

UGANDA / JUDGMENT

Pastor Walugembe v Segawa (Civil Suit 653 of 2016) [2024] UGHCCD 97 (10 June 2024)

[2024] UGHCCD 97

COURT

HC: Civil Division (Uganda)

BEFORE

Boniface Wamala, J

CASE / FILE NUMBER

Civil Suit 653 of 2016

Source: ulii.org · Research copy typeset by Esheria. Not court-issued or certified.

THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA (CIVIL DIVISION)

CIVIL SUIT NO. 653 OF 2016

PASTOR DANIEL WALUGEMBE ::::::::::::::::::::::::::::::::::: PLAINTIFF

VERSUS

HASSAN SEGAWA KAMBUGA ::::::::::::::::::::::::::::::::::: DEFENDANT

BEFORE: HON. JUSTICE BONIFACE WAMALA JUDGMENT

Introduction

[1] The Plaintiff brought this suit against the Defendant seeking a declaration that the words complained of were defamatory, a permanent injunction restraining the Defendant from further defamation of the Plaintiff, compensation by way of general damages and costs of the suit arising out of a letter published to the Chief Justice of Uganda.

[2] The brief facts according to the Plaintiff are that on 7th September 2016, the Defendant wrote and published to the Chief Justice a letter, excerpts of which included the following words;

*"... I would like to bring it to your attention that for over three months now, a group of people has clandestinely been carrying out a scare and buy land campaign where the residents are coerced to sell their land in a suspicious manner that might cause massive displacement of people and

insecurity in the area ... The conspiracy; This conspiracy is a brainchild of Mungoma, Mabonga, Wakhakha and Co. Advocates as evidenced by their later dated 13th July 2016 addressed to the LC1 Chairmen of Busia and Kimwanyi Zones, Wandegeya where they verify and confirm that pastor Daniel Walugembe has got a kibanja/ Tenancy occupancy of 13 acres straddling the Busia Zone and Kimwanyi Zone from the plaintiffs in vide HCCS No. 857 of 2000 YOSAMU MASEMBE et al vs* *MAKERERE UNIVERSITY ... I wish to raise my objection over the legitimization of such a scandalous claim basing on the following grounds;*

a) That the land which is the subject of the above stated suit has several stake holders whose interests ought to be ascertained before any claim to own the whole 13 acres of interest.

b) Proceeding to recognize and legitimize any claims of that nature from any one would breed serious legal repercussions to the LC chairpersons and whoever claims such interest.

c) The action of the chairmen of Busia and Kimwanyi Zones of recognizing pastor Daniel Walugembe's claims and intimidating residents to sell off their Bibanja to Pastor Daniel Walugembe in deals that are concluded at night without giving consideration to other stake holders will result into serious social and legal repercussions ... ".

- [3] The Plaintiff averred that by their natural and ordinary meaning, the said words were meant and were understood to mean that the Plaintiff was harassing, threatening, coercing licencees to sell off their bibanja interests and was acting like a goon. He further averred that the publication was intended to and it greatly injured the credibility and reputation of the Plaintiff, lowering him in the eyes of society generally and causing him to be loathed, ridiculed and brought into public scandal.
- [4] The Defendant filed a Written Statement of Defence (WSD) denying the allegations contained in the plaint. The Defendant averred that the defamatory statement is a general statement made against people who scare residents as to buy and coerce them to sell their land and does not refer to the Plaintiff as an individual. The Defendant stated that the statements made were of public interest and cannot be defamation. He also stated that the writing to the Chief Justice did not amount to a publication and that the Defendant was conditionally privileged as a person in authority to protect the interests of various persons.

Representation and Hearing

- [5] At the hearing, the Plaintiff was represented by **Mr. Kasumba Noah** and **Mr. Kigenyi Emmanuel** while the Defendant was represented by **Mr. Luyimbazi Nalukoola** and **Mr. Charles Ouma**. Counsel made and filed a joint scheduling memorandum. Evidence was adduced by way of witness statements. At some stage during the hearing, the Defendant abandoned the matter leading to closure of the hearing without any evidence being led by the defence; pursuant to Order 17 rule 4 of the CPR. Counsel for the Plaintiff made and filed written submissions which have been considered by the Court in the determination of the issues before Court.

