

I.T.

IN THE HIGH COURT FOR ZAMBIA  
AT THE PRINCIPAL REGISTRY  
HOLDEN AT LUSAKA  
(Civil Jurisdiction)

2012/HP/072

BETWEEN:

CHARLES MOONGA HAANYIKA

PLAINTIFF

AND

JUSTICE FOR WIDOWS AND  
ORPHANS PROJECT



1<sup>ST</sup> DEFENDANT

ZAMBIA NATIONAL BROADCASTING  
CORPORATION

2<sup>ND</sup> DEFENDANT

BOYD NSWANA MWAANGA

3<sup>RD</sup> DEFENDANT

Before the Hon. Mr. Justice M. L. Zulu on the.....day of  
..... 2017

For the Plaintiff: Mr. L. Phiri of Messrs Chonta, musaila & Pindani Advocates  
For the 2<sup>nd</sup> Defendants: Mr. A. Mwila, Legal Counsel for ZNBC

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## J U D G M E N T

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Cases referred to:

1. Michael Sata v. Chanda Chimba III and Others (2011) ZR 519.
2. Ratcliff v. Evans (1892) 2 QB 524.
3. English and Scottish Cooperative v. Odhams Press Ltd (1940) 1 KB 440.
4. Cobbet – Tribe v. Zambia Publishing Co. Ltd 1973 ZR9.

**Legislation and Other Authorities referred to:**

1. Winfield and Jolowicz on Tort, 15<sup>th</sup> Edition, 1998, page 391.
2. Gatley on Libel and Slander, 8<sup>th</sup> Edition page 6.
3. 4<sup>th</sup> Edition of Volume 8 of Halsbury's Laws of England, page 54 paragraph 108.
4. Zambia National Broadcasting Corporation Act, Cap 154 of the Laws of Zambia.
5. Lands and Deeds Registry Act, Cap 185 of the Laws of Zambia.

By way of Writ of Summons dated 23<sup>rd</sup> January, 2012 and Amended Statement of Claim filed on 4<sup>th</sup> July, 2012, the Plaintiff commenced this action and is claiming the following reliefs:

- (i) Damages for defamation arising from the 1<sup>st</sup> and 3<sup>rd</sup> Defendants' defamatory Documentary aired on the 2<sup>nd</sup> Defendant's Television Channel on the 30<sup>th</sup> October, 2011 at or about 22:00 hours entitled **"The lonely Voices – Boyd Nswana Mwanga's Sad Story."**
- (ii) Exemplary damages arising from the airing of the said defamatory Documentary.
- (iii) Damages for trespass to Lot 78, Kalola.
- (iv) Interest on amounts found due.
- (v) An apology and retraction of the Documentary by the Defendants.
- (vi) Any other relief the Court may deem fit.
- (vii) Costs of and incidental to this claim.

The Plaintiff, Mr. Charles Moonga Haanyika testified that he is currently the Managing Director of Utilink Limited, Director at Medilink Services Limited, Director at Chisuwo Farming Enterprise, Director at Medilink Pharmacy and Chairman of the Society of Engineers in Zambia.

Mr. Haanyika testified that he sued the Defendants because of a Documentary aired by the 2<sup>nd</sup> Defendants, Zambia National Broadcasting Corporation, (ZNBC) on 30<sup>th</sup> September, 2011, which made various defamatory statements which were not true of his character.

He told the Court that following the Documentary he got phone calls from People who watched the same Documentary that he was carrying and brandished a pistol at the time when he was talking to the Orphans, including the 3<sup>rd</sup> Defendant and that the Farm did not belong to him, and in the process burnt the property of the Orphans leaving them in abject poverty.

He explained that following the phone calls about the documentary, he went to ZNBC and was shown the Documentary and thereafter to Justice for Widows and Orphans Project, the 1<sup>st</sup> Defendants who confirmed that it was their documentary. The Documentary was viewed by the Court.

The Plaintiff told the Court that he did not own or carry any fire-arm on the material day, and that the Property, Farm Lot 78, Kalola was legally acquired from Mr. Hakainde Hichilema in 2007 and took

possession in August 2007 and had a Certificate of Title relating the subject property.

It was his testimony that during one of his visits to the Farm, in late 2010, he noticed a small grass thatched house built in the uncleared part of the Farm.

It came to his attention that the 3<sup>rd</sup> Defendant and Others had occupied part of his property and were residing in the said thatched structure.

