

UGANDA / JUDGMENT

Okot-Bwangamoi v Amitayo OKeny & 5 Others (Civil Suit No. 64 of 2011) [2019] UGHC 75 (27 November 2019) [2019] UGHC 75

COURT
High Court of Uganda

BEFORE
Stephen Mubiru, J

CASE / FILE NUMBER
Civil Suit No. 64 of 2011

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IN THE HIGH COURT OF UGANDA SITTING AT GULU

Reportable Civil Suit No. 0064 of 2011

In the matter between

PROF. OKOT BWANGAMOI PLAINTIFF

And

- **1. AMITAYO OKENY**
- **2. REV. OTTO N. NAPTHALI**
- **3. NYERO ABOCE**
- **4. OLWOCH OPOO WILSON**
- **5. ANYWAR WILLY OKECH**
- **6. OJARA VENANSIO DEFENDANTS**

Heard: 20 September, 2019. Delivered: 27 November, 2019.

*Torts — Libel— Whether the defendants falsely and maliciously published words that were defamatory against the plaintiff — Slight inaccuracies of expression are immaterial if the defamatory statement is true in substance — Abatement — a suit for libel is by nature a personal claim, the principle of personalis moritur cum persona (a personal right of action dies with the person) which implies that it abates with the death of the plaintiff or defendant before judgment — Qualified privilege— the defence operates to protect statements which are made without

malice in the discharge of a public or private duty, when made on a subject matter in which the defendant has a legitimate interest.*

[illegible]

STEPHEN MUBIRU, J.

Introduction:

[1] The plaintiff's claim against the defendants jointly and severally is for general, aggravated and exemplary damages for libel, a permanent injunction, interest

and costs. The plaintiff's claim is that on 27th May, 2011 in a letter addressed to the L. C. II Chairman of Onyona Parish, Ongako sub-county in Gulu District the defendants falsely and maliciously published words that were defamatory of him. The words were to the effect that he was engaged in activities aimed at grabbing their land which included; him and a one Charles brandishing a gun he possessed illegally, going to the home of one of them with the intention of killing him, for over three decades he had terrorised them and caused their arbitrary arrest. The plaintiff construed those words to mean that he is bigoted, fraudulent, irrational, and has used a gun for ulterior motives including the illegal acquisition of land from them. As a result, he has been ridiculed, ostracised and shunned by right thinking members of the public.

[2] In their joint written statement of defence, the defendants denied the plaintiffs' claim. They averred that they and the people of Opidi Lwala village are involved in a dispute with the plaintiff, over land. The contents of the letter were an expression of concern and opinion regarding the plaintiff's conduct as a result of that dispute. The contents of the latter are a true account of the plaintiff's conduct at forums convened for purposes of resolving the dispute over land. The words were published in good faith without malice on an occasion of qualified privilege under a moral and legal duty to report to the local authorities in the area, over a matter that concerned their livelihood, property and public safety. The words are incapable of bearing any meaning defamatory of the plaintiff.

Issues

- [3] At the scheduling conference, the following issues were agreed upon for the determination of the court, namely;
- 1. Whether the plaint discloses a cause of action.
- 2. Whether the words complained of by the plaintiff are defamatory.

- 3. Whether the defendants were justified in making the statements or uttering the words complained of.
- 4. What remedies are available to the parties.
- 2

The plaintiff's evidence:

- [4] Testifying as P. W.1, the plaintiff Prof. Paul Okot Bwangamoi stated that the defendants wrote a letter claiming that for the last 30 years he has been terrorising people, misused his gun and grabbed people's land. He first acquired a gun in 1963 and later a pistol in 1968. The latter was authored by the first defendant and thereafter twenty-five other people, including the rest of the defendants, appended their signatures thereto. It was copied to several other people including the GISO. He was summoned by the RDC and the police over the letter. He was shunned by most of his friends. His application for a shotgun was deferred. He admitted having been on the land in dispute with a gun with a one Charles.
- [5] P. W.2. Obina Modecai, a resident of the same Parish as the defendants, testified that a meeting was convened at the home of the plaintiff following that letter and some of the signatories apologised for its content. The allegations made against the plaintiff stem from a land dispute. He was shunned by many of the residents after the allegations went public.

The Defendants' evidence:

- [6] In his defence as D. W.1 the 2nd defendant Rev. Otto Napthali, testified that he is a signatory to the letter. People felt that a letter of such a nature was necessary to inform leaders in the area. It was addressed to the L. CII of Onywar Parish. The letter is dated 27th May, 2011 (exhibit P. E2). It was copied to several people. It was a complaint to the local leaders, it was not an insult. His expectation was that the L. C. II would summon the professor so that they could sit down and resolve the issues. D. W.2 Olwoch Opoo Wilson, the 4th defendant testified that he signed the letter as No. 4 on the attached list. The letter was brought by the 1st defendant, Okeny Amitayo, now deceased. The plaintiff forcefully entered this witness' land and ploughed it with a tractor. He was seated on an anthill with a

gun. The witness feared for his life when he saw him with a gun for he knew him to be violent and there was a bitter dispute between him and the witness. The residents combined all their grievances and then everyone who had a complaint signed it so that the leaders would come and resolve the dispute.

