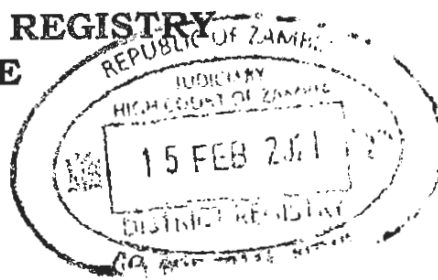


**IN THE HIGH COURT FOR ZAMBIA
AT THE DISTRICT REGISTRY
HOLDEN AT KITWE**
(Civil Jurisdiction)

2018/HK/374

**BETWEEN:**

MUKANA LIVINUS

SWIFT MUMBA

RICHARD SAILONI

GIDEON LONGWE

PRINCE KABWE

1st PLAINTIFF**2nd PLAINTIFF****3rd PLAINTIFF****4th PLAINTIFF****5th PLAINTIFF****AND**

ATTORNEY GENERAL

DEFENDANT

**Before Honourable Mrs. Justice M. Mapani-Kawimbe in Open Court on the
15th day of February 2021.**

For the Plaintiff: Mr. R. Nkhata, Messrs Nyirongo & Company

*For the Defendant: Mr. C. Mulumbwa, State Advocate & Mr. L. Sikabanga, State
Advocate, Attorney General's Chambers*

J U D G M E N T

Cases referred to:

1. *Mubita Mbanga v The Attorney General* (1979) ZR 234

Other works referred to:

1. *Clerk & Lidsell on Torts*, Sweet & Maxwell London, 1965
2. *Gatley on Slander* 8th Edition, Sweet & Maxwell, London 1981
3. *Halsbury's Laws of England* 4th Edition Volume 28

Introduction

1. The plaintiffs' claims are for damages for malicious

prosecution and defamation. They are all serving police officers and on 26th October 2017, were alleged to have stolen 10 copper cathodes from a truck that was parked at Kitwe Central Police station which they were assigned to guard. They were charged with the offence of theft by public servant, prosecuted in the Kitwe Subordinate Court and subsequently acquitted.

2. Ms. Charity Katanga erstwhile Copperbelt Province Commissioner of Police announced the plaintiffs' arrests. They were riled by her statement because they claimed that investigations were incomplete and were needlessly defamed. They sued the defendant for malicious prosecution and defamation because they failed to pursue different opportunities in their lives. Thus, through this suit, the plaintiffs seek damages for the defendant's wrongful actions.

Pleadings

3. The plaintiffs instituted this suit against the defendant on 18th July 2018 by way of writ of summons and statement of claim with an endorsement of the following orders:

"(i) Damages for false imprisonment and malicious prosecution on the footing of aggravated robbery;

- (ii) *Damages for defamation and libel;*
 - (iii) *Special damages at K300,000 being in respect of legal fees paid to lawyers to defend the criminal charges;*
 - (iv) *Any other relief the court will deem fit in the circumstance;*
 - (v) *Interest and costs."*
4. The plaintiffs statement of claim disclosed that they were all stationed at Kitwe District and on 26th October 2017, were wrongfully arrested and detained on a false charge of theft by public servant contrary to section 277 of the Penal Code. The particulars were that they jointly stole 10 sheets of copper cathodes from a truck that was parked at Kitwe police headquarters. They denied the charge but were detained for four days and only granted bail by the Subordinate Court on 30th September. Later, they were arraigned and prosecuted between 30th October 2017 and 14th February 2018. The case however terminated in their favour.
5. The plaintiffs pleaded that they were wrongfully incarcerated without reasonable and probable cause and falsely arraigned before the Kitwe Subordinate Court. As a result, their reputations got ruined and they suffered inconvenience, loss and damages. They alleged that the Kitwe district police command acted out of spite and malice by arresting them in broad day light, in front of their wives and children. The

plaintiffs averred that Ms. Katanga's statement of 30th October 2017 added more injury because it was false and the publication appeared on the front page of the Zambia Daily Mail newspaper, which was widely circulated to the world as follows:

"Five police officers have been arrested for allegedly stealing 10 sheets of copper cathodes worth over 102,000 kwacha from a truck which was impounded and parked at Kitwe District Police Headquarters. The suspects are Constable Livinus Mukana, 32, Detective Constable Swift Mumba 31, Gideon Longwe 30, Prince Kabwe 30 and Sergeant Richard Siloni who works in the transport department.

