

UGANDA / JUDGMENT

Owor v Sreekanths & Another (Civil Suit No. 3 of 2012) [2020] UGHC 28 (24 March 2020)

[2020] UGHC 28

COURT

High Court of Uganda

BEFORE

Gadenya, J

CASE / FILE NUMBER

Civil Suit No. 3 of 2012

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THE REPUBLIC OF UGANDA**IN THE HIGH COURT OF UGANDA AT MASINDI****HIGH COURT CIVIL SUIT NO. 0003 OF 2012****ARISING OUT OF STATUTORY DEMAND ISSUED BY RICHARD AGABA**

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OWOR JOHN ODOI

PLAINTIFF

\$Vs.\$

1. SREEKKANTHS**2. KINAYARA SUGAR LIMITED**

JUDGMENT

BEFORE HON. JUSTICE GADENYA PAUL WOLIMBWA

Introduction \$1.0.\$

In a plaint dated 22nd March, 2012, Owor John Odoi sued the defendants jointly and severally for defamation. The Plaintiff is a former employee of the 2nd Defendant where he worked as a Senior Stores Supervisor. The 1st Defendant works as a Manager of the 2nd Defendant in which capacity he authored a dismissal letter to the Plaintiff, and now the subject of this suit. The Plaintiff claims for:

- a) A permanent injunction restraining the Defendants from further defaming the Plaintiff.
- b) General damages
- c) Punitive/exemplary damages.
- d)) Costs of the suit
- e) Interest at 30% per annum on (b), (c) and (d) above from the date of judgment until payment in full.

Background to the Suit \$2.0.\$

According to the Plaint, the Plaintiff's cause of action arose on 4th July, 2011, when the Defendant acting on his own behalf and on behalf of the 2nd Defendant wrote and published a defamatory letter referenced as "Dismissal from Employment with the Company" labelling the Plaintiff as a grossly negligent person who occasioned the loss of 918 bags of Company Cement from the stores for which the Plaintiff was in charge as Supervisor, Stores; and absconded from work for more than four days consecutively without permission. The said letter was copied to a number of people and organizations

$\mathbf{\$1}$

including the Human Resource Manager, Stores Controller, Loans Officer, Branch Secretary National Union of Plantation & Agricultural Workers (NUPAW), Kinyara branch, Records Secretary and Payroll Secretary.

The Plaintiff claims that because the dismissal letter was copied to the branch secretary of NUPAW an organization to which he had earlier on ceased to be a member upon being promoted to managerial level, satisfies the ingredient of publishing to a 3rd party, and also placed on the notice board where it was accessible to between 30-50 persons per day.

In reply, the defendants denied ever placing the letter in question on the notice board and further pleaded the defamation defences of truth and qualified privilege.

Representation, Witnesses and Exhibits \$3.0.\$

The Plaintiff was represented by Counsel Tugume Moses from M/S Tugume – Byensi Advocates, whereas, the Defendants were represented by Counsel Mafabi Micheal from Sebalu and Lule Advocates.

The Plaintiff called 3 witnesses (John Owor - PW 1, Buhanga Pade - PW2 and Olema Justo - PW3) while the Defendants called 2 witnesses (Sarangarajan Sreekanths - DWI and Albert Bituura - DW2).

A number of documents were exhibited including; PEX1 (Dismissal from Employment Letter); PEX II (New vision Newspaper extract showing when the 2011 LC elections were conducted); PEX III (New Vision Newspaper extract highlighting the celebrations of International Women's Day that took place on 8th March, 2011); PEX IV (Requisition made by the plaintiff on 9th March, 2011 for Medical Envelop Khaki); and PEX V (Requisition by the plaintiff on 10th March, 2011 for maize flour grade 1 sifted in 100kgs bags), for the Plaintiff.

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For the defendants included DE1 (Plaintiff's Leave Form); DE2 (Plaintiff's Statement the loss of the 918 bags of cement); DE3 (Stock Register); DE4 (Plaintiff's Apology Letter to the General Manager), DE5 (the joint meeting report stating findings of the investigations undertaken to ascertain the loss of 918 bags of Cement) and DE6 (Kinyara Human Resource Manual).

\$4.0.\$ Issues Arising

- 1. Whether the plaintiff was defamed by the letter dated 4th July, 2011?
- 2. Any remedies available to the parties

Issue 1: Whether the plaintiff was defamed by the letter dated 4th July, 2011?

