

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

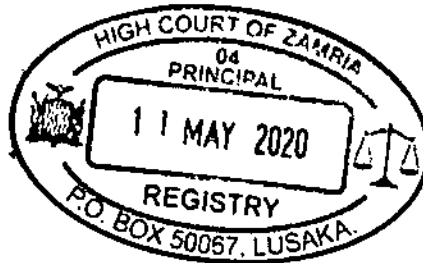
2018/HP/2126

BETWEEN:

**JACKSON YAMBA**

AND

**LUSAKA ROYAL CASINO**



**PLAINTIFF**

**DEFENDANT**

**BEFORE HON MRS JUSTICE S. KAUNDA NEWA THIS 11<sup>th</sup> DAY OF MAY, 2020**

*For the Plaintiff* : in person

*For the Defendant* : Messrs Leonard Lane Partners

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## **J U D G M E N T**

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CASES REFERRED TO:

1. *Sim v Stretch* 1936 2 ALL ER 1237
2. *Times Newspapers Zambia Ltd v Kapwepwe* 1973 ZR 292
3. *Rodger Chitengi Sakuhuka vs Sassassali Nungu Attorney General Times of Zambia Limited, Times Printpak Zambia, Limited Newspaper Distributors Limited* 2005 ZR 39
4. *James Kasamanda v Karen Michelle Van Boxtel Appeal No 173 of 2015*

OTHER WORKS REFERRED TO:

1. *Clerk & Lindsel on Torts, 20<sup>th</sup> Edition, Sweet & Maxwell, 2010*

In this matter, the plaintiff commenced this action by way of writ summons on 7<sup>th</sup> December, 2018 claiming the following reliefs;

- i. *Compensation for loss of business in the casino.*
- ii. *Compensation for defamation of character.*
- iii. *Compensation for the mental torture.*
- iv. *Compensation for falsely calling me a thief.*
- v. *A declaration that the purported ban dated 22<sup>nd</sup> September, 2018, is null and void.*
- vi. *Special damages of K5, 000, 000.00 (Five Million Kwacha).*
- vii. *Any other relief that the court may deem fit.*
- viii. *Costs and interest.*

The statement of claim states that on 22<sup>nd</sup> September, 2018, the plaintiff went to the defendant's premises to meet with Mrs Edith Kasanzale Crehan for a moringa meeting. That as members of the said casino, they started playing with the slot machines, and that the two later ordered food. Then around 12:00 hours, the plaintiff was called by a security officer to his office, where the plaintiff was asked by another security officer who was in the office why he had stolen money from Mrs Crehan's handbag.

The plaintiff avers that he removed his wallet from his back pocket, and all the other items that were in his jacket, and it was established that he had only K120.00, out which K100.00 was given to him by Mrs Crehan. He states that despite denying that he had stolen, the plaintiff was photographed without his permission, and he was banned from entering

the casino for the next three (3) months up to 22<sup>nd</sup> December, 2018. Further, he was forced to sign the exclusion notification form No 223, Occurrence Book No 837.

The plaintiff further avers that he insisted that he was innocent and that he had not touched the handbag, and he demanded that the closed circuit television (CCTV) footage be played, but the defendant refused, in the presence of the manager. It is contended that the plaintiff had been a member of the casino for four (4) years, and had never at any point breached any of the rules of the casino, let alone stolen from anyone, and is an honest and trustworthy person.

He states that he was humiliated, heartbroken, embarrassed, ridiculed, mentally tortured and suffered loss of self esteem and respect, especially that he even stood as Member of Parliament (MP) in 2011 Mwembeshi Constituency in the Lusaka Province on the ruling party ticket. Further, that he is prominent businessman who deals in the moringa out grower scheme project, and is a stationary supplier, deals in hard ware and electrical, and is an estate director.

The plaintiff also states that he cannot walk the streets of Lusaka with his head up, as a lot of people have heard that he is a thief, who stole from a casino client. Further, his relatives and his wife are very disappointed with him, and his marriage is also on the rocks as a result of the said allegations.

The statement of claim also states that the plaintiff claims K5, 000, 000.00 as special damages for defamation of character, humiliation, mental torture, odium, harassment for bringing his name into disrepute,

implying that he is untrustworthy, and for falsely calling him a thief without proof or any tangible evidence against the plaintiff.

In the defence that was filed on 24<sup>th</sup> December, 2018, the defendant states that the name Lusaka Royal Casino is a trading name. It is further averred that the allegations that the plaintiff and Mrs Crehan were at the defendant on 22<sup>nd</sup> September, 2018 are within the plaintiff's peculiar knowledge. The same goes with regard to the assertions that the plaintiff and Mrs Crehan ordered food and thereafter, around 12:00 hours, the plaintiff was called by a security officer to his office, where another security officer asked him why he had stolen money from Mrs Crehan's handbag.

