

**MATHEWS MAKAYI AND SMARTS CHIMBUYU CHIPOYA v MUHETU
WA'CHATA AND BENJAMIN KASAVI CHIPANGO (1992) S.J.**

HIGH COURT
BWEUPE, B.K., J.
28TH FEBRUARY, 1992.
1985/HP/1229

Flynote

Defamation - Libel - Imputations - Qualified privilege

Headnote

The defendants were alleged to have written two libelous letters against the plaintiffs. In the letters the defendants accused the plaintiffs of being tribalists and nepotists. The defendants, however, pleaded qualified privilege. They admitted publication of the said letters but denied that the plaintiffs' characters had been defamed. The question for the court was whether such imputation as contained in two letters were defamatory

Held:

- (i) The defendants had a duty, legal social or moral and that the persons to whom the letters were so written had a correspondent interest or duty to receive it. The reciprocity of purpose existed between the parties involved.
- (ii) This case comes within the purview of qualified privilege

For the plaintiff: Mr. S.J. Banda of Luangwa chambers

For the defendant: Mrs. Mbewe, State Advocate, Attorney- General's Chambers

Judgment

BWEUPE, B.K. J.: read the judgment of the court.

This is an action for libel.

The action arises out of two letters, one written by the first Defendant, then District Executive Secretary, Kabompo District on 31st May, 1983 to the permanent Secretary, North-Western Province and to the General Manager North-Western Cooperative Union and the other written by the 2nd Defendant then District Governor Kabompo District on 1st June, 1983 to the General Manager North-Western Cooperative Union and Marketing Union concerning the 1st and 2nd plaintiffs. The plaintiffs statement of claims in part read as follows:

- (a) That the Minister of State ofr Mines, Hon. Mathew Makayi, M.P. and current Chairman of North-Western Cooperative Marketing Union Limited is working hand in hand with the General Manager for the Union whereby they have employed a good number of people of their choice mainly Luchazi people in Kabompo so that these workers could be campaigning for the Minister of State for Mines, and the first plaintiff intends to rely on such publication at the trial.
- (b) That both the Chairman of the Union and his General Manager have even gone to the extent of transferring a Kaonde District Manager and have replaced him with a Luchazi person.
- (c) That this recently appointed District Manager (a Luchazi person) by the name of Smarts Chipoya a Chimbumba now creating fears in the minds of people especially those in

Chikenge area where he is the Ward Chairman.

- (d) That "you may wish to note that the Minister of State for Mines has started distributing commodities to people in villages and his to the Districts are all of suspicious nature."

That on 1st June, 1983 the second Defendant falsely and maliciously wrote and published or caused to be written and published to the General Manager, North-Western Province concerning the 2nd Plaintiff as follows:

- (a) That "since 1982 the said Chimbumba Chipoya has been engaging in activities which are bent on promoting tribal conflicts favouring his own tribal interests."
- (b) Soon he got employed by the Union he engaged in employing mostly his tribal or personal friends, these were to support and promote his tribal plans.
- (c) That Comrade Chimbumba's activities have proved to be against the party and the Government policies.
- (d) That he is using the post to meet nepotistic and corruptible desires activities which are regretted by our office.

The writing and publishing of these two letters clearly refer to the plaintiffs and the two defendants have admitted having written and published them. The defendants have, however, pleaded qualified privilege. They have admitted publication but deny that the plaintiffs' characters have been defamed and put the plaintiffs to the strict proof.

The question is whether such imputation as contained in two letters are defamatory? Gately on Libel & Slander 7th Edn. at para. 57 puts the matter thus:

"Any imputation which may tend to injure a man's reputation in a business employment, trade, profession, calling or office carried on or held by him is defamatory. To be actionable, words must impute to the plaintiff some quality which would be detrimental, of the absence of some quality which is essential to the successful carrying of his office profession or trade."

I have no doubt that to impute that the Minister of State for Mines, Hon. Mr. Mathew Maki, Member of Parliament and current Chairman of North-Western Co-operative Marketing Union Ltd. is working hand in hand with General Manager whereby they have employed a good number of people of their choice namely Luchazi people in Kabompo so that these workers could be campaigning for the Minister for Mines or that the Minister for Mines has started distribution commodities to people in villages is in my opinion detrimental to the political career of the Minister of State for Mines. Equally detrimental is the imputation that the 2nd plaintiff has been using the post to meet nepotistic and corruptible desires. I hold that those imputations are defamatory of the respective plaintiffs.

The defendants have pleaded justification. In *Southland -v- Stapes* (1925) AC. 47 Lord Shaw said:

"In a plea of justification that defence that a matter of opinion or inference is true is not that the defendant truly made that inference or truly held that opinion, but is that the opinion and inference are both of them true."

While the defendants in the present case sought to justify the statements of the plaintiffs alleged behaviour or the occasion of the publication and hence the imputation of the unsuitability for the post held, they made no attempt to justify that the plaintiffs themselves were nepotistic and corrupt. In these circumstances it is hard to see how the plea of justification can succeed.

The defendants assert that the letters were written in strict confidence. In *Pullman v Hill & Company* (1891) 1QB 524 at 528 it was held that an occasion is privileged when a person who makes the communication has a moral duty to make it to and the person who receives it has an interest in hearing it. Similarly in the case of *ADAM v WARD* (1917) AC 309 at 334, Lord Atkinson on qualified privilege stated

"..... that a privilege occasion is, in reference to qualified privilege, an occasion where the person who makes the communication has an interest or a duty, legal social or moral to make it to the person to whom it is made, and the person to whom it is so made has a corresponding interest or duty to receive it. The reciprocity is essential."

In this case Muhetu Wachate was a District Executive Secretary. He has a duty to write to the Permanent Secretary, North-Western Province and to the General Manager of the Union, PW4. The 2nd Defendant Benjamin Chipango, DW1, a District Governor also had a duty to write to the General manager on the subject matter contained in a letter complained of. It is my view that the Defendants had a duty, legal social or moral and that the persons to whom the letters were so written had a correspondent interest or duty to receive it. I find that the reciprocity of purpose existed between the parties involved. It is my view that the instant case comes within the purview of the privileged occasion.

Considering the totality of evidence the aggravated weighs in favour of the defendant. I would exonerate them with costs to be taxed in event of disagreement.