Copperbelt Commissioner of Police said in an interview yesterday that the five officers will appear in Court today. She said that when the truck was impounded, it was parked at central police, but it was moved to Kitwe district police after someone had tampered with the copper cathodes.

Ms. Katanga said while parked at the district headquarters, the five police officers allegedly stole ten sheets of copper cathodes valued at K102,488 from the truck, she said 6 officers were initially involved in the scam but that one has been turned into a State witness..."

6. The plaintiffs described Ms. Katanga's words to convey in their natural and ordinary meaning the following innuendo:
 - a) That the plaintiffs are copper thieves, conmen and dishonest persons who stole copper cathodes from a truck parked at Kitwe district police headquarters.
 - b) That the plaintiffs were incompetent and not fit to be trusted and or employed as public law and security

enforcement officers because they are a danger to the public.

c) The words disparaged the plaintiffs in their profession as commissioned police officers in the sense that.

i) The plaintiffs were of dissolute and profligate character; and

ii) They were unfit to associate with respectable members of the public because they were conmen and copper thieves.

7. The plaintiffs averred that in consequence of their false imprisonment, malicious prosecution and the defamatory statement ruined their reputations and were brought into public scandal, odium and contempt. The 3rd plaintiff claimed that he was admitted by the University of Zambia to pursue Bachelor of Arts-Non-Quota studies but failed to register as a student because he was humiliated and used all his money to pay his lawyer. The 4th plaintiff failed to sit for examinations at the Copperbelt University where he was pursuing a Bachelors of Arts of Human Resource degree because he was frequently in Court.

8. The 5th plaintiff was unable to register as a student at the University of Zambia where he was accepted to study law. The 2nd plaintiff had a business opportunity of K300,000, which his clients cancelled after it learnt about his case. The plaintiffs alleged that their legal fees were in excess of K300,000.00 and in concluding urged the Court to grant them the reliefs sought.
9. The defendant's response was by way of memorandum of appearance and defence filed into Court on 30th July 2019. It denied that the plaintiffs were wrongly arrested because the police had reasonable and probable cause to suspect that they had stolen 10 copper cathodes on 25th October 2017 between 18.00 hours and 08.00 hours the next day. This is because the plaintiffs were left to guard the freight liner truck and trailer no. 1865AB-05 and 186AB05, which had the copper cathodes that went missing.
10. As far as the defendant was concerned, the plaintiffs were not maliciously prosecuted because the evidence connecting them to the offence was overwhelming. The defendant denied that the plaintiffs were defamed by Ms. Katanga. Instead, the words published in the Zambia Daily Mail were true, fair and

madeⁱⁿ public interest. In any case, it did not coerce the newspaper to carry the story which was reported in the independent tabloid. Thus, the plaintiffs were not entitled to any damages and urged the Court to dismiss their case.

Trial course

11. The matter came up for trial on 9th December 2020 and the plaintiffs only witness was **Swift Mumba (PW)**. His evidence was no different from the contentions in his pleading, the departure being that he joined the police service in 2009 and in 2010, graduated from Lilayi Police College. He was posted to Kitwe Riverside police station at the Inquiries office and a year later transferred to the criminal investigations department (CID). He eventually moved to anti-robbery department in 2015 and worked for two years.

12. PW¹ testified that sometime in September 2017, he was assigned to guard a truck with the 1st, 4th and 5th plaintiffs. They performed their work without incidence but the next day, their superiors accused them of stealing 10 sheets of copper cathodes and were arrested. They were detained at Kitwe Central Police station for 4 days and deprived access to lawyers. Thereafter, the plaintiffs appeared before the Kitwe

Subordinate Court, where they were tried and acquitted because the evidence against them was insufficient.