The defendant denies the plaintiff's contention that he removed his wallet and all the items that were in his jacket, and he was found with only K120.00, out of which K100.00 was given to him by Mrs Crehan, but he was photographed, and banned from the casino for a period of three (3) months.

The defendant further denies the allegations that the plaintiff insisted on his innocence, and demanded that the CCTV footage be played, which was denied. The assertion that the plaintiff has been a member of the defendant's casino for four (4) years, and that he has not breached its rules, and is an honest and trustworthy person who suffered humiliation, loss of self respect and esteem as a result of the allegations is denied.

The defendant also denies that the plaintiff stood as MP for Mwembeshi Constituency on the ruling party ticket in the 2011 elections, and is a prominent businessman who deals in moringa, stationary, hardware,

electrical and is an estate director. The allegations relating to how the accusations have affected the plaintiff, and how he is now viewed by his wife, family members and the public is equally denied.

The claims for defamation of character are denied, stating that they are not tenable.

At the trial, only the plaintiff was before court and I allowed him to proceed as the defendant was aware of the trial date that was set in my ruling dated 28<sup>th</sup> November, 2019. The plaintiff as the only witness for his case, stated that on 22<sup>nd</sup> September, 2018, he met Mrs Edith Crehan at the defendant, and that whilst there, they had ordered food and eaten. He testified that they were also gambling in the Preway room using slot machines.

Continuing with his testimony, the plaintiff stated that at around 12:00 hours, a security officer called him to his office, where another security officer whom they found in the office asked him why he had stolen money from Mrs Crehan's hand bag. He stated that he removed his wallet and all the items that were in his pockets and jacket, and he was found with only K120.00, out of which K100.00 was given to him by Mrs Crehan.

He went on to testify that he denied having stolen the money from Mrs Crehan's hand bag, but the other security officer photographed him, without his permission, and he wrote a document, banning the plaintiff from the casino, which is at page 11 of his bundle of documents. On the duration of the ban from the casino, the plaintiff stated that it was for one (1) year and three (3) months. The plaintiff also testified that he

asked that the police be called before he left the casino, but the defendant refused.

It was further the plaintiff's testimony that he had asked that the CCTV footage be played, as there are cameras at the defendant's premises. He told the court that he went with Mrs Crehan when he was called to the security officers office, and she was surprised that he was banned from entering the casino. She had also insisted the CCTV footage be played as she did not see any money being stolen.

As regards the impact of the allegations on him, the plaintiff testified that he felt humiliated, heartbroken, and embarrassed. His testimony was that he stood as an MP and the allegations were a big insult to him. The plaintiff also in his evidence said that he had been a member of the casino for four (4) years, and he had no record of wrong doing there. Further, he had never been called a thief in his life.

Still in his testimony, the plaintiff stated that casinos are money spinning and every gambler is a potential winner, with there being no limits as to the amounts that can be won. Further, that there are limits to losing, as a gambler can spend K200.00 and leave after losing.

He even went further to state that Mrs Crehan won a car as a result of gambling, which was worth more than ZMW150, 000.00, and he drove it out of the casino. Thus, he had suffered loss in the one (1) year three (3) months, as he had lost opportunity to win. The plaintiff stated that his marriage had been affected and that his children, business associates, relatives and friends no longer trust him.

Further, his business had been affected, as people had heard that he is a thief who stole money from a woman's hand bag, which allegation was

not true, and he had been defamed. He concluded his testimony by testifying that there is nothing in the defence that proved that he had stolen the money. That marked the close of the plaintiff's case.

I have considered the evidence. It is not in contention that the plaintiff alleges that the defendant accused him of having stolen money from Mrs Edith Crehan's handbag when they were at the defendant on 22<sup>nd</sup> September, 2018. It is further not in contention that the plaintiff contends that he was photographed and banned from the defendant's casino. The question is whether he is entitled to the reliefs claimed?

I will start with the claim for damages for defamation of character, which include compensation for mental torture, compensation for calling the plaintiff a thief, and the special damages of K5, 000, 000.00. Paragraph 22-01 at page 1400 of **Clerks & Lindsel on Torts** states that the law recognizes the right of every person during life to possession of a good name, and therefore defamation is the tort that seeks to protect reputation.

The case of **Sim v Stretch** <sup>(1)</sup> defined defamation as;

***"It is a false statement about a man to his credit, or one which exposes him to hatred, ridicule or contempt or causes him to be shunned or avoided"***.

