

ALMAKIO SONGEYA KAPONDENI v B. E. C. MAPULANGA (1984) Z.R. 51  
(H.C.)

HIGH COURT  
CHAILA,  
15TH NOVEMBER, 1984

J.

Flynote

Tort - Libel - Qualified privilege - Defamatory letter copied to company which had interest in the matter - Whether privileged.

Headnote

The plaintiff's filling station constantly broke down and usually ran out of fuel. His explanation was that it was the responsibility of Shell BP to repair the pumps and to supply fuel. A letter was written to him expressing concern for his inability to manage the filling station. This letter was copied to Shell BP. The plaintiff sued for defamation.

**Held:**

The publication of the letter was privileged because Shell BP had an interest in the matter.

For the plaintiff: S.S. Kakoma, of Shamwawa and Company.

For the defendant: F.M. Lengalenga (Miss), State Advocate.

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Judgment

**CHAILA,**

**J.:**

The plaintiff in this matter claims damages in respect of the letter dated 3rd November, 1978, written and sent by the first defendant to the plaintiff. The Statement of Claim provides among other things:

"3. In a letter dated 3rd November, 1978, written and signed by the 1st Defendant and addressed and sent through the post to the Plaintiff, the same copied to the General Manager of Shell and BP Zambia Limited, Lusaka, the 1st defendant falsely and maliciously wrote and published of the Plaintiff and of him in the way of his said occupation and business and in relation to his conduct therein the following words:

I am directed to inform you that the District Development Committee has expressed its disappointment over your failure to run the Filling Station at Katete Stores in the interests of the travelling public. There have been unnecessary break-downs of the machine besides instances of the Station remaining closed for lack of fuel.

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The last meeting requested me to inform you that should any enterprising applicant come

forward to run the Filling Station the Committee will not hesitate to request you to fold up and give way. The Committee has further directed its Chairman to report back to the Committee its recommendation on 15th December, 1978'.

4. By the said words the 1st Defendant meant and was understood to mean that the Plaintiff was unfit to remain in his said business or occupation and should be removed therefrom.
5. The Plaintiff has in consequence been seriously injured in his character, credit and reputation, and in the way of his said occupation and business, and has been brought into public scandal, odium and contempt and the Plaintiff claims damages."

The defendants have denied the liability in the matter. They have admitted writing the letter to the plaintiff and they have pleaded that the occasion of sending the letter was privileged.

The plaintiff has relied on the bundle of documents as well as on his own evidence. The defendants have also called evidence and they have called three witnesses. At the end of the trial the advocate for both parties suggested to send written submissions. The court requested for the submission to be handed in within twenty-eight days but unfortunately both counsel have not sent in their written submissions.

The plaintiff's evidence is that he has been running a filling station at Katete since 1959. He got a letter from the District Administration which was written by the first defendant. The letter is contained at page one of the bundle of documents. The letter was talking about running of the filling station. He testified that it was not true that he had failed to run the filling station. He further testified that the filling station used to breakdown because they used to operate it by hand. They used to report to Shell BP to come and rectify it. He further testified that they were not breaking the machine deliberately. He used to get the licence from the Boma (District Administration ). He has further testified that the people at the Boma were aware of the sources of the supplies. The suppliers never allowed him to rectify the machine once they had broken down. Nobody front the District Administration went to discuss the matter with him on how he would improve the situation. He further testified that the first defendant was the Assistant District Secretary at Katete. The letter written to him by the Assistant District Secretary was copied to the General Manager of Shell BP. In Katete there was only one filling station and that was his. He testified that he was aware that the District Development Committee consisted of people from the Council who represented the local people of Katete. Before he got a letter from the District Administration, the District Development Committee never

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talked to him about the filling station. There was no other letter requesting him to improve the situation. He has complained that he was not happy with the letter. He has further testified that the letter has degraded him as a dog and a thief by the people who involved themselves in the business which does not involve them. He was still running the filling station and the District Development Committee had no right to take somebody from business. But he had conceded that the District Development Committee had the right to give licences. He has an agreement with the Shell BP and the Council did not know the agreement he had with Shell BP.

