IT

IN THE HIGH COURT FOR ZAMBIA **2018/HP/2081**
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(Civil Jurisdiction)

BETWEEN:

MUMBI PHIRI **PLAINTIFF**

AND

CHISHIMBA KAMBWILI **DEFENDANT**

BEFORE THE HONOURABLE MRS. JUSTICE M. C. KOMBE

For the Plaintiff: *Mr. A. Banda - Messrs Alberto Ngoyi Advocates*

For the Defendant: *Mr. M. Kasiya – C. L. Mundia and Company*

R U L I N G

Cases referred to:

1. **William Coulson v. James Coulson (1887) 3 T. L. R 846.**
2. **American Cyanamid v. Ethicon (1975) All E.R 504.**
3. **Bonnard v. Perryman (1891) 2 Ch. 269.**
4. **Capital and Countries Bank Limited v. George Henty and Sons (1882) 7 A.C 741.**
5. **Blackshaw v. Lord (1984) Q.B. 1.**
6. **Michael Chilufya Sata v. Chanda Chimba III and others (2011) Z.R. 519.**
7. **Crest Homes Limited v. Ascott (1980) F.S.R. 396.**
8. **Silkvin v. Beaverbrook Newspaper Ltd (1958) 2 ALL. ER. 516.**
9. **Tse Wai Chun Paul v. Albert Cheng (2000) HKCFA 86.**

10. **Michael Chilufya Sata v. The Post Newspapers Limited and another**
11. **Spill v. Maule (1869) L. R 4 Ex 232 at 235.**
12. **Smithline Beecham P.K. v. Opotex Europe Limited (2003) CWCA 137.**
13. **Quartz Hill Consolidated Gold Mining Company v Beall**
14. **Shell and BP (Z) Limited v. Conidaris and others (1975) Z.R. 174.**
15. **Evans Marshall & Company v. Bertola S.A (1973) 1 W.L.R. 349.**
16. **Bennie R.W. Mwiinga v. Grey Zulu and others (1990) Z. R.**

Legislation and other work referred to:

1. **The High Court Rules, Chapter 27 of the Laws of Zambia.**
2. **The Rules of the Supreme Court, 1999 Edition (White Book).**
3. **Patrick Milmo and W.V.H. Rogers (Eds), Gatley on Libel and Slander, Eleventh Edition (Sweet and Maxwell & Thomson Reuters) London, 2008.**
4. **Anthony M. Dugdale and Michael A. Jones (Eds), Clerk and Lindsel on Torts 19th Edition, (London, Sweet and Maxwell, 2006).**
5. **Halsbury's Laws of England, Fourth (4th) Edition, Volumes 24 and 28 (Butterworth's) London 1979.**
6. **Bryan A. Garner, The Black's Law Dictionary, Ninth (9th) Edition, 2009.**

This ruling relates to an application made by the Plaintiff for an order of interlocutory injunction. By this order the Plaintiff seeks to restrain the Defendant either by himself, his servants, agents or otherwise howsoever from further publishing or broadcasting or causing to be

published or broadcast, defamatory words, comments or statements about the Plaintiff.

The application is made pursuant to Order 27 rule 4 of the High Court Rules, Chapter 27 of the Laws of Zambia and is supported by an affidavit deposed to by the Plaintiff. She deposed as follows:

That the Defendant on 27th October, 2017 through its President in contumelious disregard of her reputation, business, political and professional standing published and caused to be published a Press Statement containing falsehood and untrue statements which Press Statement was malicious, untrue, false, misleading to the public and injurious to her reputation.

She explained that the Press Statement contained words set out in the video footage which she produced and marked **'MP1'**. That the words were damaging to her as Honourable Member of Parliament and Secretary General of the Patriotic Front (PF).

That she believed that the words published by the Defendant in their natural and ordinary meaning meant to mean that the Plaintiff lacked integrity, was unethical, corrupt person and was a drug addict who

was involved in drug related offences warranting investigations by the Drug Enforcement Commission (DEC).

Furthermore, that the words published were meant to mean that she had the propensity to ask for bribes or kickbacks in influencing the award of tenders to Government Contractors and did not meet the business, political, professional and leadership standards expected from a public figure.