- [7] D. W.3 Anywar Willy Okech, the 5th defendant testified that the L. C. II executive advised the community to write to local authorities for advice. The meeting resolved the letter be written because we wanted peace and freedom. The professor began the issues in 1976 to-date. He is interested in grabbing land forcefully. They never insulted the professor at all in the letter. They only sought action to be taken regarding their grievance. In the meeting of 1978 the

plaintiff had a traditional horn (*bila)* on his neck, a pistol and knife at his waist. The horn *(bila)* symbolised anger according to tradition. It is adorned by someone going out to fight or to hunt. Although he was not present in the year 2011 when the plaintiff was cutting down trees, he was told the plaintiff was moving around with a gun. He was told that Charles held the gun in that process. At the close of the defence case, the parties were given time within which to file their final submissions but at the time of writing this judgment none of them had filed any submission.

First issue; Whether the plaint discloses a cause of action.

- [8] A cause of action was defined as a bundle of facts which if taken together with the law applicable to them give the plaintiff a right to a relief against the defendant (see **Attorney General v. Major General Tinyefuza, Constitutional Petition No.1 of 1997**). It is alternatively defined as every fact which is material to be proved to enable the plaintiff succeed or every fact which if denied, the plaintiff must prove in order to obtain judgment (see **Cooke v. Gull, LR 8E. P 116** and **Read v. Brown 22 QBD 31**). The pleadings must disclose that; the plaintiff enjoyed a right known to the law, the right has been violated, and the defendant is liable (see **Auto Garage and others v. Motokov (No.3) [1971] E. A 514**). Whether or not a plaint discloses a caution of action must be determined upon perusal of the plaint alone together with anything attached so as to form part of it (see **Kebirungi v. Road Trainers Ltd and two others [2008] HCB 72**). Order 7 rule 11 (a) of **The Civil Procedure Rules**, requires rejection of a plaint where it does not disclose a cause of action.
- [9] The Court of Appeal decided in **Departed Asians Property Custodian Board v. Issa Bukenya, S. C. Civil Appeal No.26 of 1992**, that if allegations are made in the plaint so that the facts alleged support the prayers asked for, and when the prayers called for are legally justified, then all that is necessary is for the trial Court is to hear evidence which proves the facts and hear submissions of law that the remedies are justified.
 - [10] In general, a defamatory statement is a false statement of fact that is negligently or intentionally communicated or published to a third party. Libel is a category of defamation that is constituted by the publication in a permanent form, of words, photographs, pictures or symbols, of false statements of fact that harm another person's reputation. To establish a cause of action, the plaintiff must plead;- the defamatory words complained of, the fact that they referred to the plaintiff, that they were published by the defendant knowing they were false (or should have known they were false), and that the plaintiff's reputation was harmed as a result. A statement is "published" if it is communicated to someone other than the person whom the statement is about. A statement "identifies" a person if it is shown that it is "of and concerning" that person. A statement is harmful if it seriously shames, ridicules, disgraces or injures a person's reputation or causes others to do so. The plaint before court meets all these requirements.

- [11] However, a suit for libel is by nature a personal claim, the principle of *personalis moritur cum persona* (a personal right of action dies with the person) implies that it abates with the death of the plaintiff or defendant before judgment (see section 11 (1) of *The Law Reform (Miscellaneous Provisions) Act*; *Rose v. Ford [1937]*)

AC 826 and *Harvey Smith v. Bobby DHA [2013] EWHC 838 (QB)*. This means that suits cannot survive for the benefit of a deceased person's estate, whether or not proceedings had been commenced before the death of the plaintiff. Equally, a suit cannot subsist against the estate of a deceased person, whether or not proceedings had commenced before the death of the defendant. For that reason the suit against the first defendant abated upon his death.

Second issue; Whether the words complained of by the plaintiff are defamatory.

- [12] In *Ssejjoba Geoffrey v. Rev. Rwabigonji Patrick [1977] H. C. B 37* a defamatory statement was defined as one which has a tendency to injure the reputation of the person to whom it refers by lowering him or her in the estimation of right thinking members of society generally and in particular to cause him or her to be regarded with feelings of hatred, contempt, ridicule, fear, dislike and disesteem. If words have been proved to be defamatory of the plaintiff, general damages will always be presumed. Imputation of commission of a criminal offence is actionable per se without any need of proving damage on the part of the plaintiff (See *Blaize Babigumira v. Hanns Besigye HCCS No. 744 of 1992*).
- [13] A defamatory statement is one which imputes conduct or qualities tending to disparage or degrade any person, or to expose a person to contempt, ridicule or public hatred or to prejudice him or her in the way of his or her office, profession or trade. It is a statement which tends to lower a person's reputation in the eyes of or the estimation of right thinking members of society generally or which tends to make them shun and avoid that person. The typical form of defamation is an attack upon the moral character of the plaintiff attributing to him or her any form of disgraceful conduct such as crime, dishonesty, untruthfulness, trickery, ingratitude or cruelty. The person defamed does not have to prove that the words actually had any of these effects on any particular people or the public in general, only that the statement could tend to have that effect on an ordinary, reasonable listener or reader. Once a statement is capable of being interpreted

as an assertion of fact, the question then will be whether it imputes any moral fault or defect of personal character.

