff as per sections 101 and 102 of the Evidence Act.

It is also trite law that the standard of proof in civil cases is on a balance of probabilities as was pointed out in *Nsubuga vs. Kawuma [1978] HCB* 307. Also in the case of *Erumiya Ebyetu v. Gusberito [1985] HCB 64*, it was held that;

"where the plaintiff leaves his case in equilibrium the court is not entitled to incline the balance in his favour. The plaintiff must prove his case against the defendant to the required standard."

The parties filed submissions which have been accordingly been considered together with the pleadings, evidence adduced through witnesses, the cited cases and filed documents in the resolution of this suit.

a). Issue 1:

Whether the defendant uttered defamatory words and caused the publication of the defamatory articles against the plaintiff?

Dr Ekure John (PW1), the plaintiff in his evidence told court that he was an Orthopedic Surgeon with experience of over 17 years practicing with Kumi Orthopedic Centre. He further stated that he served a wide range of clients from various places from Uganda and beyond and that he had a business relationship with many international organizations.

He also confirmed to court the various positions he has held in the Anglican Church including his appointment to the Nomination Committee of Kumi Diocese which he said executed its task as mandated by the appointing authority and sent two names of nominees to the House of Bishops of the Church of Uganda for their consideration for appointment as the 2nd Bishop of Kumi Diocese.

Dr Ekure contended that the \$Etop\$ Newspaper published articles that he considered defamatory based on a petition to the Archbishop of the Church of Uganda authored by the 4th defendant. He further alleged that the defendant caused the publication of the defamatory article in the Etop Newspaper.

PW4, an information Technology Officer in support of Dr Ekure's allegation told court that he received an audio recording from the plaintiff's phone and caused its transcription. PW3, led evidence to prove that the proceedings in the Nomination Committee and the petition that arose therefrom were authored by the defendant.

He confirmed that the plaintiff was a person of high repute having served in various positions and that the story run by the Etop newspaper was

defamatory. PW2 and PW5 also led evidence to show that the plaintiff is a person of good repute and that the petition authored by the 4th defendant and published by the *Etop* Newspaper was injurious to his reputation.

The defendant led evidence to refute the Plaintiff's claim. She confirmed that she wrote the impugned petition to the Archbishop in keeping with Rule 3.7.5 (b) of the Church of Uganda Provincial Canons and that she never published or caused to be published the impugned defamatory statements in the \$Etop\$ Newspaper.

Counsel for the plaintiff submitted that the Plaintiff had a cause of action against the defendant. He submitted that a cause of action in libel is established when the words referred to the plaintiff are defamatory of them and have been published.

Counsel further submitted that the stories published in the *Etop* Newspaper were based on the petition authored by the Defendant which the Etop Newspaper used to develop the story that slandered the Plaintiff.

Counsel for the plaintiff further stated that the allegations against the plaintiff were false as evidenced by the report of the Committee appointed by the Archbishop to verify the complaints which found those allegations unfounded for it was the finding of the said committee that the Plaintiff did not bribe or intimidate any member of the committee as alleged in the 4th Defendant's petition to the Archbishop.

In support of his submissions, counsel for the plaintiff's cited a number of authorities which I have considered herein.

The Defendant's counsel filed a reply to the submissions of the Plaintiff. He admitted that the impugned letter was authored by the 4th defendant in the exercise of her right under Rule 3.7.5 of the Church of Uganda Provincial Canons.

Counsel further argued that the 4th defendant did not cause the publication of the complaint and neither did she transmit the same to the Etop Newspaper for it to publish as the 4th defendant's complaint was addressed to the Archbishop of the Church of Uganda and not to the public and that she was not the one responsible for the leaking of the said petition to the public.

In making these assertions counsel relied on a number of authorities which have equally been considered in this judgement.

In this suit, the case of the plaintiff is that the 4th defendant by her petition to the Archbishop of the Church of Uganda which was a complaint, caused the publication by Etop newspaper of defamatory articles against him and as such she should be found liable by this Honourable court.

The case of the plaintiff is thus anchored on defamatory articles published by the Etop newspaper allegedly supplied by the 4th defendant.

Black's Law Dictionary 11th Edition 2019 defines defamation as malicious and groundless harm to the reputation or good name of another by the making of a false statement to a third party.

In Winfield and Jolowicz on Tort by Rogers, W. V. H. William Vaughan Horton, 2006, London (Sweet & Maxwell) at page 513, defamation is defined as the publication of a statement which reflects on a person's reputation and tends to lower him in the estimation of rightthinking members of society generally or tends to make them shun or avoid him

Counsel for the plaintiff cited the case of **Esther Kisaakye vs Sarah* Kadama HCCS No. 194 of 2013* in which J Stephen Musota, J. (As he then was) held in that;

"Every man or woman is entitled to have his or her reputation preserved and inviolate."

A man's or woman's reputation is his or her property. Depending upon perception of that man or woman, reputation is more valuable to him or her than any other property.

Reputation is the state of being held in high esteem and honor or the* general estimation that the public has for a person. Reputation depends on opinion, and opinion is the main basis of communication of thoughts and information amongst humans. In simpler words, reputation is nothing but enjoyment of good opinion on the part of others. So, the right to have reputation involves the right to have *reputation inviolate or intact.

