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

APPEAL NO 105/2011

BETWEEN:

LITIA LITIA — **APPELLANT**

AND

ALEXANDER M. LWATULA — **RESPONDENT**

CORAM: MAMBILIMA CJ, KAOMA AND MUTUNA JJS;
on 1st October, 2019 and 28th October, 2019

For the Appellant	:	**Mr. C. M. Sianondo, of Malambo and Company**
For the Respondent	:	**Mr. B. Luo, holding a brief for Mr. G. M. Kanja, of Palan George Advocates**

JUDGMENT

MAMBILIMA, CJ, delivered the Judgment of the Court.

CASES REFERRED TO:

1. **HOPWOOD V MUIRSON [1945] 1 ALL ER 453**
2. **JOHN NAMASHOBA MUCHABI V AGGREY MWANAMUFWENGA (1987) ZR 110**
3. **WACHA V ZAMBIA PRINTING COMPANY LIMITED (1975) ZR 199**
4. **DAVIS V LISLE [1936] 2 ALL ER 213**
5. **FELIX V THOMAS [1966] 3 ALL ER 21**
6. **SHELL AND BP ZAMBIA LIMITED V CONIDARIS AND OTHERS (1974) ZR 281**
7. **SIM V STRETCH (1936) 52 TLR 669**
8. **SIMMONS V MITCHELL (1880) 6 APP CASE 156**
9. **CONWAY V GEORGE WIMPEY & COMPANY [1951] 2 KB 266**
10. **LISWANISO V THE PEOPLE (1976) ZR 277**

LEGISLATION REFERRED TO:

a. **CRIMINAL PROCEDURE CODE, CHAPTER 88 OF THE LAWS OF ZAMBIA**
b. **THE CONSTITUTION, CHAPTER 1 OF THE LAWS OF ZAMBIA ARTICLE 17**

WORKS REFERRED TO:

i. **CLERK AND LINDSELL ON TORT 11TH EDITION THE COMMON LAW LIBRARY NO. 3 SWEET AND MAXWELL PARAGRAPH 1235 AT PAGE 736**
ii. **OSBORN CONCISE LAW DICTIONARY**
iii. **HALSBURY'S LAWS OF ENGLAND VOLUME 38, 3RD EDITION, VOLUME 32, 4TH EDITION REISSUE AND VOLUME 97, 5TH EDITION**
iv. **GATLEY ON LIBEL AND SLANDER COMMON LAW LIBRARY NO. 8 FIFTH EDITION IN PARAGRAPH 71 AT PAGE 47 AND PARAGRAPH 75 AT PAGE 50**

1. INTRODUCTION

1.1 This appeal was heard at Ndola, on 2nd December, 2014. Regrettably, the panel which heard the appeal has been depleted. The appeal had now to be heard de novo before us. The appeal emanates from a decision of Hamaundu J, (as he then was) dated 11th July, 2011, dismissing with costs, the Appellant's claim for damages for slander and trespass to land.

2. APPELLANT'S CASE IN THE COURT BELOW

2.1 Facts distilled from the pleadings are that the Appellant was the owner of a proposed sub-division of Lot/9558/M in

Palabana, Chongwe District. The Respondent was also an owner of a farm in the same area.

2.2 The Appellant alleged that the Respondent, without any colour of right, unlawfully entered upon his property on or about 8th August, 2009 and remained there for three hours. That while there, the Respondent falsely and maliciously spoke and published of the Appellant, that he (the Appellant) was in custody of the Respondent's stolen wire fence. Further that the Respondent attempted to seize a roll of wire which he found on the property and use it as an exhibit for his stolen wire but he was restrained by the Appellant's workers from doing so.

2.3 The Appellant further alleged that at the time, he was on holiday in Namibia, the Respondent called him, claiming that he had found his stolen wire fence at his premises. That these statements were made to and/or in the presence and hearing of one Christopher Wamulume, Graham Kabwiku, Jackson Phiri, Shawa Moses, Kwibisa Bornwell and other persons whose names the Appellant did not know.

2.4 The Appellant contended that by the said statements and actions, the Respondent meant and was understood to mean,

that the Appellant was a criminal and an accomplice, and that his premises was a haven for criminal activities. That in consequence, he had been gravely injured in his character, credit and reputation, and had been brought into public scandal, odium and contempt.

