

IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NO. 3670 OF 1998

BETWEEN:

HENRY KHEMBOPLAINTIFF

AND

THE WEEKLY CHRONICLE NEWSPAPER.....DEFENDANT

CORAM: KALEMBERA, DEPUTY REGISTRAR

Chagwamnjira, Counsel for the Plaintiff

ORDER

The plaintiffs claim against the defendant is for damages for libel contained in an article entitled "NASME swindles over K250,000" published by the defendant on page 1 of The Weekly Chronicle Volume 3, Number 65 of November 13 to November 19, 1995. The plaintiff also claim costs of this action. The plaintiff obtained an interlocutory default judgement against the defendant on the 5th day of December 2001 for damages to be assessed and for costs of this action.

This is now a notice of assessment of damages. There was only one witness, the plaintiff himself who testified. The defendants despite being duly served were not in attendance. The assessment therefore, proceeded in the absence of the defendants.

The evidence of the plaintiff which was undisputed is that he was the founding Chairman of NASME the subject of the alleged libelous article titled 'NASME' swindles K250,000' and that because of this article his reputation went down and his picture changed among the donor community where he used to source funds for the organisation as well as the banks with which he interacted because of his personal business. It was further his testimony that even the President of the country invited him twice to discuss the said article and that all his friends looked at him as a swindler. He further informed the court that during their Annual General Meeting where an Accounts report was presented, there was no shortage and he was never prosecuted of any of the allegations. Eventually he had to re-allocate to another country and he spent USD 1438,00 for transport to come and attend to matter in court.

It is pertinent at this stage to have recourse to the relevant part of the article in question which stated as follows:

“According to various reports circulating around the issue, this association was established in 1994, and to date the interim executive committee headed by Mr H Khembo has collected membership fees from over 11,000 members totaling over K500,000 of which only K250,000 has been accounted for and the rest has disappeared into thin air”.

The plaintiff avers that these words were meant and understood to mean that:

- (i) the plaintiff is a dishonest person where money is concerned;
- (ii) the plaintiff by himself and/or with other executive members used the money alleged to be unaccounted for their own benefit;
- (iii) the plaintiff was deceiving people of this nation to join NASME so that he benefits from their membership,
- (iv) the plaintiff was robbing the public in day light.

As already noted herein the question whether the said article was defamatory or not was already taken care of by the default judgement entered herein. What this court has to do is to assess damages payable to the plaintiff as a result or consequence of such article. As to the measure of damages the general rule is contained in the speech of Lord Blackman in **Livingstone v. Rawyanrds Coal Company** [1880] 5 App. Cas. 25 at page 39 where the measure of damages for compensation purposes was defined as:

“that sum of money which will put the party who has been injured or who has suffered, in the same position as he would have been in if he had not sustained the wrong for which he is now getting his compensation or reparation”.

It has further been stated in the case of **Justice Mwaungulu v. Malawi News** Civil Cause Number 518 of 1994 that the court takes into account several factors in assessing damages for defamation which inter alia, are (i) the context of the defamatory material, (ii) the nature and extent of the defamatory publication including the aspect of reproduction, (iii) the plaintiff standing, his reputation, character and status, (iv) nature of defamation-either libel or slander, (v) conduct of the defendants from the time of publication and (vi) recklessness of publication.

In the matter at hand the defamatory article was published on the front page of the Weekly Chronicle Newspaper and one would rightly conclude that whoever bought the newspaper ought to have seen and read the article hence the averment by the plaintiff that his image and reputation has been tarnished among his peers and all those he had business transactions with. It has not been shown in evidence whether the article was reproduced in subsequent editions but it is clear that the defendants never apologised in any way to the plaintiff and no apology was ever published in the subsequent editions of the defendant newspaper.

The absence of an apology or retraction by the defendants must therefore be taken into consideration in assessing damages as well as “the whole conduct of the defendant from the time the libels (were) published down to the very moment of the verdict” per Lord Esher M.R. in **Paed v. Craham [1889]** 24 QBD at p. 53.

“(The defendant) may have behaved in a high-handed, malicious, insulting or oppressive manner in committing the tort he or his counsel may at the trial have aggravated the injury by what they said” per Lord Reid in Cassel and Company Ltd vs. Broome (op.at). Again in Sutelittle vs. Pressdraw Ltd [1990] IALLER 269. Norse L J said, “The conduct of a defendant which may often be regarded as aggravating the injury to the plaintiff’s feelings so as to support a claim for aggravated damages includes: a failure to make any or any sufficient apology or withdrawal; a repetition of the libel, conduct calculated to deter the plaintiff from proceeding persistence by way of prolonged or hostile cross-examination of the plaintiff and persecution of the plaintiff by other means.”

In the matter at hand the plaintiff testified that his reputation was seriously damaged such that he lost some funding which he had sourced and was in the pipeline from donors. He was queried by the State President due to the article and in the end he had to re-allocate to another country and is currently based in the United States of America. It is therefore the courts view that the extent of the damage caused to his reputation was grave indeed. Having been a founding member and Chairman of NASME he was well known figure in the social services circles and yet he had to leave everything and re-allocate to another country. The said article further imputed criminal responsibility and liability on the plaintiff these are indeed aggravating factors and yet there was no apology or retraction

of the said article. The defendants were therefore not remorseful-**Malawi Railways Ltd and Another v. A H Bhandur Khan** [1984] 11 MLR 432 where Honourable Makuta, CJ (as be then was) had this to say;

“In my judgement there are no mitigating circumstances. The defendant does not show any remorse. There was no provocation from the plaintiff. The allegations in my view, were made with reckless indifference to the truth. The serious imputations of criminal activities are rude, damaging and discourteous and can have unpleasant consequences on the plaintiff’s livelihood.”

In awarding damages in this matter I have considered cases of similar nature. In the case of **Victor Mbewe and Other v. Ken Ndanga and Others** Civil cause No. 179 of 2002 on award of K200,000 each and K50,000 was made as aggravated damages: **Chitalo v. Majankhosi and Malawi Congress Party** Civil Cause No. 631 of 1993 on award of K130,000 was made; **Dangwe v. Malawi Congress Party** Civil Cause No. 8 of 1993 a sum of K100,000 was awarded as damages.

In the present case after considering the awards of damages made in the previous comparable case and further considering that the value of the kwacha has since plunged into an all time low since such awards were made this court awards the plaintiff K280,000 aggravated damages. I further order that the defendant pay the plaintiff USD 1439, the value of an air ticket since the plaintiff had to travel all the way from United States of America to attend court on assessment of damages.

The costs of this action are also awarded to the plaintiff.

MADE in Chambers at Blantyre this day of December, 2003.

S A Kalembera

DEPUTY REGISTRAR