13. It was PW's evidence that the plaintiffs were defamed by Ms. Katanga the Copperbelt Police Commissioner in articles published in the newspaper and run on different television stations. She accused them of stealing copper cathodes when the offence had not been established and as a result, the plaintiffs were greatly embarrassed in front of the whole world.
14. PW went on to testify that he was a forensic accountant and two months before his arrest, was engaged by a private company to carry out an audit. He was unable to work with the company because it cancelled the agreement after it learnt the news. According to the witness, the plaintiffs were victimized at the work place and by their church members/ neighbours who perceived them to be criminals. Hence, they could not freely mix with friends and colleagues.
15. In addition, the plaintiffs were undeservingly transferred to stations outside Kitwe. PW was sent to Western province, Livinus Mukana to Luapula Province, Gideon Longwe to Eastern province, Richard Sailoni to Muchinga Province and Prince Kabwe to North Western Province. PW averred that

Gideon Longwe failed to write his examinations at Copperbelt University while Richard Sailoni failed to enroll at the same University. In concluding, PW prayed to Court to grant the plaintiffs the reliefs that were placed before it.

16. When **cross-examined**, PW testified that the truck which had copper cathodes came from Congo. When asked whether Ms. Katanga had a duty to inform the nation on criminal activities in the province, PW confirmed the assertion. He then went on to state that his contract with the private company concerned on an overpayment made to Zambia Revenue Authority. He admitted that the Investor General (IG) had power to transfer any police officer at any time but contended that the plaintiffs transfers were false because they were effected immediately after their acquittal.
17. In **re-examination**, PW responded that Ms. Katanga's statement was defamatory and ill-timed because the allegations against them had not been established.
18. That marked the close of the plaintiffs' case.
19. The defendant called two witnesses. The first was **Amon Jilendula (DW1)** Detective Chief Inspector. He testified that

he was stationed at Garnertone police station as criminal investigations officer (CIO) and on 28th October 2018, was summoned by the district CIO to Kitwe Central Police station. He was incorporated into Detective Chief Inspector Simwemba's team, which was tasked to investigate the case of the stolen copper cathodes. DW was handed a docket and observed that five police officers had been arrested as suspects.

20. The theft occurred outside Kitwe police headquarters, where the truck was parked and four police officers, namely, Livinus Mukana, Swift Mumba, Gideon Longwe and Prince Kabwe were the ones who had been assigned to guard it, while Richard Sailoni was Mr. Chisi, the officer commanding's driver.
21. DW1 learnt that an identification parade had been conducted and three out of five suspects namely, Livinus Mukana, Swift Mumba and Richard Sailoni were identified by two witnesses, namely, Amos Chibanda and another who he could not recall. Amos Chibanda also supplied the investigation team the mobile number of the suspect he communicated with. The search conducted at the network provider (MTN) showed that

it belonged to Richard Sailoni and he had called Amos Chibanda.

22. It was DW1's evidence that Detective Chief Inspector Simweemba told him that a bundle of copper cathodes had been tempered with on the truck and the photographs taken by the scenes of crime officer showed that the bundle was lower in height in comparison to the others.
23. DW1 testified that 10 plates of copper cathodes valued at ZMW102,487.97 went missing and he interviewed the plaintiffs who told him that they did not know what happened. He then charged the plaintiffs with the offence of theft by public servant, which they all denied. The plaintiffs were detained for four days in police cells before appearing at the Subordinate Court.
24. In **cross-examination**, DW1 conceded that Ms. Katanga made a public statement on the plaintiff's arrest. He joined the investigation team after the theft occurred and only saw the truck after he was handed the docket. He also conceded that there was no one who saw the plaintiffs stealing the copper cathodes and that they were represented by a lawyer in the Subordinate Court. He did not release the plaintiffs who were

not identified by the witnesses because they were jointly charged with the others.

25. DW1 testified that Richard Sailoni was not assigned to guard the truck but drove the other suspects when they went to sale the copper. He did not find out if there was any communication between the Chinese lady who owns Mineral Junction Company, where the copper was allegedly offered for sale, and Richard Sailoni. He concluded by stating that the copper cathodes were never recovered.
26. The witness was not **re-examined**.
27. The next witness was **Evans Simwemba (DW2)**, Detective Chief Inspector. He was the officer in charge of the anti-robbery squad unit, Kitwe Central police station at the material time. DW2 was on duty on 21st October 2018 and at about 16.00 hours, went out for patrols with other police officers in a police land cruiser reg. no 27913. They went up to 16 feet near the mines along Kitwe-Ndola trunk road and found a truck loaded with copper cathodes.
28. A number of people were arguing on whether to take it to Ndola or Kitwe and this prompted DW2 to check on the

documents. The cargo was consigned to Polytria Zambia, Ndola but copper dealers (jerabos) facilitated the truck's travel from Congo into Zambia on the latter's documents. According to the witness, the company got wind of the incident and its officials followed the truck to intercept it.