2.5 The Appellant claimed that if not restrained, the Respondent would continue to publish the said or similar slander about him. In his pleadings, he sought among others, the following reliefs –

> **i. Damages for slander**
> **ii. Damages for trespass**
> **iii. An injunction restraining the Defendant (Respondent) by himself, his agents or servants or otherwise from further publishing the said or any slander upon the Plaintiff (Appellant) and from trespassing on the said proposed Subdivision of Lot/9558/M.**

2.6 During trial, the Appellant testified that his uncle, Christopher Wamulume called him on the 8th of August 2008 while he was on a bus to Swakopmund, Namibia on holiday. He informed him that people had come on to his farm to collect off-cuts which had remained after erecting the wire fence, claiming that the wire was stolen. That he spoke to the Respondent on

the phone and explained that he had documents to prove that he owned the wire but the Respondent refused, insisting that he had identified the roll of wire as his; that he had witnesses and would meet him in Court.

2.7 The Appellant narrated that he also spoke to a police officer from Palabana who confirmed that they were investigating a case of a stolen roll of wire, which had been traced to him. That afterwards, the Respondent repeatedly sent him text messages and indicated that he had left his business card. The Appellant told the Court below that he was disturbed by the whole episode, forcing him to cut short his holiday.

2.8 The Appellant further testified that upon his return, he called the Respondent who told him to report himself to the police. That at the police station, a statement was recorded from him and he was asked to furnish proof of purchase for the roll of wire found on his premises which he did.

2.9 To support his claim, the Appellant called Wamulume Mukelabai. Mr. Mukelabai confirmed that the Respondent came to the Appellant's farm in the company of two police officers and two young men, claiming that some roll of wire

had gone missing from his farm. That he (Mukelabai) explained to them that the Appellant had bought three rolls of wire and would be able to produce receipts. That thereafter, the Respondent spoke with the Appellant on the phone and afterwards, the Respondent went back to his farm.

3. RESPONDENT'S DEFENCE

3.1 In his defence, the Respondent denied entering the Appellant's property and falsely or maliciously accusing him of stealing his roll of wire. His evidence was that he accompanied police officers from Palabana to the Appellant's farm when they were investigating the theft of his wire. That they stayed on the farm for less than an hour and they explained the nature of their visit to the Appellant on the phone.

3.2 According to the Respondent, a roll of wire went missing from his farm on 27th July, 2009. Another 100-metre length of wire was stolen and left abandoned at the edge of his farm on 4th August, 2009. Both incidents were reported to Palabana police by his worker, Lloyd Munkombwe. That on 8th August, 2009, he went to Palabana Police to check on the matter and a police officer named Sakala requested him to assist with

transport to follow up on a suspect named Zaccheus. That after failing to trace the suspect, the police asked him to drive them to a farm, about one or two kilometers away from his farm. He learnt that the farm belonged to the Appellant. That the police were acting on a tip from members of the public linking one of the Appellant's workers to the theft of his wire.

3.3 It was the Respondent's testimony that they did not find the Appellant when they visited his farm. He, however, left his business card for the Appellant to contact him. That as they were reversing out of the yard, he noticed a roll of wire which appeared to be similar to his. When he inquired, the Appellant's workers claimed that the wire was bought from Handyman's Paradise. He had bought his wire from Livestock. That while at the farm, he tried to speak to the Appellant on the phone, but he threatened to sue him and terminated the call.

3.4 It was the Respondent's further testimony that when the Appellant called him on 16th August 2009, he (the Respondent) referred him to the police. That the next thing he received was a letter from the Appellant's lawyers on 24th August, 2009,

demanding K100 million as compensation for trespass and slander. The Respondent contended that he merely provided transport for the police when they went to the Appellant's farm and he did not, therefore, need a search warrant to enter the premises.

3.5 There was evidence that the police went back to the Appellant's farm sometime in September, and picked up the Appellant's worker named Kondwani, along with another person known only as Zakeyo, to help with investigations.

4. DECISION OF THE COURT BELOW

4.1 At the close of trial, Hamaundu J, found as a fact, that the Respondent experienced thefts of fencing wire between 28th July, 2009 and 4th August, 2009 at his farm in Palabana. That the thefts were reported to the police and that in the course of investigations, one of the Appellant's workers was implicated. That in pursuit of the said worker, the police and the Respondent went to the Appellant's farm where the Respondent saw fencing wire which was similar to his. The learned trial Judge also found as a fact that the Respondent and the Appellant had a discussion over the phone concerning

the stolen wire and that the Appellant, subsequently, presented receipts to the police showing proof of purchase of the wire found on his property.