The Plaintiff told the Court that on 2<sup>nd</sup> July, 2012, upon hearing from his Caretaker that the person who put up the grass thatched hut had come, he decided to meet him, and he asked his brother, Mr. Dennis Haanyika, his cousin, Mr. Malambo and Garden Boy, Weston Shebele to accompany him. It was also his testimony that when they reached Chisamba road block police, they reported the matter to the Police and was assigned two Police Officers to accompany them to the Farm, where they found Boyd Nswana in the company of his brother.

The Plaintiff testified that following a cordial discussion, the 3<sup>rd</sup> Defendant and his brother agreed to peacefully leave the subject property upon being told that the land belonged to the Plaintiff, and that no guns were pointed at the 3<sup>rd</sup> Defendant, who requested a lift to Lusaka and was given K 100, 000 (unrebated) upon his request.

Following the incidence, the Plaintiff told the Court, that he received reports of the 3<sup>rd</sup> Defendant and other people going back to the Farm and took pictures as shown in the Documentary. It was his testimony

that he came to learn the other people to be the 1<sup>st</sup> Defendants whom he did not allow to enter his property and was never contacted prior to airing the Documentary by anybody, which was touching on sensitive issues and portrayed in a different manner and totally untrue.

In his cross examination, the Plaintiff told the Court that the 2<sup>nd</sup> Defendant, ZNBC revealed to him that the author of the Documentary was Justice for Widows and Orphans and the role of ZNBC was to air the Documentary on 30<sup>th</sup> October, 2011. He explained that ZNBC should air documentaries that are verified to be factual.

PW2, Nayoyo Mutinta Muchimbalume, a Senior Assistant Community Officer at Chilanga Council said she watched the Documentary and said she felt bad about the Plaintiff, who is the uncle, as it was portrayed as though the Plaintiff had grabbed the Orphans land which tarnished his name.

PW3, Weston Shebele, a driver and former worker of the Plaintiff testified that he accompanied the Plaintiff to the Farm and largely repeated the Plaintiff's testimony on how the events at the Farm unfolded. He denied that a gun was pointed at the 3<sup>rd</sup> Defendant or that their property was burnt down.

Despite notices of hearing being sent out, the 1<sup>st</sup> and 3<sup>rd</sup> Defendants did not respond.

The 2<sup>nd</sup> Defendant, ZNBC called one witness, Mr. Oswald Mutate, a journalist by profession, and had been practicing for the last 28

years, and was Acting Director of Programmes at ZNBC. He testified that he viewed the Documentary two days before his testimony and therefore, was not part of the team that evaluated the documentary. He told the Court that ZNBC was regulated by ZNBC Act and in particular quoted section 7 (1).

He added that the Documentary was produced by the 1<sup>st</sup> Defendant and only aired by the 2<sup>nd</sup> Defendant, on a commercial basis. The witness confirmed that the Documentary had allegations leveled against the Plaintiff; that he was brandishing a firearm and burnt property of the 3<sup>rd</sup> Defendant.

Under cross examination, the witness told the Court that according to the enabling Act, ZNBC has the function of providing fair and objective journalism and news. It was further his testimony that the onus was both on ZNBC and producers to confirm the facts and in this case also contacting the plaintiff.

He confirmed that the 2<sup>nd</sup> Defendant did not independently verify any of the facts and contact the Plaintiff prior to airing the Documentary.

Counsel for the Plaintiff and the 2<sup>nd</sup> Defendant filed written submissions. I am grateful to them for their valuable research.

Defamation is defined by **Winfield and Jolowics on Tort**<sup>1</sup> as the Publication of a statement which reflects on a person's reputation and tends to lower him in the estimation of right thinking members of society generally, or tends to make them shun or avoid him.

Defamation has three elements, that a Plaintiff ought to establish in order to succeed<sup>2</sup>.

**1. Reference to the Plaintiff.**

The Plaintiff must show that the words complained of refer to him. They must identify him. In the instance case, it is not in dispute that the broadcast complained of refers to the Plaintiff, because he is mentioned by name. So, this element has been established.

**2. Publication.**

The Plaintiff must show that the words complained of were published. Publication here means communication to atleast one person other than the Plaintiff. In this case, the statements complained of were broadcast as a Documentary by the 2<sup>nd</sup> Defendant, who is the National Broadcaster. So equally I find that this element has been established.

**3. Defamatory Imputation.**

The words on statement complained of must be defamatory, as was observed by **Gatley**.

