

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**CIVIL DIVISION**

**CIVIL SUIT NO. 318 OF 2012**

**OBIGAH ROSE ..... PLAINTIFF**

**V**

- 1. MPANDE FLAVIA**
- 2. MILLY NANTABA**
- 3. KOLYANGA SUSAN**
- 4. KAMYA LYDIA ..... DEFENDANTS**

**BEFORE HON. LADY JUSTICE HENRIETTA WOLAYO**

**JUDGMENT**

**A. Introduction**

1. On October 11, 2012, the Plaintiff Obigah Rose sued the three Defendants Mpande Flavia, Milly Nantaba, Kolyanga Susan and Kamy Lydia in the tort of defamation. By a written statement of defence filed on October 25, 2012, the Defendants denied the claim and by para. 4 of their defence averred that the allegations made were true and that they acted within legal channels to seek redress for the issues they had with the Plaintiff.

**B. The Facts**

2. At the time of filing the suit, the Plaintiff was the President of Young Women Christian Association (YWCA) whose Constitution reveals that it is Christian based in character. When Obigah was President, Mpande Flavia was the 3<sup>rd</sup> Vice President, Kamy Lydia was the 2<sup>nd</sup> Vice President, Kolyango Susan was the Treasurer, and Milly Nantaba was the Secretary. These four Defendants and the Plaintiff constituted the Board of Directors.

3. On June 25, 2013 when the 1<sup>st</sup> Defendant Mpande Flavia filed her witness statement, she had been elected President and had replaced the Plaintiff.
  
4. The Plaintiff's suit is based on a letter dated September 21, 2012 addressed to the Minister of Internal Affairs signed by Mpande and Nantaba under the heading '**Censure Motion against the President of YWCA**'. The words complained of are reproduced below and according to the plaint, were uttered with spite, ill will, without colour of right, full of untruths, and slandered the Plaintiff to the Minister of Internal Affairs and those copied in:
  - a) Incompetence through failure to exercise general supervision over the association finances resulting into reckless expenditure of association funds contrary to article 10.02 (b) of the constitution.
  - b) Failure to ensure presentation of reports to the Board of Directors.
  - c) Abuse of office through fictitious and exaggerated claims for allowances to undertake activities out of the President's scope of duties [that has resulted into unnecessary and expeditious expenditure of Board activities.]
  - d) Failure to foster and ensure good and democratic governance hence a harmonious working relationship with members of the Board together management resulting into unilateral decisions in most cases.
  - e) Conflict of interest which has resulted into false and fake recruitment of staff on tribal grounds e.g. receptionist Nyakuru Cheline and wrongful recruitment of Dean of students Sande Annet. Further recruitment of membership districts without the approval of the Board and proper methodology of recruitment that is acceptable by all in accordance with article 6.05 of the constitution.
  - f) Blocked all requests to review income and expenditure returns which has left the Board treasurer naive of what is going on in the finance department.

- g) Exhibited rudimentary methods of governance and turned the Association into a personal business.
  - h) Undermines fellow Board members and abuses them regarding them as children.
  - i) Human trafficking exhibited through abandonment of Board of Directors and management staff at Napak at 12 a.m. on September 11, 2012 on their way to Moroto which left Board members with doubts as to her intention.
5. By the scheduling memorandum filed on July 1, 2015, both parties agreed the following issues for trial:
- a) Whether the impugned letter was defamatory
  - b) Whether the Defendants authored and uttered the said letter
  - c) Whether the defence of truthfulness is available to the Defendants
  - d) Remedies
6. Hearing of witnesses commenced on July 2, 2015 before my brother Judge, Justice Nyanzi who recorded evidence of six witnesses for the Plaintiff, namely, PW1 Annet Linda; PW2 Sarah Apadet Okumu; PW3 Rose Obigah; PW4 Samuel Luzobe; PW5 Alice Nankya Mbidde; PW6 Yumaa Lillian.
7. On January 23, 2015, hearing of oral testimony continued before my sister Judge, Lady Justice Patricia Basaza after the transfer of Justice Nyanzi. My sister judge heard and recorded evidence of DW1 Ahimbisibwe Christine.
8. Lady Justice Patricia Basaza was transferred from the Division and on September 5, 2018, I listened to the oral evidence of Mpande Flavia DW2 in cross examination, she having filed a witness statement on June 25, 2013.
9. Both counsels filed written submissions and precedents that I have carefully reviewed and considered.

## C. The Law

10 Both counsels correctly articulated the legal definition of defamation in their submissions. **Winfield & Jolowicz**<sup>1</sup>, defines defamation as the publication of a statement that tends to lower a person's reputation in the minds of right thinking members of society or tends to make them shun and avoid him. The test for evaluating whether a statement is defamatory is that of a reasonable person. Winfield et al (supra) opines that:

*'The reasonable person is a layman not a lawyer and the judge must put himself or herself in the position of someone who may be guilty of a certain amount of loose thinking and who may not reflect fully and carefully upon a newspaper story or a television program.'* Page 361.

