

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO. 3654 OF 1998

BETWEEN:

MISS MONICA CHINDONGO PLAINTIFF

- and -

K. CREMER 1ST
DEFENDANT

- and -

BLANTYRE HOTELS LIMITED 2ND DEFENDANT

- and -

O. D. MFUNE AND SIGNATORIES TO THE
STAFF MEMORANDUM 3RD DEFENDANT

CORAM: TEMBO, J..

Nyirenda, of Counsel for the Plaintiff
Nyasulu, of Counsel for the Defendant
Kaundama, Court Clerk

JUDGMENT

TEMBO, J.: By her writ and amended statement of claim, the plaintiff is claiming from the defendants damages: (a) for unlawful interference with her contract of employment with Mandala Limited; (b) for libel and conspiracy or intimidation; (c) for loss of employment and benefits flowing from the libel and conspiracy or intimidation. Besides, the plaintiff is claiming aggravated or exemplary damages in that regard and also costs of this action. By their defence, the defendants are denying any liability therefor and, consequently, they are praying that the action of the plaintiff be dismissed in its entirety with costs.

It is expedient that mention be made, at the outset, that the Court has heard thirteen witnesses. Six of these, including the plaintiff, have testified for the plaintiff whereas seven, including Mr. O. D. Mfune, have done so for the defendants. The Court has greatly been impressed with the demeanour and credibility of the plaintiff and, therefore, finds her to be a witness of truth. On the other hand, the same cannot be said of most witnesses for the defendants. To begin with, the 1st defendant did not attend the trial. No reasons were furnished to the Court as to why the 1st defendant could not attend, and therefore not testify during, the trial. Besides, the Court has not been impressed by or with the demeanour and credibility of most witnesses of the defendants, in particular that of Mr. O. D. Mfune, DW1, and Miss Gloria Mary Magola, DW6, whose testimonies in most material respects, by and large, appear to be a mere pack of lies.

Bearing the foregoing in mind and taking into account the full testimonies of all the thirteen witnesses the facts in the instant case, in the light of which the rival prayers of the plaintiff and the defendants ought to be considered and determined, are as follows: The plaintiff was an employee of Mandala Limited in the capacity of Food and Beverage Manager. She had been posted to the Ryalls Hotel. The 2nd defendant, Blantyre Hotels Limited, was and is a subsidiary of Mandala Limited. The 1st defendant

was, at the material time, the General Manager of the 2nd defendant. The 3rd defendant were, and are, employees of the 2nd defendant.

The plaintiff had sought, and then obtained, employment from Mandala Limited in or about July, 1987. The events leading to her employment were as follows: An advertisement on **Senior Hotel Staff Requirements** had appeared in two issues of the Daily Times newspaper, thus on 12th and 15th June, 1987. These have been exhibited as Exh. P2 and P3, and were in the following terms—

“Senior Hotel Staff Requirements

Hotel Manager, Head Chef, Head Waiter and Head House-Keeper.

Applications in writing with curriculum vitae and copy references should be addressed to

- Voucher No. 0409
The Daily Times

Private Bag 39
Blantyre

Only shortlisted applicants will be contacted with regard to interviews.”.

The plaintiff responded to that advertisement by applying for the post of Hotel Manager. She was invited for interviews. There were ten candidates and the plaintiff was the only female candidate of that group of applicants. She was successful. However she was, instead, offered the post of Assistant Manager - Front of House - at Shire Highlands Hotel, as per exhibit P7.

Upon assumption of her duties as Assistant Manager, at Shire Highlands Hotel, the plaintiff received her first promotion after only a year in her new employment. She was promoted to

the post of Senior Assistant Manageress effective from 1st October, 1988, as per Exhibit P9. Thereafter, the plaintiff continued to experience steady progression in her employment with Mandala Limited. Eventually, the plaintiff was promoted to the post of Food and Beverage Manager and was posted to the Ryalls Hotel. Upon being promoted to that post and in acknowledgment of her effective and efficient performance of her duties as Food and Beverage Manager, and indeed in relation to any other post which she had earlier on held, the plaintiff was placed on Member of Management Staff Agreement effective from 2nd March 1998; as per Exhibits P13, P14 and P14(a). By Exhibit P14 the plaintiff was informed of the validity of the Member of the Management Staff Agreement as follows—

“From: Group Personal Manager
To: Miss Monica Chindongo
Food & Beverages Manager

Thr: General Manager,
Blantyre Hotels Limited

12 May, 1998

Sub: Member of Management Staff Agreement

Further to my Memo of 18th March, 1998, I attach your Stamped Member of Management Staff Agreement valid for a period of Five years from 2nd March, 1998 to 1st March, 2003.

