

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO. 439 OF 1994



BETWEEN

KAISI PLAINTIFF

- and -

THE REGISTERED TRUSTEES
OF BLANTYRE ADVENTIST
HOSPITAL DEFENDANT

CORAM: TEMBO, J

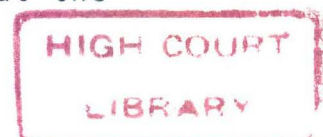
Tembenu, Counsel for the Plaintiff
Nampota, Counsel for the Defendant
Mchera, Official Interpreter
Manjolo, (Mrs) Court Reporter

J U D G M E N T

Kaisi is an employee of the Registered Trustees of Blantyre Adventist Hospital. By August, 1993, Kaisi had worked at the hospital for eighteen years. Events relating to this case occurred in August, 1993, when Kaisi was engaged as a pharmacy clerk. It is alleged that on 13th August, 1993, when Kaisi worked during a night shift, a substantial quantity of ampicillin capsules went missing from the pharmacy. Kaisi was a suspect. His house was then searched by the police in the company of some senior members of the staff of the hospital. No ampicillin capsules were found arising from the search. Subsequently, a meeting was held at which all pharmacy staff, including Kaisi, were addressed by a senior member of staff of the Blantyre Adventist hospital. The objective of the meeting was to ascertain and identify who, among the pharmacy staff, might have stolen the ampicillin allegedly stolen. None was identified. Being a suspect, Kaisi was suspended from his employment for two weeks and then reinstated.

Meanwhile, Kaisi has brought this action against his employers. He is claiming damages for false imprisonment and defamation. He also claims costs for this action. The Registered Trustees of Blantyre Adventist Hospital are denying both the claims. Instead they have asked the court to dismiss Kaisi's claims with costs.

Kaisi and the Registered Trustees of Blantyre Adventist Hospital are in agreement with regard to the following facts: that Kaisi is employed by and at the



Blantyre Adventist Hospital, which is situated in the City of Blantyre; that on 13th August, 1993, Kaisi was employed as a pharmacy clerk; that then he worked during a night shift. That there were three work shifts for staff in the pharmacy at the Blantyre Adventist Hospital, namely, 7 am to 1 pm; 1 pm to 7 pm and 7 pm to 7 am the following day. That, the pharmacy was open for business twenty four hours each day of the week, month and year. That, when on duty in the pharmacy, a pharmacy clerk held a key to the pharmacy, by which the doors to the pharmacy were opened and locked. During the day, pharmacy clerks supply drugs to nurses as per prescriptions of doctors and that nurses collect the drugs from the pharmacy. On the other hand, at night, pharmacy clerks supply such drugs to nurses in the hospital (patient's ward), either upon an express phone request being made to a pharmacy clerk or during a routine visit to the hospital which a pharmacy clerk is required to make once every three hours, to find out what nurses require. When drugs are issued by a pharmacy clerk to a nurse, either in the hospital or at the pharmacy, a record of the drugs supplied is entered and maintained in a book set apart for that purpose. A record is entered by a pharmacy clerk supplying the drugs and the nurse to whom the drugs are supplied signs or initials against each entry to signify that the nurse received the drugs specified against her signature or initials. There are no requirements for written handover notes at the commencement of each work shift. However, out of practice, verbal assurances are offered by the pharmacy clerk knocking off, that the drug situation or position in the pharmacy is in order.

Kaisi worked during a night shift on 13th August, 1993. He reported for duties at 7 pm and tookover from Florence Bwanali. He knocked off at 7 am on 14th August, 1993, and, then, handed over to Florence Bwanali. That night shift was initially to have been performed by Fumulani, who did not report for that night shift because she had to attend a funeral of her relative who had passed away earlier that day. Kaisi was then off duty. He was sent for and upon accepting to work the night shift, he did so as indicated above. Florence Bwanali had verbally assured Kaisi at the commencement of both his shifts, on 13th and 14th August, 1993, that the drug position in the pharmacy was in order. On 14th August, 1993, Kaisi had taken over from Florence Bwanali at 1 pm and he knocked off at 7 pm. Next, Kaisi reported on duty on 16th August, 1993, at 1 pm and he knocked off at 7 pm. Thereafter, Kaisi reported on duty on 17th August, 1993, at 1 pm. He found on duty, then, Sapha, Apuleni and Florence Bwanali. By 2 pm, both Bwanali and Apuleni had knocked off, leaving behind Sapha and Kaisi.