The letter dated 4th July, 2011 (PEX1) issued by the 1st defendant on behalf of the second defendant accused the plaintiff of gross negligence leading to loss of company property and unauthorized absence from workplace for more than 4 consecutive days. According to the Defendants, the Plaintiff decided to go away without permission on 7th March 2011 earlier than the scheduled date. The letter was then copied to the Human Resource Manager, Stores Controller, Loans Officer, Branch Secretary NUPAW (National Union of Plantation & Agricultural Workers, Kinyara branch), Records Secretary and Payroll Secretary, an act which the plaintiff deems as defamatory.

The above raises two sub – issues namely: gross negligence and unauthorized absence from work which the court will have to deal with first, before handling the issue of whether the plaintiff was defamed by the letter dated 4th July, 2011.

On the issue of gross negligence, the case of *Blyth Vs Birmingham Water Works* (1856) 11 EX 781 defines Negligence as;

The Omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do.

Also see the case of *Kiga Lane Hotel Limited V Uganda Electricity Distribution HCCS* 557 of 2004.

The Plaintiff testified that when he came back from leave on 26th April 2011 after Easter break, he checked the records and found that 918 bags of cement were missing but before he went for leave, no such bags of cements were missing. He also testified that the person who was in charge of stores during the period that he was on leave should have been responsible for any alleged loss of 918 bags of cement.

In contrast, DW 1 testified and presented evidence (DEX3) which shows that the loss of cement occurred over a period of time from the general store where the Plaintiff was the in-charge of the entire premises for record keeping, issuing, stock and inventory. DW 1 further explained that the loss of 918 bags of cement according to DEX3 (the stock register), started occurring from the end of November 2010 to March 2011 (a period of about 5 months while the Plaintiff was in charge).

It was DW1's testimony that upon examination of the stock register, it was realized that the plaintiff as the party responsible had stopped putting the balance of bags of cement from 22-11-2010 to March, 2011. The last posting was made after issuing of 60 bags and the balance was at 206 bags. After that, only issues and receipts were being recorded and the balances were not carried forward.

On record, is the Plaintiff's leave form which shows that the plaintiff started his leave on 14th March, 2011 and yet, as per DE3 (Stock Register) the loss of the 918 bags of cement could have occurred from 22nd November, 2011 to about 9th May, 2011 since that is the period within which indicating balances of bags of cement into the stock register had stopped. Therefore, the plaintiff's statement that the loss of the 968 bags of cement happened during his annual leave days is not true.

Keeping in mind the definition of Negligence as stated in *Blyth Vs Birmingham Water Works* (supra), the fact that the Plaintiff as the Supervisor, Stores, charged with the responsibility of record keeping, issuing stock and inventory for the entire premises, he, as a reasonable man/store supervisor, ought to have been diligent enough and seen to it that the stock register is up to date with minimal to no errors at all. When one is a supervisor and therefore accountable for material under one's care and that material gets lost in unexplainable circumstances, then one is deemed negligent in absence of any other plausible explanation. I thus find that the Plaintiffs laxity/negligence in ensuring the stock register is up to date, opened way for fraudulent behavior and forgery, an act that has led to loss of the Cement falling under his supervisory unit which is the biggest reason for his dismissal from employment.

On the issue of unauthorized absence from work, It was the uncontroverted testimony of the Plaintiff that he was never absent for more than 4 consecutive days as alleged by the Defendants in the dismissal letter. He clearly testified that he was only absent on public holidays which are in line with the company policy allowing the workers not to work on public holidays

The Plaintiff testified that 7th March, 2011 was designated as an election day for Council III (See PEX II) thus a public holiday for which he travelled to his polling station in Tororo to vote; 08th March, 2011 was Women's Day (See PEX III), a public holiday too. The Plaintiff further informed court that he was on duty on 09th, 10th and 11th of March, 2011 and exhibited requisitions evidencing his being on duty on 09th and 10th. The requisitions were admitted as exhibits PEX4 and PEX5. 12th and 13th March, 2011 were weekend days. He further testified that the company policy gave its workers an off during the public holidays.

Under Section 101 of the Local Governments Act, Cap 243, the electoral commission is mandated to organize, conduct and supervise election of the local councils. Section 107 of the same Act stipulates that:

the electoral commission shall issue a public notice which shall be published in the official gazette and public media appointing a day or days on which elections of all or a category of local government councils or administrative councils shall take place.

Under section 2 (1) of the Public Holiday's Act, Cap 255, women's day (8th March) as

one of the days specified in the schedule to the Act is declared to be a public holiday, which shall in every year be kept and observed as a public Holiday throughout Uganda.

Section 54 (1) (b) and 54 (2) of the Employment Act, 2006 simply means that if workers are required to do work on a gazetted public holiday, they are paid two times the normal rate of wages. However, workers can either receive a compensatory holiday or receive higher compensation for working on a public holiday. Also see Section 3 of the Public Holiday's Act Cap. 255.

