

UGANDA / JUDGMENT

Okwenda v Woodson (Civil Suit 55 of 2019) [2023] UGHCCD 188 (30 June 2023)

[2023] UGHCCD 188**COURT**

HC: Civil Division (Uganda)

BEFORE

Musa Ssekaana, J

CASE / FILE NUMBER

Civil Suit 55 of 2019

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THE REPUBLIC OF UGANDA**IN THE HIGH COURT OF UGANDA AT KAMPALA****CIVIL DIVISION****CIVIL SUIT NO. 55 OF 2019****OKWEDA FRANCIS:.....PLAINTIFF****VERSUS****DARRYL WOODSON:.....DEFENDANT****BEFORE: HON. JUSTICE SSEKAANA MUSA****JUDGMENT**

The plaintiff sued the defendant for defamation seeking special damages, general damages, punitive damages, and a permanent injunction against uttering defamatory statements, interest, and costs.

The plaintiff was a long serving member of church, teacher and council member of Victory City Church, Ntinda. Sometime in 2017 the plaintiff contends that he sought to challenge the defendant to account for funds and property of the church.

The defendant told the other church members and the police that the plaintiff was a mad man who wanted to kill him and should be taken to Butabika. The plaintiff was forcefully taken to Butabika National Referral Hospital under the pretext that he was a man who was dangerous to the community. The plaintiff was discharged from the hospital after seven days of in-patient monitoring, and after a two weeks review as an outpatient.

In September, 2017 when the plaintiff came back to pray at the defendant's church, the defendant was bundled up and forcefully taken back to Butabika hospital. The plaintiff was discharged and was subsequently expelled from the church and barred from ever accessing the church premises. He was also evicted from the church premises as his conduct became unbearable.

The plaintiff was later taken to Butabika National referral Hospital on more than two separate occasions all of which were as a result of a relapse of Bipolar Affective Disorder.

The plaintiff contended that he was defamed by defendant through slander amongst the church members, the plaintiff's clients and the public at large during a church service at Victory City Church-Ntinda whe he said;

"Francis Okweda is a mad man and a criminal who wants to kill me and disrupt the church gathering"

The plaintiff further contended that he was defamed by the defendant through libel when he told Ege.ug-an online tabloid that Francis was suffering from Schizophrenia.

Further defamation was made through libel when he told Edge.ug-an online tabloid that Francis has three criminal cases.

"Francis has been admitted numerous times-including twice this year into the mental ward of Butabika they can confirm to your news agency that he has both bipolar and schizophrenia"

The defendant denied liability contending that he never defamed the plaintiff as alleged. The defendant contended that due to the plaintiff's violent and queer conduct at the premises of victory City Church Ntinda, the defendant was left with no option but to issue a statement about the

conduct of the plaintiff to clear the air in regard to the plaintiff's numerous and dangerous allegations against him.

The defendant indeed banned the plaintiff from the premises of victory City Church Ntinda because the plaintiff's violent and strange conduct had become a source of concern and restlessness to the Christians of victory City Church Ntinda. The plaintiff was indeed taken to Butabika National Referral Hospital twice as a result of a relapse of Bipolar Affective Disorder.

The defendant also filed a counterclaim against the plaintiff for defamation, seeking a permanent injunction against the plaintiff from ever accessing the premises of the counter-claimant and the premises of Victory City Church Ntinda, an apology, interest, and costs of the suit.

The after the plaintiff was restricted from accessing the church as a result of the queer, abusive and violent conduct, the plaintiff decided to launch a personal attack against the defendant on the plaintiff's face book account.

That some of libel committed against the defendant by the plaintiff include the following:

"Pastor Darryl has strangled me from Victory City Church Ntinda."

"Darryl Woodson is an agent of Satan....one of very high rank. My words I can defend in the natural courts and eternal courts."

"He drowned himself at Nob View Hotel...He was a Church Bass player. PS Darryl had a hand in the death"

The plaintiff filed a reply to the counterclaim in which he asserted that whatever he had stated about the defendant was true in every material particular and that the defendant did not have a reputation to lose.

