



JUDICIARY

**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NUMBER 1776 OF 2001**

BETWEEN:

JULIET MIGOCHIPLAINTIFF

- AND -

REGISTERED TRUSTEES OF CCAP.....DEFENDANT

CORAM: THE HONOURABLE JUSTICE E. B. TWEA

Absent, of the Counsel for the plaintiff

Absent, of the Counsel for the defendant

Mrs V. Nkhoma – Official Interpreter

J U D G M E N T

Twea, J

This action was brought by the plaintiff, a minor, through her father as her next friend, claiming damages for defamation. The plaintiff was a pupil at Domasi Mission Secondary School which is under the control of the defendants.

It was in the evidence that the plaintiff was a form 2 pupil at the said school in 2001. She was a boarder. It was her evidence that on or about 18th June,

2001 she fell ill at night. The following morning she went to the Mission Hospital for treatment. She was given some medicine to stop vomiting. The Hospital took specimen for investigations and admitted her for observation. When she was being discharged, she was given containers and told to bring urine specimen the next day.

It was her evidence that she submitted the urine specimen the following day and went for classes. At about 12.00 noon the school secretary came to her and asked for her mothers' telephone number. She told this court that since she did not have her mothers' telephone number she gave her fathers number instead. She told this court that later she went to enquire from the school secretary as to why they wanted her fathers' number. The school secretary declined to disclose to her. Thereafter, against the school rules, she went to a phone booth and called her brother. It was her evidence that her brother told her that that the Headmaster had rung her father and informed him that she was pregnant. He also told her that her parents had already left Blantyre to fetch her. This was the first time that she heard of her pregnancy. She was shocked and put the phone down and went to the hostel.

It was further her evidence that she was later called to the Headmasters' office where she found her parents. She challenged her father as to why they had come, and he told her that they were waiting for other people. Later there came the Deputy Headmaster, the school chaplain, the matron and the Hospital officer. A medical report was handed over to her father. She was then asked to disclose who made her pregnant. It was her evidence that she was concerned and ashamed. She denied that she was pregnant and demanded that they should go to Mwaiwathu for a test. The Headmaster

suggested that she should stay the night and go for a second pregnancy test at Zomba General Hospital the next day, but she refused. She was asked to return school property which she did. She left with her parents that same night.

It was her evidence that that very night she went to Mwaiwathu Hospital for a pregnancy test which came out negative. The following day she went to Malamulo Hospital for another pregnancy test which was also negative.

This in the essence was the evidence for the plaintiff.

The medical officer for the defendant told this court that he examined the plaintiff and gave her medication. However upon examination, and from the history of her menstrual cycle, he suspected that she may be pregnant. He referred the matter to the school headmaster who requested him to get full results on her illness. He then requested the plaintiff to submit a urine specimen which he referred to a gynaecologist, Dr Safer, for a pregnancy test. The test came out positive. He reported the matter to the headmaster who informed him that he would communicate with the parents of the plaintiff.

It was his evidence that later that evening at about 5:00 p.m. the headmaster came to his house. He informed him that the parents of the plaintiff had arrived and that there was some disagreement about the pregnancy test results. He accompanied the headmaster to the office where he found the plaintiff's father in a very agitated and angry mood. He challenged the results and the plaintiff denied that she was pregnant. Since the plaintiff

father was in an angry mood and shouting, he sneaked out to call the chaplain. When the chaplain came, they found the plaintiffs' father calm. He apologises about his conduct. When the headmaster suggested that the plaintiff should have a second test at Zomba General Hospital the parents refused and insisted on taking her. It was his evidence that since there was no compromise the plaintiff was requested to return school property. She went to the hostel accompanied by her sister and fetched the school property which she surrendered to the headmaster.

The evidence of the headmaster corroborated that of the medical officer. It was his evidence however, that he called the meeting with the parents in order to establish who was responsible for the plaintiff's pregnancy. This, he said was necessary for disciplinary procedures: whether the one responsible was a fellow student or a school teacher. It was also his evidence that the plaintiff had twice before, to the knowledge of her parents, been cautioned for having boyfriends at the school. He contended that he had no authority to expel a student before the disciplinary board decision and that for this reason the plaintiff's case was never discussed by the Board, since she was withdrawn, and no letter of expulsion was issued. The plaintiff however, was allowed to sit for her Junior Certificate Examinations.

I have agonised over the evidence in this case. The plaintiffs' evidence caused me many anxious moments. However, I do believe and accept her evidence.

It is not disputed that the medical officer asked for the history of her illness which included vomiting and stomach discomfort. She was also questioned

about her menstruation cycle. It is not disputed that her menstrual cycle was inconsistent. She also admitted that she was admitted for observation despite her insistence that she was, then, feeling well. She told this court that she, without authority, perused her medical file and noted that there was a pregnancy test indicated. She did not know then that urine specimen is used in pregnancy test. She informed this court that she only became aware of this after she mentioned it to her friends. It is clear, to my mind, that although the plaintiff was aware, notwithstanding the irregularity with which she gained the knowledge, that she would be subjected to a pregnancy test, she only realised that she had facilitated the test submitting the urine specimen, later. Clearly her friends were privy to this information. It is a matter of speculation who else came by this information. I am fortified in this finding by her subsequent behaviour.