Further, in the case of **Rodger Chitengi Sakuhuka vs Sassassali Nungu Attorney General Times of Zambia Limited, Times Printpak Zambia, Limited Newspaper Distributors Limited** <sup>(3)</sup> it was held that;

***"Any imputation which may tend to injure a man's reputation in business, in employment, calling or office carried on or held by him is defamatory."***

The plaintiff in this matter states that he was with Mrs Crehan at the defendant when one of the defendant's security officers called him to his office, and there another security alleged that he had stolen money from Mrs Crehan's handbag. That despite his claim for innocence, and he even emptied his pockets and jackets, and he was found with only K120.00 out which, K100.00 was given to him by Mrs Crehan, the plaintiff was photographed and banned from the casino.

The plaintiff further testified that he even asked that the CCTV footage be played, as the defendant has cameras, but this was denied. The defendant in the defence merely denied the allegations by the plaintiff. Therefore, it has not raised any defences available to a defendant on claims for defamation of character. In the plaintiff's bundle of documents which is not properly numbered, is an exclusion notification on the defendant's letter head dated 22<sup>nd</sup> September, 2018.

It states that the plaintiff's right of admission into the casino had been excluded from 22<sup>nd</sup> September, 2018 to 22<sup>nd</sup> September, 2019. This is a period of one (1) year and three (3) months. It is signed by the plaintiff. What the document establishes is that indeed the plaintiff was banned from casino. I have already pointed out that the defendant merely denied the plaintiff's allegations in its defence, and did not traverse the averments. In effect, the defendant did not dispute the plaintiff's claims.

To be called a thief in the absence of evidence justifying the claim is defamatory, as it connotes that a person is dishonest and cannot be trusted around people. In this case, the plaintiff is alleged to have stolen from Mrs Crehan's handbag, which he said is demeaning, as it entails that as a man he touched inside a woman's handbag.



The plaintiff stated that he had even asked the defendant to play the CCTV footage, as the defendant has cameras at its premises, to verify the alleged theft, and he even emptied his pockets. However, the defendant declined. The defendant has not denied these assertions, and it can be seen that the defendant was not even interested in establishing whether the plaintiff was innocent, before it banned him from the casino on account of the alleged theft.

There being no defence to the allegations, and the fact it has been established that the allegation of the plaintiff being a thief was published in the presence of Mrs Crehan, and another security officer, there was defamation of the plaintiff. The plaintiff accordingly succeeds on the claim that he was defamed.

As to the measure of damages for defamation of character, the case of *Times Newspapers Zambia Ltd v Kapwepwe* <sup>(2)</sup> held that;

***“The court should first consider what sum to award as compensatory taking into account the whole of any aggravating conduct of the defendant (i.e. any conduct in contumelious disregard of the plaintiff's rights) and only then turn to consider whether this proposed award is sufficient to punish and deter the defendant, and if not, award some larger sum”.***

In the case of *James Kasamanda v Karen Michelle Van Boxel* <sup>(4)</sup>, the Supreme Court in upholding the award of K20, 000.00 that was awarded to the respondent as compensatory and exemplary damages, noted that the award took into account the kind of job that the respondent did, and

the fact that the appellant disregarded what impact the defamatory statement would have on the respondent's reputation.

The award was enhanced by K5, 000.00 after the Supreme Court noted that the appellant was in the business of private investigations, and he had capacity to pay the damages which would serve to punish and deter him.

The plaintiff testified that he is businessman and that his business has been impacted as a result of the allegations. In his bundle of documents is a certificate of incorporation of a company known as Marcell Minerals Limited, which shows that the company was incorporated on 20<sup>th</sup> January, 2019. He has also exhibited a certificate of motor vehicle registration for a light passenger vehicle registration number ABG 2623, which was registered on 19<sup>th</sup> December, 2008, which is in his names.

The company Marcell Minerals Limited, even though its shareholders are not known, was incorporated after the incidence giving rise to these proceedings. The plaintiff has however shown that he owns a vehicle, and his assertion that he was even adopted to stand as a member of parliament in 2011 has not been disputed. He has therefore shown that he is person of upright standing in society, who has been unduly defamed as a result of the allegations.

In the case of **James Kasamanda v Karen Michelle Van Boxel** <sup>(4)</sup>, respondent was awarded K25, 000.00 as damages for defamation of character, after taking into account that the appellant being a private investigator was capable of paying the damages. In this case, the defendant is a casino, which generates money from gambling, and is therefore capable of paying the damages. The defendant did not make an

The plaintiff having succeeded on his claim for defamation of character, I award him costs of the proceedings. The costs if not agreed, shall be taxed. Leave to appeal is granted.

**DATED AT LUSAKA THIS 11<sup>th</sup> DAY OF MAY 2020**

*S. Kaunda*  
**S. KAUNDA NEWA**  
**HIGH COURT JUDGE**