

IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NO. 631 OF 1993



BETWEEN :

EDA CHITALO (FEMALE) PLAINTIFF

- and -

HILDA MANJAMKHOSI (FEMALE) 1ST DEFENDANT
and

MALAWI CONGRESS PARTY 2ND DEFENDANT

CORAM :

Mkandawire, J

R. Mhone of Counsel for the Plaintiff

G. Kaliwo of Counsel for the Defendant

D. Mikanda, Official Interpreter

ORDER

On 29th March 1996 I gave judgement in favour of the plaintiff and deferred the question of damages as learned counsel had not made their submissions. Learned Counsel have now made their submissions on the question of damages and I therefore proceed to assess the same.

The plaintiff sued the 1st and 2nd defendants to claim aggravated damages for defamation and imputation of unchastity to a woman. The defamation was made at a public rally on 27th April, 1993. Perhaps let me say that the plaintiff and the 1st defendant are politicians and for some time they both belonged to the same political party, the Malawi Congress Party. For some time the plaintiff had held various ministerial posts in the M.C.P. government. However by 27th April 1993 she was no longer a member of the 2nd defendant. She was, together with others advocating for multiparty democracy. As a matter of fact the plaintiff was at that time a member of the Central Executive Committee of the United Democratic Front which was one of the political pressure groups agitating for political change in the country. The 1st defendant was a member of the Central Executive Committee of the 2nd defendant and was also the District Womens' League chairlady for Lilongwe District. The 2nd defendant is the political party that was in government at the time. It was advocating for the maintenance of the one party state. Perhaps I should mention that the then Life President of the Republic of Malawi, who is also the Life President of the Malawi Congress



Party called for a referendum so that the people should decide whether the nation should continue with the one party state or change to multi-party system of government. The Malawi Congress Party and the United Democratic Front together with other pressure groups were busy holding campaign rallies in preparation for the referendum.

It was at one of such campaign rallies that the plaintiff was defamed. The rally was held at Lilongwe and the Life President was in full attendance. The 1st defendant was one of the speakers and in the course of her speech she turned to the plaintiff and said:

"Edda Chitalo adali M.P ku Blantyre anali nduna yayikazi mdamlemekeza. Iyeyo mudampezero malo ku Chigumula kuti achoke to Ndirande. Achoke ndi banja lake lonse akakhale ku Chigumula koma iye adaiwala kuti ali ndamuna anga. Bambo Chitalo adachita kulondola kupita ku Chigumula - wosiya amuna ake chifukwa cha uhule afuna anenenji pano. Ife tikuziziwa atsogoleri amene analipo nthawi imeneyo Bwanali ameneyo ndamene anamuuza kuti bambo a Chitalo akakhale ku Chigumula koma lero Bwanali watenganso Chitalo uja."

Translation

"Edda Chitalo was an M.P. for Blantyre and a lady Minister. You honoured her by giving her a piece of land at Chigumula and that is why she moved from Ndirande to Chigumula. She was supposed to move with her family but she forgot that she had a husband and the husband had to follow later she left her husband just because she is a prostitute what does she want to tell us now. We know that out of the leaders of that time Bwanali was the one who went to plead with Mrs. Chitalo to let her husband go to Chigumula but now the same Bwanali has snatched Chitalo."

The campaign rally was broadcast live on the only radio station the Malawi Broadcasting Corporation. The defamatory words were repeated by the radio on the evening of that date to the whole nation which means that the publication was intended for a very wide audience and I dare say that a good fraction of the population of the nation held the defamatory words. The statement of claim says that the plaintiff has as a result been seriously injured in her character, credit and reputation and has been lowered in the estimation of right thinking persons and has been brought into public scandal odium and contempt. The plaintiff prays for aggravated damages.

The plaintiff gave evidence and in essence denied what was alleged of her, saying:

- (i) that she is not a prostitute.

- (ii) the piece of land at Chigumula was not given to her but that her family bought the same.
- (iii) in moving from Ndirande to Chigumula she did not leave her husband behind. As a matter of fact he moved first and she followed later on the same day.
- (iv) Mr. Bwanali could not have persuaded her husband to join her in Chigumula because when Mr. Bwanali joined politics the Chitalo family was already in Chigumula.
- (v) Mr. Bwanali had not snatched her from her husband and it is not true that she was having an affair with him.

The plaintiff told the court that the 1st defendant spoke the defamatory words with authority and that was in the presence of the Head of State. She said her family listened to the broadcast. She went on to say that her family was keen to listen to the broadcast because that was not the first time she was defamed. She went on to say that when she and her family heard what the 1st defendant said they were very disappointed. Especially the husband was very disturbed and disappointed. She was doing public work, so when her husband heard that she was a prostitute, it really disturbed him. She said that it took a long time for him to forget but she was not sure if he had really forgotten. She went on to testify that after the speech many friends telephoned her to ask if she had heard it. As a matter of fact, many friends came to console her and her husband.

