



REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NUMBER 41 OF 2012

BETWEEN:

JEREMIA MWAKAYOKA.....1ST PLAINTIFF

EMMANUEL MZANGA.....2ND PLAINTIFF

AND

BLANTYRE NEWSPAPERS LIMITED.....DEFENDANT

CORAM: Ms. CM MANDALA: ASSISTANT REGISTRAR
Mr C Masanje: Counsel for Plaintiffs (absent on delivery)
Mr Chisale: Counsel for the Defendants
Mr PW Chitsulo: Court Clerk

ORDER ON ASSESSMENT OF DAMAGES

CM MANDALA, AR

INTRODUCTION AND BACKGROUND

This is an order for assessment of damages pursuant to a Judgment delivered on 16th May 2017 by the Honorable Justice MA Tembo. In this Judgment, the Plaintiffs were awarded damages for defamation to be assessed by the Registrar and costs to be borne by the Defendant.

The Plaintiff commenced the present action on 5th April 2012 claiming damages for defamation pursuant to an article that was published by the Defendant's newspaper called the Malawi News of November 12-18 2011 headed '*ACB prompt on cases involving police officers*' and bore the faces of the Plaintiffs stating that they are the '*most complained against*'.

EVIDENCE

The Plaintiffs were present and submitted both oral and documentary evidence. Each Plaintiff's evidence will be set out in turn.

The first Plaintiff adopted his witness statement as evidence in chief. It states:

1. I am **JEREMIAH MWAKAYOKA**, the 1st Plaintiff in this matter and I make this statement from the information within my knowledge and the information relates to an article which the Defendants published in one of their weekend papers particularly the weekend of 12th to 18th November 2011. On page 6 of that paper there was an article headed *ACB prompt on cases involving police officers* written by Wezzie Nkhoma-Somba. The article started with words '*Six police officers, arrested by the Anti-Corruption Bureau (ACB), have been convicted this year alone, Malawi News can reveal.*'



2. *Below the title and in the middle of the article is a big picture depicting my face and that of the 2nd Plaintiff's face and mine were clearly visible and recognizable. Below the picture is a caption "MOST COMPLAINED AGAINST – Easy to investigate their cases."*
3. *The Defendant is one of the biggest two newspaper publishers in the country whose publications are circulated throughout the country.*
4. *On the other hand, I am a police Superintendent based at the Central Region Police Headquarters but at the time the article was being published I was a sub inspector based at Blantyre police Station. At the time of publication, I was the Church Council Chairman for St Ignatio Catholic Parish.*
5. *On 12th day of November 2011 in the morning I was resting at home because the previous night I had been on duty. Around 8 o'clock I got a call from my sister Chimwemwe Mwakayoka who was then staying in Mzuzu, in the Northern Region of Malawi. She asked me with a concerned voice "mwayamba chani achimwene" (translated as "what have you started doing my brother?). I was surprised as and had no idea what she was referring to. When I asked her what had happened she told me that she was disappointed seeing my face in a newspaper depicting us as the most corrupt persons in the police and the most complained against. She narrated how the family was shocked.*
6. *I told my sister I was not answering any corruption charges and that there was no complaint against me relating to corruption. But despite that, it was clear the paper had circulated all the way to Mzuzu.*
7. *As if that was not enough, I got another call from my workmate. Sub inspector Shadrick Topola who said "amwene, mwatukulatu mu news koma ndi trash tu" translated as 'brother you have appeared in a newspaper but for very bad reasons.' He was surprised that he could be answering these charges when he knew me as a man of good standing and character in society in the police. I also explained to him that I was not involved in any corrupt activities. He just concluded by saying, 'we will see how it ends.'*
8. *Then so many other people called me to make inquiries after being surprised that the article depicted me as a corrupt person or that a complaint or complaints have been made against me that relate to corruption. When walking in town I was also mocked by way of whistling by people, especially those at Nando's, who knew me and the association between me and corruption which the article presented was pleasing to them as they thought I had been a man of pretence when I was tough in the execution of my duties.*
9. *I was troubled to have to explain that I was not answering any corruption charges and expressed surprise at the putting of our faces along with such an article. I exhibit the newspaper cutting of the defamatory article marked.*
10. *Thus, the article created ridicule against me from workmates, workmates and the city of Blantyre at large. Being a policeman I am supposed to be an icon of crime-free reputation and the imputation of crime when I am one of the persons to curb crime was so damaging.*
11. *At church the matter was also table after some rumour mongering about my involvement in corruption as presented by the article complained of.*
12. *As a result of the said article we have suffered damage to our reputation and therefore claim damages for defamation and costs of the actin. The Defendant did not even apologise and judgment was then passed in our favour. The Defendant was however adamant and insisted the article was not defamatory when they, as seasoned publishers, ought to know that imputing criminal involvement to a person when it is not true amounts to defamation. It shows they were not even repentant.*