That as a result, she had continued to be severely injured in her professional, political and business standing, credibility and personal reputation and had been brought into public scandal, odium, ridicule and contempt.

I declined to consider the application *ex-parte* and directed that it be heard *inter-partes*.

The Defendant opposed the application and filed an affidavit in opposition.

He deposed that the contents of paragraphs 1 to 4 of the Plaintiff's affidavit in support were not disputed save that the words complained

of were not uttered falsely as they were fair comment on his part; that the words were not made with malice and were justified.

He added that the words in their natural and ordinary meaning were true in substance and in fact and were not understood to bear the meaning or intent alleged. That therefore, an injunction was not necessary to restrain him from further issuing statements in relation to this matter as the Plaintiff would not suffer irreparable injury.

It was further deposed that he had been advised by his advocates that he who comes to equity must come with clean hands. However, the Plaintiff did on or about 6th December, 2018 issue false and malicious statements against him with contumelious disregard to his rights as evident from the counter-claim.

At the hearing of the application, learned counsel for the Plaintiff Mr. A. Banda relied on the affidavit in support, affidavit in reply, the skeleton arguments and supplementary skeleton arguments filed into Court.

When asked by the Court if there was evidence that the Defendant had the intention to further publish the words complained of, Mr. Banda submitted that the video recording showed that the Defendant

published the alleged defamatory words on social media which is Facebook. Furthermore, that the Defendant had agents or servants who were his sympathizers and might have the intention of circulating the video in question.

In opposing the application, learned counsel for the Defendant Mr. K. Kasaji equally relied on the affidavit in opposition and the skeleton arguments. I will not endeavour to replicate the submissions suffice it to mention that I shall be referring to them as and when it is necessary.

By this application, I have been called upon to determine whether the Defendant is entitled to an Order of interlocutory injunction to restrain the Defendant either by himself, his servants, agents or otherwise howsoever from further publishing or broadcasting or causing to be published or broadcast, defamatory words, comments or statements about the Plaintiff.

The jurisdiction of the court to grant an interim or interlocutory injunction in the field of defamation arises where there has been or there is a threatened publication of a defamatory statement or falsehood. The order of injunction then would restrain the threatened or repeated publication of defamatory statements about the claimant.

However, the jurisdiction of the court to grant an order to restrain publication of defamatory statements is of a delicate nature which ought only to be exercised in the clearest cases. This was stated by Lord Esher in the case of **William Coulson v. James Coulson** (1). The reluctance to grant peremptory injunctions is rooted in the importance attached to the right of free speech and because the questions that arise during the proceedings such as whether the meaning is defamatory, whether justification or fair comment are applicable and malice are generally for determination at a later stage.

In this regard, interim or interlocutory injunctions in defamation actions are granted on different principles from the general principles governing the grant of interlocutory injunctions as the court is entitled to consider the merits of the case in order to determine whether or not an interim injunction should lie. Thus the practice established in applications for interlocutory injunctions by the **American Cyanamid v. Ethicon** (2) case of not considering the merits have been rejected as inappropriate in defamation.

Having said that, the Order sought herein is to prevent the repetition of a wrong. Therefore, I consider it appropriate to quote a passage from the judgment of Lord Coleridge, C.J, in the case of **Bonnard v.**

Perryman[3] where after affirming the court's power to grant interlocutory injunctions as a matter of jurisdiction he went on to say that:

> **"But it is obvious that the subject matter of an action for defamation is so special as to require exceptional caution in exercising the jurisdiction to interfere by injunction before the trial of an action to prevent an anticipated wrong. The right of free speech is one which it is for the public interest that individuals should possess, and, indeed, that they should exercise without impediment, so long as no wrongful act is done; and, unless an alleged libel is untrue, there is no wrong committed; but, on the contrary, often a very wholesome act is performed in the publications and repetition of an alleged libel. Until it is clear that an alleged libel is untrue, it is not clear that any right at all has been infringed; and the importance of leaving free speech unfettered is a strong reason in cases of libel for dealing most cautiously and warily with the granting of interim injunctions."**

To this end, the authors of Gately on Libel and Slander state that the court will only grant an injunction where the claimant satisfies the court on the following:

(1) The statement is unarguably defamatory;

(2) There are no grounds for concluding the statement may be true;

(3) There is no other defence which might succeed;

(4) There is evidence of an intention to repeat or publish the defamatory statement.