Issues for Determination by the Court

- [6] Two issues are up for determination by the Court, namely;
- *a) Whether the letter to the Chief Justice was defamatory of the Plaintiff?*
- *b) What remedies are available to the parties?*

Burden and standard of proof

- [7] In civil proceedings, the burden of proof lies upon he who alleges. Section 101 of the Evidence Act, Cap 6 provides that;
- * (1) Whoever desires any court to give judgement as to any legal right or liability dependent on the existence of facts which he or she asserts must prove that those facts exist.*
 - * (2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.*
- [8] Section 103 of the Evidence Act provides that the "burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person".* Accordingly, the burden of proof in civil proceedings normally lies upon the plaintiff or claimant. The standard of proof is on a balance of probabilities. The law however goes further to classify between a legal burden and an evidential burden. When a plaintiff has led evidence establishing his /her claim, he /she is said to have executed the legal burden. The evidential burden thus shifts to the defendant to rebut the plaintiff's claims.

Resolution of the Issues

Issue 1: Whether the letter to the Chief Justice was defamatory of the Plaintiff?

Submission by Counsel for the Plaintiff

- [9] Counsel for the plaintiffs cited Gatley in his book Gatley on Libel, para. 31, 8th Edition to the effect that a defamatory statement is one which tends to lower a person in the estimation of right thinking members of society or to cause him to be shunned or avoided or to expose him to hatred, contempt or ridicule or to convey an imputation on him which is disparaging or injurious to him in his office, profession, calling, trade or business. Counsel also relied on the decision in *Shah v Uganda Argus [1971] EA 362* to the effect that any words or imputation which may lower a person in the estimation of right thinking members of society or expose a person to hatred, contempt or ridicule have been held to be defamatory and it is the general impression that the words are likely to create in the minds of reasonable persons which must be considered rather than making a loose and precise analysis of the words used.

[10] Counsel submitted that the Defendant crafted his defamatory statement in a manner intended to defame the Plaintiff and exposed the Plaintiff to be thought of as a hypocrite, fraudster, or deceitful person that connives with people to deprive others of their interests. Counsel submitted that according to the evidence before the Court, the Plaintiff was viewed by those who accessed the letter as a mafia, land grabber, and a deceitful person not worthy to be dealt with.

Determination by the Court

[11] In law, for a statement to be considered defamatory, it has to be one that is published and carrying with it a tendency to injure the reputation of a 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/her to be regarded with feelings of hatred, contempt, ridicule, fear or dislike. Typical examples include an attack upon the moral character of a particular plaintiff attributing to him/her any form of disgraceful conduct such as crime, fraud, dishonesty among others. See: *Geoffrey Ssejjoba v Rev. Patrick Rwabigonji HCCS No. 1 of 1976 [1977] UGHCCD 1*.

[12] Defamation may be expressed in form of words (oral or written) or through pictures, cartoons, among others. In order for a plaintiff to succeed in a suit for defamation, he or she must prove the following elements;

- a) The Defendant made a statement about the plaintiff to another;
- b) The statement was injurious to the plaintiff's reputation in the eyes of 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; and

e) There are no applicable privileges or defences enjoyed by the defendant.

See: *The Red Pepper Publications Ltd & Anor v Rtd Chief Justice Samuel W. Wako Wambuzi, CACA No. 128 of 2017.*

[13] In the present case, the gist of the Plaintiff's complaint is that the Defendant published a letter to the Chief Justice of Uganda containing defamatory statements against him that injured his reputation. The contents of the letter have been reproduced in paragraph 2 above. According to the facts, the Plaintiff is a public figure in his community as a senior pastor. It is not disputed that the letter containing the alleged defamatory statements was written by the Defendant. The letter was addressed to the Chief Justice and copied to "The Registrar Court of Appeal; Hon. Mr. Justice Alfonse Chigamoy Owinyi-Dollo; Hon. Mr.

