

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KABALE

CIVIL APPEAL NO. 42 OF 2008

(From Chief Magistrate's Court CS 63 of 2005)

1. CHAINA MOVAT
2. VOICE OF KIGEZI:.....APPELLANTS

VERSUS

KYARIMPA ENID:.....RESPONDENT

BEFORE HON MR. JUSTICE J.W. KWESIGA

J U D G M E N T

The Respondent, a female businesswoman from Kabale Central Market sued the Appellants jointly for defamation before the Chief Magistrate's Court which gave Judgment in her favour and granted her damages in the sum of **Sh. 3,000,000/= (Three million shilling only)**.

The Respondent's case is that on **21st July, 2004** at about **8:30 a.m** the second Appellant read and broadcast a letter allegedly written by the first Respondent, according to paragraph 5 of the plaint, the Plaintiff heard **RHONAH NINSIIMA** and

JULIUS BARUSYA employees of the second Appellant state “ ***A lady called Kiwala Enid who sells saucepans in the Central Market, Kabale Municipality is a nuisance and/or problematic to the residents of Makanga cell. She charmed my child and the child died. She is involved in 25 cases pending hearing before LC I. She pours urine on my child’s grave every morning.***” These words were alleged by the two radio presenters as authored by **CHAINA MOVAT**, the first Appellant.

The Defendant/first Appellant denied knowledge of the letter or its broadcast. He put up a defence of total denial. The second Appellant filed a written statement which denied liability and put a defence of justification in paragraphs 8, 9 and 10 of written statement of Defence. Paragraph 9 specifically states:

“ 9. The Defendant shall at the trial show and prove that the plaintiff is a nuisance, a person of low morals and despicable social conduct and near out cast in her society and that she has no reputation to protest and is therefore incapable of being defamed.”

Before indulging in examination of the evidence and the Law, the case of defamation arises where a person publishes defamatory words when he speaks them to or in presence of a third person and a statement is defamatory of the

person of whom, it is published if it is calculated to lower her/him in the estimation of ordinary, just, and reasonable men. The test is whether under the circumstances in which the words were published, reasonable people would be likely to understand in a defamatory sense. **JUSTICE ALLEN** (as he then was) in the case of **Geofrey Ssejjoba Vs Rev. Patrick Rwabigonji HCCS No. 1 of 1976.**

Settled that a defamatory statement is one which has a tendency to injure the reputation of the person to whom it refers, by lowering him/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, dislike and typical examples are an attack upon the moral character of the plaintiff attributing to him any form of disgraceful conduct such as crime, fraud, dishonesty e.t.c. In the instant case the statement complained of, considering their ordinary and natural meaning, show that the plaintiff is a woman of immoral character who pours urine on grave of her neighbour's child, a criminal who killed a person using charms or witch craft and therefore capable of being charged, prosecuted for a homicide.

The legal position was well stated in **Scott Vs Sampson (1882) 8QBD 503** that ***"The Law recognizes in every man a right to have the estimation in which he stands in the opinion of others un affected by false statements to his discredit."***

It must be stated here that the burden of proof is upon the plaintiff to show that the words complained of convey a defamatory importation.

GITTLEY ON LIBEL AND SLANDER 8th Edition, parts 114 and 115 states that where the words complained of are defamatory in their ordinary and natural meaning the Plaintiff need prove nothing more than their Publication. This position was confirmed by Justice Gideon Tinyinondi In **Ntabgoba Vs Editor New Vision (2001-2005) 2 HCB 209.**

In the instant case the meaning of the words depict the Respondent as a Criminal who Committed a homicide and an immoral person who disrespects the grave of a neighbor's child. She is further depicted as a woman that is a source of conflicts that have ended in 25 cases in a small village in the LC village court.