11 Another perspective to the evaluation of a statement to determine what a reasonable person would conclude is a fairly new approach that is applied in the courts of the United States of America, namely, the context of the statements. In a scholarly article by Ponsoldt<sup>2</sup>, the author discusses the relevance of context in determining whether a statement was defamatory. Ponsoldt identifies four main stages to evaluate whether a statement is defamatory that were applied in **Ollman v Evans, 750 F. 2d 970 (D.C Cir.1984)** where a political science professor sued a newspaper columnist for defamation when the article called the professor a '*Marxist*' who used '*higher education for indoctrination*'.

12 The first is that the court will examine the common usage and meaning of the words. Second, the court examines whether the statement can be verified as a fact. Third, the court reviews the context of the statement to check if it is an opinion and lastly, the court examines the broader context of the statement such as where it was placed in the newspaper.

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<sup>1</sup> Sweet & Maxwell 19<sup>th</sup> Edition 2014: 360.

<sup>2</sup> James F. Ponsoldt, 'Challenging Defamatory Opinions as an Alternative to Media Self-regulation', (1998) 9 *Fordham Intell. Prop. Media & Ent. L.J.* 45.

13 In **Stocker v Stocker [2019] All. E.R 647**, the UK Supreme Court discussed the relevance of context in ascertaining defamatory content in a statement. In that case, the trial court and Court of Appeal had found the Defendant liable for defamation when she posted on Facebook a statement that her ex-husband (the Plaintiff) had tried to 'strangle' her. The ex-husband sued for defamation on the ground that she had portrayed him as a 'murderer'. The trial court and Court of Appeal relied on the dictionary meaning of 'strangle' to find that it was an attempt to kill and agreed with the Plaintiff that the statement was defamatory. On further appeal, the Supreme Court reiterated the importance of using the standard of the reasonable reader and that the court's role was to step aside from a lawyerly analysis and inhabit the world of an ordinary reader, thereby being conscious of the context in which the statement was made.

14 The context in the **Stocker** case, according to the UK Supreme Court, was that the impugned statement had been made on Facebook – where posts are a casual medium of communication in the nature of a conversation rather than carefully chosen expressions – and that such posts are read and understood by the Facebook reader. Accordingly, the court considered that a Facebook reader would interpret the post as meaning the Claimant had grasped the Defendant by the throat rather than tried to kill her deliberately, noting that people scroll through Facebook quickly and their reaction to posts is impressionistic and fleeting. The appeal was therefore allowed.

15 The concept of context in defamation cases was equally well developed in **Jeynes v News Magazines Ltd [2008] EWCA Civ 130**, where the court elaborated the reasonable reader in the following terms (at para. 4): (1) The governing principle is reasonableness. (2) The hypothetical reasonable reader is not naïve but he is not unduly suspicious. He can read between the lines. He can read in an implication more readily than a lawyer and may indulge in a certain amount of loose thinking but he must be treated as being a man who is not avid for scandal and someone who does not, and should not, select one bad meaning where

other non-defamatory meanings are available. (3) Over-elaborate analysis is best avoided. (4) The intention of the publisher is irrelevant. (5) The article must be read as a whole. (6) The hypothetical reader is taken to be representative of those who would read the publication in question. (7) In delimiting the range of permissible defamatory meanings, the court should rule out any meaning which can only emerge as the produce of some strained, or forced, or utterly unreasonable interpretation. (8) It follows that it is not enough to say that by some person or another the words might be understood in a defamatory sense.

16 In summary, what a reasonable reader of the statement, given the context in which it is made, would understand, and whether he will consider it defamatory according to the definition provided above, is what the court is concerned with when determining defamation cases. Context would include whether the statement can be verified as a fact in which case it might be defamatory if it is false; whether the statement is an honest opinion in which case it would be considered a manifestation of the freedom of speech; as well as the broader circumstances of the publication.

## **D Resolution of Issues**

### ***Issue No. 1: Whether the impugned letter was defamatory***

17 Bearing in mind the standard of a reasonable reader, I have reviewed the evidence which is comprised of the statements made, documents and testimony in order to arrive at findings of fact and law on this issue recalling that the standard of proof is on a balance of probabilities.