Defamation can be in many forms. It can be in words written or spoken or it can be through pictures or cartoons among others."

In the above case, Stephen Musota, J. further observed that;

"For defamation, the plaintiff must prove the following elements:

- a. The defendant made a defamatory statement about the plaintiff to another.
- b. The statement was injurious to the plaintiff's reputation in the eyes of the right-thinking members of society.
- c. The statement was false.
- d. If the plaintiff is a public figure, or was involved in some newsworthy event or some other event that engaged the public interest, then the defendant must have made the false statement intentionally or with reckless disregard of the plaintiff's rights.
- e. There are no applicable privileges or defenses."

I wholly associate myself with the above holding and proceed to point that the same is indeed a restatement and an expansion of the meaning of defamation as found in *Winfield and Jolowicz on Tort* by Rogers, W. V. H. (William Vaughan Horton), 2006, London: Sweet & Maxwell at page 515 which in itself sets out what a plaintiff in a defamation case must prove for a case of defamation.

According to **Winfield and Jolowicz on Tort** (cited above) a defamatory statement is defined as "the publication of words which tend to bring a person into "hatred, contempt or ridicule".

The published words must tend to lower the claimant image in the estimation of right-thinking members of society generally or must amount to a false statement about that person to his discredit and if the words tend to cause the claimant to be shunned or avoided, then they are defamatory.

Accordingly, for a case anchored in defamatory words to succeed, the following elements must be proved by a plaintiff and they are that;

- a. The statement must be defamatory.
- b. It must refer to the plaintiff, i.e. identify him.
- c. It must be published, i.e. communicated to at least one person other than the claimant.

The court then determines whether the words complained of are capable of a defamatory meaning by examining the words themselves.

The impugned published articles (PEX 3, PEX 4, PEX 5, and the English translation PEX 6) complained of are contained in the plaint.

They are newspaper articles published by the Etop newspaper, which has since settled its liability in this suit with the plaintiff by virtue of the consent judgment dated 16th September, 2020, exhibited as PEX14.

The question which now remains for determination is in regard to the liability of the \$4^{th}\$ defendant, if any to the plaintiff

The plaintiff's claim against the 4th defendant as pleaded arises from the impugned articles (PEX 3, PEX 4, PEX 5, and the English translation PEX 6) whose contents were allegedly sourced from a petition, letter, or complaint termed The Minority Report on the Flaws in the Recently Concluded Electoral College for the Election of the 2nd Bishop of the Diocese of Kumi, dated 14th June, 2019) exhibited as DEX1 and addressed to the Most Rev Stanley Ntagali, Archbishop, Church of Uganda.

Those documents are reproduced below.

a. PEX 3:

At page No. 3 of Etop Newspaper of \$18\$ th – \$24\$ th July 2019, the Newspaper read as follows;

"EBIROR ASEUN EBISHOP"

"TESO Aseo naka ebishop loitetet kanu aanyanaret nako Kumi kanu aburokin ebishop lo edodor ayengun Thomas Edison Irigei, kesi epurujaunos.

Ebishop loitetet nesi ti ebeit aisiboikin eroko ebaga kedolo,konye keda epurujai lo adakun, edudungit ejautene loko Kumi eisub kiaiapereaseo.

Adau Etop aisisiaun ebe aponi kitolosai aseo kanu aseun ikiroria iyare luti abeit aijukar Kampala tetere etogo loka bishops eseunete eraasi 5.6.2019, konye alomu esagiligo toma.

Kotoma aseak 15 luajaikina Kumi, aponi ikiroria luka imakio iyarei ipelunos imoriaritos Rev. Sam Omoding lo sek apolokit adekis nako Fredcarr Ngora ka Rev. Semu Ongangu lo kwape kwana erai engadan loka aanyanaret.

Itunga lu engurianete lu adautu aitodol aimony kec toma oyapeesi loka Archbishop Stanley Ntagali, kesi edelorit otorikuristayon icie ebe imakio luaponi koseunai kesi emodokok erekod kec ido komam ibecokina aingarenikin.

Emuaritos itunga luilapatos aseo ngin ekimat Omoding kanu ebe kolo aipikor aingarenikin adekis nako Ngora (Fredcarr) kosdi ekimat Ongangu kanu ebe aswam na mam ecai kotoma aanyanaret.

"Aponi kidotorai ngol kotoma aingarenikit adekis kanu akiro nu akauntabiliti nu mam acaete kuju kangun ecie kere,aso emameotor kaapirianut," asioma ebalwa kanu ikamunitos ekimat Omoding. "Kanu eseuna v loiyaret nesi imokocatai ngol da akiro kanu aingic naka eitosoma ilokaisiririgin lukaaanyanaret..." asioma ebaluwa kanu ekimat Ongangu.

Icogearit ebaluwa da ngol emuron John Ekure kanu ebe aitukurian acakak, aitwasam isirigin agwelegwela aseak naarai opajaneke ngesi ekimat Omoding lo ebe ekoto ti Ekure koseunai.

Konye Ekure ngesi abu kimua ngun kere kobala ebe itunga luengurianete kesi eraasi luitwasamai ajokit aigurokin aaanyanaret, konye ebe elaete akaninke.