The defendants have called three witnesses. The first defendant (DW1) has testified that in 1978 he was stationed at Katete as Assistant District Secretary. He was aware that the plaintiff was an agent of Shell BP running a filling station at Katete. The filling station used to have constant breakdowns and that members of the public and the Government departments complain about lack of fuel at the filling station. The filling station could have no fuel for two weeks or a month. The matter was discussed by the District Development Committee consisting of Heads of Government departments and parastatal organisations. This District Development Committee has a responsibility of co-ordinating and monitoring developments in the District. The question of supplying of fuel in Katete was discussed by the Committee and DW1 was the Secretary at the meeting. The Committee decided to write to the plaintiff about the matter and then thereafter. DW1 wrote the letter contained at page one of the agreed bundle of the documents. DW1 has further testified that as the plaintiff was an agent of Shell BP he decided to send a copy of the letter to Shell BP for them to know what was happening.

DW2 Governor at Katete has testified that she knew the plaintiff as an agent of Shell BP and that he was running a filling station at Katete. She used to get a lot of complaints from the members of the public as well as from Government departments about the constant break downs of the filling station. The matter was brought to the District Development Committee meeting where she was the Chairman. The Committee discussed the possibility of getting somebody to run the filling station, but before they could do that they wanted the plaintiff to be written first. As a Committee they were concerned about the constant breakdowns as well as constant lack of fuel at that filling station. She has testified that the letter which was written to the plaintiff by the Secretary contained what was discussed by the Committee and represented the truth. She testified that they requested the District Secretary DW3 to speak to the plaintiff about the matter. DW3 has testified that in 1978 he was the District Secretary at Katete. He knew the plaintiff as an agent of Shell BP and he was running the only filling station at Katete. There were a lot of complaints from the members of the public and Government departments and parastatal organisations about lack of fuel and constant breakdowns at that filling station. The matter was discussed in the Development Committee meeting and it was resolved that they should try to get somebody to run the filling station, but before that could be done, they wanted to

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write to the plaintiff about the matter. DW1 was requested to write to the plaintiff. DW3 also met the plaintiff and expressed the feelings on how that filling station was begin run. Then he got a letter from Shamwana and Company asking him to apologise for writing a letter to the plaintiff, otherwise they will take the matter to court. He did not apologise because he did not think that they had ridiculed the plaintiff; the letter stated facts and they were performing public duty which he regarded to be in the public interest. The matter was referred to the Attorney-Generals' office.

From the evidence before me there is no doubt that there was only one filling station at Katete run by the plaintiff. There is no doubt that the filling station used to breakdown constantly. This has been admitted by the plaintiff himself. There is also evidence from the plaintiff that he was not allowed to rectify the machines. He had to get people from Shell BP. There is also no doubt that there sometimes used to be no fuel at the filling station. The plaintiff used to have irregular supplies of fuel from Shell BP. The three defence witnesses have testified that as public officers they got

reports about the way the filling station was being operated. The matter was brought in the meeting of the District Development Committee where it was resolved that the plaintiff should be written to by the Secretary of the Committee. The Secretary wrote to the plaintiff and sent a copy to Shell and BP General Manager. The contents of the letter are very clear. The contents were telling the plaintiff that they were not happy with the way the filling station was being run and was urging him to improve. DW1 has testified that he sent a copy of the letter to Shell BP because they were the principals and they had an interest to know what was happening in Katete. The defence officials testified that each time they asked the plaintiff about the non-availability of fuel in Katete the plaintiff put the blame on Shell BP. DW1 therefore decided to send a copy of the letter to Shell BP so that they know what was happening. I have carefully read the letter. That letter was written by a public officer following a decision made by the Development Committee. DW1 was performing a public duty. The Committee was in charge of co-ordinating and monitoring developments in the District. Development projects cannot go ahead smoothly without sufficient fuel in the District. The Development Committee therefore became concerned by lack of fuel in the District. The letter was written to the plaintiff himself and was copied to Shell BP, the company that was supplying the plaintiff with fuel. I find therefore that Shell BP had an interest in the matter and had a right to know what was happening to their filling station which was being operated by the plaintiff. It was therefore proper for the Assistant District Secretary to send a copy to the Shell BP. The action is therefore dismissed with costs.

Delivered in open court at Lusaka on the 15th day of November, 1984.

Claim dismissed

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