I am sending a copy of the agreement to the Senior Salaries Officer in the Corporate Office for her records.

Regards.

A. A. Nyirenda.”.

Until that point in time, in her employment with Mandala Limited, the plaintiff had experienced a wonderful time in terms of

both the progression she had then enjoyed in her career and the harmonious relationship which had then, by and large, existed between her and other employees at her workplace. That state of affairs had to change and indeed the change, for the worse, came in so dramatically on or about September and October, 1998. The sequence of events then and thereafter were as follows:

On or about a day in the second week of September, 1998, at about 3 pm, the 1st defendant contacted the plaintiff by phone and invited her to his office. Yes, the plaintiff then went to the office of the 1st defendant. Upon her entry, the reception the plaintiff received from the 1st defendant was, to say the least, lukewarm. She was asked to sit down whilst the 1st defendant maintained his standing posture. Then, the 1st defendant informed the plaintiff that he had received a call from the wife of one of the hotel guests named Waterson, alleging that a manageress was having an affair with her husband. The 1st defendant, in fact, had put it to the plaintiff that, in his view, it was the plaintiff who was involved in the alleged affair. The plaintiff denied the allegation. Instead, the plaintiff informed the 1st defendant that it was common knowledge amongst the workers of the 2nd defendant, at Ryalls Hotel, as to who was involved in the alleged affair. In that respect, the plaintiff told the 1st defendant that Mr. Waterson was having an affair with Miss Kate Kasamale. Thereafter, the 1st defendant appeared to have been satisfied with the plaintiff's response to the allegation made against her in that regard.

Consequent upon the foregoing, the plaintiff had approached the guest, thus Mr. Waterson, to whom she had expressed her concern, and indeed displeasure, that she was being dragged into Mr. Waterson's affair with Miss Kasamale. This development did not please the 1st defendant. Yes, once again, the 1st defendant

had summoned the plaintiff to see him in his office. The plaintiff did so. Apart from informing her that he had then confirmed the fact that Mr. Waterson was having an affair with Miss Kate Kasamale, the 1st defendant queried the plaintiff for her having approached Mr. Waterson on the matter. He told her that for doing so he could fire her from employment, thus acting in the capacity of his office as General Manager of the 2nd defendant. The 1st defendant then cautioned the plaintiff that she should not report what had happened to her husband. All the while, the 1st defendant was actually shouting at the plaintiff, therefor. The shouting was so intense that the plaintiff's blood pressure rose and she consequently had an asthmatic attack. She vomited in 1st defendant's office and the 1st defendant helped with some of the cleaning. Noting that the situation was getting out of hand, the 1st defendant alerted some of the staff. Then, the plaintiff was not able to talk to anyone. Any communication she maintained with others was by way of her gestures. Messrs Grey Maseko and O. D. Mfuno and Mrs. Zgambo escorted the plaintiff to her house. She was taken to the hospital in the night and was ordered to rest for a week.

The plaintiff then reported for work on 5th October, 1998. She was then shown Exhibit P17 a written communication, which had been issued by Mr. Mukala, the Hotel Manager, to the 1st defendant, as follows—

“Date: 5th September, 1998
Subject: Mr. T. Maliro's Message to General Manager

Mr Maliro was in my office at 7:45 am to report that Monica Chindongo has reported for duties and that he was going away to Zimbabwe for a week.

He (Maliro) then told me to warn Mr. Cremer that he did not in his absence expect any nonsense from the General Manager

otherwise he will be very violent when he comes back. By then, Mr. Robinson of Terrastone Construction Company was also in my office.

R. Mukala.”.

Before the plaintiff had read the letter/memo Exhibit P17, set out above, she was verbally informed by the Personnel Manager, Mr. Nkhoma, that she was suspended from her employment. She was thereupon handed a letter, Exhibit P16, which was to the following effect—

“Date: 5th October, 1998
Subject: Suspension without Pay

I write to inform you that you have been suspended without pay pending investigations because on 5th October, 1998, you were disrespectful to the General Manager when you threatened him through Mr. Maliro in the Hotel Manager’s Office. Find attached the Memo from the Hotel Manager to the General Manager for reference.

You are meanwhile, requested to submit a written report on the above offence to the undersigned as soon as possible.

Regards
W. S. S. Nkhoma.”.

The plaintiff’s response was contained in Exhibit P20, in particular in paragraphs 3 and 4 thereof, as follows—

“Date: 14 October, 1998
Subject: (a) Suspension without Pay
(b) Disciplinary Case
Reference is made to your two Memo of 5/10/98 and 13/10/98, respectively, in which:

(a) You suspended me on 5/10/98 without pay for

allegedly being disrespectful to Mr. Cremer through Mr. Maliro.