4.2 In his judgment, Hamaundu J, referred to a passage from the learned authors of **CLERK AND LINDSELL ON TORT**[i] which states that –

> **"The imputation of a criminal offence must be direct. Words of mere suspicions are not enough in themselves. It will be necessary for the plaintiff to satisfy the jury that in the circumstances such words were equivalent to an absolute affirmation of guilt."**

4.3 On the basis of this passage, the learned trial Judge came to the following conclusions: that the Appellant had not brought out any direct imputation by the Respondent that he (the Appellant) had stolen the wire. That the conversation on the phone between the Appellant and the Respondent also did not bring out such direct imputation. That the Appellant's witness, who was present at the time that the alleged slander was said to have been made, also did not bring out any words that the Respondent uttered which would have cast a direct imputation that the Appellant had stolen the wire.

4.4 The learned trial Judge found, instead, that it was the Appellant's worker who was implicated in the theft of fencing wire at the Respondent's farm. Further, that the course of investigations led the police to the Appellant's farm where the suspect worked. Against the backdrop of these findings, the learned trial Judge held that the Appellant had failed to prove his claim for damages for slander.

4.5 The learned trial Judge also found that the claim for damages for trespass had not been proved. He held that the police were empowered under Section 19 of the **CRIMINAL PROCEDURE CODE (CPC)**[a] to enter upon the Appellant's farm to pursue and arrest the worker who was implicated in the theft. The said Section 19 (1) of the CPC provides as follows –

> **"If any person acting under a warrant of arrest or any police officer having authority to arrest, has reason to believe that the person to be arrested has entered into or is within any place, the person residing in or being in charge of such place shall, on demand of such person acting as aforesaid or such police officer, allow him free ingress thereto and afford all reasonable facilities for a search therein."**

4.6 Hamaundu J held that in the circumstances of this case, the presence of the police and the Respondent at the Appellant's

farm could not give rise to an action for trespass. That consequently the entire action had failed.

5. THE APPEAL AND GROUNDS OF APPEAL

5.1 Aggrieved with the determination by the Court below, the Appellant appealed to this Court, advancing four grounds of appeal, which were framed as follows –

1. **The Court below erred in both law and in fact when it held that there was no direct imputation by the Respondent that the Appellant had stolen the wire despite the uncontroverted evidence to that effect.**

2. **The Court below erred both in law and in fact when it held that the Appellant's witness who was at the farm did not bring out any words that the Respondent implied that the Appellant has stolen the wire despite the evidence that the Respondent admitted having stated that the wire at the Appellant's farm was the Respondent's wire.**

3. **The Court below erred both in law and in fact when it held that there was no trespass by the Respondent when the Respondent had no search warrant to enter the premises.**

4. **The Court below erred both in law and in fact when it held that there was no trespass as there was no evidence received to the effect that they were pursuing any arrest.**

5.2 In support of the appeal, learned Counsel for the Appellant, Mr. Sianondo, filed written heads of argument on 10th January, 2014 on which he relied entirely. In the said heads of argument, the first and second grounds of appeal have been

argued together. The third and fourth grounds of appeal were also argued together.

5.3 In the first and second grounds of appeal, Mr. Sianondo's submissions, in the main, were that the Court below failed to consider the facts before it. That the facts, as outlined, in the pleadings were that the Respondent falsely and maliciously spoke and published of him (the Appellant) in the presence of one Christopher Wamulume and others, that he was at the Appellant's farm to collect his stolen wire.

5.4 Learned Counsel stated that the Respondent had formed an opinion, and the police agreed with him, that the roll of wire he saw on the Appellant's property was his, and hence his request for the Appellant to report himself to the police. He asserted that these facts were a clear imputation that the Appellant had stolen the wire, adding that no reasonable person would request another to report himself to the police unless he had reasonable ground to believe that the other was guilty of some crime.

5.5 To advance his argument further, Counsel called in aid, the case of **HOPWOOD V MUIRSON**[1] to demonstrate that an action for slander is actionable per se where there is an imputation of crime punishable by imprisonment. Mr. Sianondo argued that theft of property was, prima facie, an offence leading to imprisonment; and by the fact that the Respondent had suspected the Appellant of having stolen his wire and required him to report himself to police and produce receipts to show proof of purchase; there was an imputation of guilt, giving rise to a claim for actionable slander.