The following issues were agreed upon for determination by the court;

- *1. Whether the plaint discloses a cause of action against the defendant.*
- *2. Whether the defendant is liable for defaming the plaintiff.*
- *3. Whether the counter-defendant/ plaintiff is liable for defaming the counterclaimant/ defendant.*
- *4. Whether the parties are entitled to the remedies sought.*

The plaintiff was represented by *Counsel Akenda Solomon* while the defendant was represented by *Counsel Lastone Gulume*

At the hearing, the plaintiff relied on 4 witnesses while the defendant called 3 witnesses. The parties were directed to file final written submissions that were considered by this court.

DETERMINATION OF ISSUES

Whether the plaint discloses a cause of action against the defendant.

The plaintiff contended that the defendant had published defamatory statements against him that he was a madman whereas not. He also contended that the defendant had caused his arrest and expulsion from Victory City Church Ntinda premises, ruining his reputation.

On the other hand, the defendant contended that to determine if a cause of action was disclosed in a defamation action, the plaintiff was required to not only reproduce the statements verbatim in the plaint but also include the following;

- i. Include in the plaint the persons to whom the words complained of were published.

- ii. For a slander the plaintiff is required to prove the substance of the words alleged to have been uttered and that they were false and published maliciously.

Counsel submitted that the plaintiff had not indicated the persons to whom the defamatory statements were made, and the plaintiff did not aver the falsity or malice of the words used which made the plaintiff defective and bad in law for failure to disclose a cause of action.

Counsel for the plaintiff rejoined that the paragraph of the plaintiff stated the persons to whom the defamatory statements were made for instance the church members and the police.

Analysis

In every action or litigation for defamation, the courts must look at the words complained of to determine whether they are defamatory. The essence of defamation is publication. (*See; Yusuf Sembatya Kimbowa Vs The Editor Observer & 2 Others H. C. C. S No 482 of 2018)* It is established that for a court to find a statement complained of as being defamatory, the actual words must be set forth verbatim in the plaintiff, and the persons to whom publication was made have to be mentioned in the plaintiff.

The plaintiff alleged under paragraph 4(q) that the defendant had called him a mad man and a criminal who wanted to kill him and disrupt the church gathering. He contended that the defendant had made these statements to the church members, the plaintiff's clients and the public at large during a church service at Victory City Church-Ntinda.

The act of publishing a libelous matter constitutes the cause of action in libel. The material part of the cause of action is not the writing, but the publication of the libel. *See Amuzie v Asonye (2011) 6 NWLR (pt 1242) p. 19*

The plaintiff, therefore, established a cause of action against the defendant.

Whether the defendant is liable for defaming the plaintiff.

The plaintiff complained of having been defamed by the defendant when he called him a madman and a criminal. He contended that the defendant had also defamed him through an online tabloid called edge.ug when he informed it that the plaintiff was suffering from schizophrenia. Counsel submitted that the plaintiff's witnesses had all testified that the plaintiff was suffering from a medical condition called bipolar which is triggered by stressful situations however this condition did not render him mad.

Counsel further submitted that the defendant's witnesses had all not refuted the plaintiff's allegations that he was called a madman by the defendant. That the defendant's utterances were also followed by consequent arrests of the plaintiff on trumped charges. It was the plaintiff's contention that to call a man who had served in the church as a leader and lecturer as mad greatly lowered the plaintiff in the right thinking members of the society generally including his family members, his past and present students as well as friends. Counsel invited the court to find that the defendant defamed the plaintiff.

On the other hand, the defendant contended that his statements about the plaintiff's bipolar affective disorder and schizophrenia were premised on his personal knowledge of the plaintiff. The defendant explained that he had a personal relationship with the plaintiff and his family and was aware of the plaintiff's mental illness right from childhood. The defendant stated that he had at the initial stages of the plaintiff's mental illness served as his counselor and overseen his medication.