By 3 pm on that day, 17th August, 1993, Koester, the Administrator, Banda Assistant Matron and Nkhwazi, the Personnel Manager, came to the pharmacy. They were joined by three Criminal Investigation Department policemen, who had earlier been collected from Blantyre Police Station by

Koester and Nkhwazi. Kaisi was collected from the pharmacy for a search to be conducted at his house for the ampicillin capsules allegedly missing from the hospital (pharmacy). They all boarded a vehicle to Mbayani traditional housing estate and upon arrival Kaisi opened the door to his house. Thereafter, the search party carried out a vigorous and thorough search for the drugs allegedly missing. All of them, except Banda, were involved in the exercise. Banda was assigned the task of recording the drugs which the search party found. After the expiry of about three hours, none of the ampicillin allegedly missing were found. The entire search party, then, returned to the hospital by the same vehicle which it used earlier on. The policemen asked Koester if they could take Kaisi to the police station along with them. Koester told the police not to do so. Thereafter, Kaisi was suspended from his employment for two weeks, after which he was reinstated.

On Sunday morning, 22nd August, 1993, Doctor Mataya addressed a meeting of all pharmacy staff in order to ascertain and identify who, among them, might have stolen the ampicillin capsules allegedly missing. None of the pharmacy staff was identified or confessed as having stolen the drugs.

On the other hand, Kaisi and the Registered Trustees of Blantyre Adventist Hospital are not in agreement in regard to the following facts: Kaisi states that on the night of 13th August, 1993, when he performed a night shift, the Matron had visited the pharmacy whilst Kaisi had left for the hospital to deliver IV labels. On his return to the pharmacy, he met the matron who had told him that she had been into the pharmacy. Kaisi states that besides a pharmacy clerk on duty at any particular time, the matron too holds a key to the pharmacy. At that time Kaisi says that the matron had carried a basket. He, however, did not, and could not tell, the contents of the basket.

In regard to the events on 17th August, 1993, when Koester came to the pharmacy to collect Kaisi for the conduct of a search at Kaisi's house at Mbayani traditional housing state, Kaisi stated the following: that Koester in the company of the policemen, Banda and Nkhwazi, called Kaisi to come out of the pharmacy as follows: " Mr Kaisi, come out, it has been reported to me that you have stolen ampicillin capsules." Further in regard to a meeting of pharmacy staff which Doctor Mataya addressed on 22nd August, 1993, Kaisi stated before this court that Doctor Mataya had used the words particularized in paragraph 9 of his statement of claim, namely that, " I have called all of you, pharmacy workers to inform you that on the 13th August, 1993, Mr Kaisi stole some drugs from the pharmacy. Now, Mr Kaisi what I want you to do is just to admit that you stole the drugs. Do not tell us about what happened on Friday, when you were on night duty, just admit that you stole the drugs. If you give us any other statement, I will take you to the police for you to be locked up and I, Doctor Mataya,

will go with you to ensure that you are locked up (punished)". That, the meeting was attended by Sapha, Apuleni, Fumulani, Mangwiza, Bwanali, Mulandu and that then there were also unspecified number of unknown out patients who had come to the pharmacy to receive medicine. That even the out patients had heard Doctor Mataya speak out those words.

On the part of the Registered Trustees of Blantyre Adventist Hospital, Mrs Mataya, matron, vehemently denied ever having gone to the pharmacy on the night of 13th August, 1993, as alleged by Kaisi; that on her part she had indeed instructed Florence Bwanali to prepare an inventory of selected drugs, including ampicillin capsules following rumours that a lot of medicinal products from Blantyre Adventist Hospital were found on the street market within the City of Blantyre. That on 13th August, 1993, she was suspicious when she had seen Kaisi at the pharmacy when he was off duty. That she, therefore, asked Florence Bwanali to prepare an inventory of the selected drugs as indicated above, before she handed over to Kaisi that evening. Florence Bwanali was further instructed to do likewise, the following morning, upon taking over from Kaisi. That the exercise had resulted in the alleged disclosure of the missing of six jars, each containing a thousand ampicillin capsules. The record book for drugs issued or supplied from the pharmacy indicated that no ampicillin cupsules had been issued or supplied to any nurse by Kaisi during the whole of the period of Kaisi's night shift on 13th August, 1993.

