



**IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT COUNTRY
CIVIL CAUSE NUMBER 448 OF 2008**

BETWEEN:

FAKI ELADI-----PLAINTIFF

AND

BLANTYRE NEWSPAPERS LIMITED-----DEFENDANT

CORAM: HON. JUSTICE M.C.C. MKANDAWIRE

Henry Kadzakumanja, Counsel for the Plaintiff

Innocent Kalua, Counsel for the Defendant

Mrs Jere, Court Reporter

Itai, Court Interpreter

JUDGMENT

INTRODUCTION

The plaintiff Faki Eladi claims against the defendant Blantyre Newspapers Limited damages for defamation. The plaintiff's basis for the claim is a story which the defendant published in the Tikambe Colum of the Malawi News of 29th of March, to 4th April 2008 concerning Mr Shaban Kadango Banda relating to theft of rice from several farmers amounting to MK8 million. The plaintiff claims that in the story in issue, although the story was concerning Mr Kadango, the defendant published the plaintiff's picture in it which was understood to refer and to mean that the plaintiff was connected to the story in the article. It is the plaintiff's contention that in the natural and ordinary meaning of the words so published meant that the person whose picture accompanied the story was Mr Kadango and the said Mr Kadango appeared before court to answer a charge of attempting to swindle farmers of their produce.

The defendant opposed the plaintiff's claim. First the defendant contend that the words complained of could not be understood to bear any meaning or innuendos defamatory of the plaintiff. The defendant also relied on the defence of qualified privilege since the story complained of was merely a report of contemporaneous court proceedings.

ISSUES FOR DETERMINATION

The issues to be resolved are:

- I. Whether the words complained of are defamatory.
- II. Whether the picture used in the article is that of the plaintiff.
- III. Whether the defendant can avail itself of the defence of qualified privilege.

SURVEY OF EVIDENCE

The plaintiff's evidence is that in 2008, he was employed by the Malawi Government as a special assistant to the then Vice President Right Honourable Dr Cassim Chilumpha. In their newspaper of 29th March to 4th April 2008, in the Tikambe Column, the defendant published the plaintiff's picture. The said picture was published in relation to a story involving Mr Kadango relating to theft of rice from several farmers amounting to Mk8 million. The said article is tendered marked as P Ex 1(a). The article in this publication basically refers to court case proceedings of theft by trick by Mr Kadango. The article details the proceedings before the Limbe Magistrate Court where Mr Kadango was prosecuted and the court eventually acquitted him of the said offence. In that article is embedded a photo which the plaintiff says is his and not of Mr Kabango.

The plaintiff said that even though the publication was not negative reporting, he found the conduct of the defendant unacceptable because they published his picture instead of the picture of Mr Kadango. The imputation from the publication was that the person whose picture was published being the plaintiff, had committed a criminal offence and was tried before a Magistrate Court while in fact the plaintiff was not connected to the said story. The plaintiff said that as a result he suffered considerable anxiety, shock, mental anguish, embarrassment as his reputation was seriously injured.

The defendant gave evidence through Mr George Kasakula who is Editor in Chief and Editor of Malawi News. In a nutshell, the witness told the court that the story in issue was based on a court case that had taken place concerning Mr Shaban Kadango and that the picture that was there was that of Shaban Kabango Banda. It is further the evidence of the witness that as a print media house, their duty is to inform, educate and entertain members of the public. In publishing the story, the defendant simply discharged its social duty to inform members of the public on the criminal proceedings in court in compliance with the principle of open justice.

ANALYSIS OF FACTS AND LAW

It is settled as a fact in this matter that there was indeed publication of the story in issue which story had no negative reporting on Mr Kabango and there has been no complaint from the said Shaban Kadango. The only controversy that has arisen is the alleged use of the picture which the plaintiff says is his and not of Mr Shaban Kadango Banda hence the claim for defamation.

The defendant in their evidence in-chief said that the picture is that of Mr Kadango and not the plaintiff. I noted during cross examination that Mr Kasakula stuck to his word that the picture in issue was taken from their photo library and according to them, it is that of Mr Kadango. He further on stated that up to now, they believed that this picture is that of Mr Kadango and not Eladi Faki. According to the defendant, there was no proof from the plaintiff that they had made a mistake on the pictures.

After the defendant had published this story, the plaintiff's counsel wrote the defendant on 7th of April 2008 claiming for damages for defamation. In that letter of demand, there was no reference to the photo of Mr Kadango as to how he looks like so that the defendant should have been put on its toes that the photo in issue was indeed not that of Kadango but the plaintiff. When the matter came for hearing, the plaintiff has not even attempted to produce the photo of Mr Kadango in order to draw the attention of the court as to how this Kadango looks like so that the court can really appreciate the differences. The court at this point in time does not have a clear picture of how this Kadango looks like so that it can safely come to a conclusion that the picture in the article is indeed not that of Kadango but the plaintiff. This is very important because the defendant in their evidence said that according to their photo library, the picture they published was that of Kadango. As a court, I had the opportunity to look at the photo in the article and compare with the plaintiff. My first impression was that indeed there is some likeness between the photo and the plaintiff. I however had no opportunity to appreciate how Kadango looks like. The defendant however stuck to their story that the photo in the article is that of Kadango as it appears in their file library. It was therefore incumbent upon the plaintiff to prove on a balance of probability that this picture was not that of Kadango. The plaintiff and Mr Kadango were both working as special assistants to the then Vice President. It would therefore not have been a problem for the plaintiff to have secured the photo of Kadango and contrast it with his. Kadango could also have easily been brought as a witness if still alive to disown this photo.. The court as I have already said does not know how Kadango looks like and where the defendant was adamant that the picture was that of Kadango, the plaintiff should have done more to clear this disagreement.

My finding is that the plaintiff had taken it for granted that this court knows how Kadango looks like which is not the case. The court is thus left in a very difficult situation because the plaintiff's side did not do their home work properly. In the absence of proof as to whether the photo in the picture was indeed not that of Kadango, I have no option but to dismiss this matter with costs.

DELIVERED THIS DAY OF NOVEMBER 2016 AT LILONGWE

M.C.C. MKANDAWIRE

JUDGE