

**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NO. 325 OF 1999**

BETWEEN:

JOHN NGWIRA.....PLAINTIFF

- and -

THE EDITOR, DAILY TIMES.....1st DEFENDANT
BLANTYRE PRINT & PACKAGING..... 2nd DEFENDANT
BLANTYRE NEWSPAPERS LIMITED.....3rd DEFENDANT
BT. PRINTING & PUBLISHING.....4TH DEFENDANT

CORAM: CHIMASULA PHIRI J.

Mrs M. Mulele of Counsel for the Plaintiff

Mr Chagwamnjira of Counsel for the Defendants

M. H. Fatch, Official Interpreter.

JUDGMENT

The plaintiff's claim is for exemplary damages for libel arising from material published in the Daily Times of 21st September 1999. The plaintiff was at the material time the Regional Commissioner for Lands and Valuation for the Central Region. The 1st defendant was Editor of the Daily Times newspaper which enjoys wide circulation throughout Malawi. The 2nd defendant is the printer of the Daily Times newspaper and the 3rd defendant is the owner of the Malawi News. Finally, the 4th defendant is a holding company for the 2nd and 3rd defendants. On page 4 of the Daily Times newspaper dated 21st September 1999, there is an article entitled "Contractor alleged to have duped Ministry". Part of the article reads as follows:-

"Ministry of Lands, Housing and Physical Planning is K400,000.00 poorer after a dubious contractor duped it, pocketing the money without bothering to do the job that was assigned to the said contractor.

Sources close to the Ministry said that a senior official within the Ministry connived with a contractor to inflate the value on the invoice so that the contractor could share the money with the senior official.....

It is also alleged that Central Region Commissioner of Lands and Valuation, John Ngwira, is involved in the racket as it is believed that the contractor whose existence is still untraceable to date belongs to him.

The contractor happens to be the Commissioner himself. I tell you, it is extremely difficult for an outsider to trace its existence because it is a non-registered thing. He only used his powers to just grade the contract, said the source."

In their natural and ordinary meaning the said words meant and were understood to mean that the plaintiff has defrauded the Ministry of Lands, Housing and Physical Planning of its K400,000.00 and that the plaintiff is a contractor. Further, that the plaintiff used his position to get a dubious contract from the Ministry. Lastly, that the plaintiff is a dishonest person who does not do his work properly as Regional Commissioner for Lands and Valuation. It has been pleaded by the plaintiff that the defendants published the article with malice, and only with the intention of humiliating the plaintiff and tarnishing the plaintiff's image as Regional Commissioner of Lands and Valuation (Centre) and thereby causing the plaintiff to suffer contempt and ridicule before the right thinking members of the public and Government sector particularly where the plaintiff was working. In support of his claim for exemplary damages, the plaintiff pleaded that the publisher of the article went to the plaintiff's office to get a clarification of the issues raised in the article before its publication. Despite the plaintiff informing the reporter from the defendants that the information the reporter had was completely false, he went ahead to publish the article. Even after its publication, the plaintiff demanded a retraction of the article and an apology but the defendants opted not to do so. It is the plaintiff's argument that the defendants published or caused to be published the said words knowing they were false or reckless and not caring whether or not they were true or false. Furthermore, that the defendants calculated that the benefit to them in terms of increased sales would outweigh any compensation payable to the plaintiff.

The defendants admitted that the plaintiff was Regional Commissioner for Lands and Valuation (Centre). Further the defendants admitted that they published the newspaper article complained of. However, the defendants pleaded that it was fair comment on a matter of a public nature. It is alleged that the plaintiff was being investigated by the Anti-Corruption Bureau in relation to inflated invoices. The defendants pleaded that in the alternative, the words complained of, were published with the leave or licence of the plaintiff.

The evidence of the plaintiff followed closely the statement of claim and also denied or challenged the issues raised in the defence of the defendants. I must say that he was an impressive witness. He stated how maintenance contracts of Government occupied buildings are awarded and the inter-relationship between the Lands and Valuation on the one hand and Buildings Department on the other hand. He was adamant that when the article was published, he received several telephone calls from his colleagues and bosses requesting the plaintiff to explain about the contents of the newspaper article. He felt embarrassed as a Regional Commissioner as well as a registered valuer in the country. He was encouraged to sue the defendants by his boss because there was need for the plaintiff to clear his name and that of his organisation. The original copy of the article was tendered in evidence. The plaintiff was not shaken by the fierce cross-examination. He took his stand that the published information was wrong and that it was published with the sole view to defame the plaintiff while at the same time boost the newspaper sales. The plaintiff lamented about his professional reputation as a registered surveyor. After the article was published the plaintiff remained in his post. Later he

was sent abroad for further studies and upon his return he was posted to Lands and Valuation Headquarters at the same rank of P5.

The last witness was Fexter Hopkins Chirwa who is self-employed in Blantyre. He says that he knows the plaintiff as his home-mate and takes him for his brother. They have known each other for 5 years. He says that he read the article in question. His first reaction when he read the article was to phone another colleague – Mr Robert Seyala and finally rang Mr Ngwira to ask about his reaction. The impression of this witness after reading the article was that he thought that the plaintiff was a thief and was involved in the scam. The witness said that after discussions with Mr Ngwira, the witness was convinced that the plaintiff could not do such a disgraceful thing.

In cross-examination, the witness stated that his intimate love for the plaintiff has deteriorated despite taking the plaintiff as his brother.

On the date when the matter was next scheduled for continued hearing the defendants and their lawyer did not come. Counsel for the plaintiff indicated that there were signals for out of court settlement. However, the defendants appeared non-committal to that process. Counsel for the plaintiff closed her case. Procedurally, the defendants having failed to give any evidence in support of their pleadings, there is no evidence on record in support of the defendants' pleadings. Consequently, I strike off the defence and enter judgment for the plaintiff on the evidence.

I have heard the evidence from the two witnesses which clearly proves that the plaintiff suffered extreme humiliation which would have been avoided if the defendants had taken a little precaution. The defendants published the article with malice and aimed at destroying the plaintiff professionally. It is becoming common in Malawi that innocent professionals are suffering for no fault of their own. One wonders where this culture of jealousy or ill will or malice is coming from.

I award the plaintiff K150,000.00 as exemplary damages for libel. The defendants are also condemned in the costs of this action.

PRONOUNCED IN OPEN COURT on the 10th day of January 2003 at Blantyre.

G. M. Chimasula Phiri
JUDGE