Under Section 54 (1) (b) of the Employment Act, 2006 provides that:

An employee shall be entitled to a day's holiday with full pay on every public holiday during his or her employment or, where he or she works for his or her employer on a public holiday, to a day holiday with full in lieu of the public holiday.

Under Section 54 (2) of the Employment Act, 2006 provides that:

Where an employee who works on a public holiday receives, in respect of such work, pay at not less than double the rate payable for work on a day that is not a public holiday, that employee shall not be entitled to a day's holiday with full pay in lieu of the public holiday.

During cross examination, DW1 testified that as a company procedure, people in charge of particular premises and activities like the general stores, petrol station, and receiving bay ought to be available on public holidays but in case that is not possible, they ought to delegate to someone above them.

A closer look at Section 4(8)(a) of the defendants Human Resource Manual shows that some public holidays will be treated as working days particularly for those who are required to maintain essential planting, harvesting and factor operations. However, what I find disturbing is the lack of compensation for work done on public holidays by such staff.

Consequently, in as much as the defendants Human Resource Manual states that essential employees ought to work on public holidays or at least delegate the duties, in the absence of compensation for work done on public holidays, that procedure is misguided and contravenes the law in the Employment Act, 2006 as well as the Public Holiday's Act, Cap 255.

On the basis of the above evidence, and the supporting law thereto, I find that the Plaintiff was not absent for more than four consecutive days as alleged in the dismissal letter of \$4^{th}\$ July, 2011.

Having settled the above sub issues, court will now decide whether the plaintiff was defamed by the letter dated \$4^{th}\$ July, 2011?

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

For defamation, the plaintiff must prove the following elements:

- 1. The defendant made a statement about the plaintiff to another.
- 2. The statement was injurious to the plaintiff's reputation in the eyes of the right thinking members of society.
- 3. The statement was false.
- 4. 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.
- 5. There are no applicable privileges or defences.

Black's Law Dictionary, 8th Edition, at page 1261, a defamatory statement means one that tends to injure the reputation of a person referred to in it. The statement is likely to lower that person in the estimation of reasonable people and in particular to cause that person to be regarded with feelings of hatred, contempt, ridicule, fear or dislike.

The test used to determine whether a statement is capable of giving defamatory meaning was discussed in the case of A. K. Oils & Fats (U) Ltd Vs Bidco Uganda Limited HCCS No. 715 of 2005_where Bamwine J (as he then was) relied on Sim vs Stretch [1936] 2 ALL ER 123 A. C, where

Lord Atkin held that the conventional phrase "exposing the plaintiff to hatred, ridicule and contempt" is probably too narrow. The question is complicated by having to consider the person and class of persons whose reaction to the publication is the test of the wrongful character of the words used. He proposed in that case the test: "would the words tend to lower the plaintiff in the estimation of the right *thinking members of society generally?*" Domestically, this position has been adopted with approval in Honourable Justice Peter Onega Vs John Jaramoji Oloya HCCS No. 114 of 2009.

In defense to this defamatory suit, the defendants pleaded Truth and Qualified Privilege.

The Defence of Truth

As cited by counsel for the defendant, in *McPherson v. Daniels* (1829) 10 B&C 263 at 272 quoted with approval in *Reynolds v. Times Newspapers Limited & Others* [1999] 4 ALLER, it was held that,

The law will not permit a man to recover damages in respect of an injury to a character which he does not or ought not to possess. Truth is a complete defence. If the defendant proves the substantial truth of the words complained of, he thereby establishes the defence of justification.

Courts in Uganda too, have had the chance to deal with justification and truth of statements uttered. In *Rev. Steven Besigye v Hon. Amama Mbabazi* HCCS No. 0J 04 of 2002 at page 8, Justice Lawrence Gidudu stated;

It is trite that justification is a complete defence once the Defendant proves on a balance of probabilities that the statements are true."

In the instant case, it is true that cement was lost. It is also true that the Plaintiff as a Stores Supervisor was directly responsible for the custody of the cement. It is further true that the disappearance of the cement was as a result of gross negligence by the Plaintiff. Court is therefore satisfied on a balance of probabilities that the statements complained of by the plaintiff are not defamatory but rather true.

The Defence of Qualified Privilege

The defence submitted that the letter in question was privileged. In support of their argument, the defence again cited the case of *Reynolds v. Times Newspapers Limited & Others* [1999] 4 ALLER, where the House of Lords stated thus;

"Over the years courts have held that many common form situations are privileged. Classic instances are employment references, and complaints made or information given to the police or appropriate authorities regarding suspected crimes ... the <u>underlying principle</u> is <u>conventionally</u> stated in words to the effect that there must exist between the maker of the statement and the recipient some duty or interest *in the making of the* communication. *A privileged communication is an occasion* where the person who makes a communication has an interest or a duty. Legal, Social, or moral to make it to the person to whom it is made and the

person to whom it is so made has a corresponding interest or duty to receive it. This reciprocity is essential."

