



REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NUMBER 434 OF 2016

BETWEEN:

RICHARD MAKONDI ----- **1ST CLAIMANT**

AND

BETTY MAHUKA----- **2ND CLAIMANT**

AND

BLANTYRE NEWSPAPERS LIMITED ----- **DEFENDANT**

CORAM: **C. H. Msokera, Assistant Registrar**

Kamkwasi, of Counsel for the Claimants

Defendant absent

Chitsulo, Official Court Interpreter

ASSESSMENT ORDER

1. On 12th November 2016, readers of the Malawi News newspaper were salivated to feast on yet another purported political scandal. The headline on the frontpage was as inviting as it was catchy – ‘DPP PUT PRESSURE ON MAHUKA TO PAY’. One could not miss the pictorial depiction of this intended political exposé. Right in the middle of the frontpage was the picture of the 2nd claimant, Betty Mahuka, flanked by pictures of the then Chairperson of ESCOM Ltd Board of Directors and the spokesperson for the Anti-Corruption Bureau.
2. In essence, the article communicated the message that Richard Makondi, who is the 1st claimant, a businessman and former National Organizing Secretary of the Democratic Progressive Party, phoned the 2nd claimant, a

former Finance Director of ESCOM Ltd, pressurizing her to irregularly authorize some payments concerning certain procurements at ESCOM Ltd.

3. Injured by the publication, the claimants sued the defendant, Blantyre Newspapers Ltd, for damages for libel on the footing of aggravated damages. They denied of the alleged phone call being made. It was their case that the consequence of the article as understood in its ordinary meaning was that the 1st claimant was represented as a fraudulent person involved in MK 4 billion fraud at ESCOM Ltd; and that the 2nd claimant was represented as someone who divulged confidential matters concerning her office.
4. The defendant did not attend trial and consequently, the trial Judge, Honourable Justice Tembo, received as uncontested the evidence of the claimants. He found the defendant liable for libel on aggravated basis and referred the matter to the Registrar for assessment of damages and costs. It is for the former assignment that this matter has found its way here.
5. The claimants have further testified of the negative repercussions the article has had on their lives. The 1st claimant laments of being shunned by his actual and potential business partners as they view him as a fraudulent person. He regrets that even his political career has hit a snag as he failed to contest for any position at a UTM convention due to people's perceptions created by the defendant.
6. The 2nd claimant submits that as a result of the publication, she has suffered in her reputation as a senior finance person. She could not secure a job for a whole year despite her efforts in searching for one. According to her, this is because she was seen by her peers and potential employers as a person who could not keep confidential matters and yet the whole article had no truth to it. She complains that although she eventually got a job in December 2017 through personal connections, she is receiving a much lower salary than she was getting before she resigned from ESCOM Ltd.

7. Counsel submits that this court should award the 1st claimant and the 2nd claimant MK21 100 000.00 and MK18 300 000.00, respectively, as damages for libel on aggravated footing.
8. Apart from what has already been said herein, Counsel justifies the awards submitted, mainly, on the following bases. Firstly, he argues that the defendant's conduct coupled with their unwillingness to settle the matter at mediation stage and alleging justification in their defence aggravated the defamatory statement considering that failure to settle at mediation made the defamatory statement to persist.
9. Secondly, he avers that the article was deliberately published in the expectation of increasing circulation and profits of the defendant's paper by taking advantage of the sensitivity of the matter, the curiosity which it would raise among the public given that the matter involved a ruling party and the high standing nature of the claimants. Thus, this led to an increased circulation resulting into large amount of revenue for the defendant.
10. Lastly, counsel submits that the defendant's conduct deserves significant condemnation which should be reflected in the amount of damages considering that they refused or did not bother to retract or issue an apology to the Claimants.
11. Before I arrive at the awards which I deem fit, I should state that I have been guided by what was stated in *Mwaungulu v Malawi News and another* [1994] MLR 227. In that case the High Court outlined factors which a court should bear in mind when assessing damages for defamation:

'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.'

12. Counsel has cited to me what he deems to be comparable cases to the one at hand. First is the case of *Kapanda and Another v Malawi Broadcasting Corporation* Civil Cause Number 2837 of 2007 where an award of MK3 500 000.00 was made in 2007. This should be compared with the award of MK4 500 000.00 made in *Mumba v Director of the Anti-Corruption Bureau* Civil Cause Number 182 of 2015. Perhaps a more recent case is *Mwakonyola and Another v Blantyre Newspapers Limited* (Civil Cause No. 41 of 2012) [2017] MWHC 93 where the award for damages for libel made in 2017 came up to MK3 000 000.00.

13. I must say that apart from the quantum of damages proposed I agree with Counsel's submissions highlighted above as to why an award of significant value should be given in the present matter. With the relatively comparable cases in mind and also not losing sight to the current value of the Malawi Kwacha, I deem it appropriate to make the following awards for damages for libel on aggravated basis: **MK11 500 000.00 for the 1st claimant and MK 8 000 000.00 for the 2nd claimant. It is so ordered.**

14. The defendant will bear the costs of these proceedings.

Made this 12th day of October 2020 at Blantyre.



C.H. Msokera

Assistant Registrar