*“Any Imputation which tends to lower the Plaintiff in the estimation of right thinking members of society generally or to cut him off from society generally or to expose him to hatred, contempt or ridicule is defamatory of him.”<sup>3</sup>*

Whether the given words are defamatory is a question of law, thus untrue imputations about a person in relation to his office, occupation or profession are considered defamatory.

Further, **Winfield** observes that:

*“A statement which disparages a person in his reputation in relation to his office, profession, calling, trade, or business may be defamatory, for example the imputation of some quality which would be detrimental or the absence of some quality which is essential to the successful carrying of the office etc, such as want of ability, incompetence, conduct which breaches widely recognized canons of business ethics and of course fraud or dishonest conduct.”*

The Plaintiff in this case has complained that his reputation in relation to his profession or occupation as a Director of many companies, a businessman and leader of a society of Engineers in Zambia, has been defamed.

The property Lot 78, Kalola belongs to Charles Moonga Hanyika, the Plaintiff as per Certificate of Title no 68147.

**Section 33 of the Lands and Deeds Registry Act** is the authority that a person in possession of a Certificate of Title is conclusive evidence of the land in question. There is no other evidence that has

contradicted this position. Therefore, nobody had the right to dispute this fact and impute otherwise.

None of the Defendants have proved or produced evidence to dispel that the Plaintiff is the holder of the Certificate of Title no. 68147, and the legal owner of the property Lot 78, Kalola. Therefore, any person who entered the said property without the consent of the Plaintiff is guilty of trespass. I therefore find that the 1<sup>st</sup> and 3<sup>rd</sup> Defendants trespassed on the property of the Plaintiff.

Having found that the Plaintiff is the legal owner of Lot 78 Kalola, any imputation on ownership relating to the said property is malicious. Accordingly, the 1<sup>st</sup> and 3<sup>rd</sup> Defendants had no right without justifiable reasons to enter and produce a Documentary on the said property without the consent of the Plaintiff.

The evidence on record and witness testimonies was largely unchallenged that the reputation of the Plaintiff was tainted as a result of the Documentary.

There is no doubt in my mind, that his name in society had been defamed. I accordingly, hold and find that the Documentary complained of, contained words which in their plain and natural meaning, were defamatory of the Plaintiff.

The 2<sup>nd</sup> Defendant states that the **Michael Sata v. Chanda Chimba III and Others** cited by the Plaintiff in support of their claim should be distinguished from the case at hand, as the Plaintiff could not

easily be contacted due to unknown particulars, while the Plaintiff in the cited case was a well-known politician.

Counsel for the 2<sup>nd</sup> Defendant in his submissions agreed that responsible journalism demands that all parties are given an opportunity to be heard, but that it was only possible when it is practical, thus the 2<sup>nd</sup> Defendant prayed that the Defendant should not be found liable based only on the fact that the Plaintiff was not contacted by ZNBC, the 2<sup>nd</sup> Defendants.

The 2<sup>nd</sup> Defendant went on to say there was nothing in the Documentary to show that the 2<sup>nd</sup> Defendant portrayed the Plaintiff as a type of person who carries a pistol around and brandishes it on carelessly or in a haphazard way and at no point did the 2<sup>nd</sup> Defendant say that the Plaintiff acquired Lot 78, Kalolo illegally.

It was also the 2<sup>nd</sup> Defendant's submission that it discharged its public mandate of informing the nation on new developments such as the plight of orphans who are usually disadvantaged by Administrators. The 2<sup>nd</sup> Defendant pleaded that it was only used in the transmission of a Documentary which was of public interest in addressing the plight of orphans. It further claimed that its role was simply to air the Documentary as it had the role to educate on the aspect of administering the estates of the deceased, inform and entertain under the ZNBC Act, Cap 154.

The 2<sup>nd</sup> Defendant pleaded that the matter before Court was of public interest addressing the plight of orphans and that the Plaintiff has not established malice by the 2<sup>nd</sup> Defendant.

The **4<sup>th</sup> Edition of Volume 8 of Halsbury's Laws of England, at page 54 paragraph 108**, states:

*“On grounds of public policy, the law affords protection on certain occasions to a person acting in good faith and without any improper motive who makes a statement about another person which is in fact untrue and defamatory.*

*Such occasions are called occasion of qualified privilege. It is not possible to set out all the occasions at common law, which will be held, to be privileged but, a common and corresponding duty or interest between the person who makes the communication and the person who receives it.”*

The 2<sup>nd</sup> Defendant's prayer is that the matter is of public interest addressing the plight of orphans and that the Plaintiff has not established malice by the 2<sup>nd</sup> Defendant.