13. *The court even found that there was no reason whatsoever why our faces were placed against the article. They should have known this. It is clear therefore that there was not even a slight justification for the Defendant's action.*

14. *We therefore pray that we be compensated appropriately for the humiliation we suffered and costs of the proceedings.*

Dated this 1st day of June 2017

(signed)

JEREMIAH MWAKAYOKA

In cross examination, the 1st Plaintiff confirmed that he is a police officer and that he remained a police officer after the article was published. The 1st Plaintiff is a senior officer in the Malawi Police Service, he was not holding this position prior to the publication. The 1st Plaintiff was promoted after the publication.

The second Plaintiff also adopted his witness statement as evidence in chief and it states:

1. *I am **EMMANUEL MZANGA** the 2nd Plaintiff in this matter and I make this statement from the information within my knowledge and the information.*
2. *The information herein relates to an article which the Defendants published in one of their weekend papers particularly the weekend of 12th to 18th November 2011.*
3. *I have been a police sergeant for some time, having worked with the Malawi Police Service from the year 2000 in October. During this period, I was never involved in any issues relating to any wrongdoing particularly corruption.*
4. *The Defendant however published an article that juxtaposed my face with a caption that I was among the most complained against and that it was easy to investigate our cases. This was not true and it gave the whole nation a wrong impression of me.*
5. *The Defendant is one of the two biggest newspaper publishers and their papers are read nationwide. That was how my friend Daniel Mbebuwa who was then staying in Mulanje got to know of the publication and called me to inquire about the article. Subsequently I also got a call from my sister in Bangwe to ask about the same issue. This demonstrates how widely the paper had been published and circulated. Right here in Blantyre the issue was also the same. At the office, a lot of fellow officers kept asking me why I had kept it to myself that I was answering corruption charges. Nobody really believed that the article was not about me and that I had nothing to do with it.*
6. *By this time of the year, I was running a minibus transportation business. Fellow officers could be openly heard linking my business success to corruption. It was a time of no peace as I was viewed with ridicule all the time.*
7. *Many people also knew me as a person who was very active at church. In fact I was the Church Administrator for the Light of Life International Church. One of our teachings is the respect for the word of God as found in the Bible. The bible condemns corruption. It was the people's story that it was hypocritical of me to hold such a position yet behind their back am a corrupt person. The issue was a hot one at our church. It actually got so serious considering one of my functions were the organization of events, procurement, recruitment and trust was lost in these duties thinking I was using such duties for my own gratification considering that I was thought to be doing the same at work.*
8. *I was troubled to have to explain that I was not answering any corruption charges and expressed surprise at the putting of our faces along with such an article. There was no apology on the Defendant's part. There was no assertion of truth of the defamatory statement about us either. Instead the Defendant were adamant that the words were not defamatory when it*

should have been clear to the defendant as a seasoned publisher of newspapers that imputation of a criminal offence on a person, which an allegation of corruption is, is defamatory. This was so unreasonable on the part of the defendants considering that they ought to have known or at least knew that the story had nothing to do with us.

9. As a result of the said article I have suffered damage to my reputation and therefore claim to be compensated appropriately for the defamation and also pray for costs of the action.

Dated this 23rd day of May 2017

(signed)

EMMANUEL MZANGA

In cross examination, the 2nd Plaintiff told the court that he did not continue his work as administrator of the church as he was removed as a result of the publication. There were no physical benefits that the 2nd Plaintiff was receiving as administrator of the church but there were spiritual benefits that he lost.

SUBMISSIONS BY COUNSEL FOR THE PLAINTIFF

Counsel for the Plaintiff filed written submissions before the court, where he argued that damages for defamation are said to be at large. Counsel cited **Cassell & Co v Broome** (1972) AC 1027 where Lord Halisham explained the phrase in these words: *'Quite obviously the award must include factors for injury to the feelings, the anxiety and uncertainty undergone in the litigation, the absence of apology or the reaffirmation of the truth of the matters complained of, or the malice of the defendant. What is awarded is thus a figure which cannot be arrived at by any purely objective computation... In other words, the whole process of assessing damages where they are at large is essentially a matter of impression and not addition.'*

Damages are compensatory in nature – **George Luhanga v Nation Publication Limited & MBC** Civil Cause Number 1144 of 2003. The aim is to vindicate the Plaintiffs' name and take into account the distress, hurt and humiliation which the defamation has caused - **Sheila Lozi v Millie B Jumbe** Civil Cause Number 1336 of 1998.