"Ai ejai ajenanut na itodunit ebe etwasamao iisirigin?Lu kangai ingulenguranete?

Arai egiritosalimorikiroraicek, apoloukeebeeraasiitungalu mam inerasi nu abeitidoeraasiluitwasamaiajokit" abala Dr. Ekure. Karaida ecamunit ebe erai ekimat Omoding ocenike, konye abu ko gir ebe atamit ngesi aisupakin ocenike abootin kanu eyapeesi kangol. "Mam eong ajai okanisa amoote aswam naarai ajai eong keda aswam ido adumanak bobo eong itunga icie da aswanisio, konye ajeni eong ebe erai itunga idis luko Ngora kesi ngul itwasamete yesi luka Etop," abala Dr. Ekure.

Abu da kiyatak ebe adaun adukun ekomiiti lo ebuni angic ngun elimitai ido etacaunit ebe kotoma apak na isabiitin iuni kodaunitete adumun abeitonut kanu akiro kangun.

"Nu apotu kotwaka kotoma apak kangin nu alimokin eong ijo karai da ebe it akiro ngun araut nuka aiyeyea kesi ebe itunga 15 kesi araasi aseak konye mam eong alimokini ijo nuka ikiroria luka imakio lu aponi koseunai," abala Dr. Ekure.

Eyatakit ebe akiro acie kesi epedori Etop adumun kane ayaiton nukaaseo (chancellor) Emmanuel Ilukor lo abu ipiko isio akodakin kede.

Konye kisisiau ebe adau Ntagali bobo aicorakin ebishop lo eyenguan loko Bukedi Dr. Nicodemus Okile Englwalas nepepe ka ipaup ke luko Lango ka Bugisu airereor nu angurian kangun tetere itikokino nuka ikiroria luka imakio iuni lu aponi koseunai eras 5.6.2019.

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Kingita Enos Osire lo erai apolon lo ikristayon kotoma aananaret kere nu ikamunitos epurujai ngol, abala ebe aponi kigaliorai ngesi awai kotoma ainapeta kangun kotupitete ebe einer kotoma asuban nu aitwar Ntagali ko Ngora.

"Elokonyi eong ido karaida katam eong ajenun nu ikamunitos ase, amamei yen ilimokini ido ngun kere elomunitos kanu ebe einer lo aronon lo abu eong ketolom apak naitwaria papa Ntagali" abala Osire. Eyatakit ebe itoronitai ngesi kanu ebe alimor ekiror akimat adiope ibore ebe abu kosub ekampein.

Ikopakitai ebaluwa ediope neejai ebishop lo eyengunan ko Soroti Dr. Charles Obaikol Ebitu kanu ikamunitos epurujai loka ase kangin. Kitam bian adolokin Obaikol ko simu mam enaba ke alomari karaida apotu atamatamitos atenak nu ipu."

b. PEX 4:

At page No. 3 of Etop newspaper of \$1^{\text{st}}\$ – \$7^{\text{th}}\$ August 2019, it reads as follows;

"Asur Ngora Ekure ...app3."

"ETOMONYAASI IKRISTAYON DR. EKURE"

"Emuron lo akojo lo ejenera ko Teso. Dr. Ekure, lo ilopatai kanu ebe aipucupuc aseuno naka ebishop loitetet loko Kumi, ngesi emarak epurujai ngol ne e jaasi i cie kotoma eyuunak luko okanisa loka itulikin, ipetekotin ka imakio icie luko Kumi.

Ekure lo erai apolon eicolong loka ainapeta nu aisiboikin ebishop lo ebuni aburokin Bp Thomas Irigei, ngesi Naesabiiti eraasi 28.7.2019, abu kolimok ikristayon luko St. John kapir ebe ipwokitai ekiror ke tai. "Idau isio ajenun itunga luapotu kiwadikata ibaluwan aremor kampala kosodete ekaulo aijukakin ikopis icie ne jai Etop. Kisisiau da ebe icie ka kesi eraasi imakio lupu eroko isomaete kojaasi lu eyengunak da lu apeteta acie kwape nati CD, CFM, PRM, PAG, itulikan ka icie," abala Ekure.

Ekure lo aupasi kede aberu ke, ekimat Yobu Osuret, apolon esomero lo Bp Ilukor S. S, David Ojepa kede akimat, Margret Asekenye kesi aponitos ebe aitacaikini kristayon nu aseunio naka ebishop.

Dr. Ekure, lo apotu aingiseta nuka ikristayon kijaikisi aimony akio ngesi abu kilep ebe ajai ekimat aijaikin Archbishop, Stanley Ntagali sh. 1m kanuebeaseunio.

Karaida mam abu kolim ekiror ekimat kangol, konye Ekure ngesi abu iyatak ebe kwaadauna ngesi ajenun ikiroria luka itunga lu ebe emodimodata ekiror ke ebe ebuni ayangar kesi okooti.

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"Do ber itunga 15 luokomiti lo irerei ikiroria imakio aibo eponitotor kesi? Ido ingai bo asekuni," engisi Charles Okello apolon ikristayon omaa.