In addition to these factors, paragraph 167 of the **Halsbury's Laws of England** states that the claimant should prove that if further publication of the words threatened or intended takes place, he will suffer injury of such a nature that damages would not be an adequate remedy.

In view of the foregoing statement of the law, I shall proceed to consider whether or not the Plaintiff has satisfied the above conditions to enable this Court grant the Order of injunction sought.

1. STATEMENT UNARGUABLY DEFAMATORY

When considering this condition, it is not sufficient for a claimant to establish that the words are capable of being defamatory; the court must be satisfied that a jury would inevitably come to the conclusion that they were defamatory.

A determination of whether the words complained of by the Defendant are capable of bearing a defamatory meaning is a question of fact. Lord Selborne in the case of **Capital and Countries Bank Limited v. George Henty and Sons** [4] stated that:

> **"The true test is whether in the circumstances in which the statement was published, reasonable persons to whom the publication was made would understand it of the Plaintiff and in a defamatory sense."**

Therefore, in ascertaining whether or not the words complained of are defamatory, I am required to consider the statements as a whole and interpret words complained of in their natural and ordinary meaning.

According to paragraph 4 of the Plaintiff's statement of claim, the Plaintiff contends that the Press Statement contained the following words which are malicious, false, untrue and damaging:

> *"Honourable Mumbi Phiri is corrupt, she built her house through corrupt means. She has been collecting bribes from Chinese Nationals in the name of the PF (Patriotic Front Political Party); in the same manner, she has been collecting bribes from Lebanese Nationals in exchange for favours from*

the Government and that is how she has built that house through corruption.

Madam Mumbi is a drug addict; she is always intoxicated; she is insane. In fact DEC should follow her and investigate her properly for drug abuse... I think it will be a waste of time for me to be answering to lunatics like Mumbi Phiri because people may think I am at her level." (Reproduced only the English version)

The question I ask myself then is this: In the circumstances, in which the said Press Statement was published, can reasonable persons to whom the publication was made understand it of the Plaintiff and in a defamatory sense?

Before I consider this question, it is important to state at this juncture that the Plaintiff herein is a politician and at the time of the publication, she was serving as Member of Parliament and as Deputy Secretary General of the PF. In short, she is a 'public' figure. Therefore, this question is considered against that backdrop.

The authors of Gately on Libel and Slander at paragraph 2.28, state that:

'It is defamatory to impute to a person in any office any corrupt dishonest or fraudulent conduct or other misconduct or inefficiency in it or any unfitness or want of ability to discharge its duties and this is so whether the office be public or private.'

Thus in the case of **Blackshaw v. Lord**[5] it was held to be defamatory to allege that a senior civil servant had lost a large amount of money of public money when the matter was still under investigations.

In addition, the learned authors of Clerk and Lindsell on Tort state that a suggestion that a person is suspected of crime without imputation of actual guilt may be libelous. Furthermore, an imputation of insanity may be defamatory.

In the present case, the Defendant has not denied that he issued the Press Statement which contained the words complained of. However, he contends that the words complained of are justified and were a fair comment and were not understood to bear the meaning or intent alleged in the statement of claim.

Furthermore, it is contended that at this stage it is not proper for this Court to broaden the scope of the inquiry to include questions touching on whether or not the statement complained of amounts

to Defamation or otherwise. That the issues raised by the Plaintiff are issues which this Court must adjudicate upon at the trial.

While the Defendant has advanced this argument, I have already mentioned that interlocutory injunctions in defamation actions are granted on different principles from the general principles governing the grant of interlocutory injunctions as the court is entitled to consider the merits of the case in order to determine whether or not an injunction should lie.

Therefore, guided by the authorities I have referred to above, I am of the considered view that the imputations made against the Plaintiff who has been mentioned by name in the statement are *prima facie* defamatory as they impute crime and insanity which right thinking members of the public frown upon and would consider such public officers unfit to hold public office.

In this regard, I find that the Plaintiff has satisfied this condition that the words complained of are unarguably defamatory.