In cross-examination she said that at her own campaign rallies she did not refer to lady members of the Malawi Congress Party as prostitutes. She also said that the speech raised suspicions in her husband's mind but she could not say whether he believed the allegation.

Jessie Chinthalo also heard the speech and she said she was very disappointed. She said she wondered how the plaintiff could do public work if she was engaged in prostitution.

The 1st and 2nd defendants filed a defence but failed to come to court to give evidence. The case was adjourned several times at their instance until in the end I decided to give judgement without defence evidence. I will return to the defence that was filed later.

Having reviewed the evidence and the circumstances in which the defamatory words were uttered I now come to assess the damages. At the very outset I must acknowledge that I have had great benefit from the Order of **Justice Tambala** in the case of **D.F. Mwaungulu -v- Malawi News and Others Civil Cause No. 518 of 1994 (unreported)**. In that case the learned Judge gave a clear and logically list of considerations which a court should bear in mind when assessing damages in a defamation case. The learned

Judge awarded the plaintiff the sum of **K25,000.00** being both compensation and exemplary damages. However the circumstances of that case are sharply different from the present. I have also had great benefit from the order made by **Justice Mwaungulu** in the case of **Aleke Banda -vs- Robert Dangwe and Malawi Congress Party Civil Cause No. 279 of 1993 (unreported)**. The learned Judge went at length to analyse English and Zambian authorities in so far as exemplary damages are concerned and how those authorities could be applied in the Malawian context. After an exhaustive review of the authorities he came to the conclusion that in our jurisdiction we should not limit the grant of exemplary damages to the situations spelt out in the English cases of **Rooks -vs- Barhard (1964) AC 1027** and **Broome -vs- Cassel & Co. Ltd. (1972) AC 1027**. I entirely agree with the learned Judge. While these cases will continue to be used as guide lines, the award of exemplary damages should not be limited. I also entirely agree with what was said in the case of **Times Newspapers of Zambia Ltd. -vs- Kapwepwe (1973) 292, 301** as cited in **Justice Mwaungulu's Order at page 17**. People in positions of power, or influence or authority should not abuse their positions to defame others. If they do so, courts should be at liberty in proper cases to award exemplary damages.

Now back to the present case. I want to say something about the plaintiff's reputation as this is very important in defamation cases. I have already referred to the plaintiff's evidence. Mr. Kaliwo submitted that the plaintiff's reputation only came from herself. That is correct. If the plaintiff is of bad reputation, evidence of bad reputation could only have come from the defence. But as I said the defendants failed to come to court to give evidence. Mr. Kaliwo did cross-examine the plaintiff and the line of cross-examination taken did not in any way suggest that she is a woman of bad reputation. Mr. Kaliwo did suggest that the plaintiff had provoked the situation in that she herself at her campaign rallies referred to lady members of the Malawi Congress Party as prostitutes. She denied that. So there is no evidence that the plaintiff is of bad reputation or that she had provoked the situation. If there was evidence of provocation or of bad reputation that would indeed mitigate the damages as was the case in **Hampton -vs- Herkes 1961-63 ALR Mal 373**. Briefly, the facts of that case were that the plaintiff was having an affair with the defendant's husband. Divorce proceedings followed between the husband and the defendant and in those proceedings the plaintiff was correspondent. In her anger, the defendant called the plaintiff a "bloody whore" and a "jumper." Interlocutory judgement was entered in default of appearance. However the defendant pleaded in mitigation of damages the general bad character of the plaintiff, the pastol truth of the statements and provocation. At **page 383 Bram J.** observed as follows:

"In mitigation, some colourable verity in some of the expressions used is inescapable, however slight. The plaintiff by her conduct which is directly related to the slander has disintituled herself to the status of full sensitivity about accusations of unchastity particularly by the defendant. Further, the defendant, although wrong in her accusations of general bad repute, was most grossly provoked as can be seen by the abusive nature of her defamatory statements.

In Hobbs V. Tinling (5) Scrutton, L.J. said (1929) 2 K.B. at 17; (1929) All E.R. Rep. at 40): "It is, I think, generally assumed that a plaintiff proving a statement *prima facie* defamatory and unexcused by justification, privilege, or fair comment, is always entitled to nominal damages."

Judgement was indeed entered for the plaintiff but she was only awarded nominal damages. No costs were awarded to her. In the instant case there is nothing to mitigate the damages. As a matter of fact, one can only assume from her political achievements that she is a lady of high integrity. In the previous government she had risen to become minister. When giving evidence in the present case she said she is a member of the central executive committee of the United Democratic Front and that she is a cabinet minister.