Ajaasi bobo aingiseta nu ikamunitos irekods luka imakio luaponi koseunai lu irekods luka imakio lu aponi koseunai lu itoronitai kanu eitolitol eloka apiyai ka aswam na mokoc na epudasi itunga ajenun. "Ajai aberu naadote na inherit ebaibuli naabu Yesu Kolimoke be yen mam ediakaritor kibir aberu ngin?Ikote akiro nepenen," abala Ekure etami abongokin.

Elipak lu adakitos apapula naka Etop okanisa kesi ecogiaritos Ekure kanu aitwasam amumu kotoma ainapet nuka ekanisa.

Karaida abu ngesi olimonok ikuratayon iboro luipudai kanu kangul lu e ponio aseun kwape ebishop konye mam itunga apodokitos kobalasi ebe ikirorai lu alomunitos kotoma Etop kesi mam erekod kec ajok kanu aseunio kwape ebishop.

"mam eong abuni einer nu ipu kane naarai ejai Edait lo Etop lo moi bobo ebuni aididimar eong oredio," abala Ekure lo etacaunit ebe nu ewadikatai Etop ene enguiki aseunio naka ebishop kesi ebe erasi aliokon. "Adaunitai aitutub ti aisiboikin ebishop loitetet eraasi 24.12.2019, konye erai ibiror da eputokinos kede Soroti konye angetakinet ke ebuni Kumi adumun ebishop," elairai Ekure."

c. <u>PEX 5(the English translation of PEX3)</u>

"ELECTION OF THE BISHOP HAS FAILED"

"The election of the new bishop for the Kumi Diocese to replace Thomas Edison Irigei who is about to retire have got muddled up.

The new bishop was scheduled to be installed before Christmas, but with the confusion that is existing, Kumi is resembling Soroti where the elections had to be postponed.

Etop has learned that elections took place to choose two names to be sent to Kampala so that the house of bishops sitting on 5.6.2019 would elect the bishop, but confusion has set in.

Among the 15 voters in Kumi, the names of the reverends included Rev Sam Omoding who was in charge of Fredacarr Hospital in Ngora and Rev Semu Ongangu who is the Diocesan treasurer.

People who are complaining have already sent their complaint to the Archbishop Stanley Ntagali, where some elders are claiming that the people elected had poor records and were not fit to lead.

The ones who have rejected that election despise Rev Omoding who has failed to lead the Fredacarr Hospital Ngora and that Rev Ongangu had been dubious in the diocese.

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"That one was removed from the leadership of the hospital for poor accountability and because of that has not been allowed to lead any other church, so, he has no experience," the letter read concerning Rev Omoding.

"For the second elected, he too has a very bad record about the diocesan finances..." the letter read about Rev Ongangu.

This letter also accuses Dr. Ekure because of intimidating voters, using money for buying voters because his relative is Rev. Omoding whom he wants to be elected."

But Ekure denies that saying that the people who are complaining are the work of the devil for confusing the diocese, but that his hands are clean.

"Where is the evidence that I used money? Who are those complaining? If they have refused to say out their names, that means that they are not

saying the truth and are being used by the devil, " said Ekure. Even though he admitted that Rev Omoding was his nephew, he denied trying to canvass votes for him for that office.

"I am not in the church looking for employment because I have my job and I have also employed some people, but I know it is a few people in Ngora who are using you of Etop," Dr. Ekure said.

He also added that the committee had been set up to investigate the allegations and that in about three weeks they will have found the truth.

"What happened that time even that information was meant to be secret is that 15 people were voters but I am not going to give you the names of the elected Reverends," Dr Ekure said.

He added that Etop can get more information from the Chancellor Emmanuel Ilukor the head of the elections, but we failed to connect to him.

But we have learnt that Ntagali has instructed the retired bishop of Bukedi Dr Nicodemus Okile Engwalasi together with his colleagues from Lango and Bugisu to look into the grievances so as to stop the names of the three reverends who had been elected on 5.6.2019.

When Enos Osire the leader of Christians in the diocese about the confusion, he said that he was sidelined at the time of arrangements following the speech at the farewell for Ntagali from Ngora.

"I have been sidelined even if I try to ask about elections, no one will give you information, and all that because I spoke badly at the time of saying farewell to Ntagali," Osire said.

He is blamed for mentioning the name of a female reverend which they took for him campaigning for her.

One letter is copied to the Soroti Diocese retired Bishop Dr. Charles Obaikol Ebitu because of the confusion in that election.

We tried reaching Obaikol on his phone several times but in vain"

d. <u>PEX 6 English Translation of PEX5:</u>

At page 3 of Etop Newspaper dated \$1^{st}\$ – \$7^{th}\$ August 2019, it read as follows; "Ngora has attached Ekure P.3"

"CHRISTIANS HAVE MADE DR. EKURE SHED TEARS"

"A Well-known physiotherapist in Teso, Dr. John Ekure, who is accused of spoiling the election of a bishop in Kumi, has attributed that confusion to some catholic Christians, the saved and some elders in Kumi.

Ekure who was the chairperson of the preparatory committee for the installation of the new bishop to replace Bp Thomas Irigei, on Sunday 28.7.2019 told Christians in St John Kapiri that his name is been soiled for nothing.