Justice E. K Muhanguzi; and Legal Representatives". There is evidence that the letter was accessed and read by the other board members of Katanga Valley Landlords and Tenants Association (KALTA); going by their reaction as per letter dated 18th September 2016. The letter was also accessed by other members of the community, among them being Mutesa Darius (PW2) and Kigudde Majid (PW3). There is, therefore, no doubt that there was publication of the contents of the letter to the public by the Defendant.

[14] It was further shown by the Plaintiff in evidence that owing to the publication, a section of his church-going members shunned him, some members completely left the church and that the Katanga community ridiculed him and regarded him as a land grabber. This evidence was corroborated by that of PW2 and PW3 who stated that they always knew the Plaintiff as a man of good character but the contents of the letter made them conclude that he was a mafia that was harassing residents. PW2 and PW3 also stated that

investigations were conducted and it was found that the allegations against the Plaintiff were false. In the absence of any evidence to the contrary, or of a rebuttal of the above stated evidence, I find that the Plaintiff has satisfied the Court that the contents of the impugned letter were injurious to his reputation. The words were clearly made in reference to the Plaintiff, said to be working with a group of other persons. The said words carried a defamatory meaning, had the effect of lowering the Plaintiff's reputation in the estimation of right thinking members of the society and could lead the Plaintiff to be shunned or ridiculed.

[15] It was claimed by the Defendant in the WSD that even if the words were capable of a defamatory meaning, the defence of qualified privilege was available to him. The Defendant stated that he was conditionally privileged when he wrote the letter as a person in authority to protect public interests. The legal principal underlying the defence of qualified privilege is based on reciprocity of interest. A privileged occasion arises if the communication is of such a nature that it would be fairly said that those who made it had an interest in making such a communication and to those to whom it was made had a corresponding interest in having it made to them. When those two things co-exist, the occasion is a privileged one. See: **Blaze Babigumira v Hanns Besigye HCCS No.744 of 1992** and **Hunt v Great Northern Railway Co. [1891] 2 QB 189.**

[16] According to Gatley on Libel and Slander, page 328 paragraph 14.4, the main classes of statements which come under the defence of qualified privilege at common law are;

- a) Statements made in discharge of a public or private duty;
- b) Statements made in a subject matter in which the defendant has a legitimate interest;
- c) Statements made by way of complaint about those with public authority and responsibility;
- d) Reports of parliamentary proceedings;
- e) Reports or extracts from public registers; or

- f) Reports of judicial proceedings.

[17] If proved by a defendant, a plea of qualified privilege would exonerate the defendant from defamation. However, the plea is only available to the defendant in absence of malice or bad faith. In other words, it has to be proved by the defendant that the words complained of were privileged communication, made on a privileged occasion and in good faith. See: *Joseph Kimbowa Lutaaya v Francis Tumuheirwe, HCCS No. 862 of 2001*. In the present case, the Defendant claimed conditional privilege on account that he wrote the letter as a person in authority to protect public interests. It was claimed by the Defendant that he was the Chairperson of Katanga Valley Landlords and Tenants Association (KALTA). He wrote to the Chief Justice by way of a complaint on land grabbing in the Katanga area. The presumption is that if he was acting in good faith, he would have been communicating the decision of the board of the Association. The other leaders and members of the Association in a letter to the Chief Justice dated 18th September 2016, however, disowned the letter by the Defendant and, indeed, stated that its contents were erroneous and injurious to the Plaintiff. The question, therefore, is why the Defendant took a unilateral decision to make the impugned communication and yet he represented himself as if he was acting in an official capacity? In absence of contrary evidence, this points to some degree of malice or bad faith and it denies the Defendant benefit of the defence of qualified privilege.

[18] As such, although it may be agreed that the Defendant was making a complaint to a public office over a person with public authority or responsibility, which would put the statements within the ambit of qualified privilege, the absence of good faith dispels the availability of the defence to the present Defendant. The defence of qualified privilege has therefore not been established by the Defendant.

[19] In all therefore, the Plaintiff has satisfied the Court on a balance of probabilities that the publication by the Defendant was defamatory of him and in absence of any defence available to the Defendant, the Defendant is liable in defamation.