Thereafter, a report was made to Koester by the matron, respecting the alleged missing drugs. Koester and Doctor Mataya agreed to enlist the help of the police to conduct a search for those drugs at Kaisi's house. On his part, Koester denies that he had said the words which Kaisi stated that Koester had said when Koester came to the pharmacy to collect Kaisi for a search at Kaisi's house. Koester told the Court that he merely explained that Kaisi was suspected of having stolen drugs during the night shift on 13th August, 1993, for which suspicion police men had been invited to assist in the conduct of a search for those drugs at Kaisi's house. Koester finally observed that Kaisi readily cooperated in the whole exercise.

On his part, Doctor Mataya denied ever having said the words attributed to him by Kaisi, as having been said at the meeting of all pharmacy staff which Doctor Mataya had addressed on Sunday, 22nd August, 1993. Doctor Mataya's own version of what he had said at that meeting was to the effect that he had asked all pharmacy workers, then in attendance at the meeting, to let him know if any of them were aware of the whereabouts of the alleged missing drugs; That if any of them had confessed having stolen those drugs, the matter would have ended there and then; that if none of them elected to do so, he would refer the matter to the police. He did not specifically refer to Kaisi that Kaisi was the thief. However, Doctor Mataya also stated that he

had said that if any other person had without permission entered the pharmacy during the night when Kaisi was on duty, and that if arising from such intrusion the drugs had been stolen, then, Kaisi would be responsible as he was the officer on duty in the pharmacy at that time. Several other witnesses who testified for the Registered Trustees of Blantyre Adventist Hospital also supported the versions of Doctor Mataya's and Koester's testimony regarding the alleged defamatory words said to have been spoken by Doctor Mataya and Koester.

Let me pause here. The foregoing are facts of this case, upon which and by which I must determine the claims made by Kaisi against the Registered Trustees of Blantyre Adventist Hospital. Kaisi is claiming damages for false imprisonment and defamation.

Let me first deal with the claim of false imprisonment. It is a fact that Kaisi was under arrest on 17th August, 1993, from the moment he was called out of the pharmacy to join Koester and the other members of a search party. The arrest lasted the entire period of the search until when the search party had returned to the hospital from Kaisi's house. Kaisi was during the whole of that period not free to go anywhere else or to do anything as he pleased, but had to be at his house with the search party. He, therefore, was obliged to be present at his house in order to facilitate the execution of a search warrant which Koester and Nkhwazi had procured from the police. It is the evidence of both Kaisi and the Registered Trustees of Blantyre Adventist Hospital that the period in question was estimated to be about three hours only. Unyolo, J., then as he was, in the case of Chiumia - V - Southern Bottlers Limited Civil Cause No. 707 of 1989 (unreported) observed that what constitutes an arrest or imprisonment at law is well settled. He cited a classic definition of imprisonment which appears in Termes de la Rey, namely-

"Imprisonment is no other thing but the restraint of a man's liberty, whether it be in the open field, or in the stocks, or in the cage, in the street or in a man's own house as well as in the common gaole; and in all places the man so restrained is said to be a prisoner so long as he hath not his liberty fully to go at all times to all places wither he will without bail or mainprise or otherwise."

Villiera, J, then as he was, in the case of Sindi - V - D Ross and Company Limited 10 Malawi Law Reports at page. 274, applied this classic definition of imprisonment. In that case, Villiera, J held that the plaintiff was not a free person to go wherever he wanted, further the Judge was satisfied that no actual force was used to compel the plaintiff, in that case, to go where he was required. It was further observed by Villiera, J that had the plaintiff refused or resisted, actual force would have been used to compel compliance on his part. I would like wise think that

had Kaisi resisted or refused to join the search party, actual force could have been used by the three policemen to compel Kaisi's compliance, in that regard.