(b) You have threatened to dismiss me if I do not submit a written report regarding the above issue within seven days.

Regarding point (a) you state that on 5th October, 1998 I was disrespectful to Mr. Cremer through Mr. Maliro in the Hotel Manager's Office as stated in Mr. Mukala's memorandum of 5th October, 1998, although it was wrongly dated 5th September, 1998.

I would like to take you back to Mr. Mukala's memo and ask you to read it again word by word, and tell me where he has stated that I was disrespectful and threatened Mr. Cremer. I am not Mr. Maliro and whatever he said to Mr. Mukala was not a message from me through Mr. Mukala to Mr. Cremer. I would never in any case use Mr. Maliro to carry a message to Mr. Cremer regarding any Company or personal business.

I, therefore, have nothing to explain or report to you on the incident or this issue."

Consequent upon plaintiff's letter, Exhibit P20, she was invited to appear before a disciplinary Committee. She did so, and thereafter the 2nd defendant purportedly terminated her contract of employment, as per Exhibit P22, as follows—

"From: Personnel Manager - Blantyre
Hotels Limited

To: Miss Monica Chindongo

Cc: The General Manager, Blantyre Hotels
:
Finance & Administration Manager - BHL
:
Group Personnel Manager - Mandala Ltd
:
Salaries Officer - Mandala Ltd

Date: 21st October, 1998

Subject: Termination of Service

In accordance with Clause 9.4 of the Company's Conditions of Service, we write to inform you that your services with the Company have been terminated with immediate effect.

By copy of this Memo, the Salaries Officer is advised to calculate your terminal benefits as follows—

- (a) pay for days worked from 1st October, 1998 to 21st October, 1998.
- (b) Three months pay in lieu of notice
- (c) Pay in lieu of leave days if any
- (d) Less tax and any debts with the Company.

Your pension withdrawal benefits will be sent to you once the same have been received from Old Mutual.

Lastly, you should handover to the Hotel Manager, Ryalls Hotel, all Company property in your possession before you receive your terminal benefits.

W. S. S. Nkhoma.”.

The plaintiff challenged the purported termination of her employment by the 2nd defendant, through, her letter, Exhibit P23, as follows—

“The Personnel Manager
Blantyre Hotels Ltd
P. O. Box 21
Blantyre

Dear Sir,

Terminal of Service

I have received your letter of 21st October, 1998 “terminating” my services

May I draw your attention to the fact that my

employer is Mandala Limited and I was employed as Food and Beverage Manager, Ryalls Hotel.

In the circumstances you are not in a position to terminate my services. I will therefore ignore your letter.

Yours faithfully,

M. Chindongo (Miss)

Cc: Group Personnel Manager
Mandala Ltd

P. O. Box 49
Blantyre.”.

Consequent upon the foregoing, on 3rd November, 1998, Mandala Limited terminated plaintiff’s contract of employment for reasons expressed in their letter of termination, Exhibit P25, as follows—

“ 3rd November, 1998
Miss M. Chindongo
C/o Ryalls Hotel

Blantyre

Dear Miss Chindongo

Termination of Member of Management Staff Agreement

We refer to the discussion you had with the undersigned on 27 October 1998 and on 3rd November, 1998 arising from correspondence you have had with Blantyre Hotels Ltd from 5 to 22 October and confirm as follows—

1. It is quite clear from the Ryalls Hotel Staff Memorandum of 5 October, 1998 and your subsequent letters to Blantyre Hotel Ltd

management, that your working relationship with both management and staff at Ryalls Hotel has deteriorated so much that it is not advisable to retain your services.

2. As a result of (1) above it has been decided to terminate your employment in accordance with Clause No. 11 of your Member of Management Staff Agreement dated 20th March, 1998 which states:

The employment may be terminated by either party's serving the other with three calendar months' notice in writing or by either party paying to the other three calendar months' salary in lieu of notice at any time. The employment may also be terminated for reasons in the Company's Conditions of Service, Rules and Regulations."

The Senior Salaries Officer in the Corporate Office is therefore advised by copy of this letter to prepare your final settlement based on the following data:

Salary up to and including your 1st working day, Three months salary in lieu of notice, salary in lieu of leave accrued, less tax and any debts with the company.

Similarly the Welfare Officer in the Group Personnel Department is advised to process your withdrawal benefits from the Company Pension Scheme.

May we take this opportunity to thank you for your services rendered since the commencement of your employment on 1st August 1987 and wish you all the best.