The evidence of DWI as confirmed by DW2 as well as in exhibit DEX6 is that DWI was authorized to issue the letter of dismissal under section 7(1)(h) which vests authority on DWI to issue a dismissal as the Head of Department. The actions of DWI and by extension the Defendant fall squarely within the House of Lords' observations in the decision cited above. The Defendants therefore cannot be held liable for a communication made to the Plaintiff resulting from a legal duty.

The Plaintiff argues that the dismissal letter was copied to a number of people and organizations like the Branch Secretary of NUPAW who ought not to have received it. He also alleges that the same letter was placed on the notice board; a place accessed by about 40-50 people on a daily basis.

Evidence on record shows that PEX I was rightly copied to the relevant departments within the company. Therefore, it cannot be said that the letter was published for it to be defamatory. DW2 provided valid reasons why the letter was copied to the relevant departments. He testified that it is a practice of the Defendant applicable to all staff members. He stated that the letter was copied to Human resource because it is the department concerned with employees. It was copied to records because the department handles all records of employees and therefore it must be informed where an employee is leaving or joining the company. It was copied to loans office because it is imperative that the loan office knows since the company operates an internal loans system. Similarly, the payroll section has to be informed so that they effect changes on the payroll. The Stores Controller also has to be informed because this is the department where the Plaintiff was working.

In addition, DW1 further confirmed in his testimony in chief that the Branch Secretary-NUP AW was copied in because they had had a previous engagement with the company concerning a previous incident in which the Plaintiff was involved. The Branch Secretary-NUPAW was an interested party in the employment matters of their members. Further, during the disciplinary hearing of the Plaintiff, a one Mr. Luke Okello, the Branch Secretary NUPAW was one of the parties present during the hearing. See the overleaf of Exhibit DE5.

In his submissions, Counsel for the defendant's argued that copying a dismissal letter to the Branch Secretary of NUPAW, who in fact attended the Plaintiff's disciplinary hearing in the first place, would not be defamatory whether the Plaintiff was a member of NUPAW or not.

With regard to the allegation that the Defendants placed the dismissal letter on the notice board, counsel for the defendants argued that the claim was not substantiated at all in evidence by the plaintiff as he did not name any official of the Defendant who allegedly put the letter on the noticeboard. DWI also testified that it was not the Defendant's policy to pin dismissal letters on the notice boards. DW2, the Defendant's HR employed at Kinyara for 21 years testified that he had never seen the letter on the notice board.

He further testified that,

"The letter PEX I was never placed on the notice board. Kinyara does not have any precedent of displaying the letter. The notice board is a common place. Anyone could have pinned it."

In favor of the defendants, I am therefore inclined to conclude that the above definition would not be defamatory whether the Plaintiff was a member of NUPAW or not.

With regard to the allegation that the Defendants placed the dismissal letter on the notice board, counsel for the defendants argued that the claim was not substantiated at all in evidence by the plaintiff as he did not name any official of the 2nd Defendant who allegedly put the letter on the noticeboard. DWI also testified that it was not the 2nd Defendant's policy to pin dismissal letters on the notice boards. DW2, the 2nd Defendant's HR employed at Kinyara for 21 years testified that he had never seen the letter on the notice board. He further testified that,

"The letter PEX I was never placed on the notice board. Kinyara does not have any precedent of displaying the letter. The notice board is a common place. Anyone could have pinned it. "

In favor of the defendants, I am therefore inclined to conclude that the above definition of Qualified Privilege applied to the circumstances and evidence in the current case, is a complete defence to the Defendants.

\$5.0.\$ Decision

In the circumstances, court finds that the suit has no merit and the Plaintiff is not entitled to the reliefs sought. The same is therefore dismissed in totality.

Costs of the suit are hereby awarded to the Defendants in accordance with section 27 of the Civil Procedure Act Cap 71 which provides that:

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Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incident to all suits shall be in the discretion of court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent those costs are to be paid... \$V\$

It is so ordered

Gadenya W. Paul Judge 24/3/2020

Judgement is delivered in open court in absence of the parties, Mr. Olinga court clerk was present. I direct the Assistant Registrar to give the parties a copy of this judgement.

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Gadenya W. Paul Judge 24/3/2020

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Prepared on 14 October 2026 · Esheria