

HIGH COURT
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IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO. 398 OF 1987

BETWEEN:

BONNY STEVEN CHIHANA PLAINTIFF

- AND -

ROWLAND A MHONI DEFENDANT

CORAM: UNYOLO, J.

Chikopa of Counsel for the Plaintiff
Chiume of Counsel for the Defendant
Liyao (Mrs), Court Clerk
Gausi (Mrs), Court Reporter



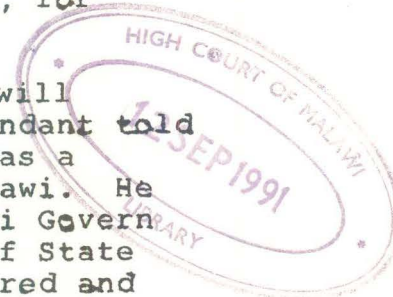
J U D G M E N T

In this action the plaintiff claimed ~~against~~ the defendant general damages for personal injuries, pain and suffering. He further claimed the sum of K42.00 as special damages for damage to property. It was pleaded that the defendant so severely assaulted the plaintiff with beer bottles, inflicting upon him two deep cuts in the head. It was averred that the plaintiff bled profusely as a result and that he had to be rushed to hospital where he received ten stitches to close the cuts. It was also pleaded that he suffered excruciating pain for several days and that because of the injuries his shirt was so soaked in blood he could not use it again. In his defence the defendant denied assaulting the plaintiff. He averred that if the plaintiff got injured at all then it was just tough luck, in that the plaintiff must have been injured as a result of his own aggressive behaviour. The defendant pleaded that whatever action he took was in self-defence and that overall the plaintiff cannot be heard to complain. Finally, the defendant denied that the plaintiff suffered any damages, general or special, or at all. Lastly, the defendant counter-claimed against the plaintiff for damages for defamation and for personal injuries, pain and suffering. He pleaded that the plaintiff maliciously and forcibly called him a "cheap lawyer who did not know what he was doing". He averred that these words were uttered in the presence of several people in a bottle store and that they meant, and were understood to mean, that he was incompetent in his duties as a legal practitioner. The defendant pleaded further that the said words were calculated to, and did disparage him in his career as a legal practitioner

and that he was greatly injured in his credit, character and reputation as such legal practitioner and brought into hatred, ridicule and contempt whereof he had suffered damage. He gave particulars of the damages suffered in this context as well as particulars of the personal injuries sustained. And in his reply to defence and defence to counter-claim, the plaintiff joined issue with the defendant upon his defence and denied the allegations made in the counter-claim. So much for the pleadings.

Taking first things first, I will deal with the plaintiff's claim first. The plaintiff did not appear at the hearing. His lawyers were sure that he was aware the matter was coming up for hearing, having written to him about it. On his part, Counsel for the defendant informed the Court that he met with the plaintiff in town only a few days before the date of the hearing and there could, therefore, be no doubt that he was around. The Court was further informed that the plaintiff had been very unco-operative with his lawyers, and after considering the matter fully and carefully, I proceeded to hear the case. Up to the second day, the plaintiff was nowhere to be seen. In the circumstances, I dismiss his action with costs, for want of prosecution.

I now turn to the counter-claim. I will consider the claim for defamation first. The defendant told the Court that he is a lawyer by profession. He has a Bachelor of Laws Degree from the University of Malawi. He said that after qualifying he worked for the Malawi Government, first as Registrar General and later as Chief State Advocate in the Ministry of Justice. Then he retired and set-up his own practice under the name of Mhoni and Company in downtown Blantyre. He has since folded up the practice and is now back in the Ministry of Justice working as a Member Judge of the National Traditional Court of Appeal. The defendant told the Court further that the plaintiff was one of his clients the time he was in private practice. He was instructed to incorporate a company for the plaintiff, which he did. That was a year or so before the incident in the present case. Referring to the said incident, the defendant's evidence was briefly that he was on the material day making merry and imbibing with others in a bottle store at Kaoba in the City of Blantyre when the plaintiff came. According to the defendant, the plaintiff was already drunk at the time and was aggressive, shouting at everybody. As if that was not enough, the plaintiff then picked on the defendant, referring to him in jest as "my lawyer". The defendant told the Court that he took exception to be referred to by his profession in a pub and remonstrated with the plaintiff. Unfortunately, this backfired. The plaintiff then started saying that the defendant was a "cheap lawyer". He repeated this several times loudly and clearly. Such broadly was the defendant's evidence in regard to the claim for defamation. It is pertinent to observe at this juncture that the defendant called a witness who corroborated him on all the material