2. <u>THERE ARE NO GROUNDS FOR CONCLUDING THAT THE STATEMENTS ARE TRUE</u>

Paragraph 27.6 of Gately on Libel and Slander states that:

> **"In practice, it is customary if not invariable for there to be some evidence even if limited to assertions by the claimant of the falsity of the allegations."**

In this regard, it will not be usual for the claimant to be able to prove on an application for an interlocutory injunction that the words are false.

The Plaintiff in paragraph 3 of her affidavit in support deposed that the Press Statement was false, malicious, untrue, misleading to the public and injurious to her reputation.

Further, the Plaintiff contends in the submissions that the Defendant has not demonstrated or shown in any way that the words attributed to him were true. Therefore, it could not be concluded that the statements were true.

The Defendant in his affidavit in opposition has explained that the words complained of were not made with malice as they were justified and were not understood to bear the meaning or intent alleged.

In his defence, he has averred that the words complained of in their natural and ordinary meaning were true in substance and in fact. In the particulars for justification, he has further averred that the words complained of were true and not in any way malicious. In other words, he is justifying the statement that he made.

At this juncture, I will consider the defence of justification in defamation actions.

It is a complete defence to an action for defamation for the defendant to plead justification, that is, that the statement is true. It is a general rule that where the defendant contends that the words complained of are true and asserts that he will plead and seek at trial to prove the defence of justification, the court will not grant an interim injunction unless exceptionally the court is satisfied that such a defence is one that cannot succeed.

However, Matibini J. quoting the Halsbury's Laws of England in the case of **Michael Chilufya Sata v. Chanda Chimba III and others**[6] stated that:

> **'It is not enough for a defendant in the face of a statement that the words are untrue to merely state that he intends to justify. Before pleading justification,**

a defendant should believe that the words complained of were true, intend to support the defence at trial and have reasonable evidence to support the plea or reasonable grounds to suppose that sufficient evidence to prove the allegations would be available at trial.'(Underlining mine for emphasis only).

Further, Lord Denning in the case of **Crest Homes Limited v. Ascott** [7] stated that:

'Where there were reasonable grounds for the defendant saying he was going to justify, the court would not grant an interlocutory injunction.'

Although the Defendant has raised the defence of justification and intends to rely on Section 6 of the Defamation Act, I am persuaded by the authorities cited above that for the purposes of this application where there is a statement from the Plaintiff that the words complained of are untrue, it is not enough for the Defendant to merely state that he will rely on the defence of justification.

In such an application and action, it was incumbent upon the Defendant to have provided reasonable grounds in his affidavit in opposition to suppose that sufficient evidence to prove the allegations would be available at trial especially that injunctions in defamatory

actions are granted on different principles from the other actions. In short, the Defendant should have put forward any particulars to justify the imputations made against the Plaintiff which the Plaintiff has complained of.

Since the Plaintiff has made assertions of the falsity of the words complained of but there are no reasonable grounds at this stage for concluding that the statements made by the Defendant are true, I find that the Plaintiff has satisfied this condition.

3. THERE IS NO OTHER DEFENCE WHICH MIGHT SUCCEED

According to the authors on Gatley on Libel and Slander, the court will not normally grant an interim injunction where the threatened publication will on its face be privileged. The only exception is where the defendant is clearly malicious.

Further, the same authors go on to state that where the intended defence is fair comment, the position is similar to where the intended defence is that of justification.

In the present case, the Defendant has raised the defence of fair comment. This defence protects statements of opinion or comment on

matters in the public interest and not imputations of facts. This is because there are matters on which the public has a legitimate interest or with which it is legitimately concerned and on such matters, it is desirable that all should be able to comment freely and even harshly so long as they do so honestly and without malice.

Therefore, freedom of expression and press freedom are largely protected by this defence. Lord Diplock put it this way in the case of **Silkvin v. Beaverbrook Newspaper Ltd** [8] when he stated that:

> **"The right of the public which means you and me and the newspaper editor and the man who but for the present bus strike would be on the Clapham omnibus to express their views honestly and fearlessly on matters of public interest even though that involves strong criticism of conduct of public people."**

The modern authoritative statement of the law is found in the case of **Tse Wai Chun Paul v. Albert Cheng** [9] where in the Court of Final Appeal of Hong Kong Lord Nicholls outlined the history and principles of the defence. The defendant must overcome four hurdles in order to establish the defence:

(i) The statement must be comment and not fact.