Whereas the first Appellant did maintain his denial of knowledge, authorship and association with the letter that second appellant by conduct and pleadings maintains Defence of Justification. The Defence of justification places upon the Defendant the burden of proving that the statement made was true. Paragraph 9 of the written statement of Defence, the second Respondent expressly contended that at the hearing it would prove that the plaintiff/Respondent is a nuisance, has low morals and despicable social conduct, has no reputation capable of being

defamed. The burden of proof is not only as presumed by Law but was expressly pleaded. Justice Byamugisha (as she then was) In **BLAZE BABIGUMIRA VS HANNS BESIGYE HCCS NO 744 OF 1992 (un reported)** held, inter alia, that the Defence of Justification means that the Defendant is contending that the words complained of were true. The burden of is on the Defendant to prove that in fact these words were true. Prima facie, the words complained of were defamatory. The Plaintiff heard the words broadcast on a radio which has a very wide coverage in the area and listened to by the community to which she belongs. She called witnesses; PW 2 Tusiime Kellen, PW 3 Asiimwe Caroline and PW 4 Mujunante Patrick who all confirmed they heard the alleged letter being read on radio. This is cogent evidence of publication on radio. They all understood the letter referred to Kyarimpa Enid alias Kiwala. The Plaintiff and PW 4 made efforts to obtain a copy of this letter from the second Defendant/Appellant and despite the promises by Mr Keihwa one of the Managers of the Radio the letter, if it existed, was withheld. The radio denied the Plaintiff of a copy. The evidence as a whole leaves no dispute at all that Ronnah Ninsiima and Julius Barusya were employees of Voice of Kigezi or that they were presenters of the days programme.

The second Defendant/Appellant did not rebut the Plaintiff/respondents evidence on publication of the Radios staff. There is no rebuttal that they published the

defamatory words in their ordinary course of employment as radio presenters. It is irrelevant that the plaintiff did not produce the letter or obtain any printout from communications records as contended by the Appellants Advocate. The moment she proved that there was publication and that what was published was defamatory and that the publication was by the Defendant she discharged her duty. The second Defendant had evidential burden to prove that publication was never made. It is not explained why Ninsiima and Barusya were not presented to rebut the allegations. This points to conceding to their role. This has been considered together with the Defence of justification which unequivocally avers that the plaintiff/Respondent is evil, Criminal and of Law morals incapable of being defamed.

The burden was assumed by the Defendant/Appellant to prove that the Plaintiff is of such poor moral character and she had such a disgraceful criminal record which was not done. The Plaintiff testified that she was exposed to hatred, contempt and ridicule and her reputation as a prominent trader was injured. She suffered the agony and inconveniences of going to the second Defendant more than once to demand for the letter allegedly read on the air to the public by the second Appellant but the letter was nowhere. She suffered the inconveniences of

answering questions from her husband and friends regarding the publication. I therefore find that she was prejudiced or injured.

As a Judge, I have the duty to decide whether the publication complained of is capable of being understood by reasonable people as bearing the meaning alleged or defamatory meaning. It is not the duty of this court to decide what is the meaning of the Publication but what it is capable of bearing to reasonable people being the kind of people in the station of life of the plaintiff such as PW 2, PW 3 and PW 4. After considering the evidence as a whole there is no proof that the first Appellant **CHAINA MOVAT** wrote the letter allegedly read. This could have been proved by the letter itself or the evidence of the second Defendant who publically alleged Movat wrote the letter. It is probable that the letter was written by someone else or that it did not exist and the second Defendant who asserts in the written statement of Defence that the words uttered were true is the origin of the words, if not, has a duty to prove them.

I have noted that the Defendant's principal witness, Patrick Keihwa Besigye gave evidence of total denial that departed from the written statement of Defence. This does not absolve the Defendant of its burden of proof in its case of justification. Following the above examination of the evidence and the Law I have

come to the same conclusion as the learned **Magistrate Grade One M/S Nakitende Juliet** in her Judgment dated **30th June, 2008**. I have found no ground or justification to interfere with the awarded damages. However, having found no evidence against **Chaina Movat**, his appeal shall wholly succeed and the Appeal by **Voice of Kigezi** the second Appellant fails. Therefore the second Appellant shall pay the Respondent damages in the sum of **Shs. 1,500,000/=** ordered by the trial Magistrate and **the costs of the proceeding both** in the **Lower Court** and **in this Appeal**.

Dated at Kabale this **23rd** day of **February, 2012**.

.....
J.W. KWESIGA

JUDGE

23-2-2012

Delivered in the presence of:

Mr. Beitwenda for Respondent.

Mr. Rev. Bikangiso for Appellants.