5.6 According to learned Counsel, mere suspicion has been held in several decisions to amount to slander, especially where the suspicion imputed guilt of having committed a crime. To support his submission, Mr Sianondo invited us to look at our decision in the case of **JOHN NAMASHOBA MUCHABI V AGGREY MWANAMUFWENGA**[2], where we stated that –

> **"In slander actions it is no longer necessary for the plaintiff to prove that the precise words were uttered. It is sufficient if he proves a material and defamatory part of them or words which are substantially to the same effect."**

5.7 Counsel also pointed us to a High Court decision in the case of **WACHA V ZAMBIA PRINTING COMPANY LIMITED**[3] in which it was held that a statement of suspicion is defamatory and that it is even more so where it amounts to an imputation of guilt.

5.8 Commenting on the learned trial Judge's finding that the Appellant's witness had not uttered any words to show that the Respondent implied that the Appellant had stolen the wire, Mr. Sianondo argued that this was a clear misstatement of the facts and a departure from the definition of slander. He referred us to the learned authors of **OSBORN CONCISE LAW DICTIONARY**[ii] who define slander as **"defamation by means of spoken words or gesture"** and argued that similarly, the Respondent's statement, that he had found his wire at the Appellant's farm, amounted to spoken words that the Appellant was guilty of theft.

5.9 As regards the finding that there was no direct imputation that the Appellant had stolen the wire, learned Counsel argued that the Court did not address its mind to the fact that the Respondent, while in the company of the police and through

his words, imputed, in the presence of the Appellant's workers that he (the Appellant) had stolen the wire, which they intended to collect. According to Mr. Sianondo, these utterances were proof of the slanderous act by the Respondent, which entitled the Appellant to an action for slander.

5.10 Coming to the third and fourth grounds of appeal, Mr. Sianondo's submissions on behalf of the Appellant, were that the Court erred by not considering the effect of a police officer or a Respondent entering an Appellant's premises without a search warrant.

5.11 Learned Counsel submitted that the Court failed to direct its mind to the fact that the police officer who was conducting the investigations did not have a warrant to search or authority to arrest and that he even admitted during trial, that entering and searching premises without a warrant amounted to breaking the law. To drive this point further, learned Counsel referred us to the case of **DAVIS V LISLE**[4] where it was held –

> **"It appears to be very important that it should be established that nobody has a right to enter premises except strictly in accordance with authority."**

5.12 It was Mr. Sianondo's further submission that the Appellant had full rights to enjoy his property free of any disturbance from members of the public, such as the Respondent, or the police officers, by virtue of Article 17 of the **CONSTITUTION OF ZAMBIA**[b]. Article 17 provides that –

> **"Except with his own consent, a person shall not be subjected to the search of his person or his property or the entry by others on his premises.**

5.13 Mr. Sianondo posited that the aforementioned authorities set out rules of law to the effect that no one can enter any premises without authority. That Section 19 of the **CPC**[a], on which the trial Court relied, demonstrated that a person shall be exempted to enter premises in cases where it can be shown that he or she had due authority to do so. To further buttress his argument, Mr. Sianondo referred us to the case of **FELIX V THOMAS**[5], where the Privy Council held that –

> **"If a Constable enters private premises without any statutory authority or without a search warrant obtained pursuant to statutory authority or without any permission, he may be a trespasser."**

5.14 Learned Counsel submitted that it was reasonable, in a democratic society, for the Respondent and the Police to have

requested for permission or informed the Appellant the reasons for entering his property before, and not after entering the premises. That in any event, there was no provision in the **CPC**[a] extending similar rights or privileges to persons, or even complainants, accompanying a police officer to conduct a search.

5.15 According to Mr. Sianondo, the Court erred by applying the provisions of Section 19 of the **CPC**[a] to this case with ease, more so that the act of entering the premises without a search warrant infringed on a right that was protected by the Constitution. Counsel submitted that the Privy Council, while commenting on a provision similar to Section 19 in the **CPC**, held in the case of **FELIX V THOMAS**[5] that -

> **"The section is therefore one to be applied strictly and to be used with caution."**

5.16 Additionally, Mr. Sianondo argued that the Appellant had adduced relevant evidence to show that he was in possession of the property on which the Respondent unlawfully entered. That having established that entry onto his land was unlawful, an action for damages for trespass was properly before the

Court. To support his argument, learned Counsel drew our attention to the words of the learned authors of **HALSBURY'S LAWS OF ENGLAND VOL 38** [iii] in paragraph 1205 at page 738 where they state that-

> **"Every unlawful entry by one person on land in possession of another is trespass for which an action lies although no actual damage is done...A person trespasses upon land if he wrongfully sets foot on, rides or drives over it, or takes possession or pulls down or destroys anything permanently fixed."**

He also invited us to look at the case of **SHELL AND BP ZAMBIA LIMITED V CONIDARIS AND OTHERS**[6] in which we held that –

> **"A trespass is actionable only on the part of him who is in possession using the word possession in its strict sense, as including a person entitled to immediate and exclusive possession."**

Learned Counsel concluded by praying that this appeal should be allowed.