Yours sincerely,

A. A. Nyirenda
Group Personnel Officer.”.

Upon receipt of Exhibit P25, the plaintiff for the first time became aware of the Ryalls Hotel Staff Memorandum of 5th October, 1998, against her, thus Exhibit P18. It is quite evident from the reading of Exhibit P25 that Mandala Limited had terminated plaintiff’s contract of employment for reasons, to the greatest extent, based upon Ryalls Hotel Staff Memorandum against the plaintiff. It is, therefore, expedient that Exhibit P18 be fully set out herein as follows—

“ Memorandum

From: Employees - Ryalls Hotel

To: The General Manager - Blantyre Hotels
Ltd

cc: Finance & Administration Manager - BHL
Personnel Manager - BHL

Hotel Manager - Ryalls Hotel

Date: 5th October 1998

Subject: Removal of Miss M. Chindongo

1. Sir, we would like to take you back, that is before you came to manage Blantyre Hotels Limited. Miss Chindongo has been a terror ever since. If you did not hear the news that she was beaten up by one of the employees who in turn was dismissed in the process, then take it to day.
2. If you did not hear that she came into this place in a crooked way, in the sense that no formal interviews were conducted, know it to day.
3. If you did not know that she has always thought of becoming a Hotel Manager through her lips and not necessarily knowing the job know it to day.

4. If you have forgotten that you received a signed document from Shire Highlands employees demanding her immediate transfer because of her unbecoming, unlawful and inhumane behaviour towards employees, please remember this.

5. Let us remind you once again that we gathered in the Statton Hall in September, 1997, where we told you to remove her from the place just because she had dismissed some of our fellow employees because they were employed by her fellow senior members of staff and not because they made any offence.

6. Another thing is, she is very good at talking, gossiping, disliking some of the employees as well as some Senior members and saying that without her, business will stand at a halt.

7. If you did not know that she claims to have been married to someone called Tony Maliro, yet she is still called Miss Chindongo, know it and also remember that a certain man was assaulted just because of giving her an advice of how to work and maintain our hospitality.

8. Let us also remind you that on 5th October, 1998, Mr. Maliro, who is neither an employee of Blantyre Hotels nor a husband to Monica, came and threatened the Hotel Manager at Ryalls to keep Miss Chindongo well, failing which, on his way back from Zimbabwe, he will terrorise this place.

9. Now, if the top most management are being threatened like this, who are we to defend ourselves. We are so feeble that we cannot stand such type of threats.

10. To crown it all, we are telling you now to remove Miss Monica Chindongo from Blantyre Hotels Ltd to elsewhere. If you choose to still keep her here then do so and let her do the job alone with all departments in her hands. We have persevered long enough. Please do not misquote us, what we are saying here is that you are at liberty to keep Miss Chindongo here and displace us or vice versa. Enough is enough.

11. She must leave this place now not tomorrow.

Thank you

Concerned employees

(Signatures are appended below).”.

Plaintiff's reaction to the allegations made against her in Exhibit P18 is that all the allegations made therein are false. Indeed a mere glance at the evidence as to the manner in which the plaintiff sought and obtained employment from Mandala Limited and, thereafter, steadily progressed in her employment to the position of Food and Beverage Manager at Ryalls Hotel, clearly affirm the view of the plaintiff in that regard. The plaintiff did not obtain her employment and any promotions in any crooked way, whatsoever, as alleged in Exhibit P18. The post of Hotel Manager had been advertised in the Daily Times newspaper issues of 12 and 15 June, 1987. The plaintiff had replied to the advertisement expressly indicating her wish to be considered for appointment as a Hotel Manageress. She was like any other suitably qualified candidate, therefore, required to produce evidence of her qualifications in writing. Upon doing so she, together with other candidates, attended a formal interview. She succeeded thereat and instead of granting her the post of Hotel Manageress, as per the advertisement, the plaintiff was offered the post of Assistant Manager- Front of House - at Shire Highlands Hotel. Indeed upon her efficient and satisfactory performance of her duties, as were assigned to her from time to time by her employer, the plaintiff was promoted several times resting with the position of the Food and Beverage Manageress at Ryalls Hotel. There is no single letter issued to the plaintiff by her employer signifying that she had been guilty of any misconduct, including one respecting inefficient performance of her duties during her employment. To the contrary written communication, to the plaintiff from her employer, abound respecting the fact that the plaintiff was an efficient and dependable worker of Mandala Limited at Blantyre Hotels Ltd.

Besides the foregoing, the plaintiff was and still is a wife to Tony Maliro. During the trial, the 3rd defendant did not adduce any evidence to the contrary. In that regard any insinuation to the effect that the plaintiff was leading an immoral life with Tony Maliro, in that he was not her husband, was and is unfounded. The allegation was and is utterly false.

