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IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
CIVIL CAUSE NUMBER 1014 OF 2014

BETWEEN:

ROSE NDALAMA.....CLAIMANT

AND

CHRISTIAN BALSLEV-OLSEN1st RESPONDENT

DANISH CHURCH AID.....2nd RESPONDENT

CORUM : R.M CHINANGWA JUDGE

Semphani

Counsel for the Claimant

Likongwe

Counsel for the Respondent

Chiweza

Counsel for the Respondent

Chitao

Court Clerk.

JUDGEMENT

1. Introduction

The claimant seeks damages for defamation; punitive damages for malicious falsehood and costs of this action. The claim is opposed by the defendants. During the hearing the respondents chose not to call any witness. As such the matter proceeded on the hearing of the claimant's evidence only. She was the only witness. After hearing the claim was dismissed. This ruling serves to provide the reasons for the same.

2. Claimants Evidence

The claimant through a witness statement stated as follows:

- 2.1 I was employed by the 2nd Defendant on 1st February, 2011 on two-year contract to work as a Finance Assistant. After the expiration of the two years, I was given a further two-year contract to work as a finance Officer up to the 14th February 2015. I have exhibited hereto copies of an Addendum to employment contract and a copy of the employment contract marked "RN1" AND "RN2" respectively.
- 2.2 In March 2014, the Danish Ambassador, Mr. Morgens Pedersen, who was based in Mozambique, came to Malawi to present his credentials to the President of the Republic of Malawi and the 2nd Defendant through the Administration Assistant was requested to provide necessary logistical assistance to the Ambassador from the date of arrival, on 3rd March, up to the time he was to be dropped off at Tete in Mozambique on 5th March 2014.
- 2.3 On 5th March 2014 I learnt that the driver and the Ambassador had left for Mozambique. I enquired from the Administrative Assistant, Nancy Beni, as to why the driver had left without asking for money. She told me that he had used some money that was meant for an earlier trip in January which was cancelled. I was not involved at all with any transactions concerning this visit as I would normally have been involved because there were expenditures concerned.
- 2.4 The procedure for one to collect money for travelling was that s/he would prepare a budget which his superior would approve. Then the Finance Assistant prepared a payment voucher and a cheque then the documents would be sent to review if everything had been done correctly then after that I would send them back to the Finance Assistant who would then take them to the Country Representative and the Programme Coordinator or other designated signatories to co-sign the cheque. It was only after this that the person travelling would come to the Finance Assistant to collect the cheque.
- 2.5 Surprisingly, with respect to this particular incident, all of the procedures set out in paragraph 6.4 above were not followed for reasons which were not disclosed to me. So, when the driver returned from Mozambique, he did his travel expenses reconciliation as is the case with all members of staff who travelled and he submitted his papers to the Finance Assistant, Mrs. Rose Chalendewa.
- 2.6 Sometime later in the same month of March 2014 the 1st Defendant, Mr. Christian Balsev-Olesen, who was the 2nd Defendant's Regional Representative wrote me an

