

Geoffrey Ssejjoba,,,,,,,,,,,,,,,,,,,,,APPELLANT

VERSES

Rev. Patrick Rwabigonji,,,,,,,,,,,,,,,,,,,,,DEFENDANT

High Court (Allen, J.): February 18th, 1977

(Civil Suit No.1 of 1976)

Tort - defamation - a defamatory statement is one which has a tendency to injure the reputation of the person to whom it refers by lowering him in the estimation of right-thinking members of society generally and in particular to cause him to be regarded with feelings of hatred, contempt, ridicule, fear, dislike and disesteem.

Tort - defamation - typical examples of defamation are an attack upon the moral character of the plaintiff, attributing to him any form of disgraceful conduct such as crime, dishonesty, and cruelty or casting a reflection upon the fitness or capacity of the plaintiff in his profession or trade.

Tort - defamation - defences - justification - where the defence of justification has been put up in a case of defamation, the burden is on the defendant to prove that the statements contained in the publication were true.

Tort - defamation - defences - qualified privilege - defendant has to show that the publication was made in the discharge of his public or private duty, both legal and moral - for the defence to succeed the statement must be shown to have been made honestly and without any indirect or improper motive in law is referred to as "malice" - A statement is malicious when it is made for some purpose other than the one for which the law confers the privilege of making it.

Tort - defamation - qualified privilege - It is not necessary for the plaintiff to prove affirmatively what the defendant's improper motive was, all he needs to do is to disprove the existence of a proper motive.

Tort - Libel - libel is in all cases actionable per se and no proof of damage is necessary but, if damage is suffered then this aggravated the wrong and increases the damages to which the plaintiff is entitled. This was an action in defamation by the plaintiff school teacher against the defendant parish priest as a result of a letter written by the latter on 7th November, 1975. The writing and publication of the letter was admitted and the agreed issues to be tried were:

1. Whether statements made in the letter were true.
2. Whether qualified privilege applied.
3. Whether the plaintiff suffered damage and if so the quantum.

The court was however, of the view that the first issue should really have been whether or not the letter was defamatory of the plaintiff.

The plaintiff (P.W.1) was responsible for teaching the P.6 class at Butenga Mixed Primary School, Masaka, and he was also assistant headmaster responsible for the running of the school in the absence of the headmaster, Mr. Nasamba (P.W.3). On Friday

7th November, 1975 the plaintiff had a cause to punish one Joyce Nannonno, the daughter of the defendant. When she refused to apologize for her misbehavior he sent the girl home from school. On 11th November, 1975 the defendant wrote a letter in English to the headmaster (exhibit P.1) in which he demanded that the girl should be allowed to resume her classes. He also asked for a school staff meeting to be convened to discuss the matter and for the Chairman of the school management committee to be informed. On the same day, he wrote in Luganda to the District Education Officer, Masaka, the letter complained of (exhibit P.2) which was copied to Kibirige (P.W.2), the Chairman of the Parents Committee. This letter contained the matter which the plaintiff claimed was defamatory of him.

In that letter, the defendant accused the plaintiff a teacher of disgraceful conduct such as drunkardness and the crimes of adultery, hoarding and overcharging, of dishonesty in the handling of school choir funds; and of cruelty towards his pupils. In court the defendant aggravated the defamation by accusing the plaintiff of murder or manslaughter, alleging that he beat his pupils to death.

In the same letter, he further accused the plaintiff of being drunk in class, canning pupils without good reason, being constantly absent from class, having sexual intercourse in front of his pupils, neglecting his duties so as to carry on his own business, refusing to allow his pupils to attend religious services and instruction, failing to co-operate with the rest of the school staff and parents, causing his pupils to fail examinations by his neglect and dismissing students from school without reason.

The defendant chose the defence of justification, and called two witnesses, Kibuge (D.W.2) and Rwabizisoni (D.W.3) both parents. They were not very helpful. Apart from that the defendant claimed that he had observed every one of the alleged wrongs himself.

The headmaster (P.w.3), the Chairman of the Parents' Committee (P.W.2) who gave evidence disputed all the alleged wrongs of the plaintiff as published by the letter.

The defendant farther put up the defence of qualified privilege that he made the statements in the discharge of his legal and moral duty in matters affecting the school where his interest as a parent and pastor to the authority concerned, namely the District Education Officer.

Held:

A defamatory statement is one which has a tendency to injure the reputation of the person to whom it refers by lowering him in the estimation of right thinking members of society generally and in particular to cause him to be regarded with feelings of hatred, contempt, ridicule, fear, dislike and disesteem. Typical examples are an attack upon the moral character of the plaintiff, attributing to him any form of disgraceful conduct, such as crime, dishonesty, cruelty and so on. In the present case the letter in question was apparently the most defamatory letter ever written since the defendant managed to include all points mentioned above.

2. The defence of justification placed upon the defendant the burden to prove his claim that the statements contained in the letter were all true.

3. Looking at the many serious allegations and the evidence (such as it was) as a whole, it was clear on the balance of probabilities that the defendant failed to prove them or even anywhere near proving them. The defence of justification therefore failed.

4. The alternative defence of qualified privilege meant that the letter was claimed to have been published fairly by the defendant in the discharge of his public or private duty, both legal and moral in matters affecting the school where his interest was concerned as a parent and pastor to the authority concerned, namely the District Education Officer.
5. For such a defence to succeed the statement must be shown to have been made honestly and without any indirect or improper motive which in law, is referred to as "malice" and which destroys the privilege and the defence.
6. A statement is malicious when it is made for the purpose other than the one for which the law confers the privilege of making it.
7. In proper cases of qualified privilege, the defendant is protected even though his language was violent or excessively strong if, having regard to all the circumstances, he might honestly and on reasonable grounds have believed that what he wrote was true and necessary for his purpose, even though in fact it was not so Adam v. Ward 119171 A.C. 309.339
8. The absence of any genuine belief in the truth of the statement is conclusive proof of malice, but even where a genuine belief in its truth is consistent with the existence of malice of the defendant, then the motive was an improper one. Thus, if he uses the occasion for a malicious purpose he will be liable, even though he said what he believed to be true.
9. It is not necessary for the plaintiff to prove affirmatively what the defendant's improper motive was, all that he needs to do is disprove the existence of a proper motive.
10. Taking the evidence as a whole, it is clear that the defendant could not in the circumstances, and did not in fact, have any genuine belief in the truth of most of the contents of his letter to the District Education Officer. His motive was apparently actuated by desire for revenge against the plaintiff as a result of punishing the defendant's daughter; and that this improper motive amounted to malice in law sufficient to destroy the defence of qualified privilege on this occasion.
11. As a result of the foregone, the plaintiffs claim in defamation succeeded and the defendant was consequently liable.
12. As regards damages, libel is in all cases actionable per se and no proof of damage is necessary but, if damage is suffered then this aggravates the wrong and increases the damages to which the plaintiff is entitled.
13. In this case the publication was to a limited group of persons, but, at the same time, it was a very grave libel and a person should not have to suffer such a character assassination without very good cause.
14. The plaintiff did not suffer financially taking this into account and bearing in mind the positions in society of both of the parties, an award of Shs.5, 000/- would be adequate.

Judgment entered in favour of the plaintiff. Shs. 5.000/- general damages awarded with interest at 6% from date of judgment and costs in the suit.

Dated this 18th Day of February 1977

ALLEN

JUDGE