"We have known the persons who wrote letters to Kampala and then gave copies to eth Etop newspaper. We have learned that some of them are serving reverends and some have retired like CD, CFM, PRM, PAG Catholics and others," Ekure said.

Ekure was accompanied by his wife, Rev Yobu Osuret, the head teacher Bp Ilukor S. S., David Ojepa and a female reverend, Margret Asekenye had come to explain to the Christians about the election of the bishop.

Dr. Ekure, whom the questions from the Christians made him shed tears revealed that there is one elder who is trying to bribe Archbishop Stanley Ntagali with shs 1m to be elected as next bishop.

"Even if he did not mention the name of the reverend, Ekure added that he has known all the names of the people who are spoiling his name and he will sue them in court.

"What about the 15 members of the Committee who screened the names of the reverends, where do they come from and who elected them?" Charles Okello asked the head of the Christians Omaa.

There were also questions about the records of the reverends who had been elected who had been recommended because of their poor financial management which people wanted to know.

"There was an adulterous woman in the bible whom Jesus told people that whoever had not sinned should stone the woman? That is how things are," said Ekure trying to answer.

The congregation who was carrying the Etop Newspaper in the church were on Ekure exploiting the animosity already created in the church.

Even if he told the Christians the items that were required of those to be elected as bishop but the people were not bothered saying that the names in the Etop were not of a good record and were unfit to be elected as bishop.

"I am not going to say much here because there is an editor of Etop who wants to drag me to the radio," Ekure said as he explained that what was written in Etop had jeopardized the election of the new bishop since there are lies.

"it had been scheduled that the installation of the new bishop was on 24.12.2019 but that has failed and it will resemble the Soroti affairs but in the end Kumi will get a bishop," Ekure swore

e. \$DEX1\$:

The perusal of the DEX1 shows that it was authored by the ⁴defendant and it refers to the plaintiff in one paragraph, the excerpt of which is;

"One member of the Electoral College Dr. John Ekure intimidated other electoral college members by his eloquence in expression and could not allow others to express their views freely.

This made one member for lack of opportunity to express, to cry") Although the Bishop had advised that the chairman of the organizing committee of the forth coming consecration of the Bishop should not participate in the Electoral College, his advice was ignored."

(Emphasis mine)

When the impugned petition (DEX1) and PEX9, which highlights the report of a Select House of Bishop's team assigned to visit Kumi Diocese to probe allegations of influence peddling in Bishop's nominations dated 21 Aug 2019 are compared, exhibit PEX9 answers the said petition (DEX1) on many other fronts other than only to the plaintiff's now complaint of the defamatory words which are the basis of the newspaper articles (PEX 3, PEX4 PEX5 and their English translation (PEX6), claimed to be sourced from DEX1.

I, however, note that the words in DEX1 were not reproduced in the plaint or pleadings of the plaintiff, nor did they appear in the attachments alluded to in the plaint.

The perusal of the plaint, the words in the articles exhibited as PEX 3, PEX 4, PEX 5, and their English translation, PEX 6 are the ones claimed to be defamatory of the plaintiff and argued as originating from DEX1, authored by the \$4\$ th defendant.

In a case of defamation, the defamatory words ought to be clearly stated in the plaint and the said words form the material facts of the case. The law requires that the very words in the libel must be set out in order that a court may judge whether they constitute a ground of action.

In Bullens and Leake and Jacobs Precedents of Pleadings. \$12th\$ Edition P 626 which was followed The Supreme Court of Uganda in **Presidential Election Petition No. 1 of 2006** per Benjamin Joses Odoki, CJ (as he then was), the authors state **inter alia** that: -

"The book, newspaper or other document from which the words are taken should be identified by date or description. Where the defamatory matter is part of a longer passage, the defamatory part only need to be set out, provided the remainder of the passage would not vary the meaning of the defamatory matter (Sydenham vs Man [1617] Cro. Jac 407). Where the defamatory matter arises out of a long article 'feature' in a Newspaper, the plaintiff must set forth in his statement of claim the particular passage referring to him of which he complains and the respects in which such passages are alleged to be defamatory (DDSA Pharmaceuticals Ltd (1973) 1 QB 21 CA); and if the part complained of is not clearly severable from the rest of \$a\$ simple publication, the whole publication must be set forth in the statement of claim, even though the defendants may be entitled to plead justification or fair comment in respect of the other parts of the publication."

In order to ably examine the defamatory words complained of and the grievance of the plaintiff, it is paramount that the pleadings be revisited to contextualize the plaintiff's cause of action as against the defendant. The plaint gives the scope of the defamatory words that aggrieved the plaintiff.

To buttress the importance of the contents of the plaint, this court has in Nkalubo Vs Kibirige [1973] EA 102; [1972] 2 ULR 49 per Spry V. P held **inter alia** that: -

"... the particular words complained of should have appeared in the plaint in Luganda since the letter was written in the language, *followed by a literal translation in English." (emphasis mine)*

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The grievance of the plaintiff is particularized in paragraph 7 and 8 of the plaint. The Plaintiff pleads that the articles published in the newspaper have the following injurious statements and/or innuendos;

- a) That the plaintiff is corrupt and bribed voters for the Bishop
- b) That the plaintiff is biased towards electing his relative as bishop
- c) That the plaintiff is of very poor upbringing and a menace to the public
- d) That the plaintiff is out of control and is not in good terms with the elders of the Anglican Church, the saved and some elders in Kumi.
- e) That the plaintiff is disrespectful to the elders of the Anglican church and the Christian Community at large.

