

**IN THE HIGH COURT OF MALAWI**  
**PRINCIPAL REGISTRY**  
**CIVIL CAUSE NO. 683 OF 1997**

**BETWEEN :**

**VICTOR NDOVI (MALE) ..... PLAINTIFF**

**and**

**UDF NEWS LIMITED ..... DEFENDANT**

**CORAM : CHIMASULA PHIRI, J.**

W. Msiska of counsel for the plaintiff

T.S.D. Chirwa of counsel for the defendant

J.H.Balakasi - Court Clerk

**RULING**

The plaintiff has sued the defendant for damages for libel for publication contained in the UDF News of February 27 - March 5, 1997 and costs for the proceedings. In this motion the plaintiff has prayed to the Court that judgment on admission be entered against the defendant under Order 27 Rule 3 of the Rules of the Supreme Court as read with Order 18 Rule 13 of the same Rules.

The basis of the application is that in his statement of claim the plaintiff stated in paragraphs 1 and 2 as follows:-

- 1. The defendant are publishers of the UDF News, a wide circulation newspaper in Malawi.**
- 2. On page 6 of the issue of the UDF News of February 27 - March 5, 1997 the defendants published the following words defamatory of the plaintiff.**

**“The Real Victor Ndovi”**

**“almost every week the Daily Times carries an article by Victor Ndovi. Every article he writes attacks the UDF government and quite often the State President**

himself. Victor Ndovi sees nothing, absolutely nothing commendable that the UDF government has done in two - and half years.

Attacking the government is not a crime. It is the essence of democracy that government policies and actions be under scrutiny. But there are types of criticism. Destructive and constructive criticism. Victor Ndovi writes for his pay masters the Malawi Congress Party for whom the Daily Times is a mouth piece. He cannot give credit where credit is due.

The Malawi Congress Party itself has never fully understood what multi-party is all about. It has always believed that the role of an opposition party is to oppose everything that the government does. Opposing for the sake of opposing has made the MCP look ridiculous sometimes. For example they viciously opposed the government's Free Primary Education although they knew it was very popular. By the time they realised the damage they were doing to themselves they had lost credibility.

Victor Ndovi is the personification of the MCP policy of blind attacks. He poses as an expert in everything. He writes against the government foreign policy, educational policy, labour policy, health policy and whatever catches his fancy. He believes that a road can be designed and built within six months, complete with surveying and soil samples. He believes that a referral hospital can be designed and built in two months.

It has never occurred to him that the MCP government took three decades to build the shabby roads whose pot-holes are now blamed on the UDF government. Mind you Dr. Banda was his own Minister of Works and one wonders where the money went.

What Victor Ndovi is doing and writing is true to character. He is not an expert in any field in spite of his pretensions.

All he has is his blind loyalty to Dr> Hastings Kamuzu Banda and the MCP. That is why he writes blindly. But that is not all. He has done many atrocious things for which many people do not know about.

When the MCP government started to get bad press in the United Kingdom they planted Victor Ndovi there. He pretended to have fallen out of the MCP government and fled abroad. Through him the MCP government kept close tab on its many critics in Great Britain where he was posing as an exile and a journalist.

**Many Malawi students in Great Britain kept away from him when his cover was blown. However, he cursed considerable hardships to many.**

**Any Malawian who returned to Malawi from Europe and found himself or herself detained on arrival has Victor Ndovi to thank.**

**Many highly trained Doctors, Engineers, Lawyers, Economists and other professionals who spent years awaiting security clearance before they could get employed have Victor Ndovi to thank.**

**Those who got badly tortured by the Special Branch on return to Malawi, have Victor Ndovi to thank. And if any of them died as a result of the torture, they have Victor Ndovi to thank. He was reliable MCP informant in London. He even prowled the House of Lords pretending to be a helpless exile.**

**Up until his return to Malawi Victor Ndovi had fooled many people, both Malawians and foreigners, into believing that he too was an anti-MCP dissident. He continued to spy on exiles and dissidents abroad for his pay - masters in the MCP.**

**Now that MCP is an opposition party in a multi-party dispensation Victor Ndovi has no job. He is earning a living by writing lies and dissertations about the UDF government to please his pay-master. His life-long loyalty to the MCP is now in the open.**

**The least Victor Ndovi can do is to beat his chest, stricken by conscience and apologise publicly to all his victims and the entire Malawi Nation.**

**We know that the MCP has never apologised for its atrocities but Victor could set an example.**

**Both Victor and the MCP must accept the fact that things have changed in Malawi and will never be the same again.**

**Writing articles in the Daily Times which seeks to misinform and disinform readers about the UDF parties will not bring back the MCP single-party dictatorship.”**

In its defence the defendant admitted paragraph 1 and 2 above quoted. In his submission Mr Msiska relied on the provisions of Order 27 Rule 3 which state that where admissions of fact or of part of a case are made by a party to the cause or matter may apply to the court for such judgment or order as upon those admissions he may be entitled to, without waiting for the determination of any other question between the parties and the Court may give such judgment or make such order, or application as it thinks just. An application under this rule may be made by motion or summons.