(ii) The comment must have a sufficient factual basis (that is, the comment must be based on facts which are themselves sufficiently true).

(iii) The comment must be objectively fair i.e. it must be an opinion which an honest person could hold.

(iv) The subject matter of the comment must be of public interest.

Lord Nicholls went on to state that the rationale for the defence of fair comment is different and it is different in a material respect from the rationale of the defence of qualified privilege. He stated that it is not based on any notion of performance of a duty or protection of an interest. Its basis is the high importance of protecting or promoting the freedom of comment by everyone at all times on matters of public interest.

However, it is important to point out that in protecting the freedom of expression, the defence of fair comment in defamation cases presents a tension between the rights to expression and the need to protect reputation. In the case of **Michael Chilufya Sata v. The Post Newspapers Limited and another**[10] the erstwhile Chief Justice Matthew Ngulube observed that a balance had to be struck between

freedom of the press and right to reputation. Matibini J. in the case of ***Michael Chilufya Sata v Chanda Chimba (III)*** summarized the position of the law as elucidated in the case of ***Michael Sata v. The Post*** when he held that:

> **"The right to free speech is one in which it is of the public interest that individuals should possess, and indeed should exercise as long as no wrongful act is done. However, freedom of expression is not absolute or limitless. Its exercise may be subject to restrictions as are necessary in a democratic society. Reputation is an essential component of the dignity of the individual. It must be respected. It must not be assailed without lawful justification. Once reputation is besmirched by unfounded allegations, the damage can be irreparable and everlasting; especially if there is no opportunity given to vindicate one's reputation. When this happens, it is not only the affected individual and his family that suffer, but society may also at large suffer. Thus the protection of reputation is also in the public interest."**

It seems to me perfectly plain from the foregoing that although freedom of expression is recognized, it does not mean that individuals or indeed the press are given the freedom to defame.

Having said that, I have already stated that the court will not grant an interim injunction where the publication or statements complained of will on its face be fair comment. The only exception is where the claimant has established malice.

Malice in defamation law is a dominant improper motive for publishing the statement. According to Cockburn C.J in the case of **Spill v Maule** [11], malice maybe inferred in the following circumstances:

> **"It may be that the language used in a libel though under other circumstances justifiable may be so much too violent for the occasion and circumstances...as to form strong evidence of malice and that an inference of actual malice maybe drawn from its use."**

What the foregoing means is that if the defendant asserts that he will raise such a defence and prove the truth of the facts supporting the comment, then if the matter appears to be one of public interest and the claimant cannot establish malice, an interim injunction will not be granted.

I have considered the defence of fair comment in the present case in relation to the Order of injunction sought by the Plaintiff. I have also

considered the statements attributed to the Defendant as highlighted in this ruling and the context in which they were made.

In my view, the statements or words made by the Defendant that the Plaintiff has been collecting money from the Chinese and Lebanese and that's how she has managed to build her house and that he is a drug addict and insane do not at this stage appear to be comments but statements of facts that the Plaintiff is involved in criminal activities and is insane.

I say this because although the Defendant has averred in his Defence and Counter-claim that the words complained of are statements of fact which emanate from observations he made, he did not provide sufficient factual basis on which this Court could have inferred that the statements attributed to him are true and thus a fair comment on a matter of public interest.

As Matibini J. (as he then was) stated in the case of ***Michael Chilufya Sata v. Chanda Chimba III*** the comment must explicitly or implicitly indicate at least in general terms the facts on which the comment was being made. Therefore since the Defendant in this case averred that the comment was made based on his observations, he should have in his affidavit in opposition provided the facts on which he made the

observations as a comment cannot exist in thin air or in a vacuum. There must be some factual building blocks on which the comment is based.

In this regard, since the Defendant has not provided reasonable grounds on which this court can at this stage make an inference that the statement attributed to him is fair comment, I find that *prima facie* the defence of fair comment might not succeed.