The imprisonment of Kaisi, referred to above, was effected by the Police at the instance of Koester and Nkhwazi, employees of the Registered Trustees of Blantyre Adventist Hospital. It was conceded by Koester and Doctor Mataya that they had intended to search Kaisi's house, for which they, eventually, in fact obtained police assistance. The law of false imprisonment, where a matter has been reported to the police, provides that the Court must decide whether the defendant or his agents or his servants merely stated the facts to the police or whether they made a charge against the plaintiff. Thus, it is settled law that if the defendant made a charge against the plaintiff on which it became the duty of the police to act, then, the Court must find defendant liable for false imprisonment. But, the Court will not find defendant liable if the defendant merely gave information and the police acted according to their own judgment. See case of Hauya - V - Cold Storage Co. Limited Civil Cause No. 274 of 1987 and also case of Saulosi and Paketi - V - Bata Shoe Co. (Malawi) Limited Civil Cause No. 568 of 1987. Unyolo, J., in the Case of Chiumia stated that the determination whether a defendant made a charge or merely offered information to the police was a factual matter; that all the evidence had to be considered with religious care. Thus, the Court should not only look at what the reporter said, but also the manner in which the reporter has acted - a factor to be taken into account in determining whether such reporter merely gave information or whether he procured or directed the police to effect an arrest.

In his testimony for Kaisi, Nkhwazi stated that Koester had told the police, at the police station, that Kaisi had stolen drugs at the Blantyre Adventist Hospital and that it was then, also indicated to the police that there was sufficient proof that Kaisi had stolen the drugs. That is why the police had produced a search warrant only in respect of a search to be conducted at Kaisi's house. In fact, when the police in the company of Koester and Nkhwazi had arrived at the Blantyre Adventist Hospital, they went straight to the pharmacy where Koester only called Kaisi to come out of the pharmacy and the intended search ensued accordingly. I, therefore, have no doubt that the police had merely acted on the charge made by Koester at the police station that Kaisi had stolen drugs. It is interesting to note that at the end of the search, the police found it necessary to seek Koester's views if in fact the police had, then, to take Kaisi along with them to the police station. The police did so, even if the results of the search had clearly shown, and that the police then well knew, that no ampicillin capsules had been found after a thorough search. This in my view signifies the fact that the police were merely acting on the instructions of Koester. Indeed, when Koester had told the police not to take Kaisi along with

them, the police in fact left Kaisi at Blantyre Adventist hospital. So, were Koester to have said Yes indeed take him, the police would have in fact done so. The police were not acting, or did not act, according to their own judgment. If they were, it would have been perfectly within their discretion to have taken Kaisi to the police for further investigations. But they only could have responded to the orders or charges made by Koester, hence they did not on their own pursue the investigations further. As to the response of Koester upon that police inquiry, I imagine that by that time it ought to have been clear to Koester and his colleagues that a mistake might have been made. Koester must, therefore, have seen the need for first making sure that some of the other drugs found at Kaisi's house ought first to have given them a clue that Kaisi used to steal drugs from the hospital, that is, before they could later handover Kaisi into the police custody once more. As it indeed eventually turned out to be, all those other drugs which the search party had found at Kaisi's house were all sufficiently evidenced by official receipts of Blantyre Adventist hospital to the effect that Kaisi had bought those drugs and paid for them in the ordinary or regular way. On his part, Koester had told the Court that he merely informed the police of the fact that a theft had occurred at the hospital and that Kaisi was suspected. I prefer the version of Nkhwazi on this point as it is more probable, especially when viewed in the light of the entire conduct of the search party, and the reaction of the police at the end of the search.

Kaisi stated that about three hours had elapsed from the time he was arrested to the time when he was let free, thus at the hospital upon return from the search at his house. This point has not been disputed at all. Accordingly, I find that during the whole of that period, Kaisi was not at liberty to do what he pleased. Although actual force was not used, it is my considered view that were Kaisi to have resisted or refused a search at his house, or to attend thereat, actual force would have been used by the policemen.