The defendant stated that as to the criminal cases, the plaintiff admitted that there were various criminal cases against him registered with the Uganda Police Force. The defendant thus contended that the defendant's directions to the online newspaper were premised on facts that were well known to him and his statements should be interpreted in that context only.

Counsel for the defendant cited among others the case of *Dr. Wasswa Joseph Matovu v Prof. Venansius Baryamureeba & 3 others Civil Suit No. 391 of 2012* where this court emphasized that statements and words must be understood in the context in which they are said and used. That in that case, the 1st defendant had published utterances that suggested that the plaintiff had mental health issues. That this court declined the plaintiff's counsel's attempt to dissect the publication and place it out of context and held thus:

"The words spoken by the 1st defendant were false but not defamatory; it would not amount to defamation. These were bona fide statements and did not amount to defamation. The statements were based on the facts truly stated and the inference drawn must be honest and reasonably warranted by such facts. The plaintiff was indeed suspended and the circumstances were to be investigated."

Counsel submitted that this case was entirely applicable in the facts at hand where the defendant made bonafide and justified statements about the plaintiff. Counsel further submitted that stating that a person suffers from mental illness did not amount to defamation more so where the person as admitted by the plaintiff in this case indeed suffers from the said condition.

Counsel concluded that the plaintiff had not adduced any evidence to prove that the defendant uttered any false defamatory statements against the plaintiff and prayed that the court resolves the issue in the negative.

In rejoinder, counsel for the plaintiff submitted that the case of *Dr. Wasswa Joseph Matovu v Prof. Venansius Baryamureeba & 3 others* cited by the defendant was distinguishable from the present case. Counsel submitted that the defendant had called the plaintiff a madman and not a person who suffers from mental illness which two phrases were different and carried different meanings.

Counsel submitted that merely referring to a person as one suffering from mental illness might not be defamatory but calling them a mad person was defamatory. Counsel invited the Court to disregard the word mental illness as used by the defendant in his submissions.

Analysis

The meaning of defamatory words either in libel and slander must be based on untruth. *See Access Bank Plc v Muhammad (2014) 6 NWLR (pt 1404) p. 613*

A defamatory statement is one, which injures the reputation of the person to whom it refers, by lowering that person's reputation, in the eyes of rightthinking members of society generally. As a result of the statement, the person affected may be regarded with feelings of hatred, contempt, ridicule, fear, dislike, and of no esteem. An attack on the moral character of someone, attributing to that person some form of disgraceful conduct, such as crime, dishonesty, or cruelty is to defame that person: (See: *Geoffrey Ssejjoba vs. Rev. Patrick Rwabigonji [1977] HCB 37.)*

A statement is also defamatory if it amounts to a reflection upon the fitness or capacity of the plaintiff, in the plaintiff's profession or trade or other undertaking.

The test, of whether or not, a statement is defamatory, is an objective one, in that, it is the standard of an ordinary, right-thinking member of society that is used. It is thus no defense, for the defendant to assert that the statement was not intended to be defamatory or that the same was made by way of a joke: (See: *SALMOND ON THE LAW OF TORTS: 25th Edition: 1969 London: Sweet & Maxwell, pg 181.)*

The defendant allegedly calling the plaintiff a madman would be defamatory since it would question the plaintiff's capacity as a lecturer and tutor, therefore, affecting his work. The plaintiff's contention is that the defendant called him a madman and a criminal which the defendant

denies. I have read all the witness statements on the record and none of the witnesses stated that the defendant had called the plaintiff a madman during the church service. PW1 states that most of his employees some of whom were church members quit their jobs because they believed that he was a madman. There is no evidence that the defendant made the alleged defamatory statement.

With regard to having been called a criminal, the excerpt of the article by edge.ug shows that the defendant said that they should talk to Kira Road Police where criminal cases had been lodged against the plaintiff. This statement did not allude to the defendant being a criminal but informed the article to contact the police about the criminal cases lodged against the plaintiff. I concur with counsel for the defendant that this was a bonafide statement since there were indeed criminal cases lodged against the plaintiff.