6. RESPONDENT'S HEADS OF ARGUMENT

6.1 The Respondent filed written heads of argument in opposition to the appeal on 25th November, 2014. Mr. Luo, who was holding a brief on behalf of Mr. Kanja, also relied entirely on the filed heads. In the heads of argument, Mr. Kanja, argued the first and second grounds of appeal

separately and argued the third and fourth grounds of appeal together.

6.2 In response to the Appellant's submissions on the first ground of appeal, Mr. Kanja argued that the Court did not err when it held that there was no direct imputation by the Respondent that the Appellant had stolen the wire.

6.3 He proffered a definition for the tort of defamation; that it is the "publication of a statement which injures or damages the reputation of another by exposing him to hatred, contempt or ridicule, and tends to lower him in the estimation of right thinking members of society generally or tends to make them shun or avoid that person".

6.4 According to Counsel, in order to establish a case or succeed in an action for defamation, the claimant must prove –

a. That the statement is defamatory, that is, it must tend to harm the reputation of the claimant so as to lower the esteem, respect, goodwill or confidence in which the claimant is held in society or in the estimation of the right thinking members of society generally;

b. That the statement referred to the plaintiff; and

c. That it has been published by the Respondent, that is, communicated to a third party.

6.5 As to what amounts to words being defamatory, Mr. Kanja found a useful guide in the case of **SIM V STRETCH**[7] where Lord Atkins applied the following test –

> **"Would the words tend to lower the plaintiff in the estimation of right thinking members of society generally?"**

He submitted that the evidence tendered by the Appellant did not in any way show, disclose or prove that the Respondent defamed the Appellant by way of slander. Nor did it show that the Respondent uttered words which were defamatory of him. In his view, the Court rightly found that the Appellant's testimony in Court; the phone conversation he had with the Respondent; and, the testimony of his witness (PW2), who was at the farm when the words were allegedly uttered, did not bring out any direct imputation by the Respondent that the Appellant had stolen the wire.

6.6 To fortify his argument, Mr. Kanja relied on a passage from the learned authors of **CLERK AND LINDSELL ON TORT**[i] on the subject of slander imputing a criminal offence. It is the same passage on which the learned trial Judge relied and we have reproduced it in paragraph 4.2 above.

6.7 Learned Counsel also referred us to the case of **SIMMONS V MITCHELL**[8], in which it was held that words merely conveying suspicion will not sustain an action for slander. He also cited the case of **JOHN NAMASHOBA MUCHABI V AGGREY MWANAMUFWENGA**[2] earlier referred to us by Mr. Sianondo, where this court held that-

> **"The defamation pleaded must be proved, it is not sufficient to prove that other defamatory words alleging a different form of misconduct were used."**

Mr. Kanja submitted, relying on this passage, that the Appellant, in this appeal, had failed to prove that he had been defamed by the Respondent by way of slander.

6.8 Coming to the second ground of appeal, which was assailing the lower Court's finding that PW2 did not bring out any words imputing that the Appellant stole the wire, learned Counsel submitted that the Court was on firm ground. He argued that PW2 did not, in any way, show that the Respondent uttered words of a defamatory nature.

6.9 Reacting to the third and fourth grounds of appeal, Mr. Kanja supported the Court's finding that there was no trespass. He submitted that trespass to land occurs where a person directly

enters upon another's land, without permission, or remains upon the land or places any object upon that land. He argued that in the case in **casu**, the Respondent's evidence was that he provided the police with transport when they went to investigate a suspect who was working at the Appellant's farm. That it was in the course of this process that the Respondent found himself on the Appellant's farm. That the Respondent had no intention whatsoever to trespass on the said farm.