Counsel for the Registered Trustees of Blantyre Adventist hospital has submitted that, even if I find that Kaisi had suffered from false imprisonment, the Registered Trustees should not be held liable for it, in that they acted in accordance with section 33 of the Criminal Procedure and Evidence Code. That section provides as follows-

"Any private person may arrest any person who in his view commits a cognizable offence, or whom he reasonably suspects of having committed a felony or who has been proclaimed as an offender under section 106".

There is no proof that Kaisi had committed a cognizable offence. On the part of the Registered Trustees,

it is contended that any body could have entertained a reasonable belief and suspicion that Kaisi had committed theft. It is further contended that it was therefore perfectly in order that Kaisi was so arrested and imprisoned for the purpose of ascertaining whether the belief was true or not.

In the Case of Sindi, at page 275 of the report, Villiera, J had noted that the plaintiff had been arrested and the defendant had a strict duty to justify the arrest. He further noted that the liberty of the individual is so valuable that the law requires that private individuals in the position of the defendants have to prove that a felony has been committed and that there is reasonable suspicion that the person arrested is responsible. Nothing short of that test will suffice. In conclusion, he noted that mere suspicion that an offence has been committed will not do if in fact no offence has been committed. Villiera J. had then applied the proposition of law enunciated in the judgment of Isaac, C. J. in the case of Walters - V - W. H. Smith and Son Ltd. (1914) 1 K.B. at 607, as follows-

"In this case, although the defendants thought, and indeed it appeared that they were justified in thinking, that the plaintiff was the person who had committed the theft, it turned out in fact that they were wrong. The felony for which they gave the plaintiff into custody had not in fact been committed, and, therefore, the very basis upon which they must rest any defence of lawful excuse for the wrongful arrest of another fails them in this case. Although I am quite satisfied not only that they acted with perfect bona fides in the matter but were genuinely convinced after reasonable inquiry that they had in fact discovered the perpetrator of the crime, it turns out that they were mistaken, and it cannot be established that the crime had been committed for which they gave the plaintiff into custody; they have failed to justify in law the arrest, and there must, therefore, be judgment for the plaintiff."

It is correct that a defendant in a case of false imprisonment may justify the arrest or imprisonment by showing that the defendant had seen the plaintiff commit a cognizable offence, in such a case an offence must in fact be committed. In the instant Case, the Registered Trustees of Blantyre Adventist hospital do not assert that they in fact saw the plaintiff commit the offence at all. Consequently, this is not applicable. Further, a defendant can justify an arrest or imprisonment of another by showing that he had reasonably suspected the arrested person to have committed a felony. In that respect, I would entirely agree with the views of Villiera J in the Sindi Case that mere suspicion that an offence has been committed will not suffice for the required defence. It is my considered view that in the instant case there was nothing more than a mere suspicion, which led the management of Blantyre Adventist

hospital to occasion the false imprisonment of Kaisi. Why do I hold such a view? Mrs Mataya, the matron, was the prime mover of the events that led to the false imprisonment of Kaisi. Her evidence is, therefore, quite crucial to my determination whether the staff of the Registered Trustees of Blantyre Adventist hospital had indeed reasonably suspected Kaisi of having committed the felony of theft. Mrs Mataya's testimony was to the effect that she had on 13th August seen Kaisi at the pharmacy when he ought not to have been there in that he was off duty. That about the same time she had heard some rumour that a lot of medicinal products from Blantyre Adventist hospital were found on the street market within the City of Blantyre. Consequent thereupon, she asked Florence Bwanali to prepare an inventory of selected drugs, including ampicillin capsules. Let me not, as I have already done so in the narration of the facts, that there was no requirement of written handover notes at the hospital upon commencement of work shifts in the pharmacy. she instructed Florence to keep the matter to herself and eventually upon the basis of that scheme of investigations, she established that Kaisi had stolen ampicillin drugs, and reported the same to Koester and Doctor Mataya, who without any other action being taken on their part invited the police for the conduct of a search at Kaisi's house. Mrs Mataya was said to keep a key to the pharmacy. At least that was the assertion made by Kaisi, which allegation was not denied by Mrs Mataya or indeed the other witnesses of the Registered Trustees of the Blantyre hospital.