She told this court that she went to the Hospital to find out the results but the Hospital authorities did not tell her. When the school secretary requested for her parents telephone numbers, she became even more anxious. Worst still, when the secretary refused to tell her why the school wanted her parent's phone number, she became even more anxious, that she went to make a phone call at a booth, contrary to school regulations. It was her evidence that she talked to her brother who told her that her father had received a phone from the headmaster that she was pregnant and that her parents were coming to fetch her. Naturally she was very devastated and went to the hostel.

I accept her evidence that this was the first time she received affirmative information about the pregnancy test. However, I do not accept her evidence that she was not aware that such a test was being conducted. In the

same vein, I do not accept the plaintiff's assertions that she should have consented to the test before it was carried out. I will come back to this point later.

Every person is entitled to unimpaired possession of his or her reputation and good name. The legal presumption therefore, is that everyone is of good character. Anyone who publishes any matter that is untrue and likely to injure the reputation of another is guilty of defamation.

In the present case it was admitted that the plaintiff submitted to medical examination and treatment by the defendant, among which was a pregnancy test. The defendant authorised the pregnancy test by a third party. The test came out positive. According to the medical report, the test was done under the auspices of Dr Safer a qualified gynaecologist. The plaintiff attempted to discredit the clinic where the test was carried out however. It was clear however, that it was Dr Pandya, the resident practitioner, who was suspended not Dr Safer. It is also clear that the suspension was in respect of non – compliance with the certificate and not for lack of competence. I find that Dr. Safer was a qualified person to interpret the results on the specimen submitted by the defendant's Hospital.

The plaintiff exhibited two laboratory reports in this court, which indicate subsequent urinalysis for pregnancy, at Mwaiwathu and Malamulo Hospitals on the 20th and 21st June, 2001. According to the plaintiff's evidence in this court, she was not examined by any doctor or medical officer at Mwaiwathu Hospital, Dr. Chilemba's clinic or Malamulo Hospital. According to the evidence of her father, he said that he met Professor Wilima in the corridors

of Mwaiwathu Hospital on the night of 20.6.01 and requested for dispensation of the requirements for immediate payment. He did not indicate that Professor Wilima examined the plaintiff and requested a pregnancy test. The same was the position with the laboratory investigation request report from Dr. Chilemba's clinic. The plaintiff was never examined. Nor was there any evidence that she in fact went to Dr. Chilemba's clinic. The only evidence was that the plaintiff's mother was a nurse at the said clinic.

What came out of the plaintiff's evidence was that she and her parents went to the laboratories in issues and requested for pregnancy tests to be done. When they were done they were given results. There was no diagnosis or prognosis by a medical doctor or officer on the condition of the plaintiff illness and the laboratory examination report. I find it hard to accept that such reputable Hospitals could conduct specimen examination so gratuitously and unprocedurally. On the evidence before me I do not find the laboratory examination results produced by the plaintiff from Mwaiwathu and Malamulo Hospitals to be so cogent so as to disprove the diagnosis of the medical officer at the defendant's Hospital or the prognosis of Dr. Safer at the clinic where the plaintiff's urine specimen was investigated. For the said reasons I would have found that defamation has not been proved.

I would however, consider the other limb.

The plaintiff was a pupil at the defendant's secondary school and was a resident boarder. She fell ill and was entitled to medical attention and

treatment at the Defendants Hospital. After diagnosis, the medical authorities found a need for a pregnancy test. The matter was referred to the headmaster, in confidence, notwithstanding the plaintiff's naughty conduct of peeping into the medical records. The headmaster granted authority for the pregnancy test so that the plaintiff could get proper treatment. The headmaster was *in loco parentis* to the plaintiff. It was his duty to ensure that there was proper diagnosis and prognosis of the plaintiff's illness. It was his duty to ensure the plaintiff's health as a resident boarder and to alert her biological parents or guardian should her health be likely to be impaired for a substantial period. The defendant therefore, would have been entitled to plead qualified privilege. I have considered the point raised by the plaintiff that she should have been consulted before the pregnancy test or been the first to be informed of the results before her parents were informed. The plaintiff was a minor. The school authority was concerned about her welfare: who was responsible for her pregnancy, how she had to conduct herself following the pregnancy, what to do to ensure she sat for her Junior Certificate Examination and, finally, what needs to be done to ensure that school discipline and procedures are followed. These are weighty issues which could not be dealt with without the parents or guardians of a pupil. This is clear from the plaintiff's evidence. She was shocked and devastated when she unprocedurally received the results of the pregnancy test from her brother. She was frustrated and very rude to both her parents and the school authorities during the meeting and that she totally refused to remain on the campus thereafter. Clearly, a young person in such circumstances needs strong moral support. Her parents and or guardian were most suited to provide such support.

It is my judgment therefore, that had I found that there was defamation, I would have found that the publication by the headmaster to the father of the plaintiff was subject to qualified privilege.

Be this as it may. I would not have found the same for the further communication and publication by the plaintiff's father to the rest of the family members than the plaintiff's mother. Equally there is no privilege for his communication to eavesdropping and inquisitive students when he shouted at the headmaster during the dispute on the results of the pregnancy test. A person who republishes a defamatory matter is equally responsible for defamation. This would equally apply to the other family members or students who did the same or relied on hearsay to publish the matter. **Grubb Vs Bristol Limited Press ltd [1963] 1Q.B 309 or Lewis Vs Daily Telegraph Ltd (1964) A.C. 234.**

This is a bad case as it raises more questions than answers. Proper discretion would have required alternative dispute resolution than trial. Be this as it may, it is my judgment that this case must fail with costs to the defendants.

Pronounced in Open Court this 25th day of January, 2008 at Blantyre.

E. B. Twea
JUDGE