The next issue for my consideration is whether the Documentary was broadcast with malice by the 2<sup>nd</sup> Defendant. Malice if proved, destroys the defence of qualified privilege.

Gatley at page 5 states;

***“Malice here does not necessarily mean personal spite or ill will, it means improper motive or an indirective motive. Any indirect motive other than a sense of duty is malice. Mere carelessness or negligence in publishing the defamatory statements is not in itself malice. Failure to make an inquiry or investigation that might verify a statement is not malice. It is for the plaintiff to prove malice.”***

From the evidence on record, it is clear that the Plaintiff had no quarrel with ZNBC or its staff before the documentary was produced and aired. Thus, there is no evidence of improper or indirect motive in connection with airing the Documentary. The Documentary was aired on commercial basis and was intended to educate the public on the aspect of issues that are related to orphans and the administration of the estates of the deceased. I hold that this was also in line with its mandate as stated in the ZNBC Act.

I accordingly, find that the Plaintiff has not proven malice against the 2<sup>nd</sup> Defendant, ZNBC, and all its claims against It, are accordingly dismissed.

However, the Plaintiff succeeds with its claims against the 1<sup>st</sup> and the 3<sup>rd</sup> Defendants for Damages relating to the production of the Documentary and causing the same to be aired on National Broadcaster. The Plaintiff also succeeds and is awarded damages for trespass to his property by the 1<sup>st</sup> and 3<sup>rd</sup> Defendants.

When assessing damages in a defamation claim, a number of factors are to be taken into consideration. Gatley at page 385, observes:

*“Much will depend on the character and conduct of the Plaintiff. If he has attacked, or in any way provoked the Defendant, or if his own imprudent conduct has given rise to the publication of which he complains, he is hardly likely to receive much sympathy at the hands of a jury. If he is not altogether blameless in the matter, he may be well advised not to bring an action. A man who brings an action in defence of his reputation must be ready and willing to change against him. If he fails to do so by the awarding him nominal or even contemptuous damages only.”*

In this case none of evidence of the witnesses or submissions are questioning the character and conduct of the Plaintiff in this claim. I accordingly hold him to be of good standing.

I will now consider the reliefs the Plaintiff seeks. He is claiming damages for libel and also exemplary damages. In **Ratcliff v. Evans**, Bowen L.J said:

*“The law presumes that some damage will flow in the ordinary course of things from the mere invasion of his absolute right to reputation.”*

Further in the **English and Scottish Cooperative v. Odhams Press Ltd**, Lord Goddard, L.J had this to say:

***“There is no obligation on the Plaintiff to show that they have suffered actual damage.... In every case a Plaintiff is entitled to say that there has been a serious libel upon, him, that the law assumes he must have suffered damages, and that he is entitled to substantial damages.”***

The Documentary defamatory of the Plaintiff was aimed by the National Broadcaster, ZNBC, therefore, a lot of people must have viewed it. It goes without saying that the Plaintiff suffered injury to his reputation as a result of the Documentary.

However, there is no evidence adduced that the Plaintiff's business was affected as a result of the defamatory Documentary aired on the National Television. It is a requirement that the Plaintiff proves this head of damages.

Despite the foregoing, I am of the view that the 1<sup>st</sup> and 3<sup>rd</sup> Defendants have exhibited contumelious behavior towards the Plaintiff. Further, they did not show any sign of concern or remorse over the airing of the false story in their documentary. I am fortified by the case of **Cobbet – Tribe v. Zambia Publishing Co. Ltd** in awarding Exemplary damages to the Plaintiff, as I regard the conduct of the Defendants to be wanton, as they disregarded the Plaintiff's rights.

For the foregoing reasons, the Plaintiff succeeds against the 1<sup>st</sup> and 3<sup>rd</sup> Defendants. I award him general damages for defamation in the sum of K 100, 000.

I equally award him exemplary damages in the sum of K 40, 000.00 as the Defendants recklessly caused to be produced a Documentary that was maliciously and caused it to be aired to the Nation through the National Broadcaster, ZNBC.

I further award the Plaintiff K 20, 000.00 for trespass to his property by the 1<sup>st</sup> and 3<sup>rd</sup> Defendants.

Interest is equally awarded, at short term deposit rate from the date of Writ to date of judgment, and thereafter at current bank rate until payment in full.

The Plaintiff will have the costs of this action, to be agreed and in default taxed.

**Delivered at Lusaka this 14<sup>th</sup> day of Sept 2017.**



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**M.L. ZULU  
HIGH COURT JUDGE**