The onus is on the defendant to prove the truth of a defamatory statement rather than for the claimant to prove its untruth.

Words are not defamatory however much they damage a man in the eyes of a sector of the community unless they also amount to disparagement of his reputation in the eyes of right thinking men generally. A true statement written and said about another person can never become defamatory. The written publication must be false and without lawful justification for it to be defamatory. The statement made by the defendant was true and he referred them to police and not that he was a criminal.

I, therefore, find that the defendant is not liable for defaming the plaintiff.

Whether the counter-defendant/ plaintiff is liable for defaming the counterclaimant/ defendant.

In the counterclaim, the defendant contended that the plaintiff had defamed him through various posts on his Facebook.

The plaintiff's counsel submitted that the same was not proved by evidence. It was the plaintiff's defense that there was truth/justification in as far as whatever he said about the defendant in his Facebook posts was the truth and such could not be defamed. According to his evidence, the plaintiff testified that he was the author of all the Facebook posts alluded to and they were merely posts by the plaintiff regarding the circumstances and situations at Victory City Church Ntinda where he was no longer wanted because of challenging fellow leaders on issues of accountability at the church.

Further, it was the plaintiff's submission that the defendant had failed to show that the plaintiff's posts on Facebook were directed to him since on Facebook there were many accounts in the name Darryl Woodson and as such he failed to prove that he was defamed by the plaintiff in any way.

In response, counsel for the plaintiff cited the case of **Esther Kisaakye V Sarah Kadama, High Court Civil Suit No. 194 of 2013** where the court spelled out the elements of defamation to be;

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

Counsel submitted that the defendant/counter-claimant had led unequivocal evidence at trial to prove that the plaintiff/counter-defendant made and published the false statements about the defendant's character which were injurious to the counter-claimants reputation. That the plaintiff had admitted during cross-examination that he made the posts about the defendant on his Facebook page.

Counsel further submitted that the plaintiff's publications were unfounded and were issued in an attempt to hurt the defendant because he stopped the plaintiff from preaching his desired sermons at Victory City Church Ntinda. That the plaintiff/ counter-defendant had no defense for publishing the defamatory statements and that he made the statements well knowing and intending the consequences of his actions.

Counsel also submitted that the defendant was a public figure being a senior pastor of the large congregation of Victory City Church, a member of the National Executive Team of Uganda Assemblies of God, and a principal of Africa Theological Centre ATC. That he was undoubtedly a man of high religious and social standing.

Counsel submitted that the plaintiff had decided to issue publications that directly attack the defendant's reputation as a religious leader by painting him out to be a Satanist, kidnapper, murderer, and thief among others. That the plaintiff had successfully targeted the defendant's public image and chose a public platform to do that. That this was done out of personal detest for the defendant but without any justification.

Counsel concluded that the above showed that the plaintiff willfully defamed the defendant and was therefore liable for all the resultant damage to the defendant's reputation. Counsel prayed that this court be pleased to so find.

In rejoinder, counsel for the plaintiff submitted that the defendant had confirmed that he preached the gospel of Jesus Christ and throughout his ministry, Jesus was never offended by anyone who called him either agent of the devil or the devil. Counsel submitted that the defendant who was a pastor and professed the word of Jesus Christ was estopped from alleging that he was defamed when called a Satanist or agent of Satan yet Jesus whom he believes in and follows was never offended by such a statement.

Counsel submitted that the statements made by the plaintiff should be interpreted in the context of a believer challenging the authority of the preacher, statements concerning spirituality, and the belief system of the defendant. That if the pope who is the Head of the Catholic Church can be called "Illuminati" the defendant by being called Satan or an agent of Satan could not be said to be defamed.