It appears to me that of late there is laxity on adherence to the mode of making these applications. I wish to state that if the plaintiff chooses to apply by motion, the matter must be set down for hearing in open court. There is no need for there to be an affidavit but the motion itself should clearly show on what grounds the Court will be moved and the provisions of the law that will be relied upon. Such a motion should not come before a judge in Chambers. If the plaintiff opts to commence the application by summons, then it has to be supported by an affidavit and will be held in Chambers before the judge.

This application was commenced by motion and I directed counsel to address me in open court. Mr Msiska submitted that paragraphs 1 and 2 of the statement of claim contain all the substance of libel. I adopt my stand stated in **F.A., Mlombwa t/a Umodzi Transport vs Cotam Transport** - civil cause number 1890 of 1996 where I said that the right of each man, during his lifetime to the unimpaired possession of his reputation and good name is recognised by the law. Reputation depends on opinion, and opinion in the main depends on the communication of thought and information from one man to another. He, therefore, who directly communicates to the mind of another, untrue and likely in the natural course of things substantially to disparage the reputation of a third person is, on the face of it, guilty of a legal wrong, for which the remedy is an action of defamation. **Prima facie**, the publication of a defamatory matter is a cause of action. The one suing must in his pleading be able to set out with reasonable certainty the alleged defamatory word. Vide : **Collins vs Jones** (1955) 1 QB. 564. He must also allege in his pleading that the imputation published is false and it is usual thought not necessary, to allege that it is malicious. The motive is immaterial in determining liability. If the defence is justification i.e. that the alleged defamatory statement is true, the person being sued must prove the matter true. The defence must prove the justification of the defamatory matter as alleged but need not prove the literal truth of every fact which he has stated. It is enough if he can prove the substantial truth of every material fact.

Mr Msiska argued that by its defence the defendant unconditionally admitted the contents of paragraphs 1 and 2 of the statement of claim. On the other hand Mr Chirwa contended that the admission made of paragraphs 1 and 2 should be viewed as admission of publication and not admission of liability for defamation. Mr Chirwa argued that paragraph 2 of the Defence clearly denies that the words it published means or should understood to mean the imputations given by the plaintiff that he was a spy and informant of MCP Government and he caused detentions and torture of some Malawians and that he was a stooge or agent of the former government.

By looking at Order 18 Rule 13 of the Rules of the Supreme Court it clear that any allegation of fact made by a party in his pleading is deemed to be admitted by the opposite party unless it is traversed by that party in his pleading or a joinder of issue under Rule 14 operates as a denial of it. In the present case the Court is looking at an express admission of the contents of paragraphs 1 and 2 of the statement of claim. Pansing there can one reasonably say paragraphs 2 and/or paragraph 3 of the Defence does not say it is subject to contents of paragraphs 2 and 3 of the Defence. It is clearly worded as an independent paragraph. It makes express and unconditional admission. The effect of the defendant admitting the facts pleaded in the statement of claim is that there is no issue between the parties on that part of the case which is concerned with those matters of fact and therefore, no evidence is admissible in reference to those facts. Vide : **Pioneer Plastic Containers Ltd v Commissioner of Customs and Excise** (1967) 1 All ER 1053. The question this Court is posing is this: is there any issue between the parties which is left out for trial after the express admission of the contents of paragraphs 1 and 2 of the statement of claim? My answer is in the negative.

Therefore I enter judgment on admission of the facts by the defendant in favour of the plaintiff under Order 27 Rule 3 of the Rules of the Supreme Court. I further order that the Deputy Registrar should assess damages for libel. The defendant is condemned in costs of and incidental to these proceedings to be taxed by the master if not agreed by the parties.

**PRONOUNCED** in open Court this 16th day of February 2000 at Blantyre.

**CHIMASULA PHIRI**  
**JUDGE**