- email asking me to raise an invoice for what the 2nd Defendant expended on the Ambassador's visit since the Ambassador wanted to refund the money. I collected the necessary information from Rose Chalendewa, the Finance Assistant, Nancy Ben, the Administrative Assistant and Mr. James Milanzi, the driver, and I then raised an invoice which I submitted to the 1st Defendant for his onward transmission to the Ambassador.
- 2.7 After a few days he wrote me again and asked that I should include all copies of receipts. O again asked the Finance Assistant to give me the receipts which the driver had given to her and after compiling them I sent them to the 1st Defendant.
- 2.8 In between 1st and 3rd April, 2014 during a security training, the 1st Defendant approached me with a print out of the receipts and asked me to verify information which he could not read. As the information was in Portuguese, I called the driver to come and verify to the 1st Defendant which was done while both of them were at my desk.
- 2.9 The on 18th April 2014 I was informed by the Administrative Assistant that the 1st Defendant wanted to meet me together with the Programme Coordinator, Eyasn Mekonnen Jembere at 2:00 O'clock in the afternoon.
- 2.10 Before the Scheduled time I went to the office of the Programme Coordinator to find out if he knew the agenda of the meeting and he told me that he was not aware of the agenda and I went back to my office but before I reached my office, I met the 1st Defendant who then informed me that the meeting was just for him and myself.
- 2.11 At the appointed time I went into the 1st Defendant's office where he told me that the Danish Ambassador had lodged a complaint that we had overcharged him on the invoice for the expenses the 2nd Defendant spent when we hosted him in Malawi. He stated further that the Ambassador had sent a member of his staff to verify the costs at the border and he found out that some of the receipts that the driver had produced were fake.
- 2.12 The Regional Representative stated further that the Ambassador had lodged a complaint through the complaints handling mechanism of Danish Church Aid and told me that as a controlling officer I was to be put on suspension together with the driver to pave way for investigations.
- 2.13 He gave me my suspension letter and asked me to sign it in acknowledgement of the contents and the requirements of the suspension. However, before signing, I read it and I noted that there was a statement in it that said that I am the one who was suspected of committing serious fraud and that I was suspended until further notice. I have exhibited a copy of the said suspension letter hereto and marked it "RN3."

- 2.14 I refused to sign the suspension letter because of the allegation of fraud therein and after some discussion the 1st Defendant agreed that the letter should be reworded by taking out the allegation of me committing fraud and putting in its place an allegation of me as a controlling officer failing to detect fraud. However, after a few days he sent the same letter to me with a cover letter stating that the committee had refused to change the allegation. I have exhibited a copy of the cover letter hereto and marked it "RN4."
- 2.15 After the meeting with the 1st Defendant in 6.13 above, I requested that I should meet with the staff representative, Mr. Anthony Malunga. I went to explain what had happened to the staff representative and since at the very same time the 1st Defendant had called for a staff meeting, he left me and told me to wait until he meets the 1st Defendant.
- 2.16 When the staff meeting was over the staff representative came back and told me that at the staff meeting the Regional Representative told all members of staff that gathered there that the Institution has suspended me and the driver because we had stolen huge sums of money and that investigation will be instituted and that no one was allowed to speak to me and the driver. The staff representative further told me that the 1st Defendant had said that the case was not in my favour since I was asked about the receipts and I said that they were valid which was not the case as the driver himself was the one who verified the receipts as requested.
- 2.17 Then I called my husband to come to pick me up. I waited at home for the results of the forensic audit and I was invited to attend a disciplinary hearing with the 1st Defendant and they had dropped the charge of fraud since the audit did not show that I had committed any fraudulent actions and that in place of it they had replaced it with a charge of performing my duties without professional care. I have exhibited hereto a copy of the notice marked as "RN5." I was told to bring along any person of my choice to be with me and I brought Mr. Mabvuto Bamusi. After the deliberations the National Director promised that the case would be concluded by 13th June.
- 2.18 It was however on 24th June that I was called to meet the 1st Defendant. At the meeting, he gave me a letter which stated that the 2nd Defendant would not renew my contract and that I was not required to come to the office to complete that contract that was still subsisting. I have exhibited hereto a copy of the letter and marked "RN6."
- 2.19 Although the 2nd Defendant cleared me of any fraud or theft of its money, their subsequent act of barring me from reporting for duties despite my being innocent coupled with the fact that during the time of my suspension the 1st Defendant had

publicly alleged that I had stolen huge amounts of money and that the evidence was overwhelmingly against me, portrayed me as a guilty person in the eyes of my fellow employees. The Defendants did not make any other public statement to the said members of staff informing them of my innocence whatsoever so that to date I am still viewed as a thief or a fraudster.