18 An examination of the statements complained off by the Plaintiff reveals only two statements of fact that have potential to be defamatory:

*a) Abuse of office through fictitious and exaggerated claims for allowances to undertake activities out of the*

*president's scope of duties that has resulted into unnecessary and expeditious expenditure of board activities.*

*b) Conflict of interest which has resulted into false and fake recruitment of staff on tribal grounds e.g. receptionist Nyakuru Cheline and wrongful recruitment of dean of students Sande Annet. Further recruitment of membership district without the approval of the board and proper methodology of recruitment that is acceptable by all in accordance with article 6.05 of the constitution.*

19 The letter that contained these statements was addressed to the Minister of Internal Affairs and copied to the Minister of Gender, Inspector General of Police, YWCA Board members among other stakeholders.

20 It's important to note that all parties to this suit held elective offices and had been elected during the same Annual General Meeting in 2010. In cross examination, Rose Obigah testified that from the moment elections were completed, the Defendants rejected her (page 28 of typed proceedings). Among the thorny issues between the parties was the dismissal and non-renewal of the Executive Director's contract. Exhibit D7 in the Defendant's trial bundle is a letter dated August 2, 2011 by Mpande, Kolyang and Kamya complaining to the Plaintiff regarding the alleged unilateral dismissal of Kiyingi Laetia the Executive Director.

21 Another instance of friction between the parties over management issues is evidenced by a letter dated March 10, 2011 signed by all four vice presidents/Defendants in which they express dissatisfaction with resolutions passed at a meeting on the finance manager's contract.

22 There was also a notice in the New Vision newspaper exhibit D. 10 issued by Rose Obigah PW 3 to notify the public that one

Harriet Kawalya Kagwa was not the spokesperson of YWCA, which according to Mpande DW3 was without Board approval.

23 On February 24, 2012, a letter was sent to the Commander Kampala Metropolitan Police informing the Commander of an upcoming extra ordinary meeting to discuss urgent YWCA affairs including recruitment of a new Executive Director, mismanagement of funds, and conflict of interest issues among others.

24 It is against this background that the impugned letter was written by the Defendants on September 21, 2012 bringing to the attention of the Minister responsible for supervision of NGOs the management and leadership crisis at YWCA. Indeed, the Ministry of Internal Affairs through Okello Stephen the Secretary NGO Board responded to Milly Nantaba the 2<sup>nd</sup> Defendant and Secretary of the YWCA Board giving guidance on the way forward.

*The statement on abuse of office.*

25 This statement in its ordinary meaning suggests financial mismanagement through false claims for allowances to undertake official activities. Would a reasonable reader (constructed from those who received the letter, that is, the Minister to whom the letter was addressed or those copied in the letter) construe the statement as one capable of lowering their perception of the Plaintiff?

26 In the absence of any specific revelation of financial impropriety, none of the readers of this letter would construe a defamatory meaning. On the contrary, the Ministry considered it a management issue that was capable of resolution. Evidence of possible financial impropriety only came out during the trial and not before.

27 Worthy of note is that the impugned letter followed a meeting on September 19, 2012 called by the Secretary-General of the

National Association of Women Organizations (NAWOU) in an attempt to resolve the impasse in YWCA from which meeting the Plaintiff walked out, conduct that surprised NAWOU. Exhibit D12 is relevant in this regard.

28 Several attempts to resolve the impasse amicably having failed first at the Board level, then by NAWOU were followed by the notice to censure the Plaintiff addressed to the line Minister.

29 I have reviewed the evidence adduced by the Plaintiff and apart from placing blame on other parties for financial mismanagement, it doesn't demonstrate how her reputation was lowered in the eyes of the readers of the letter who should have testified on her behalf. Her evidence in cross examination on the various payment vouchers that do not give purpose of payments raise more questions than answers.

30 Having considered the context in which the statement on abuse of office and management flaws was made, which mainly, was the leadership crisis in the organization, failing to agree with other Board members (the Defendants) on how to run the organization and the various attempts by the Defendants to address the challenges internally, the response by the Ministry of Internal Affairs that pointed to internal management challenges, a reasonable reader of the impugned letter would not find it defamatory. Further, that reader as evidenced by the letter from the Ministry dated October 11, 2012 in the Plaintiff's trial bundle would not perceive the Plaintiff as a criminal.

*Conflict of interest and nepotism.*

31 The context I have described above also applies to this statement. Leadership crisis and management challenges informed this statement and it would not lower the Plaintiff's image in the eyes of a reasonable reader. This matter had come up earlier when the four Defendants raised it to the Plaintiff in their handwritten letter dated March 10, 2011. (Exhibit D. 9). Furthermore, in her evidence in court, Mpande Flavia explained that there was influence exerted

by the Plaintiff in the process of recruitment especially as both Nyakuru and Sande Annet originate from West Nile region where the Plaintiff also originates. While this perception of influence peddling was rebutted by the Plaintiff's witnesses, namely, Luzobe Sam PW4, a Human Resource consultant, the Defendants were entitled to express their honest opinion.