6.10 Mr. Kanja submitted further that trespass to land was an intentional tort. He however hastened to mention that lack of knowledge as to trespass was not a defence, as was held in the case of **CONWAY V GEORGE WIMPEY AND COMPANY**[9] where the Court stated that it was irrelevant that the person was unaware that they were trespassing or even honestly believed that the land was theirs. He submitted, however, that in this case, police had power, under Section 19 of the **CPC**[a] to enter upon the Appellant's farm to pursue a suspect. That on that premise, the presence of the Respondent and the police on the Appellant's farm could not have given rise to an action in trespass. As he concluded, Mr. Kanja urged us to dismiss

the appeal for being frivolous and vexatious, and for lack of merit.

7. DECISION OF THIS COURT

7.1 We have considered the evidence on record, the submissions of Counsel, the judgment appealed against and the issues raised in this appeal.

7.2 It is not in dispute that the Respondent, in the company of police officers, visited the Appellant's farm in connection with thefts of wire at his (Respondent's) farm. It is also not in dispute that while at the Appellant's farm, the Respondent saw a roll of wire which appeared to be similar to the one which went missing at his farm. The Appellant claimed that the wire belonged to him and provided proof of purchase. It is common cause that two of the Appellant's workers were detained in connection with the theft at the Respondent's farm.

In our view, there are two issues which will determine the outcome of this appeal, these are; whether the Appellant was entitled to damages for an action of slander imputing commission of a criminal offence; and whether there was trespass to the Appellant's property to entitle him to a claim

for damages. The first issue speaks to the first and second grounds of appeal, while the second issue will resolve the third and fourth grounds of appeal.

7.3 Mr. Sianondo's argument in support of the first and second grounds of appeal was that the Respondent falsely and maliciously spoke and published of the Appellant, in the presence of his workers, that the Appellant was in possession of his stolen wire. According to Counsel, the fact that the Respondent assumed that the wire which he found on the Appellant's property was his and required the Appellant to report to the police and provide proof of purchase of the wire was a clear imputation of commission of theft and therefore, slanderous of the Appellant. Counsel anchored his submission on the case of **HOPWOOD V MUIRSON**[1] in which, according to him, it was stated that an action for slander is actionable per se, where there is an imputation of a crime punishable by imprisonment.

7.4 Mr. Kanja, on the other hand, argued that evidence tendered by the Appellant did not show, disclose or prove that the Respondent defamed him by way of slander or that the

Respondent uttered words that were defamatory of him. According to Mr. Kanja, the Court below rightly found that the Appellant's testimony and that of his witness, as well as the phone conversation which the Appellant had with the Respondent did not bring out any direct imputation by the Respondent that the Appellant had stolen the wire.

7.5 It is trite that under common law, the tort of slander is not actionable unless there is proof of special or actual damage. Common law also provides for exceptions where actions for slander will lie without proof of special damage. The learned authors of **GATLEY ON LIBEL AND SLANDER**[iv] categorise these exceptions under four heads. These are –

1. **Where the words impute a crime for which the plaintiff can be made to suffer physically by way of punishment**
2. **Where the words impute to the plaintiff a contagious or infectious disease**
3. **Where the words are calculated to disparage the plaintiff in any office, profession, calling, trade or business held or carried on by him at the time of publication, and,**
4. **By the Slander of Women Act, 1891, where the words impute adultery or unchastity to a woman or girl.**

The Appellant, in this case, is seeking damages under the first exception; namely, that the Respondent uttered words which

impute that the Appellant committed a crime, for which he can be made to suffer or be imprisoned.

7.6 The Privy Council in the case of **SIMMONS V MITCHELL**[8], cited to us by Mr. Kanja, is instructive. It sets out one of the principles for a claim under actionable slander; this is that words conveying suspicion cannot sustain an action for slander without proof of special or actual damage.

7.7 In that case, the Respondent, a Clerk of the Crown, was alleged to have said of the Appellant, within the hearing of the Appellant's brother and other persons, that -

> ***"People who go to see the Secretary of State had better see that their characters are clear, for your brother lies here under suspicion of having murdered a man named Emanuel Vancrossen at Spout some years ago."***

7.8 The Appellant, in that case, complained that the words alleged were not words of mere suspicion; but that the natural meaning of them was to impute the guilt of murder to him. The Respondent, on the other hand, argued that the words used amounted at most, to words of mere suspicion and did not convey any positive or absolute imputation or a charge of an indictable offence. Delivering Judgment on behalf of the Privy Council, Sir Robert Collier stated as follows –

> **"The words in those counts convey in their natural sense suspicion, and suspicion only, and according to the law of this country with respect to policy, of which we have nothing to do, would not support an action for slander... Undoubtedly, if the words had admitted fairly two meanings, one being imputation of suspicion only and the other of guilt, it would have been proper to leave to the jury the sense of which they were uttered but their Lordships have come to the conclusion that taken in their natural sense, and without a forced or strained construction, they do not contain these two meanings but only one viz. that there was a strong suspicion, but of suspicion only against the Plaintiff."** (Emphasis ours)

