



IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NUMBER 21 OF 2012

BETWEEN:

JEREMIA MWAKAYOKA

1st PLAINTIFF

EMMANUEL MZANGA

2nd PLAINTIFF

AND

BLANTYRE NEWSPAPERS LIMITED

DEFENDANT

Coram: JUSTICE M.A. TEMBO

Masanje, counsel for the Plaintiffs
Kalua, counsel for the Defendant
Chanonga, Official Court Interpreter

JUDGMENT

This is the judgment of this Court following trial of the plaintiffs' claim for damages for defamation.

The plaintiffs were police officers at the time of the publication complained against. The defendant is the publisher of the newspaper where the alleged defamatory words were published concerning the plaintiffs.



The defendant published in its Malawi News newspaper of 12-18 November 2011, an article headed “ACB PROMPT ON CASES INVOLVING POLICE

OFFICERS”. At the centre of that article is placed a picture which bears the faces of the plaintiffs herein and three other police men. Only the plaintiffs’ faces were visible and recognisable while the other officers faced away from the camera. Under the picture, the defendant placed a caption “most complained against - Easy to investigate their cases”.

The plaintiffs’ argument is that the reference to them in the picture as the most complained against is defamatory against them. Specifically, they pleaded that the juxtaposition of the article with their faces coupled with the caption aforementioned is defamatory of them as the same would be understood by every reasonable member of the society to mean the plaintiffs are the most complained against in terms of corruption and that they are being investigated by the Anti-Corruption Bureau or that they are among those convicted of corruption. They therefore claim damages for defamation and costs of the action.

The defendant on the other hand argues that the story complained about was not capable of referring to the plaintiffs. They further pleaded that if the words complained of could be understood to refer to the plaintiffs then they did not bear the meanings as ascribed to them by the plaintiffs in their statement of claim because the tenor of the whole article is about the police generally and not about the plaintiffs.

This Court is aware of the trite law on defamation as submitted on by both parties in this matter. Anyone who publishes any matter that is untrue and is likely to injure the reputation of another is guilty of defamation. See *Migochi v Registered Trustees of the CCAP* [2008] MLR 117.

The Court must consider whether there was publication of words complained of. The Court must further consider whether the published words complained of refer to the plaintiff. The Court must also consider whether the words complained of convey a defamatory meaning in their ordinary meaning to a reasonable member of the society. The parties have correctly cited the relevant case law. See *Banda v Pittman* [1990] 13 MLR 34, *Maluza v David Whitehead and Sons (Mw) Limited* [1993] 16 (2) MLR 564, *Mtungila v Malawi Post Corporation* [2006] MLR 46 and *Mbilizi v BAT (Malawi) Limited* [1995] MLR 148.

The plaintiffs also rightly submitted that imputation of fraudulent or dishonest conduct on a person is defamatory of that person. See *Turner v MGM Pictures Limited* [1950] 2 ALL ER 449.

Where the sting of the defamation and an antidote is provided in the same article, in that you have a defamatory part and a conclusion removing the defamation, then there is no defamation. See *Chalmer v Payne* (1835) 2 Cr. M. & R. 156.

As far as the evidence is concerned, there is no dispute as to the publication of the article with the words complained of in this matter.

The evidence of the plaintiffs is quite clear that there was juxtaposition of the article with their faces coupled with the captions complained of.

By putting the plaintiffs' faces on the article, the article was made to have everything to do with the plaintiffs. The defendant's argument that the article does not refer to the plaintiffs but to the police generally cannot therefore hold in the circumstances.

The defendant further argued that the words complained of are not capable of bearing a defamatory meaning in their natural and ordinary meaning to a reasonable reader.

The defendant argued that the whole article may be argued to be non-defamatory of the plaintiffs because the sting and antidote is provided in the same article in that the whole article puts matters in context as to what the Anti-Corruption Bureau has discovered in relation to the whole police service which is the most complained about probably due to its extensive interface with members of the public.

The defendant contended that where the sting of the defamation and an antidote is provided in the same article, in that you have a defamatory part and a conclusion removing the defamation, then there is no defamation. See *Chalmer v Payne* (1835) 2 Cr. M. & R. 156.

This Court agrees with the plaintiffs that the set-up of the article juxtaposing the pictures of the plaintiffs with the captions complained of is defamatory of the plaintiffs as the same would be understood by every reasonable member of the society to mean that the plaintiffs are the most complained against in terms of corruption and that they are being investigated by the Anti-Corruption Bureau. It is the plaintiffs' faces which are juxtaposed with the article. The corruption clearly

involves dishonest and the imputation of the same to the plaintiffs is defamatory. The defendant's witness was pressed on why the plaintiff's faces were printed on the article and he could not explain the reasons.

Although the whole article may be argued by the defendant to be in a non-defamatory tenor about the police generally a reasonable reader would be left with the impression that the picture of the plaintiffs and the picture caption that the plaintiffs in the picture are the most complained about and easy to investigate may mean that at a glance it is the plaintiffs in particular that are the ones that are easily investigated and are the most complained about in corruption related matters.

The words complained of therefore clearly, in the set-up of the article, are capable of bearing a defamatory meaning as rightly submitted by the plaintiffs. This is particularly true given that the defendant could not explain the reasons why the plaintiffs' picture was set up in the article with the captions as it was. And it is not true that the plaintiffs in the captioned picture are under any investigations for corruption or have been complained of concerning corruption.

The plaintiffs are therefore awarded damages for defamation which shall be assessed by the Registrar.

The successful plaintiffs shall have the costs which shall be borne by the defendant to be taxed, if not agreed.

Made in open court at Blantyre this 16th May 2017.

A handwritten signature in black ink, consisting of a large, stylized 'T' shape with a horizontal line extending to the right and a vertical line curving upwards and to the left.

M.A. Tembo

JUDGE