Besides the foregoing, it is expedient to note that no evidence was adduced by the 3rd defendant to support their allegation in Exhibit P18 that the plaintiff had been beaten by a member of staff who subsequently had been dismissed therefor. Even if evidence were to have been adduced, it would be quite strange for the Court to support a member of staff who takes to the beating or assaulting of his or her superior at a workplace over any issue, instead of having an amicable settlement in any manner prescribed in the relevant conditions of employment. The Court would not side, where it is so proved, with a member of staff whose employment was terminated consequent upon that member of staff having been guilty of assaulting her or his superior at the workplace. In any case, in the instant case, the fact of the matter is that the 3rd defendant have not adduced evidence to support their allegation in that regard. The allegation was and is false indeed.

Concerning the alleged unlawful dismissal of some of the junior employees of the 2nd defendant by the plaintiff on account that these were not employed by her, the position is quite clear. The plaintiff had, in communicating to the concerned employees their dismissal, merely acted on the express instructions of the General Manager, herein, the 1st defendant. Indeed, upon subsequent review of their respective cases, two of them were confirmed and only one had been reversed in that the employee concerned had never received a warning respecting the performance of her duties. Thus, in that regard, no evidence had been adduced to establish the fact that the plaintiff had been a

terror throughout the period of her employment with Mandela Limited, and indeed at Blantyre Hotels Limited as alleged by the 3rd defendant in Exhibit P18.

Finally, but not least, it is expedient to point out that the 3rd defendant have not proved to the satisfaction of the Court, or at all, that the plaintiff had used Mr. Maliro, her husband, to threaten the 1st defendant as alleged. The issue was purely one affecting Mr. Maliro only. He did not say to anyone, including Mr. Mukala that he was acting on the express or implied instructions of the plaintiff in that regard. To the extent that the 3rd defendant and indeed the 2nd defendant alleged that the plaintiff had been guilty of some misconduct by way of being disrespectful to the 1st defendant through the utterances of Mr. Maliro, the defendants have utterly failed to prove the allegation in that regard.

Besides the foregoing, it is extremely important that the Court should make an observation regarding the manner and circumstances pertaining to the production of Exhibit P18.

The 1st defendant allegedly had had some quarrel with Tony Maliro at some Club house in Limbe. No proof of that allegation was made during the trial. However, the position was that upon the 1st defendant allegedly so being assaulted by Tony Maliro at some Club house in Limbe, the 1st defendant had thereafter asked Mfune and two other employees of Ryalls Hotel to go to Blantyre Police to make some report thereon. Mfune was told by the 1st defendant about the alleged assault. It would appear the same was true of the other two employees who the 1st defendant had asked to go to Blantyre Police Station for that purpose. Later, in the afternoon, on that day, Mfune was to address a meeting of the Trade Union for the Ryalls Hotel Branch, of which Mfune was the Chairman then. He had cleared the convening of

the meeting with the 1st defendant. In fact, the 1st defendant was aware of the subject matter for the meeting, thus, the removal of Miss Chindongo. It is interesting to note that this was on or about the same day that news went round that the 1st defendant had been assaulted by Mr. Maliro, husband of the plaintiff. Indeed neither Mfune nor his colleagues, who had been instructed by the 1st defendant to record a statement at the Police Station respecting Mr. Maliro's alleged assault of the 1st defendant, had witnessed the alleged assault.

On his return from the Police Station, late in the afternoon, thus about 3 pm, Mfune had found the concerned staff waiting for him for the meeting. Before going to the venue of the meeting, Mfune had gone to see the 1st defendant and thereafter he reported for the meeting. Although attempts were made by some witnesses for the defendants to give the impression that the meeting had discussed several issues of interest to its members, the only document which emerged from the meeting, thus Exhibit P18, appears clearly to signify that only one issue was, in fact, discussed; thus, the removal of the plaintiff from Blantyre Hotels Limited. The interaction between the 1st defendant and Mfune and thereafter that between Mfune and the members of staff at the Trade Union meeting, clearly shows that the 1st defendant had conspired with Mfune on the one hand and, through Mfune, with the 3rd defendant, who are said to have issued Exhibit P18. Yes, the question of allowances might have been discussed, but only as a means by which Mfune would have secured the support of the 3rd defendant in coming up with Exhibit P18 for the removal of the plaintiff from Blantyre Hotels Ltd. That position is quite consistent with the contents of Exhibit P18 which clearly and expressly only dealt with the removal of the plaintiff from her workplace and for unfounded reasons, as has been noted herein above. No other record of the meeting in question had been produced apart from Exhibit P18.