7.9 Similarly, the learned authors of **CLERK AND LINDSELL ON TORT**[i] in paragraph 1235, the passage on which the learned trial Judge in the court below relied, state that –

> **"The imputation of a criminal offence must be direct. Words of mere suspicion are not enough in themselves. It will be necessary for the plaintiff to satisfy the jury that in the circumstances such words were equivalent to an absolute affirmation of guilt,"**

7.10 Another principle for slander actionable per se is that the basis of the claim is not only that the words complained of put the defamed person in jeopardy of a criminal prosecution; but that they also lead to social ostracism. The learned authors of **GATLEY ON LIBEL AND SLANDER**[iv] put it this way –

> **"It seems now settled that words imputing criminal offence are actionable per se by reason of the obloquy (strong public criticism or loss of respect and honour) to which they expose the Plaintiff rather than the danger they bring of criminal prosecution."**

7.11 From the above cited authorities, it would appear to us that while suspicion may be defamatory, when a plaintiff relies on slander actionable per se, mere suspicion, in and of itself, cannot sustain such a claim. There has to be something more. In this case, something more is an imputation of absolute guilt on the part of the plaintiff or that the plaintiff has suffered social ostracism such as loss of respect or strong public criticism.

7.12 We have perused the evidence on record. According to DW3, the person who was suspected of having stolen the Respondent's wire was one of the Appellant's workers. This is the person whom they had followed to the Appellant's farm. The words spoken and/or actions by the Respondent did not suggest guilt on the part of the Appellant. From the circumstances as described by the witnesses in this case, there was no direct imputation of guilt by the Respondent on the Appellant. Neither was there any social ostracism, loss of respect or strong public criticism.

7.13 The evidence of the Respondent, which was collaborated by the testimony of DW3, seems to support this view. The

Respondent testified that he did not know the Appellant prior to the visit. Furthermore, it was only on their exit that the Respondent spotted the wire roll which was similar to his. The Respondent even left his business card so that they could resolve the matter with the Appellant. In our view, the Respondent's inquisition did not, by any stretch of imagination, amount to any imputation of guilt on the part of the Appellant.

7.14 Further, the Appellant's witness, PW2 stated in his testimony, that the Appellant **"spoke with the Respondent on the phone, and afterwards the Respondent went home"**. PW2 did not indicate or recite the words which he heard, neither did he or the Appellant show that the Appellant had suffered ostracism of any kind arising from the Respondent's utterances.

7.15 At this stage, we have taken note that Counsel for the Appellant referred us to a High Court decision in the case of **WACHA V ZAMBIA PRINTING COMPANY LIMITED**[3] in which it was held that a statement of suspicion is defamatory and that it is even more so where it amounts to an imputation of

guilt. Being a High Court decision, it is not binding on this Court. However, we wish to re-state that the correct legal position on this point is as we have stated in paragraph 7.11 above and as was held in the case of **SIMMONS V MITCHELL[8].** This is that spoken words which convey mere suspicion that the plaintiff has committed a crime punishable by imprisonment will not support a claim for slander actionable per se. The High Court Judge in the **WACHA[3]** case was alive to this principle and even referred to the case of **SIMMONS V MITCHELL[8]** in his judgment.

7.16 We note also that Mr Sianondo argued that it was no longer necessary to prove the precise words that were uttered as espoused in the case **JOHN NAMASHOBA MUCHABI V AGGREY MWANAMUFWENGA[2].** That case can be distinguished from the case in casu. It related to the actual words uttered in an action for slander. The Court was of the view that it is sufficient if a Plaintiff proves a material and defamatory part of the words used. The case in casu relates to imputation of guilt from the words used.

From what we have stated above, we find no basis to interfere with the findings of the Court below. For this reason, the first and second grounds of appeal must be dismissed for lack of merit.

7.17 Coming to the third and fourth grounds of appeal. Mr. Sianondo argued, on behalf of the Appellant, that the Court below did not direct its mind to the fact that the Respondent and the police entered the Appellant's premises without a search warrant. That such entry amounted to breaking the law, a fact, according to Counsel, admitted by DW3.