2.20 Whilst I was still on suspension a number of people especially those in the NGO sector immediately stopped talking to me. Others whom we share the same faith like Mrs. Mercy Masoo of Water Aid and Mr. Mabvuto Bamusi who was with Norwegian Church Aid approached me to enquire what had happened and whether the allegations of theft and fraud were true. It was really difficult for me to parry off the allegations and it was actually worse when the 2nd Defendant refused to allow me to go back to work up to the end of my contract despite clearing me of the charges of theft and fraud.

2.21 After my contract run out with the 2nd Defendant, I started job hunting but due to defamatory publications of the Defendants, no one wanted to employ me. I sent many job applications but I was not being called despite my being very qualified for some of the jobs. Sometime in March 2016 I was lucky to be called for an interview at Jhpiego and just after two weeks they sent me an email telling me that I was successful and that I would be offered a job but just before being given the offer letter I received another email from them telling me that they had changed their mind due to the feedback they received from the reference check. I have exhibited a copy of the emails hereto and marked them "RN7" and "RN8" respectively

2.22 I was curious to find out what could have made them change their mind so I called Ciiku Tharao who was responsible for recruitment and she told me that they got a damning reference from the 2nd Defendant and that whether I stole money or not from the Dan Church Aid I needed to clear my name otherwise as an Accountant I would not be given a job anywhere. I felt devastated.

2.23 As can be seen from the above events, the Defendants, through overt and malicious intention, have destroyed my professional and social reputation both as an accountant as well as respectable Christian and member of my community despite there being evidence that I am innocent. I still suffer stigma and segregation both professionally and socially which have adversely affected my employability and enjoyment of friendship, respect and trust from those who know me or those who receive negative reference from the 2nd Defendant every time I apply for a job. I therefore pray before this honourable Court to find that the Defendants committed acts

professionally and socially which have adversely affected my employability and enjoyment of friendship, respect and trust from those who know me or those who receive negative reference from the 2nd Defendant every time I apply for a job. I therefore pray before this honourable Court to find that the Defendants committed acts of defamation against me; that my reputation has suffered as a consequence thereof; that the said defamation has rendered me unemployable as my last employer is poised to send damaging references to my potential employers; that the Defendants have therefore undermined my earning capacity; and that they should be ordered to pay me compensation not only for ruining my reputation but for actively preventing me from being employed by Jhpiego and other numerous opportunities unknown to me and also to make a public apology to clear my name.

In summary during cross examination the claimant stated that at a meeting at which she did not attend, the 1st defendant said Rose and James have stolen a lot of money and they are being put on suspension. The claimant added that Anthony Malaunga a staff representative had told her what the 1st defendant had said at a staff meeting. She further added that she has failed to get a job at Jhpiego because of the report that was given by Danish Church Aid.

In re-examination the claimant reiterated that she was not at the meeting where 1st defendant made mention of her.

3. Issue for Determination

This court has to determine whether

- a) The claimant was defamed
- b) A malicious false statement was made against the defendant.

These will be addressed below.

4. Analysis of Law and Evidence

In *Nyirenda v AR Osman and Co* [1993] 16(2) MLR 681 (HC) defamation is publication of a statement that tends to lower a person in the estimation of right-thinking members of the society generally; or which make them shun or avoid that person or expose her to ridicule, hatred or contempt. The test is objective. In this case it is argued that the defendants published a statement to third parties, that is fellow employees at a staff meeting and to

claimants' prospective employers. Upon hearing the evidence of the claimant, being the only witness in this matter, this court found that the applicants claim was not proved on a balance of probabilities because she was not present when the alleged words were spoken to the third parties. In that regard all that the claimant presented in evidence was hearsay evidence. She did not bring to court the staff representative who was present at the staff meeting when the 1st defendant made a presentation, nor did the claimant bring her prospective employer who sought a reference from Danish Church Aid. There is no way that this court can confirm that the statement defaming the claimant or malicious false statement was made against the defendant. It is on this ground that the claims must fail.

5. Finding

The claims fail.

Pronounced this 24th day of June 2021 at LILONGWE



R.M CHINANGWA

JUDGE