Looking, at what Florence Bwanali did, the taking of an inventory of the selected drugs at the instance of Mrs Mataya, a lot of questions arise for answers. How was the exercise done? Did she actually physically count all the containers, did she verify if they were full or empty. Certainly, it is unclear if Mrs Mataya herself had actually like-wise verified the accuracy of the exercise done by Florence Bwanali. Certainly, Koester and Doctor Mataya did not attempt to verify the situation before they involved the police. As, I have already noted, the requirement by Mrs Mataya that the matter be confined to herself and Florence Bwanali, when Bwanali and herself were interested persons in the management of the pharmacy, leaves a lot to be said about their respective innocence at all, if indeed a theft of the drugs had been committed. In view of all this, I do not hold the view that there was a reasonable basis for suspecting that a loss of drugs had occurred and that Kaisi ought to have been the suspect. The circumstances of the case of Chiumia are clearly distinguished from those of the instant case, in that regard. As it clearly was the position in that case that a stock take was formally carried out by the Stores Controller, in which the plaintiff and other stores clerks were involved. At the end of that exercise the team found a shortage of **K2,200.00**. The team thereupon, started all over again assisted by the Company's Assistant Accountant just to be sure they had not made a mistake. Again they came up with the same result. The

plaintiff and his colleagues were then asked to explain how the shortfall came about. This was indeed done before the matter was referred to the police. There was nothing of that sort in the instant case. It was basically the rumour Mrs Mataya had heard and some doubtful attempts at investigating the rumour by Mrs Mataya. No. I do not hold that there was any reasonable suspicion that Kaisi had committed the offence of theft. Indeed, not even the fact that any drugs, including ampicillin capsules, had missed from the pharmacy.

In the circumstances, I must hold the Registered Trustees of Blantyre Adventist hospital vacariously liable for false imprisonment.

On damages, counsel for the plaintiff has drawn my attention to a number of case authorities of this court. I will only refer to the case of Wasili - V - Clan Transport civil cause No. 506 of 1981, where the court awarded K1,000.00 for imprisonment lasting two to three hours. I note that that was in 1981. Since then, to-date, the value of the Kwacha has depreciated severalfold. I, therefore, award Kaisi a sum of K5,000.000 as damages for false imprisonment he suffered.

Kaisi has also claimed damages for defamation. The claim is based on alleged defamatory statements said to have been made on separate occasions by Koester and Doctor Mataya. It seems to me that Kaisi's claim in that regard should fail, in that the evidence adduced before me does not support the claim. On the contrary, the evidence has established that Koester and Doctor Mataya indeed made oral statements which, in my view, were incapable of bearing any defamatory meanings, due regard being had to the natural and ordinary meanings of those statements. Such must more so be the case as no innuendo had been pleaded.

The law on this point is well settled. Before a question of libel or slander is submitted to the jury, the court must be satisfied that the words complained of are capable of the defamatory meaning ascribed to them. That is a matter for the Court. Thus, whether the words are capable of defamatory meaning is for the judge to decide. See Lewis - v - Daily Telegraph Limited (1963) 2 All England Law Reports page 151. In that case the defendant published an article which stated that the Fraud Squad of the city of London Police were investigating the affairs of the plaintiff's company. The trial judge had put the question to the jury if they found for the plaintiff or defendant, and, if for the plaintiff, how much? The judge did not first give a direction to the Jury that those words were incapable of bearing a defamatory meaning ascribed to them by the plaintiff. The House of Lords confirmed the decision of the court of Appeal for a retrial on the basis that the learned trial judge had left the question to the Jury if they found for the plaintiff or defendant without a direction that the words complained of were incapable of the extreme meaning

which had been rejected, by their Lordships, namely, that the natural and ordinary meaning of those words did not convey actual guilt of fraud. Lord Hodson said that it may be defamatory to say that someone is suspected of an offence, but it does not carry with it that that person has committed the offence, for this must surely offend against the ideas of justice, which reasonable persons are supposed to entertain. Lord Hodson further observed that if an ordinary sensible man was capable of thinking that wherever there was a police inquiry there was guilt, it would be almost impossible to give accurate information about anything; in his opinion ordinary sensible man would not think so.