Several factors will be used to decide the extent of damages. For instance, an unreasonable plea of justification where it appears the Defendant well knew that he could not support such a plea, does aggravate the injury. In **Simpson v Robinson** (1848) 12 QB 511 where the Defendant pleaded justification but gave no evidence in support of the plea at trial, the Defendant's conduct was said to be malicious and aggravation of the injury. Similarly, unreasonable failure to apologize adequately can be evidence of malice – **McGregor on Damages**, 16th Edition, Paragraph 1910 at page 1235.

The extent of the publication of the defamatory statement may also operate as an aggravating factor. In **Gathercole v Miall** (1846) 15 M&W 319 it was held that in order to show the extent of any mischief that may have been done to the Plaintiff by a libel in a newspaper, you have a right to give evidence of any place where any copy of the libel has appeared for the purpose of showing the extent of the circulation. There is no need to give detailed evidence of the numbers of the circulation of a newspaper that is well known to the court or the jury; **Whittaker v Scarborough Post Newspaper Company** (1896) 2 QB 148.

The Plaintiff's conduct generally may be of essence to the issue of damages. Since the Plaintiffs are complaining of an injured reputation, a proper assessment of damages requires a knowledge of the worth of that reputation. The damage which the plaintiff has suffered must depend almost entirely

on the estimation in which he was previously held. The court must therefore be made aware if the plaintiff did not have any good reputation; *ibid* at page 1239.

Counsel submitted to cases to support his prayer, namely:

- *Rashid Nembo v Attorney General* Civil Cause Number 418 of 2007 where the court awarded K1,000,000.00 for defamation to a Plaintiff who was a public figure and the defamation involved was about criminal imputation which was very damaging.
- *Shepherd Mumba v The Director of the Anti-Corruption Bureau* where in May 2016 the Plaintiff was awarded the sum of K4,500,000.00 as damages for defamation in a case that involved wide circulation of the publication.

Counsel concluded with a prayer for each Plaintiff to be awarded the sum of K6,500,000.00 and costs of the action and assessment proceedings.

SUBMISSIONS BY COUNSEL FOR THE DEFENDANT

Counsel for the Defendant undertook to file his submissions on 19th June 2017 but failed to do so. The submissions reached the Court on 21st June 2017 and therefore could not be considered.

THE LAW ON ASSESSMENT OF DAMAGES

The High Court in *Ngosi t/a Mzumbamzumba Enterprises v H Amosi Transport Co Ltd* [1992] 15 MLR 370 (HC) set the basis for assessment of damages:

'Assessment of damages.....presupposes that damages have been proved. The only matter that remains is the amount or value of the damages.'

The rule is that prior to assessment, the injured party has provided proof of damage sustained – *Yanu-Yanu Co Ltd v Mbewe* (SCA) 11 MLR 405. Even in the face of difficulties in assessing damages, the Plaintiff is not disentitled to compensation – *Mkumuka v Mphande* (HC) 7 MLR 425.

The cardinal principle in awarding damages is '*restitutio in integrum*' which means, in so far as money can do it, the law will endeavour to place the injured person in the same situation as he was before the injury was sustained – *Halsbury's Laws of England* 3rd Ed. Vol. II p.233 para 400.

This principle was further enunciated in *Livingstone v Raywards Coal Co* (1880) 5 App Cas 25 at 39, where Lord Blackburn said:

'...where any injury is to be compensated by damages, in settling the sum to be given for reparation you should as nearly as possible get at the sum of money which will put the party who has been injured or who has suffered, in the same position as he would have been in had he not sustained the wrong for which he is now getting his compensation or reparation.'

The law distinguishes general damages and special damages as follows – general damages are such as the law will presume to be the direct natural or probable consequence of the action complained of. Special damages, on the other hand, are such as the law will not infer from the nature of the course - *Stros Bucks Aktie Bolag v Hutchinson* (1905) AC 515. In determining the natural consequences, the court considers if the loss is one which any other claimant in a like situation will suffer – *McGregor on Damages* p23 para 1-036.