The gist of the counterclaim was that the plaintiff called the defendant a Satanist, an Illuminati, an extortionist, and a thief among others on his various Facebook posts published to the public. The defendant is a Senior Pastor at the Victory City Church Ntinda, a member of the National Executive Team of Uganda Assemblies of God, and a principal of Africa Theological Centre ATC which makes him a public figure expected to be of a high moral standing. The defendant contended that these statements were defamatory.

The plaintiff's defense was that the statements were meant to be construed as a believer challenging the authority of the preacher, statements concerning spirituality, and the belief system of the defendant. He also, on the other hand, contended that there was no proof that they were made towards the defendant since there were many people on Facebook named Darryl Woodson.

Analysis

I agree with Musota J (as he then was) in the case **Esther Kisaakye V Sarah Kadama, High Court Civil Suit No. 194 of 2013** cited by counsel for the defendant/ counterclaimant. The judge laid out the elements that one must have in order to prove defamation and I concur with counsel for that all of them were fulfilled.

The plaintiff published injurious false statements about the defendant's character which were injurious to the counterclaimant's reputation. These statements were made several times intentionally targeting the defendant's reputation and on a public platform with the knowledge that the defendant was a public figure held at a high moral standing by the society.

It is not necessary to prove publication in an action for libel where the defendant has made direct positive admission of it in the pleadings. The plaintiff/counter-defendant in his defence to counter claim stated; **that whatever he had stated about the defendant was true in every material particular and that the defendant did not have a reputation to lose.**

The defense that there are many people on Facebook by the name of Darryl Woodson is a weak argument in this case. In several posts, the plaintiff mentioned the defendant and the Church. Any right-thinking member of society would clearly deduce that these posts were about the defendant.

In consideration of whether the words complained of are defamatory, the nature of the claim and the language used must be looked at as a whole in considering whether reasonable men could come to the conclusion that the words were not intended to convey, and those reading the facebook posts would not understand them as conveying imputations suggested by the plaintiff.

On that premise, I find that the plaintiff/counter-defendant defamed the defendant/ counterclaimant.

Whether the parties are entitled to the remedies sought?

If a plaintiff can prove that a libel has been published of him without justification, his cause of 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 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, applied by the High Court of Uganda in; J. H. NTABGOBA VS. THE EDITOR IN CHIEF OF THE NEW VISION NEWSPAPER & ANOTHER: H. C. C. S NO.113/2003.*

In assessing damages in a case of defamation, court looks at the motive and conduct of the defendant. Where, the defendant is motivated by malice or spite; and defendant refuses to apologise after the plaintiff has complained of the falsity of the article and demanded for an apology, then such a conduct aggravates the damages. See *Kiirya Hillary v The New Vision Printing & Publishing Company Ltd & Anor (CV-CS 144 of 2007) [2009] UGHC 159 (28 August 2009)*

The size of the circulation of the offending publication is another matter that court takes into consideration. Where the circulation is large, it is presumed that the injury is greater, as the publication reaches more people, than if it had a smaller or restricted circulation. The defamatory injury is thus presumed to be greater with a wide circulation. See *Major Godfrey Segawa vs. The Editor, The Crusader Newspaper & Another: H. C. C. S No.27 of 1992.*

The plaintiff issued a series of statements intended to harm the defendant on a very public platform with wide circulation. He did this with malice in order to harm the defendant's reputation.

The defendant sought a permanent injunction to restrain the plaintiff from further publishing defamatory statements about him, accessing his home premises and premises of any Victory City Church, damages and costs.

The court grants the following reliefs to the defendant/counterclaimant.

- 1. A Permanent Injunction is granted restraining the plaintiff from publishing defamatory statements against the defendant as well as accessing his home premises and premises of any Victory City Church.

- 2. The purpose of awarding damages in a case of libel is to compensate the plaintiff for any loss or injury he has suffered or sustained as a result of the false publication. The defendant is also awarded UGX 20,000,000 as general damages.
- 3. The plaintiff is ordered to pay the defendant's costs.

I so order

SSEKAANA MUSA JUDGE 30th June 2023

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