Regard being had to all the evidence before me, including the demeanour of all the witnesses, the position on Kaisi claim for defamation is as follows: Although Kaisi has alleged that Koester had said "Mr Kaisi, come out, it has been reported to me that you have stolen ampicillin capsules", the truth seems to be that Koester must have said what he himself told the court as having been said by him. In that regard, Koester was supported by a number of other witnesses who testified for the Registered Trustees of Blantyre Adventist hospital. Nkhwazi, the only other witness for Kaisi, did not strike me as a witness of truth on this particular point as he had to be guided or led into saying what he had to say. On his part, Koester said that when collecting Kaisi for the search to be conducted at Kaisi's house, he simply explained that Kaisi was suspected of having stolen drugs, hence the need for a search to be conducted by the policemen at Kaisi's house. As seen from the case cited above, the expression "suspected of having stolen drugs" does not imply or ought not to imply to any ordinary sensible man that Kaisi was said to be guilty of theft. The natural and ordinary meaning ought to be that he was subjected to mere investigations to collect evidence of his possible involvement in the commission of the alleged offence or lack of such involvement.

In regard to what had been said by Doctor Mataya on 22nd August, 1993, during a meeting of pharmacy staff, Kaisi was all by himself in his assertion that Doctor Mataya had said the words pleaded and particularized in paragraph 9 and 10 of the statement of claim, namely the words that "I have called all of you, pharmacy workers to inform you that Kaisi on 13th August, 1993, stole some drugs from the pharmacy. Now, Mr Kaisi what I want you to do is to just admit that you stole the drugs. Do not tell us about what happened on Friday, when you were on night duty; just admit that you stole the drugs. If you give us any other statement, I will take you to the police for you to be locked up and I, Doctor Mataya, will go with you to ensure that you are locked up (punished)". This is the statement which Kaisi alleged in his statement of claim that Doctor Mataya had made at a meeting of pharmacy workers on Sunday 22nd August, 1993. On his part, Doctor Mataya vehemently denies ever having made such statement. And he was supported by several other

witnesses who testified for the Registered Trustees of Blantyre Adventist hospital. Thus, Doctor Mataya's version of what he had said was to the effect that he had asked all pharmacy staff, then in attendance at the meeting, to let him know if any of them were aware of the whereabouts of the drugs allegedly missing; That if any of them had confessed having stolen those drugs, the matter would have ended there and then; that if none of them elected to do so, he would refer the matter to the police. That he did not specifically refer to Kaisi, except to the effect that if any other person had without permission entered the pharmacy during the night when Kaisi was on duty, and further if arising from such intrusion the drugs had been stolen, then, Kaisi would be responsible as he was the officer on duty in the pharmacy at that time. Let me note that Doctor Mataya did not say that Kaisi would then be a thief. It does not seem to me that what Doctor Mataya said was capable of bearing any defamatory meaning tending to damage the reputation of Kaisi. It is interesting to note that Doctor Mataya had called this meeting after a search had already been conducted at Kaisi's house. It is, therefore, quite probable that indeed Doctor Mataya was, then, making an inquiry from all the pharmacy staff and not necessarily from Kaisi only, especially in light of the fact that a search conducted at Kaisi's house on 17th August, 1993, was to no avail. This may also tend to confirm the understanding that when Doctor Mataya had said if some person other than Kaisi had stolen the drugs during the night Kaisi was on duty, then, Kaisi would be responsible for the loss, not necessarily that Kaisi would himself be called, or held to be, the thief. I am quite sure that an ordinary sensible man would view these matters likewise. I accept the version of Doctor Mataya as being quite probable in that it does make sense in the light of the fact that Kaisi had already, prior to that date, singularly been subjected to a search at his house which had yielded negative results to the suspicion that he had stolen the drugs allegedly missing from the pharmacy where he worked.

In the circumstances, I would dismiss the claim of Kaisi for defamation in its entirety.

On costs, as Kaisi has indeed succeeded on only one of the two claims he had made against the defendants, he succeeds on his claim for costs only to that extent, namely, half the costs.

PRONOUNCED in Open Court this 19th day of February, 1996, at Blantyre.


A K Tembo
JUDGE