29. It was DW2's evidence that he told the driver to take the truck to Kitwe Central police station so that the ownership details could be verified. However, while at the police station, unknown people tried to steal copper from the truck and the police command moved it to Kitwe police headquarters because it had a wall fence and offered more security. DW2 was asked to provide two officers to guard the truck and he assigned Livinus Mukana and Swift Mumba. The other sections also provided officers.

30. DW2 went on to testify that after some time, Mr. Chisi called him to his office and he found some senior police officers and Linda, a Chinese national the owner of Mineral Junction. She told them that three police officers went to her company in a police land cruiser reg. no. ZP713, which belonged to the anti-robbery section to sell her copper plates. Linda refused to buy them because she had been implicated in a suspicious

transaction and told her security guard Amos Chibamba to send them away.

31. DW2 testified that he went to Linda's company at the officer commanding's instruction to recover the copper cathodes but found that the suspects had left the premises. He later inspected the truck and confirmed that 10 plates of copper cathodes were missing. DW2 sought an explanation from the officers who were guarding the truck but they all kept quiet. He was then ordered by the police command to detain the suspects and he opened a docket where he registered himself as the complainant.

32. According to DW2, the stolen copper cathodes were valued at ZMW102,487.97 and were never recovered. He averred that the evidence against the plaintiffs was solid but was surprised that they were acquitted. DW2 dismissed the plaintiffs' claims for false imprisonment and malicious prosecution asserting that they were baseless. He added that their arrest was a matter of procedure and the police was entitled to detain any person under investigation. Such person could later be considered for police bond.

33. DW2 denied that the plaintiffs were defamed because the police had no control over the media publications. He averred that the plaintiffs were given access to seek legal representation and in concluding, prayed to Court to dismiss the plaintiffs' claims because they lacked merit.
34. When **cross-examined**, DW2 testified that the plaintiffs were charged with a bailable offence and the police could only detain suspects for 48 hours. The truck was parked at the police station before 17.00 hours and inspected. It had twelve bundles of copper cathodes with 22 plates. According to DW2, PW and Livinus Mukana had good reputation and had never faced any disciplinary action before the incident. He described his relationship with PW as cordial and attended trial in the Subordinate Court as a witness.
35. DW2 explained that he checked the CCTV at Mineral Junction Company and found that all the footage on the copper cathodes episode had been deleted. He went on to state that all police officers were subject to transfers and at the instance of the high command in Lusaka. Thus, he had no influence on the plaintiffs' transfers as he had also been transferred to Mufulira but never cried foul. DW2 concluded by stating that

when the truck was parked at Kitwe Central police station, the plaintiffs tried to steal the copper cathodes.

36. In **re-examination**, DW2 responded that he went on patrol with Detective Mukelabai (his deputy now retired). Detective Sergeant Banda (deceased) and Detective Constable Banda (now in Mufulira).
37. That marked the close of the defendant's case.

Determination

38. Having considered the pleadings and evidence adduced, it is indisputable that the plaintiffs who were police officers were arrested and charged with the offence of theft by public servant. They were alleged to have stolen 10 sheets of copper cathodes from a truck that DW detained at Kitwe Central police station and later moved to Kitwe Police headquarters. Four of the plaintiffs had direct contact with the truck as they were asked to guard it, while the 3rd plaintiff is alleged to have driven the other plaintiffs after they stole the copper cathodes to a potential buyer.
39. The plaintiffs were kept in police custody for 4 days and granted bail after they appeared before the Kitwe Subordinate

Court. They were prosecuted before that Court and acquitted of the charge. It is also indisputable that Ms. Charity Katanga, then Copperbelt Commissioner of Police, issued a public statement over the plaintiffs' case and it was captured by the Zambia Daily Mail.

