



**IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
CIVIL CAUSE NO. 547 OF 2006**

BETWEEN

MRS. ROSE CHIWANDA PLAINTIFF

-AND-

MRS. AMONI 1ST DEFENDANT

MR. PHOSO 2ND DEFENDANT

MRS. PHOSO 3RD DEFENDANT

CORAM : T.R. Ligowe : Assistant Registrar

Malera : Counsel for the Plaintiff

Kaferaanthu : Court Clerk

ORDER ON ASSESSMENT OF DAMAGES

On 20th April 2006 the plaintiff got a judgment in default for the defendants to pay damages to be assessed. He had brought action against the defendants claiming damages for defamation and costs. The facts as claimed were that on or about 13th November 2005 the first defendant published the following words which are defamatory of the plaintiff;

"Mai a Kumbukani (thereby meaning the plaintiff) agwidwa ufiti: Akuti amatenga mwana wa a Phoso limodzi ndi ena ndikumawaphunzitsa ufiti."

The 2nd and 3rd defendants repeated the gist of the words at a meeting attended among others, by traditional leaders at Area 36 in the city of Lilongwe. At that meeting the 1st defendant admitted to have published the said words to a number of people living within Area 36. The defendants knew and intended the words or their gist to be published. In their natural and ordinary meaning the words meant and were understood to mean that the plaintiff practiced and taught Mr. and Mrs. Phoso's daughter and other children witchcraft. In consequence the plaintiff reputation was seriously damaged and she suffered distress and embarrassment.

This is now the assessment of damages. The defendants did not attend hearing on the date appointed for the assessment despite having been served with the requisite notice. No reason for the non attendance having been communicated, the court proceeded in their absence.

The Evidence

The first witness was the plaintiff herself. She confirmed the facts as claimed in her statement of claim and said that people were stoning her at the meeting. She had to be rescued by a Mr. Msiska who came by his car and took her away. And after that every body was calling her a witch. She left Area 36 for Falls but she found people there knew about the story.

The second witness was Mrs. Selina Dikirani. She said she was the plaintiff's neighbour at the material time and saw the defendants uttering the defamatory words at the meeting.

The third and last witness was Mr. Isaac Khaura Msiska. He is the one who rescued the plaintiff from the mob. That time people were clapping hands and singing that the plaintiff is a witch.

The Law

This is a case of slander; defamation conveyed by spoken words or gestures. Slander is normally distinguished from libel; defamation conveyed in a permanent form. Whereas libel is always actionable without proof of special damage, slander must in order to be actionable without proof of special damage, impute among others a criminal offence punishable with at least imprisonment in the first instance. There has been no proof of any special damage in the present case and counsel for the plaintiff has argued in his skeleton arguments that the slander in this case is actionable per se. He has cited sections 4 and 6 of the Witchcraft Act meaning the defamatory words in this case impute criminal offences as provided thereunder. The sections provide:

4. Any person who otherwise than in laying information before a court, a police officer, a chief or other proper authority, accuses any person with being a witch or with practising witchcraft or names or indicates any person as being a witch or wizard shall be liable to a fine of £ 25 and to imprisonment for five years.

6. Any person who by his statements or actions represents himself to be a wizard or witch or as having or exercising the power of witchcraft shall be liable to a fine of £50 and to imprisonment for 10 years.

Analysis

The offence in section 4 is committed when “A” charges another “B” with being a witch or practicing witchcraft. So applying that section to the facts in this case, it is the defendants who would be said to have committed it. They themselves, by saying what they said committed an offence.

The offence in section 5 is committed when a person by his statements or actions represents himself to be a wizard or a witch. The defamatory words in this case do not say that the plaintiff represented himself to be a witch.

For a slander to be said to impute a criminal offence it is not essential that the exact offence should be specified, words involving a general charge of criminality will suffice. The facts stated on which the imputation is based must of course constitute a crime. (see **Jackson v. Adams** (1835) 2 Bing.N.C. 402). In the present case the facts do not constitute any crime committed by the plaintiff. So the defamatory words would not be said to impute any crime committed by her and therefore not actionable per se.

Conclusion

No proof of any special damage having been shown the court is at pains to award anything to the plaintiff.

Made in chambers this 14th day of July 2007.

T.R. Ligowe
ASSISTANT REGISTRAR