Issue 2: What remedies are available to the parties?

[20] In view of the above finding, the Plaintiff is entitled to the declaration that the words complained of were defamatory of him and to an order of a permanent injunction restraining the Defendant from any further publication of material libelous to the Plaintiff.

[21] The Plaintiff further sought for general damages for defamation and proposed a sum of UGX 500,000,000/=. The law is that general damages are the direct, natural or probable consequence of the act complained of and are awarded at the discretion of the Court. The purpose of the damages is to restore the aggrieved person to the position they would have been in had the breach or wrong not occurred. See: *Hadley v Baxendale (1894) 9 Exch 341; Kibimba Rice Ltd v Umar Salim, SC Civil Appeal No. 17 of 1992* and *Robert Cuossens v Attorney General (SCCA No. 8 of 1999) 2000 UGSC 2 (2 March 2000)*. In the assessment of general damages, the court should be guided by the value of the subject matter, the

economic inconvenience that the plaintiff may have been put through and the nature and extent of the injury suffered. See: *Uganda Commercial bank v Kigozi [2002] 1 EA 305)*. Under the law, general damages are implied in every breach of contract and every infringement of a given right.

- [22] On the measure and assessment of damages for defamation, Sir Thomas Bingham MR in the case of *John v MGN Ltd [1962] 2 ALLER 35* stated thus; *"The successful plaintiff in a defamation action is entitled to recover, as general compensatory damages, such sum as will compensate him for the wrong he has suffered. That sum must compensate him for the damage to his reputation; vindicate his good name, and take account of the distress, hurt and humiliation which the defamatory publication caused. In assessing the appropriate damages for injury to reputation the most important factor is the gravity of the libel; the more closely it touches the plaintiff's personal integrity, professional reputation, honor, courage, loyalty and the core attributes of his personality, the more serious it is likely to be. The extent of the publication is very relevant: a libel published to millions has a greater potential to cause damage than a libel published to a handful of people"*.
- [23] On the case before me, the Plaintiff led evidence showing that he is a senior pastor at Eternal Life Gospel Church Wandegeya. He testified that he suffered ridicule amongst the Katanga community where his church is located and some of his church-going congregation left the church after the said publication. His evidence was corroborated by PW2 and PW3. In view of the above evidence, and in absence of any evidence to the contrary, I am satisfied that the Plaintiff had a reputation to protect, which was injured by the publication made by the Defendant and the Plaintiff is entitled to compensation by way of general damages. The sum of UGX 500,000,000/= proposed by the Plaintiff is, however, astronomical and would be out of tune with reality. Taking all the circumstances of the case into consideration, I find an award of UGX 50,000,000/= as sufficient compensation and I award the same to the Plaintiff as general damages.
- [24] Regarding the costs of the suit, Section 27 of the Civil Procedure Act provides that costs follow the event unless the court upon good cause determines otherwise. Given the above findings, the Plaintiff is entitled to the costs of the suit and the same are awarded to him.
- [25] In all, therefore, the suit by the Plaintiff succeeds and judgment is entered for the Plaintiff against the Defendant for;
- a) A declaration that the words complained of were defamatory of the Plaintiff.
 - b) An order of a permanent injunction restraining the Defendant from any further publication of defamatory materials against the Plaintiff.
 - c) Payment to the Plaintiff of the sum of UGX 50,000,000/= (Uganda Shillings Fifty Million only) as general damages.
 - d) Payment of the costs of the suit.

It is so ordered.

Dated, signed and delivered by email this 10th day of June, 2024.

Boniface Wamala JUDGE

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE	https://ulii.org/akn/ug/judgment/ughccd/2024/97/eng@2024-06-10
CASE PAGE	https://chat.esheria.ai/case-law/uganda/pastor-walugembe-v-segawa-civil-suit-653-of-2016-2024-ughccd-97-10-june-2024-unknown-topic-unknown-court-2024--6a3ea4da3b1caa91297e70b3

Prepared on 13 October 2026 · Esheria