40. Flowing therefrom, the Court discerns that the issues for determination are the following:

- (i) Whether the prosecution of the plaintiffs was actuated by malice on the part of the defendant? If the answer to the above is in the affirmative, whether the plaintiffs are entitled to damages?**
- (ii) Whether the plaintiffs were defamed and entitled to damages?**

41. I will now deal with the issues in turn.

- (i) Whether the prosecution of the plaintiffs was actuated by malice on the part of the defendant?*

42. The thrust of the plaintiffs' case is that their superiors falsely accused them of stealing copper cathodes which they asked them to guard. The investigation was unsatisfactory as there was no credible evidence against them. Further, they were

detained without reason for four days and denied access to legal representation. As a result, they suffered damages through high legal fees and loss of education/business opportunities.

43. In response, the defendant contended that the plaintiffs were arrested on reasonable and probable cause. They were assigned to guard the truck but instead stole 10 copper cathodes which they attempted to sell to Linda, the owner of Mineral Junction. Some of the plaintiffs were identified by Amos Chibanda a security guard who was at the premises and also had direct communication with Richard Sailoni. Thus, the defendant was justified in detaining the plaintiffs and there was nothing unusual in the manner that the police dealt with the plaintiffs case.
44. In addition, when the plaintiffs were asked about the theft of the copper cathodes, they as direct guards, failed to explain how the copper cathodes were stolen and this created reasonable suspicion for their arrest.
45. Having analysed the contested positions, it suffices to state that the tort of malicious prosecution is committed in circumstances where a defendant causes the arrest and

prosecution of a plaintiff without reasonable or probable cause; and such proceedings must terminate in favour of the plaintiff. In our context, the commonly accepted essential ingredients of malicious prosecution were elucidated by Muwo J, as he then was, in the case of **Mubita Mbanga v The Attorney General**¹ when he stated:

“The Plaintiff has to prove on a preponderance of evidence that he was prosecuted which is the first essential of the case and secondly that the prosecution was malicious, he has to do the same in respect of the second part of his claim in the writ.

The essential of malicious prosecution are four. They are:

- (1) Prosecution**
- (2) Favourable termination of the prosecution**
- (3) Lack of reasonable and probable cause, and**
- (4) Malice**

In simple language this means that the Plaintiff must prove that he was prosecuted and that the prosecution terminated in his favour and the accuser acted without reasonable and probable cause and did so with malice. (See Winfield and Jolowicz on Tort, 10th Edition at pp. 478 to 484). Although in a number of cases judicial attempts to define the word ‘malicious’ have not been completely successful a consensus of opinion among judges has been that there must be some other motive on the part of the accuser than a desire to bring to justice the person whom he honestly believes to be guilty.”

46. Into this bed of legal and evidential burden, a plaintiff must convince a court that the defendant acted maliciously. While the Director of Public Prosecutions has the power to initiate, continue or discontinue any criminal proceedings against any person; this power must be exercised in context and performed without malice or impropriety.

47. It follows therefore, that in order to succeed, the plaintiffs ought to demonstrate that there is an intimate connection in the initiating, investigation, arrest and subsequent malicious prosecution for the impugned offence with the motive of abusing the process of Court. The plaintiffs must further show that the police's motive in setting the criminal process was laid in a distortion of the truth in a matter where the conclusion would not end in the prosecution's favour.
48. As I have already stated, the plaintiffs claimed that the defendant acted maliciously when it set the law in motion against them. It had no probable or reasonable cause for doing so as the allegations against them were ill-founded. Throughout his testimony, PW sought to demonstrate that the plaintiffs' arrest was unlawful, while the defendant on the other hand, contended that the police had reasonable and probable cause to arrest the plaintiffs in that they had the best opportunity to steal from the truck, which was in their possession.
49. In addition, they attempted to sell the copper cathodes to Linda of Mineral Junction and were identified by witnesses. Against this background, it suffices to state that the law

empowers an arresting officer to arrest and detain a suspect where he founds reasonable suspicion. This principle of law was espoused by the Learned authors on **Clerk and Lindse** **on Tort Sweet & Maxwell 1965** at paragraph 12-50 as follows:

"Police officers have discretion as to whether or not to exercise a power to detain or arrest which discretion must be exercised in good faith and can only be challenged as unlawful if it can be shown to have been exercised 'unreasonably' under the principles laid down by Lord Greene M.R in Associated Picture House Limited v Wednesday (1948) L.K.B. 223."