The Plaintiff went ahead to plead the natural and ordinary meaning of the words used in the articles in Paragraph 7(i) of the Plaint and the particulars of the innuendos in Paragraph 8 of the plaint.

The plaintiff's case against the th defendant is that the petition (DEX1) addressed to the Most Rev Stanley Ntagali, Archbishop, Church of Uganda, was the basis of the articles published in the *Etop* Newspaper (PEX 3, PEX4, $\frac{1}{2}$) PEX5, and the English translation PEX6) that contained the said injurious statements and innuendos as against the plaintiff.

Winfield and Jolowicz on Tort by Rogers, W. V. H. (William Vaughan Horton), 2006, London: Sweet & Maxwell, observe what innuendos are, thus;

"Innuendo; the words of which the claimant complains may be either (a) defamatory in their natural and ordinary meaning or (b) defamatory only, or in addition to (a), in light of facts and circumstances known to persons to whom the words were published. If reliance is placed upon juxtaposition it must be shown that a reasonable person, seeing the two objects together, would draw from their relative positions an inference defamatory of the claimant.

The modern practice is to require the claimant to say in his particulars of claim what meaning he attributes to the statement in order that the defendant may know what case he has to meet and the judge may know upon what meanings he may have to rule. An innuendo in the legal sense arises only when the defamatory nature of the statement depends upon facts or circumstances which are not part of general

knowledge but which are known to persons to whom the statement is **published.**" (Emphasis Mine)

In a suit for libel, a plaintiff has to prove that the relevant statement as contained in his pleadings is defamatory. However, he or she does not have to prove that it is a lie. If a statement is defamatory, the court will simply assume that it is untrue.

The test of the defamatory nature of a statement is its tendency to excite against the plaintiff adverse opinions or feelings of other persons.

This is the legal position as elaborated in Gatley on Libel and Slander (9th edition) at page 7 para 1.5, as the learned authors have this to say on the issue;

"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"

I have had occasion to read the articles and compare them with the impugned petition to determine if they are defamatory. The contents of the plaint clearly elaborate the defamatory words that are believed to have injured the reputation of the Plaintiff as the impugned newspaper articles exhibited as PEX 3, PEX4 PEX5 and the English translation PEX6 allege that the Plaintiff bribed voters and that he orchestrated corruption and intimidation.

I agree with the submissions of counsel for the plaintiff that the plaintiff does not shoulder the burden of proving falsity or malice in order to establish a cause of action because if the words complained of are defamatory or capable of being so construed, the law presumes that they are false.

The mere publication of an allegation of corruption against the plaintiff, whose reputation is that of a seasoned orthopedic surgeon, would *prima*

facie; and subject to being tested on the already stated elements of defamation, amount to an act of defamation.

This is because in law, words which impute commission of a criminal offence or connotes criminal conduct on the part of the person against whom those words were written cannot be taken lightly as they are per se defamatory.

The burden thus shifts to the defendant to show that they are true.

See: AK Oils & Fats (U) Limited vs BIDCO Uganda Limited HCCS 0715 of 2005.

In the instant case, as I do agree with the plaintiff that the newspaper articles in \$Etop\$ newspaper in themselves contains possible defamatory remarks that would reduce the esteem of the plaintiff in the eyes of right-thinking members of society. This is because the published articles by reference innuendo states that the plaintiff is corrupt and bribed voters in the process of selection of possible names of candidates for appointment as \$2^{nd}\$ Bishop of Kumi Diocese. Such publication thus can be considered defamatory.

However, the said publication in \$Etop\$ newspaper must be cross referenced with and alluded to the petition authored by the defendant (DEX1) as it is the one stated to be the basis of the impugned publications in \$Etop\$ newspaper.

The defendant's petition (DEX1) does points out that during the process of and the exercise for the selection of suitable names to be submitted to the House of Bishops for its eventual selection of who was to be the \$2^{nd}\$ Bishop for Kumi Diocese, that process was marred by "manipulation, *corruption and monetary bribes.*"

The said petition further alludes to the fact of the Plaintiff intimidating other Electoral College members due to his eloquence in expression and his inability not allow others to express their views freely.

The other further contents of the petition are that there were more votes than the voters themselves, that the votes were counted by only one person and also that there was conflict of interest to say but the least.

At this point, it is important to consider whether the alleged defamatory statement expressly referred to the plaintiff for the test of defamation to be

complete for according to **Winfield and Jolowicz on Tort**, as already stated, is threefold, that is;

- a) That the words or statements complained of are defamatory.
- b) That they refer to the plaintiff.
- c) That they were maliciously published by the defendants.

The close perusal of the 4th Defendant's petition (DEX1) show that it does not in itself allude to the particular individual that orchestrated manipulation, bribery and corruption. It is also silent on as to who orchestrated the alleged corruption and the perpetrators of all the alleged grievances in the nomination process.

However, it points out the fact of the plaintiff being very eloquent which attribute caused other members of the Selection Committee to be and or feel intimidated.