4. THERE IS EVIDENCE OF AN INTENTION TO REPEAT OR PUBLISH THE DEFAMATORY STATEMENT

As I have already alluded to the court has the jurisdiction to interfere by injunction before the trial of an action to prevent an anticipated wrong. Therefore the court will not grant an interim injunction unless there is some evidence or there are grounds to infer that the person against whom the injunction is sought threatens or intends to continue the publication of the words. In this regard, a claimant has to prove that there is reason to believe that publication or further publication of words is threatened or intended.

The learned authors of Gatley on Libel and Slander stated that:

> **"Where the defendant continues to publish the false or defamatory words and immediate and irreparable injury to a person or property is likely to result, the Court has jurisdiction to grant an interlocutory injunction restraining the defendant from further publishing the words until the hearing of the action, or until further Court Order."**

Further, it was stated in the case of **Smithline Beecham P.K. v. Opotex Europe Limited** (12) that the Court will not grant an interim injunction unless there is some evidence or there are grounds to infer that the defendant threatens and intends to continue the publication of the words.

Thus in the case of **Quartz Hill Consolidated Gold Mining Company v Beall**(13) the court discharged an injunction earlier granted as the court found that there was no intention on the part of the defendant to issue any more circulars and there were no grounds to make such an inference.

In the present case, the Plaintiff seeks to restrain the Defendant from further publishing or broadcasting defamatory words, comments or statements about her.

The question I ask myself is this: While it is not in dispute that the Defendant has published the words complained of, is there evidence or any grounds to infer that the Defendant has intention to continue the publication of similar words?

The Plaintiff in paragraph 11 of the affidavit in reply deposed that the Defendant had shown a propensity to continue with the publications based on his illusory assumption that he is justified to publish or make fair comments against her character.

This is also clear from paragraph 10 of the Defendant's affidavit in opposition where he deposed that an injunction was not necessary to restrain him from further issuing statements in relation to this matter as damages would be an adequate remedy.

Therefore, although there is no evidence that has been adduced of any further publication of the words complained of, the view I hold is that since the Defendant has pleaded justification which is basically that the words complained of are true and considering what I have referred to in the preceding paragraph, these are grounds from which it can be inferred that the Defendant intends to continue to publish the words complained of.

For this reason, I find that the Plaintiff has satisfied this condition. In sum, the Plaintiff has satisfied the four conditions that I have referred to above which the court should consider before an interlocutory injunction can be granted in a defamatory action.

That notwithstanding, however, the Plaintiff also has to show that damages would not be an adequate remedy. I shall therefore proceed to consider whether damages would be an adequate remedy in this case.

ADEQUACY OF DAMAGES

According to paragraph 29/L/5 of the White Book on the guidelines on the adequacy of damages as a remedy, one of the fundamental principles of injunction law that the courts must determine when considering whether to grant an injunction or not is whether if a plaintiff succeeded at the trial, he would be adequately compensated by damages for any loss caused by the refusal to grant an interlocutory injunction.

If damages would be adequate remedy, and the defendant would be in a financial position to pay them, no interlocutory injunction should

normally be granted however strong the plaintiff's claim appeared to be at that stage.

If on the other hand damages would not be an adequate remedy, the court should then consider whether if the injunction were granted, the defendant would be adequately compensated under the plaintiff's undertaking as to damages. If damages in the measure recoverable under such an undertaking would be an adequate remedy and the plaintiff would be in a financial position to pay them, there would be no reason upon this ground to refuse an interlocutory injunction.

In considering the above principles, the question I ask is this: if the Plaintiff were to succeed at the trial in establishing her claims set out in the statement of claim, would she be adequately compensated by an award of damages for the loss caused by the refusal to grant an interlocutory injunction?

In answering this question, I am guided by paragraph 955 of the Halsbury's Laws which provides that:

> **'The Plaintiff must as a rule show that an injunction until the hearing is necessary to protect them against irreparable injury; mere inconvenience is not enough.'**

According to the **Shell and BP (Z) Limited v. Conidaris and others** [13] case irreparable injury means:

> **"Injury which is substantial and can never be adequately remedied or atoned for by damages, not injury which cannot possibly be repaired".**

Both parties have submitted at length on this question. The Plaintiff contends that if the injunction is not granted she will suffer irreparable injury which will diminish her right and good standing in the eyes of the public and thereby impact negatively on her public and political leadership roles in the PF and as a Member of Parliament. That this injury cannot adequately be compensated through an award of damages.

