**Ntabgoba v Editor-in-Chief the Newvision Newspaper and another**

[2004] 2 EA 234 (HCU)

**Division:** High Court of Uganda at Kampala

**Date of Judgment:** 17 March 2004

**Case Number:** 113/03

**Before:** Tinyinondi J

**Sourced by:** LawAfrica

**Summarised by:** C Kanjama

*[1] Tort – Libel – Defamatory matter – Meaning of defamation – Elements of libel –Whether Plaintiff*

*had suffered any damages – Compensatory damages, including aggravated element, and exemplary*

*damages – Measure of damages.*

*[2] Tort – Libel – Defence of fair comment – Distinction between statement of fact and comment.*

*[3] Words and phrases – “Defamatory matter” – Perception of the ordinary man.*

**Editor’s Summary**

The plaintiff was the principal Judge in charge of the High Court. An article appeared in the defendant’s

publication which referred to a case he had handled in which he allegedly failed to apply equal speed in

granting bail to two persons charged jointly with an offence of abuse of office. The article imputed a

corrupt

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motive to the plaintiff. The defendant’s publication failed to publish an apology when formally

contacted, and instead responded that it would call as a witness the Chief Justice in the threatened libel

case. The plaintiff testified that he was greatly defamed by the said article, that his reputation had been

severely damaged and that he was entitled to an award of damages.

The defence denied that the publication in question was defamatory, and in the alternative pleaded

fair comment.

**Held** – Under the law, a man is entitled to his good reputation. *Scott v Sampson* [1882] 8 QBD 203

adopted. If a defamatory statement is made in a written publication, a tort of libel is committed for which

damages are awardable. *Ratcliffe v Evans* [1892] 2 QB 524 adopted. For a statement to be defamatory, it

must be false and must lower the plaintiff in the estimation of the reasonable reader. *Astaire v Campling*

[1966] 1 WLR 34 adopted. The plaintiff has the burden to prove that the words complained of are

defamatory. If the words are defamatory in their natural and ordinary meaning, the plaintiff only needs to

prove publication. The plaintiff in this case had testified and proven the publication and the injury to his

reputation. The burden then shifted to the defendant who failed to call any witnesses and had therefore

failed to show that the words did not import a defamatory meaning.

The question of whether the words complained of were capable of conveying a defamatory meaning

was a question of law. The Court was not bound to accept the evidence or opinions of witnesses but must

make its own finding on the ordinary meaning of the words, and whether a reasonable man would be

likely to understand the words in a defamatory sense. In this case, the Court would hold that the words

complained of did contain defamatory matter.

To succeed in a defence of fair comment, the defendant must show that the words are comment and

not a statement of fact, that there is a basis of fact (which is true) for the comment complained of and that

the comment is on a matter of legitimate public interest.

Libel is a wrong actionable “*per se*” and the plaintiff need not prove actual damage. In this case, the

plaintiff went ahead and showed the devastating effect the publication had on him physically and

psychologically. The plaintiff would be entitled to general damages, such sum as would be sufficient to

compensate for the damage to his reputation, vindicate his good name and take account of the distress,

hurt and humiliation which the defamatory publication has caused. In determining the measure of

damages, the Court would look at awards in related libel cases. The Court would also consider the nature

of the libel, the extent of the publication, the conduct of the defendant (including whether an apology was

offered) before and after the publication and during the hearing. In view of the conduct of the defendant

herein and the other factors considered, an award would be made for general and aggravated damages

under one head of UShs 30 million.

Exemplary damages would be awarded where an award of general and aggravated damages was not

sufficient, in view of the need to teach the wrongdoer a lesson. To obtain exemplary damages, a plaintiff

must show that the publication was carried on for profit, that it was done with reckless disregard of the

law or with knowledge of its illegality, and that it was done because the prospects of

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material advantage outweighed the prospects of material loss. In this case, the award of compensatory

damages would be sufficient to deter the defendant, and there would be no award of a further sum as

punitive damages.

Judgment given for the sum of UShs 30 million as compensatory damages (inclusive of exemplary

damages), a permanent injunction against future defamatory publication, interest and costs.

**Cases referred to in judgment**

(“**A**” means adopted; “**AL**” means allowed; “**AP**” means applied; “**APP**” means approved; “**C**” means

considered; “**D**” means distinguished; “**DA**” means disapproved; “**DT**” means doubted; “**E**” means

explained; “**F**” means followed; “**O**” means overruled)

***East Africa***

*Biwott v Clays Ltd* [2000] 2 EA 334 – **AP** and **C**

*Journal Printing v Maclean* [1896] 23

*Machira v Mwangi* [2001] 1 EA 110

*Matembe and another v Cheye and another* High Court civil suit number 104 of 1995 – **AP** and **C**

*Mayanja v Mulengera Newspaper and others* – **AP** and **C**

*Odongkara v Astles* [1970] EA 374 – **AP** and **C**

*Sempa v Cheye and another* High Court civil case suit 644 of 2001

*Shah v Uganda Argus* [1971] EA 362 – **A** and **F**

*Wanetosi v Okware and others* High Court civil suit 575 of 1996 – **A**

*Wavamuno v Cheye* High Court civil suit number 651 of 1995 – **AP**

***United Kingdom***

*Astaire v Campling* [1966] 1 WLR 34 – **A**

*Broome v Cassell and Co* [1972] AC 1079 – **A** and **AP**

*Capital and Counties Bank Ltd v George Henry and Sons* [1982] 7 AC 741

*Groom v Crocker* [1939] 1 KB 194

*Hibbins v Lee* [1864] 4F and F 243

*John v MGN Ltd* [1996] 2 All ER 35 – **A** and **AP**

*Joynt v Cycle Trade Company* [1904] 2 KB 294

*Lefroy v Burnside* (number 2) [1879] 4 LR TR 556

*Ley v Hamilton* [1935] 1 53 LT

*Manson v Associated Newspapers Ltd* [1965] 1 WLR 1038

*Morgan v Odham’s Press* [1970] 1 WLR 820 (CA) – **A** and **F**

*Newstead v London Express Newspaper Ltd* [1940] 1 KB 377 – **A**

*Ratcliffe v Evans* [1892] 2 QB 524 – **A** and **AP**

*Rookes v Banard* [1964] AC 1129 – **A** and **AP**

*Rubber Improvement Ltd v Associated Newspapers Ltd* [1964] AC 234

*Scott v Sampson* [1882] 8 QBD 203 – **A**

*Tolley v JB Fry and Sons Ltd* [1930] 1 KB – **A** and **F**

*Walkin v Hall* [1968] LR 3 QB – **A** and **AP**