50. What would amount to reasonable suspicion is based on a subjective test but must nonetheless show that:

- (i) an arresting officer has sufficient information justifying the arrest of suspect.
- (ii) Prior to effecting an arrest, the arresting officer has verified the information or report he has.
- (iii) The information must be sufficient to enable a reasonable person to believe that an offence was committed;
- (iv) Where an arresting officer does not properly apply his mind to those essentials and the information turns out to be false, then the arrest becomes unlawful. Further,

that that if a suspect is detained for an unreasonable period of time, such detention will be equally rendered unlawful.

51. From the evidence before me, I find that the plaintiffs were tasked to guard the truck which had copper cathodes at Kitwe Central police station. During their watch, there was no report of any incidence but 10 sheets of copper cathodes were stolen. When DW2 asked them to explain what may have transpired, they did not give any explanation. According to DW1's evidence, three of the plaintiffs that is Livinus Mukana, Swift Mumba and Richard Sailoni were identified by Amos Chibanda during a parade as the persons who went to sale the copper cathodes to Linda of Mineral Junction Company using the anti-robbery unit police land cruiser. Richard Sailoni also gave Amos Chibanda his MTN mobile number so that they could communicate with him over the sale.
52. Applying the principles that an arresting officer must follow, I further find that at the time of arrest, the plaintiffs were genuinely implicated in the theft of copper cathodes. DW2's evidence that the plaintiffs failed to provide an explanation of how the copper cathodes were stolen armed him with

information that he used to justify the arrest of the plaintiffs. At that point, the information was sufficient to enable DW2 to believe that the plaintiffs had committed a crime. In the circumstances therefore, I find and hold that the plaintiffs have failed to prove their claim of malicious prosecution. Their ancillary claim for damages equally fails.

53. Regarding the plaintiffs' claims for false imprisonment, the evidence shows that by the time they were detained, they had been informed of the offence they had committed. It was in the discretion of the police to grant them bond but it was not given. There were no facts that were availed to Court to suggest that there was impropriety in the manner that their case was handled. I therefore, hold that the claim lacks merit and fails.

54. On the claim for undeserved transfers, the Court agrees with DW2's evidence that transfers are part of conditions of service of public officers. Thus, nothing limits the Inspector General of Police from making administrative changes in the Zambia Police. That being the case, I further find no merit in the claim and it fails.

(ii) *Whether the plaintiffs were defamed and entitled to damages?*

55. The plaintiffs contended that they were defamed by Ms. Charity Katanga when she issued a statement about their arrest. They alleged that investigations were inconclusive and as a result, were embarrassed in the front of the whole world. The 2nd plaintiff lost a business opportunity of K300,000 while the 3rd, 4th and 5th plaintiffs failed to pursue their studies at the University of Zambia and Copperbelt University respectively.

56. In response, the defendant argued that Ms. Katanga's statement was uttered in her normal course of duty. She had a duty to inform the public about the criminal activities in Copperbelt province. Further, she never influenced the Zambia Daily Mail an independent tabloid to carry her statement and as such, the plaintiffs were not defamed.

57. Having stated the parties contentions, an authority cited as definitive on the law of defamation is **Gatley on Libel and Slander 8th Edition** at page 117, who wrote this, as was adopted in **Thomas v CBc** as follows:-

"The gist of the torts of libel and slander is the publication of matter (usually words) conveying a defamatory imputation. A defamatory imputation is one to a man's discredit, or which tends to lower him in the estimation of others, or to expose him to hatred, contempt or ridicule, or to injure his reputation in his office, trade or profession, or to injure his financial credit. The standard of opinion is that of right-

thinking persons generally. To be defamatory an imputation need have no actual effect on a person's reputation; the law looks only to its tendency. A true imputation may still be defamatory, although its truth may be a defence to an action brought on it; conversely untruth alone does not render an imputation defamatory."