7.18 According to Counsel, the Appellant had full rights to enjoy his property without any disturbance. That from the authorities cited, no one can enter a property without authority. That Article 17 of the **CONSTITUTION OF ZAMBIA**[b] and Section 19 of the **CPC**[a] required that the police should ask for permission from the owner of the premises; or must acquire authority and/or obtain a search warrant prior to entry onto the premises. Counsel argued that this right does not extend to persons accompanying the police.

7.19 To buttress his argument, Counsel referred us to the case of **FELIX V THOMAS**[5] to demonstrate that failure to obtain a search warrant under Section 19 of the **CPC**[a], renders a police officer a trespasser. We have visited the **FELIX** case. We must state at the outset that it refers to totally different provisions. These are Sections 36 and 37 of the Summary Offences Ordinance which are the equivalent to our Sections 26 and 118 of the **CPC** respectively. Section 26 of the **CPC** enumerates instances when a police officer may arrest without a warrant, while Section 118 deals with the power of a magistrate to issue a search warrant.

7.20 In response to the Appellant's arguments on the third and fourth grounds of appeal, Mr. Kanja submitted that the Respondent merely provided transport to the police to pursue a suspect. That this pursuit took them to the Appellant's farm. That the Respondent had no intention, whatsoever, to trespass on the Appellant's farm.

7.21 Counsel submitted further that police were empowered under Section 19 of the **CPC**[a] to enter on the Appellant's farm. That,

consequently, the presence of the police and the Respondent did not give rise to an action in trespass.

7.22 We have examined Article 17 of the **CONSTITUTION OF ZAMBIA**[b]. It states as follows –

> **"Except with his own consent, a person shall not be subjected to the search of his person or his property or the entry by others on his premises.**

Article 17 provides for protection to privacy of home and other property. By the said Article, the Constitution seeks to protect citizens from unwarranted invasion of their premises by authorities. This protection, however, is not absolute. Article 17 makes provision for derogation of that right in clause (2) which provides, among others –

> **"That nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this Article to the extent that the law in question makes provision –**
> **(a) ...**
> **(b) That is reasonably required for the purpose of protecting the rights or freedoms of other persons**
> **(c) ..."**

7.23 This Court had occasion to pronounce itself on the delicate balance that has to be struck between giving effect to the constitutional provisions in Article 17 and the need for authorities to investigate criminal conduct with or without a

search warrant in the case of **LISWANISO V THE PEOPLE**[10]. The issue in that case related to admissibility of evidence obtained without a search warrant. In our view, the principles adumbrated there have analogous application to the appeal before us. Silungwe CJ as he then was, stated –

> **"Although the law must strive to balance the interests of the individual to be protected from illegal invasions of his liberties by the authorities on (the) one hand and the interests of the State to bring to justice persons guilty of criminal conduct on the other (hand), it seems to us that the answer does not lie in the exclusion of evidence of a relevant fact."**

7.24 Among the laws to which the exceptions in Article 17 apply, include Section 19 of the **CPC**[a]. Section 19 provides that –

> **"If any person acting under a warrant of arrest or any police officer having authority to arrest, has reason to believe that the person to be arrested has entered into or is within any place, the person residing in or being in charge of such place shall, on demand of such person acting as aforesaid or such police officer, allow him free ingress thereto and afford all reasonable facilities for a search therein."** (emphasis ours)

The full import of Section 19 is that any police officer having authority to arrest, and has reason to believe that the person to be arrested has entered or is within a premises, must be allowed entry by the person in charge of the place for purposes of searching the premises. Section 19 does not require a police officer to produce a search warrant in order to enter and

effect an arrest. We, therefore, do not agree with Mr. Sianondo's assertions that Section 19 of the **CPC**[a] as read with Article 17 of the **CONSTITUTION OF ZAMBIA**[b], requires the police to first send out notices or seek permission from the owner of the premises prior to entry if they are investigating a crime.

7.25 It is evident that the operation and the investigation at the Appellant's farm was led by the police and not the Respondent. The Respondent was merely in the company of the police officers. As we have stated above, his (the police officer's) actions were covered by Section 19 of the **CPC.** In our view, there can be no separate claim for trespass against the Respondent when the police who were leading the investigation, were acting within the law. The third and fourth grounds of appeal must also fail.

All the four grounds of appeal having failed, the entire appeal fails and it is dismissed with costs to the Respondent, to be taxed in default of agreement.

I.C. Mambilima
CHIEF JUSTICE

R.M.C. Kaoma
SUPREME COURT JUDGE

N.K. Mutuna
SUPREME COURT JUDGE