As a matter of fact, Exhibit P18 was prepared by Mfune after the signatures had already been procured from the so called concerned employees, on plain sheets of paper, without Exhibit P18. Exhibit P18 was prepared by Mfune in keeping with the conspiracy between him and the 1st defendant on the one hand and that with the rest of the so called concerned employees, on the other hand. Thus why upon Exhibit P18 being prepared, both Messrs Mfune and Cremer, 1st defendant, did not even care to serve it upon the plaintiff prior to the 2nd defendant's purported termination of the contract of employment of the plaintiff; and indeed prior to the eventual termination of her contract of employment by Mandala Limited. As it has been noted above, the plaintiff first became aware of Exhibit P18 upon being served with the letter of termination of contract from and by Mandala Limited. As it has been noted above, in coming to the decision to terminate its contract of employment with the plaintiff, Mandala Limited to a greater extent had relied on the allegations made against the plaintiff in Exhibit P18. In view of the findings of fact by the Court in regard to Exhibit P18, it is quite clear that the termination was based on false allegations which, by their conspiracy Mfune and 1st defendant, had maliciously procured from the 3rd defendant. Yes, maliciously procured, in that both Mfune and the 1st defendant had resolved between them to secure the removal of the plaintiff whatsoever and howsoever. And as it turned out to be, exhibit P18, upon which the plaintiff's termination of contract was procured from Mandala Limited, was full of false allegations indeed. It is also correct to observe that had it not been for Exhibit P18, plaintiff's contract with Mandala Limited would then not have been terminated at all. The foregoing are facts in the instant case.

As noted above, by her writ and amended statement of claim the plaintiff is claiming damages: (a) for unlawful interference with her contract of employment with Mandala Limited; (b) for libel and

conspiracy or intimidation; (c) for loss of employment and benefits flowing from the libel and conspiracy or intimidation. Besides, the plaintiff is claiming aggravated or exemplary damages in that regard. At the end of the trial, and by the submissions of counsel, the plaintiff has expressly asked the Court not to consider, and therefore not to make, an award of damages for unlawful interference with plaintiff's contract. Further, that the Court ought to bear in mind that damages sought for conspiracy and intimidation are in the alternative. That being the position, then, the Court must, therefore, now proceed to the consideration of legal issues raised in the instant case which are those pertaining to libel; conspiracy or intimidation; aggravated or exemplary damages and to damages for loss of employment and benefits flowing from the libel and conspiracy.

To begin with, respecting the tort of libel, the plaintiff's pleadings are in paragraphs 17 to 19 of her amended statement of claim, as follows: that by the staff memorandum dated 5th October, 1998, (thus Exhibit P18) the defendants falsely and maliciously published of and concerning the plaintiff all the words contained in Exhibit P18; that in their natural and ordinary meaning, the words in Exhibit P18 meant and were understood to mean that the plaintiff: (a) is corrupt and that she secured her employment with Mandala Limited through corrupt practices; (b) will use any means including corrupt practices to get promoted; (c) is not capable of maintaining a good working relationship with other employees; (d) leads an immoral life with Tony Maliro; (e) is not fit to be a Manageress in the Hotel Industry. That in consequence, thereof, the plaintiff's reputation has been seriously damaged and she has suffered considerable distress and embarrassment.

A defamatory statement or matter is one which has a tendency to injure the reputation of the person to whom it refers: **Salmond and Heuston on Law of Torts** 19th Ed at page 155 cited with approval by Tambala, JA, in a Supreme Court of Appeal

decision in **PTC -v- Ng'oma**, MSCA Civil Appeal No. 30 of 1996 (unreported). The essential feature of defamatory matter is, therefore, its tendency to damage the reputation or good name of the plaintiff, Tambala, JA, further stated in that case. It is therefore not what the plaintiff feels about herself upon defamatory matter. There has to be a publication of the defamatory matter to some person other than to the plaintiff. And what matters is the effect of the defamatory matter on that other person, in particular as to whether that matter in that person tends to injure the reputation of the person to whom it relates. To such person or persons, since such publication, the plaintiff is henceforth held in contempt and he or she suffers from ridicule.

Thus, the test is whether the words tend to lower the plaintiff in the estimation of right thinking members of the society generally: Per Lord Atkin in **Sim -v- Stretch** (1936) 2 ALL E.R. 1237 at 1240. In the case of words defamatory in their ordinary sense the plaintiff has to prove no more than that they were published. He cannot call witnesses to prove what they understood by the words; not will it avail the defendant to call any number of witnesses to say that they did not believe the imputation. The only question is, might reasonable people understand them in a defamatory sense? So when circumstances are proved which will clothe words otherwise innocent with a defamatory meaning the question must equally be: might reasonable people who know the special circumstances understand them in a defamatory sense. If words are used which impute discreditable conduct to my friend, he has been defamed to me, although I do not believe the imputation, and may even know that it is untrue: **Hough -v- London Express Newspaper, Limited** (1940) 2KB 507, at 515, per Goddard L. J.