Special damages must be specifically pleaded and must also be strictly proved - **Govati v Manica Freight Services (Mal) Limited** [1993] 16(2) MLR 521 (HC). A Plaintiff who claims special damages must therefore adduce evidence or facts which give satisfactory proof of the actual loss he or she alleges to have incurred. Where documents filed by the Plaintiff fail to meet this strict proof then special damages are not awarded – **Wood Industries Corporation Ltd v Malawi Railways Ltd** [1991] 14 MLR 516.

Although perfect compensation is impossible, what the plaintiff should get is fair and adequate compensation - **British Commission v Gourley** (1956) AC 185. Since it is difficult to assess damages involving monetary loss, courts resort to awarding conventional figures guided by awards made in similar cases and also taking into account the money value. Lord Morris buttresses this contention in **West v Shepherd** (1964) AC 326 at 346 where he states: *'money cannot renew a physical frame that has been battered and shattered. All judges and courts can do is to award a sum which must be regarded as giving reasonable compensation.'*

The court bears in mind the sentiments laid out in **Steve Kasambwe v SRK Consulting (BT) Limited** Personal Injury Cause Number 322 of 2014 (unreported):

'At times the court is faced with situations where the comparative cases have been rendered obsolete because of the devaluation of currency and inflation. It would not achieve justice if the court insisted on the same level of award as was obtaining in the previous cases. In such situation, when deciding the new cases, the court must take into account the life index, i.e. cost of living and the rate of inflation and the drop-in value of the currency. The court must therefore not necessarily follow the previous awards but award a higher sum than the previous cases.'

COMPENSATION

An article was published in the Defendant's newspaper called the Malawi News of November 12-18 2011 headed *'ACB prompt on cases involving police officers'* and bore the faces of the Plaintiffs stating that they are the *'most complained against'*.

In the matter of **Mwaungulu v Malawi News and another** [1994] MLR 227 the High Court stated: *'In assessing damages for defamation the court should take into account the following factors: the content of the article, the nature and extent of the publication including the aspect of republication of the defamatory matter, the plaintiff's standing, his reputation, character and status, the nature of the defamation, the probable consequence of the defamation, the conduct of the defendant from the time of the publication of the defamation up to the time of judgment, recklessness of the publication and comparable awards in other defamation suits and the declining value of money.'* See **Hon Justice Kapanda & Hon Justice Chikopa v Malawi Broadcasting Corporation** Civil Case Number 2837 of 2007.

The guiding considerations in determining damages for damages was summarized in **Shepherd Mumba v Director of the Anti-Corruption Bureau** Civil Cause Number 182 of 2015 where the court states: *'When assessing damages under this head we consider the coverage of the publicity, the station in life of the plaintiff and the effect on his daily life.'*

In light of this guidance, this court notes that the newspaper is as widely circulated as it is widely read. This is evidenced by the call that the 1st Plaintiff received from his sister all the way from Mzuzu.

The newspaper therefore had wide coverage. Further, there is very serious likelihood that the Defendant's newspaper has online coverage that ensures that its publications are read beyond borders. Further, the Defendant's newspaper having noted the mistake made no attempt at rectifying the situation through an apology in the same newspaper.

The severity of the damage is further compounded by the fact that the Plaintiffs were persons under the employ of the Malawi Police Service which at the core aims to serve the Malawian population. Those who knew the Plaintiffs therefore could no longer expect sound service from them and lost their trust in the Plaintiffs. It is high time our publishing companies were cautious about the information that they churn out as well as use of pictures as in this case. The Defendant's editorial team should have been aware that displaying the faces of officers without verification as to whether the ACB was prosecuting or investigating them would result in a suit such as the current one.


In the *Hon Justice Kapanda Case* the 2nd Plaintiff was awarded the sum of MK3,500,000.00 in January 2011 while in the *Mumba Case* the Plaintiff was awarded the sum of K4,500,000.00 in May 2016. These have given adequate guidance to the court and this court believes the sum of MK3,000,000.00 each will adequately compensate the Plaintiff's herein.

DISPOSAL

The Plaintiffs are therefore awarded MK3,000,000.00 each, totalling MK6,000,000.00 for defamation and costs of the action to be taxed if not agreed.

Each party is at liberty to appeal to the Supreme Court of Appeal within the requisite time frames.

Ordered in Chambers on the 23rd day of June 2017 at Chichiri, Blantyre



CM Mandala

ASSISTANT REGISTRAR