points on this aspect. This witness was one of the persons in the bottle store on the relevant day. All in all, I am satisfied that the plaintiff did utter the words "cheap lawyer" with reference to the defendant. Perhaps I should mention that it was conceded by learned Counsel for the defendant during submission that neither the defendant nor his witness in their evidence substantiated the additional words "who does not know what he is doing" set out in the counter-claim. But as already pointed out, I am satisfied the plaintiff did utter the words "cheap lawyer" concerning the defendant and I so find. Now, the question is whether these words are capable of a defamatory meaning. The defendant's assertion is that they are and that in their natural and ordinary sense the words meant, and were understood to mean, that he was incompetent in his duties as a lawyer.

Pausing there, it is trite that statements may be defamatory of a person with reference to his calling or profession on the grounds that they disparage him in it. See Turner - v - MGM Pictures Ltd (1950) 1 All ER 449. In Sim - v - Stretch (1936) 2 All ER 1237 Lord Atkin applied THE TEST:

"Would the words tend to lower the plaintiff in the estimation of right thinking members of society generally, or which would cause him to be shunned or avoided?"



Cases bearing on this point are numerous. See Gatley on Libel and Slander, 8th Edition, paragraph 60. For example, in Lawrence - v - Hall (1928) 72 SJ.87, it was held to be DEFAMATORY TO SAY OR IMPUTE THAT A PERSON WAS UNFIT FOR HIS profession or calling owing to want of ability, inefficiency or incompetence. And in Slack - v - Barr (1918) 82 JP.91 an engineer/fitter was held to have a good cause of action for the statement that he was grossly unskilful workman. The Oxford Advanced Learner's Dictionary of Current English defines the word "cheap", among other things, as "of poor quality". And referring to the present case, there is no doubt in my mind that what the plaintiff meant by the words complained of was that the defendant was a lawyer of poor quality - an incompetent lawyer, in simple English. I am satisfied the words were uttered in the presence of several other persons in the bottle store. No defence of any kind has been proffered. In the result, I find that the defendant has proved the claim for defamation.

I now turn to the claim for assault. The defendant told the Court that he tried his best to remonstrate with the plaintiff, but to no avail. The plaintiff kept coming and telling him to his face that he was a cheap lawyer. The defendant said that he then pushed the plaintiff on the spur of the moment and warned him to mind his own business. Again, this back-fired. It was the defendant's evidence that then and there the plaintiff went into a rage. He began beating the defendant using ..

hands and objects such as beer bottles he was able to lay his hands on. The defendant said that he tried to fight back in self-defence, but he was no match for the plaintiff. He went down a couple of times before showing a clean pair of heels. He then went behind the bottle store and hid himself there. That was how the "war" ended. It was the defendant's evidence that in the attack he sustained a laceration over the right eye and a sprain of the fourth finger. He said that he suffered great pain that night and for days thereafter. Finally, the defendant told the Court that he attended hospital and produced in evidence the medical chit he got from there. Here again, the defendant was corroborated on all material points by the witness he called. Clearly, the plaintiff was the aggressor. The defendant cannot, in my judgment, be faulted in any way. I can't find any defence or justification for the attack. In the upshot, I am satisfied that the claim for assault has been made out and I find accordingly. In sum, the counter-claim succeeds in its entirety.