Reverting to the facts in the instant case, the position is that Exhibit P18 contains numerous statements which have a tendency to injure the reputation of the plaintiff. Indeed the Court accepts the submission of the plaintiff based on the pleadings of

the plaintiff in paragraph 18 of her amended statement of claim, respecting the natural and ordinary meaning to be ascribed to Exhibit P18. The Court has already made findings of fact relating to the defendants' allegations in Exhibit P18; that those allegations are false, in fact. Exhibit P18 makes false allegations against the plaintiff which reasonable men and women may understand to the effect that the plaintiff: (a) is corrupt and that she secured her employment with Mandala Limited through corrupt practices; (b) will use any means including corrupt practices to get promoted; (c) is not capable of maintaining a good working relationship with other employees; (d) is leading an immoral life with Tony Maliro; and (e) is not fit to be a Manageress in the Hotel Industry. As noted above, Exhibit P18 had been prepared by Mfune on behalf of the 3rd defendant, after Mfune had initially conspired with the 1st defendant to procure Exhibit P18 from the 3rd defendant. Exhibit P18 was then published to a number of persons including the Hotel Manager of Ryalls Hotel, Mr. Mukala and other senior management personnel of Mandala Limited. Ordinarily such a publication or communication would have been one on an occasion of qualified privilege. However, given what the Court has earlier on found as a fact, that Mfune and the 1st defendant had conspired to procure Exhibit P18 from the 3rd defendant with a malicious and an express aim of having the plaintiff removed from Blantyre Hotels Limited, whatsoever and howsoever, the defence of qualified privilege is not attainable on the facts of the instant case. The defendants had acted with malice, thereby defeating their attempts, subsequently, to successfully assert that they published Exhibit P18 to Mr. Mukala and other senior management personnel of Mandala Limited on an occasion of qualified privilege. In the circumstances, the plaintiff's claim for damages for libel must succeed. It is so ordered.

The Court must now revert to the consideration and determination of legal issues pertaining to the tort of conspiracy.

To begin with, it must be pointed out that the law respecting the tort of conspiracy was well settled by speeches of their Lordships in a House of Lords case of **Crofter Hand Woven Harris Tweed Company Limited and others -v- Veitch and Another** (1942) AC 435. In this judgment, the Court will merely make reference to the speech of Viscount Simon L.C. which is contained at pages 438 to 447 of the law report in question.

According to Viscount Simon L.C., the following are the elements of the tort of conspiracy: (a) there must be an agreement between or among the defendants; (b) the agreement must be for effecting an unlawful purpose; and (c) such agreement must result in injury or damage to the plaintiff. That it is a question of fact whether the conspirators acted with an intention to injure the plaintiff's interests and that the true test is: what in truth was or is the object in the minds of the conspirators when they acted as they did. That, if the predominant object is to damage another person and damage results, that is tortious conspiracy. But if the predominant purpose is the lawful protection or promotion of any lawful interest of the defendants, it is not a tortious conspiracy though it causes damage to another person.

In his speech and, therefore, judgment Viscount Simon L.C., at page 447, came to the conclusion that—

“In the instant case, the conclusion, in my opinion, is that the predominant object of the respondents in getting the embargo imposed was to benefit their trade-union members by preventing under-cutting and unregulated competition, and so helping to secure the economic stability of the island industry. The result they aimed at achieving was to create a better basis for collective bargaining, and thus directly to improve wage prospects. A combination with such an objective is not unlawful, because the object is the legitimate promotion of the interests of the combiners, and because the damage necessarily inflicted on the appellants is not inflicted by criminal or tortious means and is “not real purpose” of the combination. I agree with Lord Fleming when he

says in his judgment that it is not for a Court of law to consider in this connection the expediency or otherwise of a policy adopted by a trade union. Neither can liability be determined by asking whether the damage inflicted to secure the purpose is disproportionately severe: this may throw doubts on the **bona fides** of the vowed purpose, but once the legitimate purpose is established, and no unlawful means are involved, the quantum of damage is irrelevant. I move that this appeal be dismissed with costs.”.