58. The learned authors of **Halsbury's Laws of England** 4th Edition Volume 28 page 8 equally say:-

"A defamatory statement is a statement which tends to lower a person in the estimation of right thinking members of society generally or to cause him to be shunned or avoided or to expose him to hatred, contempt or ridicule or to convey an imputation on him disparaging or injurious to him in his office, profession, calling, trade or business."

59. According to **Gatley on Libel and Slander (supra)** for the tort of defamation by way of libel to succeed the following elements must be proved by the claimant:

- i. The libel must be published by the defendant.
- ii. The published words must refer to the Plaintiff i.e. identify him.
- iii. The statement as published must be false and defamatory of the plaintiff.
- iv. It must be published i.e. communicated to at least one person other than the claimant.
- v. That the publication is malicious not in the way of being spiteful or ill willed but there must be evidence of lack of

justifiable cause to publish the words complained of. Further there must be evidence to show that the Defendant knew the words complained of were false or did not care to verify them.

vi. The words must be defamatory and must tend to lower the Plaintiff's reputation in their estimation of right minded persons in the society or they must tend to cause the Plaintiff to be shunned or avoided by other person.

60. The learned author in **Gatley on Libel and Slander (supra)** further states that abusive words may not be defamatory *per se* but must be shown to have been construed by the audience as defamatory and not simply abusive. Thus, the burden of proving defamation is upon the plaintiff to demonstrate that a reasonable man in his position would have understood the words to be defamatory.

61. Back to the case before Court, the article complained of by the plaintiffs is reproduced herebelow:

"Five police officers have been arrested for allegedly stealing 10 sheets of copper cathodes worth over 102,000 kwacha from a truck which was impounded and parked at Kitwe District Police Headquarters. The suspects are constable Livinus Mukana, 32, detective constable Swift Mumba 31, Gideon Longwe 30, Prince Kabwe 30 and Sergeant Richard Siloni who works in the transport department.

Copperbelt Commissioner of Police said in an interview yesterday that the five officers will appear in court today. She said that when the truck was impounded, it was parked at central police, but it was moved to Kitwe district police after someone had tampered with the copper cathodes.

Ms. Katanga said while parked at the district headquarters, the five police officers allegedly stole ten sheets of copper cathodes valued at K102,488 from the truck, she said 6 officers were initially involved in the scam but that one has been turned into a State witness..."

62. After examining the statement, and applying the law on defamation. I find that Ms. Katanga's words were factually correct in that five police officers (the plaintiffs) had been accused of stealing 10 sheets of copper cathodes valued at ZMW102,487. It was also a fact confirmed by the plaintiffs and uttered by Ms. Katanga that the copper cathodes were stolen from a truck that had been impounded and parked at Kitwe police headquarters station. The facts were further confirmed by DW2 in his evidence and not challenged by the plaintiffs.

63. Accordingly, I find that Ms. Katanga's statement was not defamatory but made in fair comment because it did not misinform the public on a matter that was of public concern. In other words, it was reliable, verified and not motivated by malice. Consequently, I hold that the plaintiffs' claim for defamation lacks merit and fails.

64. In passing off, the 1st, 3rd, 4th and 5th plaintiffs claimed that they failed to pursue their studies at University because they were humiliated and afraid to face the world. During trial, their witness did not adduce any evidence to show how those plaintiffs were ill-treated by university staff and other members of the public for the Court to make a determination. In short, their evidence fell short of the threshold required to prove defamation.

65. Be that as it may, the Court was perplexed at how the 1st plaintiff a serving police officer could engage in gainful contractual work outside his employment with the police service. In the court's view, this action is unacceptable because it comes at great expense to his expected role of maintaining law and order at all times. I therefore, urge the Zambia Police Command to ensure discipline amongst its officers so that they only perform work that they are employed to do.

Final Orders

66. In concluding, and for the avoidance of doubt, I hold that the plaintiffs' claims all lack merit and are dismissed in their entirety.

67. Costs are awarded to the defendant to be taxed in default of agreement.

Dated the 15th day of February 2021

Mapani
M. Mapani-Kawimbe
HIGH COURT JUDGE