32 The point I am driving at is that the Defendants were entitled to raise these issues touching on the management of YWCA and what was communicated in privileged circumstances cannot be defamatory. In **Harrison Busingye v Attorney General HCCS No. 83 of 2011 (ulii)** where the Plaintiff complained of a letter written by a government official concerning a project under his docket but which project the Plaintiff had inspected in the absence of government officials and given a negative assessment to the partners, I found that the context of the letter by the government official was relevant as he was entitled to respond to the negative assessment of government projects by the Plaintiff contrary to the Memorandum of Understanding between them.

33 The rest of the statements *on incompetence; failure to ensure presentation of audit reports to the Board; failure to foster good governance; blocking requests to hold meetings to review income and expenditure; exhibiting rudimentary methods of work; and undermining fellow Board members*, are opinions.

34 The Defendants were entitled to express these opinions protected under the freedom of speech in Article 29(1)(a) of the Uganda Constitution on matters that the Defendants were concerned with as Board members and Vice Presidents. In **Derbyshire County Council v Times Newspaper Ltd [1993] 1 ALL ER 1011**, the Council sued the defendant newspaper for a defamatory publication critical of the Council's management of its superannuation fund. At the trial, the Defendant applied for the action to be dismissed on the ground that the Council being a local authority cannot maintain an action for libel when no financial loss was pleaded. The judge dismissed the Defendant's application. On

appeal to the Court of Appeal, the court allowed the appeal and on further appeal by the Council to the House of Lords, it was held that there was no public interest favouring the right of government organs to sue for libel and it was of the highest public importance that '*a governmental body should be open to uninhibited public criticism*' and a right to sue would fetter freedom of speech.

35 While this precedent concerns government entities, it equally applies to the Plaintiff who was by all accounts an elected leader of a widely known private entity but with a public character that has played a critical role in the women empowerment movement. Expression of opinion by the Board members was well within corporate governance principles especially when their concerns were first aired internally and then went public when there was no response from the Plaintiff, their President. An honest opinion is a defence in an action for defamation and according to **Halsbury's Laws of England**<sup>3</sup>, the test is whether an honest person could have held that opinion on the basis of any fact that existed at the time it was published.

#### *Trafficking of persons*

36 I note that during cross examination of Mpande on this statement, she testified that the parties had agreed to drop the complaint regarding this statement. This notwithstanding, the statement on human trafficking cannot be taken literally because apart from being left in Napak at midnight, there was no indication that the Defendants were in any danger. No criminal liability can be imputed to this statement and therefore it is not defamatory.

37 I note from submissions of both counsel that their focus was on the defence of justification so they dwelt on either proving there was abuse of office and nepotism or disproving the same. As found in this judgment, a reasonable reader of the impugned letter would not jump to the conclusion it was defamatory given the context of

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<sup>3</sup> Halsbury's laws of England, para. 632, Vol.32 (2019) (LexisNexis).

internal management challenges and tension between the Defendants as board members and the Plaintiff, their President.

***Issue No.2: Whether the defence of truthfulness is available to the Defendants***

38 Having found that the statements on abuse of office and conflict of interest were not defamatory and that the other seven statements complained of, were honest opinions, I need not discuss this issue.

**E Summary of Findings**

39 Having considered the context in which the statement on abuse of Office and management flaws was made, which mainly, was the leadership crisis in the organization, failing to agree with other Board members (the Defendants) on how to run the organization, the various attempts by the Defendants to address the challenges internally and the response by the Ministry of Internal Affairs that pointed to internal management challenges, I find that a reasonable reader of the impugned letter (taken from the audience that received it) would not find it defamatory. Indeed, that reader as evidenced by the letter from Ministry dated October 11, 2012 in the Plaintiff's trial bundle did not believe the Plaintiff was a criminal. In the premises, the Plaintiff has not proved that the statements on abuse of office and conflict of interest are defamatory.

40 Expression of opinion by the Board members was well within corporate governance principles especially when their concerns were first aired internally and then went public when there was no response from the Plaintiff, their President.

**41** The Defendants were entitled to express these opinions protected under their freedom of speech on matters that the Defendants were concerned with as Board members and Vice Presidents.

## **F Costs**

**42** The parties, who are all members of a Christian based entity, YWCA, have litigated since 2012, putting all the acrimony behind them will best be served by an order for each party to bear their own costs.

**43** The suit stands dismissed with no order as to costs.

**DATED AT KAMPALA THIS 20<sup>TH</sup> DAY OF JANUARY 2020.**

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**HON. LADY JUSTICE HENRIETTA WOLAYO**

## **Legal representation**

Alliance Advocates for the Plaintiff  
Web Advocates for the Defendants