- [14] The defamatory nature of a statement is its tendency to excite against the plaintiff the adverse opinions or feelings of other persons. A typical form of defamation is an attack upon the moral character of the plaintiff attributing to him any form of disgraceful conduct, such as crime, dishonesty, untruthfulness, trickery, ingratitude or cruelty (see *Ssejjoba Geoffrey v. Rev. Rwabigonji Patrick [1977] H. C. B 37*). Although a statement need not be perfectly true, it should be substantially true in order not to be false. Slight inaccuracies of expression are immaterial if the defamatory statement is true in substance.

- [15] Under cross-examination, the plaintiff admitted the existence of a land dispute with the community, he admitted having been on the land in dispute with a gun with a one Charles and during the meeting of 1978, having had a traditional horn (*bila*) on his neck, a pistol and knife at his waist. The horn (*bila*) symbolised anger according to tradition. I find slight inaccuracies and exaggerations in the letters written by the defendants but the statements alleged to have been defamatory were true in substance. The words therefore were not defamatory.

Third issue; Whether the defendants were justified in making the statements or uttering the words complained of.

- [16] Qualified privilege operates only to protect statements which are made without malice (i.e., spitefully, or with ill-will or recklessness as to whether it was true or false). According to *Gatley on Libel and Slander* (p 328 para 14.4), the main classes of statements which come under the defence of qualified privilege at common law are:- statements made in the discharge of a public or private duty; statements made on a subject matter in which the defendant has a legitimate interest; statements made by way of complaint about those with public authority or responsibility; reports of parliamentary proceedings; copies of or extracts from

public registers; Reports of judicial proceedings. The defence seeks to protect defamatory material of public importance where defendants have published responsibly, irrespective of the material's truth or falsity. It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation provided it is done in good faith.

- [17] In the instant case, the defendants made the statements on a subject matter in which they had a legitimate interest; a dispute over land and their personal safety as a result thereof. They made the statements by way of complaint to those with public authority or responsibility over such matters including the L. C. I, L. CII and L. CIII Chairpersons, the O/c Ongako Police Post, the O/c Crime-Gulu, the DPC Gulu District, the Chairperson L. C. V Gulu district, the RDC Gulu and the DISO-Gulu. The statements therefore were made on an occasion where the persons who made the communication had an interest, or a duty, legal, social or moral, to make it to the persons to whom it was made and the persons to whom it was so made had a corresponding interest or duty to receive it. The letter was therefore published on an occasion of qualified privilege. The burden then shifted to the plaintiff to show express malice on the part of the defendants (see *Clark v. Molyneux (1877) 3 Q. B. D. 237*).
- [18] Once qualified privilege is established, even when it is demonstrated that the publication is based upon facts and statements which are not true, the defendant is not liable unless the plaintiff establishes that the publication was made by the defendant with reckless disregard for truth. The defendant is protected even though his language was violent or excessively strong if, having regard to all the circumstances, he might honestly and

Malice in law, which is presumed in every false and defamatory statement, stands rebutted by a privileged occasion. In such cases, it is enough for the defendant to prove that he

- [19] The defence of qualified privilege therefore can be assailed if the defendant was actuated by an improper motive that is to say by "express malice" (see Lopes C. J. in **Royal Aquarium and Summer and Winter Garden Society Ltd. v. Parkinson* [1892] 1 Q. B. 431 at p.454*). Express malice, unlike legal malice, is never presumed; it must be proved as a fact. In such a case, in order to make a libel actionable, the burden of proving actual or express malice is always on the plaintiff. It may be proved either extrinsically or intrinsically of the document and such words in the document are apt as evidence (see **Adam v. Ward* [1917] AC 309, [1917] All ER 151*).
- [20] Malice in this sense means making use of a privileged occasion for an indirect or improper motive. The defendant would be found to have made the statements with "express malice" if he acted with knowledge that the statement was false or with reckless disregard of whether it was false or not. The plaintiff did not prove express malice. The defence of qualified privilege accordingly succeeds. In light of the above findings, it is not necessary to consider the last issue regarding the remedies are available to the parties. The plaintiff obviously is not entitled to any of the remedies sought.

[21] In the final result, there is no merit in the suit. It is accordingly dismissed with costs to the defendants.

For the plaintiff : Mr. Ocorobiya Lloyd. For the defendants : Mr. Ogen Simon Peter.

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