As can be gleaned from the headnote, in the **Crofter** case, the respondents were officials of the Transport and General Workers’ Union, to which all the dockers of Stornoway, the main port of the island of Lewis, and the great majority of the operatives employed in the spinning mills on that island belonged. The yarn spun in the mills was woven into tweed cloth by the crofters in their homes and the cloth, when woven, was finished in the island mills and sold by the mill owners as Harris tweed under a trade mark known as the “stamp.” The appellants were producers of tweed cloth, which was also hand-woven by crofters, and could therefore be sold as Harris tweed, but not under the “stamp”. The appellants obtained their yarn from the mainland at a cheaper price than that charged by the island mills and the cloth when woven was sent for finishing on the mainland.

The respondents, acting in combination with each other and in combination with the owners of the mills, instructed the dockers at Stornoway to refuse to handle yarn imported from the mainland consigned to the appellants which they desired to export, and as from January 24, 1938, the dockers, without any breach of contract, acted in accordance with these instructions. The embargo was raised four days later as regards the export of the finished cloth of the appellants, but continued as regards the importation of yarn and the export of cloth sent for finishing to the mainland. The appellants sought interdict against the respondents to stop the embargo: It was held that the predominant purpose of the combination was the legitimate promotion of the interests of the persons combining, and since the

means employed were neither criminal nor tortuous in themselves, the combination was not unlawful.

Applying the foregoing principles to the facts of the instant case, the Court holds a firm view that a tort of conspiracy was committed by the defendants. Granted the earlier finding of the Court that the defendants were liable for libel, it cannot, therefore, be said that the means employed by the defendants to achieve the object of the defendants, as combiners, were neither criminal nor tortuous in themselves. As a matter of fact the means so employed were tortuous. Besides that, the dominant purpose or object of the combination was not legitimate in that the defendants had not, so much, sought thereby to promote their trade or employment interests. As noted above, the predominant purpose of the combination amongst the defendants were to secure the unlawful dismissal or termination of the plaintiff's employment with Mandala Limited. Exhibit P18 contained, as has been noted above, false allegations against the plaintiff, which the 1st defendant upon conspiring with Mfune (DW1) had procured from the 3rd defendant. The manner in which Exhibit P18 had been prepared and, therefore, procured from the 3rd defendant clearly shows that the conspiracy was at several levels: 1st level that between DW1 and 1st defendant and the other level that between DW1 and the 3rd defendant who had in fact signed plain sheets of paper without ever having sight of Exhibit P18 which contained false allegations against the plaintiff. What is further evident though, in that regard, is that moved by DW1 the 3rd defendant embraced the conspiracy between the 1st defendant and DW1 to have the plaintiff removed from Blantyre Hotels Ltd, whatsoever and howsoever. They, therefore, adopted the means which turned out to be tortuous, in that in Exhibit P18 they made disparaging statements against the plaintiff, which were in fact defamatory of the plaintiff as clearly specified above. Further, it is abundantly clear that the plaintiff has suffered damage thereby in that she has lost her employment with

Mandala Limited, among other things. In the circumstances the plaintiff's claim for damages for conspiracy must succeed. It is so ordered.

Coming to the damages to be awarded, it is the considered view of the Court that regard being had to the particular circumstances of this case, justice will be done and will manifestly seem so to be done, if the plaintiff were to be compensated in damages which would clearly and adequately reflect compensation for plaintiff's loss of her job, salary and benefits. She has to be put in the situation in which she would have been were it not for the damages suffered by her as a result of the libel and conspiracy. The realistic estimation of such damages, in the view of the Court, would be to make an award based upon loss of plaintiff's employment, salary and benefits, as these are particularised in paragraph 20 of the plaintiff's amended statement of claim. Ordinarily, separate sums of money would have to be awarded for libel and conspiracy. But in the special circumstances of this case, and in particular as envisaged in paragraph 20 of the plaintiff's amended statement of claim, an award of one aggregate amount to be arrived at by a computation which fully takes into account all the items listed in paragraph 20 of the plaintiff's amended statement of claim would suffice. It is so ordered.

The plaintiff has also claimed aggravated or exemplary damages. It is the considered view of the Court that the circumstances of this case merit an award of aggravated or exemplary damages. The Court ought to take into account the nature of the libel and whether the defendants were reckless in publishing the libelous material. The libel in the instant case was a serious one in that malicious and false allegations of corruption and immorality had been made against the plaintiff. No apology have been made. Concerning conspiracy, the personal and direct involvement of the General Manager of the 2nd defendant, thus, 1st defendant is an aggravating factor. Again, it is the fact of

malice against the plaintiff at the instance of the General Manager, Mr. Cremer: **PTC -v- Ng'oma**; and **Rookes -v- Bernard (1964) AC 1129**. For that purpose the plaintiff is awarded a further amount in damages of K40,000. Costs are for the plaintiff.

PRONOUNCED in Open Court this 12th day of November, 2002, at Blantyre.

A. K. Tembo
JUDGE