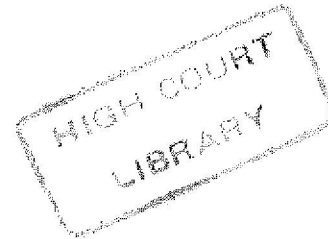


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MALAWI JUDICIARY
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NO. 159 OF 2017

BETWEEN

MLENGA MVULA.....CLAIMANT

-AND-

FDH BANK LTD.....DEFENDANT

CORAM: THE HON. JACK N'RIVA, JUDGE

Mr Mickeus, of Counsel for the Claimant

Mr Nkhono, of Counsel for the Defendants

Ms Nkangala, Court clerk

JUDGMENT

The claimant commenced this action by writ of summons specially endorsed against the defendant claiming damages for defamation (libel) and costs of this action.

In his statement of claim, the claimant stated that on 4th of May 2017 the defendant published or caused to be published the following words in the Nation Newspaper.

“.....lawyers for Maranatha as well as the spokesperson for the Judiciary (Mr Mlenga Mvula) have been quoted as suggesting that FDH Bank is in

blatant contempt of court. If these remarks have been correctly attributed, FDH Bank finds it unfortunate and ironic, that these officers of the Court should, while charging FDH Bank with contempt of court, make statements of that nature in a manner that tends to undermine the very authority of the Court to hear all the parties concerned before undermining all issues before it.”

The claimant went further to assert that the nature and ordinary meaning of the above quoted words was that he was a person who did not report true stories, a misleader, a liar, untrusted reporter and a person who took sides in his reporting on behalf of the Judiciary.

As a result of this, the claimant asserted that his reputation had been seriously damaged and had suffered considerable ridicule, distress and embarrassment and loss of good reputation that he used to enjoy from the media fraternity.

The defendant contended that the words complained of could not be understood to bear any meaning or innuendos defamatory of the claimant. The defendant also relied on the defences of fair comment and justification.

Let us consider, in a nutshell, what defamation entails. Defamation is the publication of a statement which tends to lower a person in the estimation of right-thinking members of society generally or which makes them shun or avoid him or to cut him off from society or to expose him to hatred, contempt or ridicule: *Nyirenda v AR Osman & Co* [1993] 16(2) MLR 681 at 702. The claimant in the present case alleged that the defendant published defamatory words about him. Anyone who publishes any matter that is untrue and is likely to injure the reputation of another is liable of defamation. See *Migochi v Registered Trustees of the CCAP* [2008] MLR 117. In order for a claimant to succeed in a claim for defamation, he or she must prove:

- (a) that defamatory words were uttered;
- (b) that the words referred to the plaintiff; and
- (c) that the words were maliciously published.

See Mwale J in *Soko v Opportunity International Bank of Malawi* Case Number's 622 OF 2012 and Chirwa J in *Thawani t/a Titi B Shop v Carlsberg Malawi Limited* Civil Cause NO. 87 OF 2013.

As far as the evidence is concerned, there is no dispute as to the publication of the press release with the words complained of in this matter. These published words indeed referred to the claimant. What is remaining is to determine if these words conveyed a defamatory meaning in their ordinary meaning to a reasonable member of the society.

The evidence of the claimant is that the published words in their ordinary meaning as stated earlier suggested that he was a person who did not report true stories, a misleader, a liar, untrusted reporter and a person who took sides in his reporting on behalf of the Judiciary. The evidence of the witness of the claimant was that when he read the published words, he was so shocked. And when he was asked what was shocking about those words, he told the Court that the published words purported that the claimant had conducted himself in unprofessional manner.

This Court tends to differ.

The words complained of clearly, in the set-up of the press release, are not capable of bearing a defamatory meaning as rightly submitted by the defendant. This is particularly true given that there have been five articles that were exhibited in which the claimant as spokesperson of the Judiciary commented on the issues that arose between the defendant and Maranatha. The press release by the defendant that was published in the newspaper emanated from these articles. In the press release, the defendant is saying that the claimant 'has been quoted as suggesting that it is in contempt of court.....'. Did the claimant not give his comments in the exhibited articles? He did. Is the press release referring to what the claimant had once commented in the articles? The answer is yes. Are the published words suggesting that the claimant had conducted himself in unprofessional manner? The answer is no. Are the published words suggesting

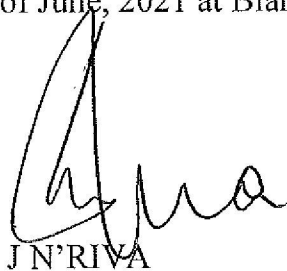
that the claimant is a liar, is taking sides in his reporting, a misleader or untrusted reporter? The Court does not think so.

Even if the published words were found to be defamatory, this Court agrees with the defendant that the defences of fair comment and justification would have been applicable. In any event, the tone of the claimant's utterances were as if it was a foregone conclusion that the defendant was in contempt of court. For that reason, one cannot conclude that the words, the defendant published, were meant to be defamatory to the claimant.

All in all, the claimant has failed to prove on a balance of probabilities that he was defamed by the defendant.

I dismiss the case with costs to the defendant. This Court gave the claimant fourteen days to file closing submissions but he did not do so. This is one of the reasons that has made me to condemn him in costs.

Made in Open Court this 18th day of June, 2021 at Blantyre.

A handwritten signature in black ink, appearing to read 'J N' RIVA', written over a printed name.

J N' RIVA

JUDGE