The Defendant on the other hand has argued that damages are the universal remedy for defamation. That in this regard, the injunction is not necessary as the Plaintiff will not suffer any irreparable injury which cannot be atoned for in damages.

I should pause here and mention that there are certain cases in which a claim for damages may not be an adequate remedy. This is particularly the case where the person sued is unlikely to pay the sum likely to be awarded at the trial; where the wrong is irreparable, for

example, where the damage is non-pecuniary, like libel, nuisance or trade secrets and where the damages would be difficult to assess.

Thus in the case of **Evans Marshall & Company v Bertola S.A** (15) the Plaintiffs emphasized the damage to their goodwill and trade reputation that they would suffer if the agency at will which they had held for three weeks was unjustifiably disrupted and also the difficulty of assessing the resulting damage. Sachs L.J had this to say:

> **"In my judgment damages would not be an adequate remedy in this case...the courts have repeatedly recognized that there can be claims under contracts which as here it is unjust to confine a plaintiff to his damages for their breach."**
>
> **Great difficulty in estimating these damages is one factor that can be and has been taken into account. Another factor is the creation of certain areas of damage which cannot be taken into monetary account in a common law action for breach of contract."**

Similarly, in case of **Bennie R.W. Mwiinga v Grey Zulu and others** (16) a High Court decision which I cite for its persuasive value, it was held that the Plaintiff could not be adequately compensated for his loss as a member of UNIP and parliament if he were denied an injunction.

As I have mentioned, at the time when the application was made, the Plaintiff was a Member of Parliament. However, I have taken judicial notice of the fact that she is no longer MP. That notwithstanding, the Plaintiff is still a public figure as she is the Deputy Secretary General of the PF which is the ruling party.

Although the Plaintiff has prayed for general, aggravated and special damages for defamation of character, the view I take is that since the Plaintiff is alleging injury to her reputation as a public figure and that there is reasonable apprehension that the Defendant will continue to publish or repeat words complained of, it would be unjust to confine the Plaintiff to damages should she succeed in her claims at trial. I hold this view because once reputation is tainted the injury is irreparable and permanent and damages can never properly put a person in the position he would have been before the words complained of were published.

In this regard, I find that in the circumstances of the case, the Plaintiff has demonstrated that if she were to succeed at the trial, damages cannot adequately compensate for the loss she is likely to suffer if the Defendant is not restrained from further publishing words complained of.

Before I conclude, the Defendant has also argued that the Plaintiff has not come to equity with clean hands as she on 6th December, 2018 issued a false and malicious statement against him with contumelious disregard to his rights as evident in his counter-claim in this matter.

I do agree with the Defendant that those who seek equitable reliefs must come to court with clean hands. However, in relation to the Plaintiff, the words attributed to the Plaintiff were purportedly made after the Plaintiff had commenced this action.

Further, the Plaintiff has denied that she published the words complained of. The Defendant has not endeavoured to substantiate this assertion so that this Court can consider it in the same manner that the words complained of by the Plaintiff against him have been considered. Therefore, I am not able at this stage to make a determination that the Plaintiff's hands are dirty and she cannot be considered for this equitable relief. I find no merit in this regiment.

Having said that, the net result of my findings, is that the Plaintiff has satisfied all the necessary conditions that I need to consider before granting an interlocutory injunction in a defamation action. Most importantly, there are grounds on which it can be inferred that Defendant unless restrained, he will continue to publish the words

complained of as he has pleaded that the words complained of are true.

For the foregoing reasons, I am inclined to exercise my discretion in favour of the Plaintiff and accordingly, I grant an interlocutory injunction restraining the Defendant from further publishing or uttering or causing to be published or broadcast the words complained of pending the final determination of this matter or until further Order of the Court. I make no order as to costs.

DELIVERED AT LUSAKA THIS 30TH DAY JUNE, 2020

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M. C. KOMBE

JUDGE