I now turn to the vexed question of damages. Again, I will deal first with the claim on defamation. I have already given the defendant's professional background. He contended that as a result of the incident, clients shunned him and that he lost business to the extent that he had to close down his practice. The facts are, however, clear. What emerges is a picture of a solitary and isolated incident in a tiny bottle store, and we are talking of very few people - a dozen or so present - all on the booze, it would appear. There was no evidence that apart from the plaintiff any of these other people were the defendant's clients. I have already said that the plaintiff was himself drunk and I doubt very much those in the pub at the time would have taken him seriously in all the circumstances. The defendant was unable to call any witness or witnesses to substantiate the allegation that he had to close down his practice solely because of the incident herein, or give names of any clients who ceased to deal with him as a result. Corroborative evidence was, in my view, necessary in the light of the gravity of the allegation. Frankly, I find it difficult to attribute the closing down of the defendant's practice to the incident in the bottle store. All the same, the defendant is entitled to compensatory damages, as the kind of slander involved in this case is actionable even without proof of special damages. I cannot underestimate the humiliation and distress caused to the defendant. It is also noted that the plaintiff has made no apology in the matter. It is to be observed, on the other hand, that the extent of damage which a defamatory matter may cause must depend, to a large degree, upon the extent of the publicity given to it. See Morgan vs Oldham Press Ltd (1971) 1 WLR 1239. See also Glaston Kalino vs Abel Kalakanjoka, Civil Cause No. 56 of 1981 (unreported). Further, the state of mind of the

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slanderer is material. See Bridgemont vs Associated Newspapers Ltd and Others (1951) 2KB 578. I have, therefore, taken into account in the present case the fact that the case here is one of slander as opposed to libel. Further, I have taken into account that the words complained of were uttered in a private place to a very small group of people. I have also taken account of the fact that the plaintiff was in a drunken state of mind at the material time. All these are, in my view, considerable mitigating factors.

In the Kalakanjoka's case above cited, the plaintiff sued the defendant for slander and assault. The defendant called the plaintiff a thief. Skinner, CJ as he was then, awarded the plaintiff damages for the slander in the sum of K1,000.00. The learned Chief Justice observed:

"I now turn to the assessment of damages in respect of the slander. This is a case of slander actionable per se. The plaintiff was a respectable man. He did nothing to bring the slander upon himself. He was in no way impudent. To call a man a thief is a serious matter, but I bear in mind that the extent of the publication was limited. However, I must take account of the fact that there was no apology and the defendant manufactured an allegation of adultery. I assess damages for defamation in the sum of K1,000.00".

I have considered the facts of the present case with religious care. I have noted both the mitigating and aggravating features in the case. I have borne in mind the Kalakanjoka case was decided some ten years ago. Clearly, with inflation, K1,000.00 then was much more than K1000.00 today and doing the best I can, I award the defendant damages for the slander in the sum of K2,500.00

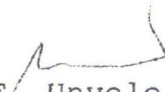
Finally, I turn to the assessment of damages in respect of the assault. The Kalakanjoka's case is again useful on this aspect. There the learned Chief Justice awarded the plaintiff K500.00. He said that:

"The attack on the plaintiff was a severe one. He was struck a number of times on the face and stomach. Again, the attack was made upon him in front of a number of people and constituted a grave affront to his dignity. I award him K500.00 by way of damages."

To my mind, the injuries sustained by the defendant in the instant case were a little more serious than those described in the Kalakanjoka's case. Taking all the facts into account and again doing all the best I can, I award the defendant K1,000.00 damages for the assault and the resulting injuries, pain and suffering.

In sum, I enter judgment for the defendant on the counter-claim in the sum of k3,500.00 with costs.

DELIVERED in open Court this 29th day of July, 1991, at Blantyre.


L. E. Unyolo
JUDGE