Save for this allegation of intimidation by characteristic eloquence, the rest of the allegations in the petition does not refer to the plaintiff. This characteristic eloquence trait exhibited by the plaintiff, was also a pointed in the document termed Highlights of Select House of Bishop's Team assigned to visit Kumi Diocese to probe allegations of influence peddling in Bishop's nominations dated 21st August 2019 (Exhibit PEX 9).

It was argued by the Plaintiff that the defendant referred to the plaintiff as an "intimidator" in the petition (DEX1). However, according to the defendant, the alleged intimidation she was referring to was as a result of the plaintiff's supposedly eloquent oral presentation which even resulted in an unnamed member of the electoral college to cry because the said member could not compete with the plaintiff in his art of eloquence. That is all.

This the gist of the contestation between the plaintiff and the ⁴ defendant.

The reading of, and the assigning of ordinary meaning to the words uttered by the ⁴ defendant in her petition to the Archbishop of the Church of Uganda as quoted above, to me indicate that the intimidation referred to by the ⁴ defendant in her petition was that which merely arising from an attribute exhibited by the plaintiff which attribute cannot amount to a

defamatory statement when juxtaposed with the legal consonance of what words would amount to being defamatory as is ably presented at page 522 by Winfield and Jolowicz on Tort by Rogers, W. V. H. (William Vaughan Horton), 2006, London: Sweet & Maxwell thus that defamatory words are those words that;

"Tend to bring a person into "hatred, contempt or ridicule". The words must tend to lower the claimant in the estimation of rightthinking member of society generally or must amount to a false statement about a person to his discredit and if the words tend to cause the claimant to be shunned or avoided."

My evaluation of the Petition (DEX1) by the ⁴ Defendant shows that it is a complaint addressed to the Archbishop of the Church of Uganda pointing out irregularities and the intimidating eloquence of the plaintiff, nothing else.

The intimidating eloquence of the plaintiff is position which is even supported by the report of the Select Committee of Bishops (PEX9) which confirms in Paragraph 1.1.4 (b) that the Plaintiff did dominate the proceedings of the Selection Committee whose members included the ⁴ defendant with that dominance being pointed out as also arising of the plaintiff's articulacy.

Given these two very similar and supportive positions, I would be hesitant to find and conclude that the alleged reference of the plaintiff as being intimidating to the other members of the Select Committee through his eloquence as contextualized in the 4th defendant's petition (DEX1) would amount to a disparagement of the plaintiff or that because he had such "intimidating eloquence" then such was detrimental to his image, trade and profession.

On the other hand, I would find that the said attribute of eloquence exhibited by the plaintiff would relate to his character and once pointed out by others who feel intimidated by that personality such as was expressed by the 4th defendant in her complaint to the head of the Church of Uganda, would in my considered view, not amount to a disparagement of the plaintiff image rather it was a statement of fact and nothing else.

Although PW1 in paragraph 33 of his witness statement states that the said petition to the head of the Church of Uganda contained an allegation of corruption and so it that disparaged him, my perusal of the same show that other the plaintiff being specifically referred to as having had an intimidating eloquence, there was nothing else in the said petition which connected the plaintiff to the other complaints contained in the said petition.

In fact, the allegations and the innuendos of corruption, bribery, and manipulation as against the plaintiff arise essentially from the publication made by the *New Vision* Printing and Publishing Co. Ltd, the Editor *Etop* Newspaper, Tolbert Edait, who are the 1st, 2nd and 3rd defendants who collectively creatively wrote the articles published in Etop newspaper and created a nexus between what was complained of by the 4th defendant in her petition to the Archbishop of the Church of Uganda to create an allusion that the petition (DEX1) carried allegation of corruption, bribery and manipulation by the plaintiff, whereas not as the evidence on the record of the court does not support such a claim.

In my consideration of the 4th defendant's petition to Archbishop Ntagali, I find that it only alludes to the characteristic dominance of proceedings of the Select Committee by the Plaintiff who exhibited eloquence which left his fellow members feel intimidated.

I am not convinced that because of such intimidation by eloquence, the pointing of such individualities by one would amount to a disparagement of another.

Even if that was to be the case, the plaintiff still had the duty show that there was a relationship between what the 4th defendant wrote in her petition and the published disparaging articles in *Etop* newspaper.

When the published disparaging articles in Etop newspaper and the th defendants petition are put side by side, it can be safely concluded that the complaint to the Archbishop of the Church of Uganda and the published disparaging articles had nothing in common for the latter juxtaposed what the th defendant complained of with the supposedly opinions of the writers and publishers those articles which fact is clear for the th defendant expressly in her petition stated that the Plaintiff;

"Intimidated other electoral college members by his Eloquence in expression and could not allow others to express their views freely. (This made one member for lack of opportunity to express, to cry".

As far as that petition is concerned, the th defendant here is stating that due to the plaintiff eloquence by expression the plaintiff had other members of the electoral college intimidated. That summation can only connote the expression of the mental situation in which those electoral college members found themselves in. Theirs was a condition of anxiety, apprehension and trepidation. That kind of situation would and cannot amount to defamation.