I now turn to the conduct of the defendants. In assessment damages, the court is entitled to look at the conduct of the defendant from the time the defamation was published. As I said earlier, the plaintiff has pleaded for aggravated damages and such damages may only be awarded where the conduct of the defendant merits. There was no apology in this case and although the 1st defendant uttered the abusing words in the presence of the Head of State, she was not reprimanded. Lack of apology from the 1st defendant and the absence of reprimand on the part of the 2nd defendant can only go to aggravate the situation.

Although the defendants did not appear in court they filed a defence which I think would be best to reproduce:

- "1. The second defendant contends that the plaintiff's statement of claim discloses no cause or no reasonable cause of action against the second defendant.
2. The first defendant admits that the meeting pleaded of statement of claim took place on the pleaded date but denies that the first defendant will contend that the first defendant spoke or published the words referred to in the statement of claim.

3. If it shall be held that the first defendant spoke or published the said words, which is denied, the first defendant will contend that the said words were published by Malawi Broadcasting Corporation without the authority and/or consent of the first defendant.
4. The first defendant will further contend that the alleged words or any of them referred to or were understood to refer to or were capable of referring to or being understood to refer to the plaintiff as alleged in the statement of claim or at all.
5. The first defendant denies that the said words in their natural or ordinary meaning or however bore or were understood to bear or were capable of bearing or being understood to bear any of the alleged meanings or any meaning defamatory of the plaintiff."

At paragraph 2, the 1st defendant denies even publishing the defamatory words. This is ridiculous, the rally was broadcast live and the plaintiff taped the function. The tape was played in court and the 1st defendant's voice was heard loud and clear. At paragraph 3 the 1st defendant says that MBC published the words without her authority and/or consent. This again is ridiculous. The defendants know fully well that they controlled the M.B.C. and every rally of the Life President was broadcast live and then there was a rebroadcast after the 8.00 p.m. news. The evidence of the General Manager, **Mr. Henry Chirwa (PW3)** was that it was a requirement of the Malawi Congress Party that all rallies addressed by the Life President be broadcast live and a repeat broadcast after 8.00 p.m. news and the mass rally of 27th April 1993 was no exception. The publication therefore was with full authority of the 2nd defendant. Then finally at paragraph 5, the 1st defendant denies that what she uttered of the plaintiff was not defamatory. I am greatly shocked. How can anybody with good intentions say that calling the plaintiff a prostitute was not defamatory. I have gone at length to analyse the defence to show the defendants conduct after defamation. They are not apologetic. In my considered view the defence was but a display of arrogance and insolence. It also shows that the defendants were full of malice and have no regard whatever for the plaintiff's integrity and personal feelings. Finally the case had a number of adjournments at the instance of the defendants. This I believe, was a deliberate ploy to delay the proceedings. This is indeed a case that calls for aggravated damages. I am aware that the plaintiff did not plead specific items of aggravation, but failure to do so does not constitute a defective statement of claim - McCregor on Damages Fourteenth Edition paragraph 1502(5) at page 1014.

I am aware that in Robert Dangwe and Malawi Congress Party MSCA Civil Appeal No. 8 of 1993 the Supreme Court reduced the damages from K300,000.00 to K100,000.00. In that case the High Court had awarded compensatory damages. Their Lordships gave reasons for

so reducing the award, but those reasons are not attendant in this case. Besides I do not think that when the Supreme Court reduced the award, that court was fixing a ceiling for defamation cases. Indeed each case must be decided on its own merits. Here I am dealing with the Chastity of a woman. I am not in way manifesting that an allegation of theft is not a serious matter, it is. But I am of the view that the chastity of a woman must be held in great respect. The plaintiff suffered serious injury to her character, credit and reputation and was reduced in the estimation of right thinking persons. She was indeed brought into public scandal, ridicule and contempt. In awarding damages I take into account the aggravating factors I have mentioned above. I note however that the defamation has not affected her political career.

Before I conclude I think I must refer to the recent case of Eda Chitalo -vs- Malawi Congress Party and Margaret Maimba Civil Cause No. 532 of 1993. In that case at a public rally attended by the then Life President of the Republic, the 2nd defendant in her speech referred to the plaintiff in that case, who also happened to be plaintiff in this case as prostitute No.1. The rally was broadcast live on M.B.C. and there was a repeat broadcast in the evening. The plaintiff in that case was awarded K80,000.00. What was awarded in that case was general damages. In the present case I shall award aggravated damages in view of the aggravating circumstances. I grant the plaintiff an award of K130,000.00 with costs.

PRONOUNCED in open Court this 29th day of November 1996 at Blantyre.



M P Mkandawire
JUDGE