

IN THE SUPREME COURT FOR ZAMBIA  
HOLDEN AT LUSAKA  
(CIVIL JURISDICTION)

APPEAL NO.5/2000

BETWEEN:

NATIONAL COUNCIL FOR SCIENTIFIC RESEARCH  
NICHOLAS C.H. LUBABA  
AND  
JONATHAN MULILO

1<sup>ST</sup> APPELLANT  
2<sup>ND</sup> APPELLANT  
  
RESPONDENT

Coram: Sakala, AG. DCJ., Muzyamba, Lewanika, JJS.  
On 20<sup>th</sup> July, 2000 and 4<sup>th</sup> October, 2000

For the 1<sup>st</sup> Appellant: R.H. Nketani, of R.H. Nketani & Co.  
For the 2<sup>nd</sup> Appellant: R.H. Nketani, of R.H. Nketani & Co.

For the Respondent: O. Dzekedzeke, of Dzekedzeke & Co.

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### JUDGMENT

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Lewanika, JS. delivered the Judgment of the court.

This is an appeal against the decision of a High Court Judge awarding the respondent damages in the sum of K5 million for libel.

It was common cause in the court below that the respondent was employed by the 1<sup>st</sup> appellant as a Scientific Officer in the Livestock and pest Research Centre. Sometime in July, 1986, the Head of the respondent's unit circulated a circular from the Deputy Secretary General of the 1<sup>st</sup> appellant for a seminar being organised by the Tropical Disease Research Centre in Ndola on the subject of "*Problems and recent advances in malaria*" from 25<sup>th</sup> to 26<sup>th</sup> September, 1986. The respondent was interested in attending the seminar and promptly sent a copy of his thesis for his Master's Degree to the organisers of the seminar who accepted it and invited him to present a paper at the seminar. Procedures at the 1<sup>st</sup> appellant

required the respondent to obtain prior approval from his Head of Unit and the Secretary General before applying to attend the seminar and sending an abstract of his thesis. A few days before the seminar, the respondent approached his Head of Unit for permission to attend the seminar and for an imprest of K600.00. The Head of Unit took the respondent to the Office of the Deputy-Secretary General to obtain the necessary approvals but in the meantime, he approved the respondent's request for an imprest but reduced the amount to K400.00. Prior to receiving the approval of the Deputy Secretary General, the respondent went to the accounts department and processed the application for an imprest and was given a cheque which he cashed at the bank. In the event the Deputy Secretary General did not give permission for the respondent to attend the seminar and gave instructions to stop payment on the cheque but it had already been encashed. The respondent did not travel to Ndola to attend the seminar as he fell ill. The respondent refunded the imprest money on 24<sup>th</sup> November, 1986. Disciplinary proceedings were instituted against the respondent which resulted in his dismissal by letter dated 21<sup>st</sup> January, 1987. Then on 1<sup>st</sup> November, 1993 the 1<sup>st</sup> appellant issued a circular under the hand of the 2<sup>nd</sup> appellant to its members of staff directing them not to consort with former employees who had been dismissed for charges of dishonesty/theft. This was followed by an internal memorandum dated 3<sup>rd</sup> November, 1993 listing the former employees who had been banned from visiting the 1<sup>st</sup> appellant's premises, and the respondent's name was on the list. These were the publications that led to the proceedings in the court below.

The appellants in their defence did not deny publication but pleaded justification. The learned trial Judge found that on the evidence before him, there was no evidence of theft or dishonesty as the respondent had retired the imprest after failing to travel due to illness and awarded the respondent damages, hence the appeal.

The grounds of appeal filed by Counsel for the appellant consist in the main of attacks on the findings of fact made by the learned trial Judge. We have considered the submissions of Counsel as well as the evidence on record. There can be no doubt that the respondent did not follow the laid down procedures, firstly in applying to attend the seminar and sending an abstract of his thesis without prior approval of the Secretary General of the 1<sup>st</sup> appellant organisation. Secondly in applying for imprest for the trip before the Secretary General had granted him authority to travel. On the other hand there is also evidence on record that the application form for imprest was approved and the amount reduced from K600.00 to K400.00 by Dr. Chupape the Head of the Livestock and Pest Research Centre who was the respondent's immediate supervisor. There is also evidence on record that the respondent retired the imprest, albeit belatedly. The respondent's conduct might have been reprehensible but we cannot say that it was dishonest or that what he did amounted to theft. Having pleaded justification in its defence, the appellant had to satisfy the court that the publications complained of were true and correct in form and in substance and this they failed to do on the evidence on record. We find no merit in the appeal against liability which we

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dismiss. On the question of quantum, the publication was limited to the 1<sup>st</sup> appellant's employees and had the appellant pleaded qualified privilege, the outcome of this litigation could have taken a different direction. We consider the award of K5 million excessive in the circumstances and we reduce it to five hundred thousand Kwacha (K500,000.00). As the appeal has succeeded in part, we order that each party is to bear its own costs.

E.L. SAKALA  
**AG. DEPUTY CHIEF JUSTICE**

W.M. MUZYAMBA  
**SUPREME COURT JUDGE**

D.M. LEWANIKA  
**SUPREME COURT JUDGE**