In addition, it is also clear to me that even the particulars of alleged defamation by the th defendant is included by the plaintiff in his plaint as one of his grounds of his claim as against the th defendant. The plaint itself is wanting in this respect for there is no pleadings of the words allegedly uttered by the th defendant as being defamatory of the plaintiff which are included in the plaint and which is found in the th defendant's petition as quoted above.

A law court is bound to stick to what the parties plead, for in civil matters parties are bound by what they say in their pleadings as to the facts which they rely upon which have the potential of forming the record. No party, is thus allowed to depart from their pleadings.

See: Semalulu versus Nakitto High Court Civil Appeal No. 4 of \$2008.\$

The alleged defamatory words by a party must be highlighted in a plaint since they form the material facts for which a case of defamation would be anchored.

Where the plaint does not disclose the words complained of, the court will find that the plaintiff has failed to establish a cause of action as against a defendant.

See: *Nkalubo vs Kibirige* [1973] *EA* 102; [1972] 2 *ULR* 49.

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Indeed, Justice Remmy Kasule (JA, as he then was) was alive to this situation when he held in his lead judgement in *Lubanga Jamada vs Dr Ddumba Edward CACA No. 10 of 2011* that;

"Before taking leave of this appeal, I too, like the appellate Judge observed in the first appeal, find that the plaint in Civil Suit No. 1177 of 2007 filed in the Chief Magistrate's Court at Nakawa, did not comply with the law in that it did not state and give particulars of the exact words that constituted the libel that the appellant complained of. In NKALUBO V. KIBIRIGE [1973] EA, SPRY,

VP, held with the *concurrence of the rest of the Court members that: "This is a gravely* defective pleading. In all suits for libel the actual words complained of must be set out in the plaint. It was said by Lord Coleridge C. J., in *Harris v Warre* [1879], 4 C. P. D. 125 at P. 128: "In Libel and Slander the very words complained of are the facts on which the action is grounded. It is not the fact of the defendant having used defamatory expressions, but the fact of his having used those defamatory expressions alleged, which is the fact on which the case depends"..... this is not a mere technicality, because justice can only be done if the defendant knows exactly what words are complained of, so that he can prepare his defence".

No words are pleaded in the plaint form this newspaper as being defamatory of the plaintiff. On the whole, nowhere in the plaint is it indicated as to which exact words the appellant complained of in those publications attached to the plaint as constituting the defamation, the subject of the appellant's complaint. The appellate Judge in the High Court was thus justified to hold that the plaint filed in the trial Court by the appellant did not comply with an important procedural requirement. It was wrong in law of the trial Magistrate to proceed on such a defective plaint. It is appreciated that the appellant represented himself at trial in the Magistrate's Court. That however is no excuse for not complying with a fundamental principle of pleading as to what constitutes a cause of action in a plaint. In conclusion all the grounds of appeal having been found by me to be incompetent by reason of being wrong in law, I come to the conclusion that this appeal must fail. I strike out the same. I uphold the judgment of the High Court in Civil Appeal No. 29 of 2009."

In the instant case, the defamatory words particularized in the plaint were those published in \$Etop\$ newspaper not those from DEX1.

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The failure to expressly quote what would amount defamatory from what the 4th defendant published would lead to the exoneration of the 4th defendant from liability in defamation as it would be unfair to hold the defendant liable for defamatory words published in a newspaper articles exhibited as PEX 3, PEX4 PEX5 and the English translation PEX6 with no nexus that it was the 4th defendant who caused such publication yet her complaint contained (DEX1) was written to the Most Rev Stanley Ntagali, Archbishop, Church of Uganda with no evidence to show that she ever leaked her complaint to the press and caused it to be published as it were by Etop newspaper.

As Musa Ssekaana, J in *Yusuf Ssembatya Kimbowa vs The Editor, The Observer and 2 others* HCCA No. 482 of 2018 that;

"The essence of defamation is 'publication' which excites others against the plaintiff to form adverse opinions or exposes him to hatred, contempt or ridicule or injure him in his trade, business, profession, calling or office or to cause him to be shunned or avoided in society."

I am of the similar view with counsel for the ⁴ defendant that even though the impugned articles contained derogatory and defamatory remarks as against the plaintiff, such publications were not the works of the ⁴ defendant for indeed the petition to the Archbishop of the Church of Uganda by the ⁴ defendant can be concluded as a fair representation of the state of mind of members of the Select Committee with the persons responsible for the publication of the said defamatory remarks realizing their follies and woes and opted to settle their liability to the plaintiff sooner than later.

Arising from the above conclusions, this court would fail to find any liability to the plaintiff as against the ⁴ defendant for the publication of the defamatory articles in the ¹ newspaper which defamatory articles were clearly caused to be published by the ¹ , ² and ³ defendants.

The issue of whether the ⁴ defendant uttered defamatory words and caused the publication of the defamatory articles against the plaintiff would fail. I do so find accordingly.

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Issue Two:

What remedies are available to the parties?

The claim for defamation by the plaintiff as against the ⁴ defendant having failed, then as a consequence, the suit against the ⁴ Defendant is dismissed case with costs to the ⁴ defendant.

I so order.

Hon. Justice Dr Henry Peter Adonyo

Judge 17th January, 2023

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