

**IN THE SUBORDINATE COURT OF THE
FIRST CLASS FOR THE LUSAKA DISTRICT
HOLDEN AT LUSAKA**
(Civil Jurisdiction)



BETWEEN:

**RANA RAKESH RATAN
AND**

APPELLANT

MOSES MUSONDA

RESPONDENT

**Before the Hon. Magistrate Mr. Humphrey Matuta Chitalu, in open court
at 09:00 hours this 8th day of June, 2017.**

For the Appellant: Mr. Lumumba Mudenda from Messrs Tembo Ngulube
Associates

For the Respondent: In Person

JUDGMENT

LEGISLATION REFERRED TO:

- 1. Local Court Act, Cap 29 of the Laws of Zambia, ss: 56, 58**
- 2. Subordinate Court Act, Cap 28 of the Laws of Zambia, s 15**

OTHER WORKS REFERRED TO:

- 1. HANDBOOK OF MEDIA LAWS IN ZAMBIA by Alfred W. Chanda and
Mufalo Liswaniso, published by Zambia Independent Media
Association, at page 40**

This matter was commenced by way of an appeal from the local court. The respondent sued the appellant in the local court alleging that the appellant insulted him for no apparent reason. I will maintain the parties in this matter as they appeared in the court below. The respondent and appellant shall herein be referred to as plaintiff and defendant respectively.

At the conclusion of the matter, the local court made the following pronouncements:-

1. Claim proved; and
2. Defendant to compensate plaintiff with K4, 000 to be paid on Saturday 29th October, 2016 at exactly 10:30 hours.

The defendant aggrieved by the decision of the lower court appeals to this court in accordance with section 56 of the Local Court Act, Chapter 29 of the Laws of Zambia. The grounds of appeal advanced by the defendant are as follows:

1. The court below erred in law and fact by taking into consideration evidence of the plaintiff as gospel truth despite it not being backed by any witness;
2. The court showed its unfairness to the defendant by ordering a compensation of K4,000 to be paid within a period of 22 hours, from Friday 13:00 hours to 10:30 hours the following day on Saturday;
3. That the defendant only asked the plaintiff whether he had any idea about the drums of the company seen by the Director in a truck around Manda Hill area and that no insults were uttered at all;
4. That to ask for information from a workmate in a normal way regarded reasonable in the eyes of normal thinking person is not an offence under the Zambian law; and
5. That the order made by the court below was erroneous. It is the defendant's prayer that it should be quashed by the higher court because what the court below did was the same as telling the defendant to be using sign language when talking to another at the company when he is not disabled.

This appeal from the local court was dealt with by way of rehearing the matter in accordance with section 58 of the Local Court Act, Chapter 29 of the Laws of Zambia.

In civil matters the plaintiff bears the burden of proving his claim on the balance of probabilities.

The plaintiff gave evidence on oath and he called no witnesses. The plaintiff recalled on 21st October, 2016 he reported for work at Reddy Investment Limited where he worked as a driver. According to the plaintiff the defendant was his supervisor and was responsible for the security at the said premises.

It was submitted that on the material day he knocked off at 17:00 hours. According to the plaintiff he got a lift from a friend who was coming from the Copperbelt. At around 18:00 hours he was called by the defendant who wanted to know his whereabouts. It was stated that the plaintiff was at home. That the defendant asked the plaintiff to report early the following day.

According to the plaintiff on the 22nd October, 2016 Banesh a stores person at the company premises asked him about the drums. The plaintiff stated that Banesh told him that the Director had seen him with the drums. It was stated that Handyman also asked the plaintiff about the drums. It was submitted that the plaintiff expressed ignorance about the allegations.

That the defendant called the plaintiff to his office. It was submitted that when the two were in the office, the defendant asked the plaintiff about the drums. According to the plaintiff, he did not know anything about the drums. That after some exchange the defendant stated that he was told that the plaintiff was seen in unknown motor vehicle with drums belonging to the company heading towards Manda Hill, Lusaka. According to the plaintiff he was defamed in the eyes of his workmates. The plaintiff submitted that as a result of the allegations his employment was terminated. That he lost a salary income of

That the defendant had known the plaintiff for seven months. That the plaintiff was employed as a casual driver.

The defendant recalled the 21st October, 2016 when the Director visited the site on routine checks. It was stated that the Director knocked off and as he drove along the Great North road from 15 miles to Lusaka, he saw two drums belonging to the company being carried on the lorry *en-route* to Lusaka. According to the defendant the Director saw the plaintiff seated in the lorry carrying the drums. It was submitted that the Director called the defendant and asked if he had sold the drums which the defendant denied. According to the defendant, the Director followed the lorry up to Manda Hill, Lusaka. The defendant called plaintiff who stated that he was at his home.

The following day on the 22nd October, 2016 the defendant received a call from the Director suggesting that the defendant should discuss the matter with the plaintiff. According to the defendant he called the plaintiff to his office. That when the plaintiff was asked about the drums he said he did not know anything. It was asserted that the plaintiff protested that he was taken as a thief. According to the defendant he asked the plaintiff to stop work and he gave him terminal benefits. The defendant stated that he did not use any insulting language to the plaintiff. That he only asked the defendant about the matter.

The defendant contended that he appealed against the decision of the local court ordering him to compensate the plaintiff in the sum of K4,000 because he did not insult the plaintiff.

In cross examination the defendant stated that there is CCTV on the premises. It was submitted that the defendant could not play the video footage because there are no cameras at the point the drums are kept. It was further stated that there are two guards manning the gate.

It was stated that no one else asked the plaintiff about the matter and that no one forcibly removed the plaintiff from the office. That the plaintiff was only given money due to him by one Banesh and that the plaintiff kept on saying that he was going to sue the company.

Having heard all the evidence in this matter I now make a finding of facts. On the 21st October, 2016 “an unknown Director” of Reddy Investment Limited at around 17:00 hours as he drove along the Great North road from 15 miles to Lusaka allegedly saw the plaintiff in unknown motor vehicle carrying two drums belonging to the company. It was submitted that the said Director followed the motor vehicle up to Manda Hill, Lusaka. The registration number of the motor vehicle were not identified by the Director and neither was the matter reported at any police station.

At around 18:00 hours on the material day the defendant phoned the plaintiff who told him he was at his home. Nonetheless, the defendant asked the plaintiff to report at the defendant’s office early the following day. On the 22nd October, 2016 the plaintiff reported for work. However, Banesh and Handyman asked the plaintiff about the alleged theft of the company drums even before the plaintiff reported at the defendant’s office. The defendant called the plaintiff to his office and while they were the two of them the defendant told the plaintiff that the “unknown Director” had seen him take two company drums to Lusaka. The plaintiff denied the allegations. After some exchange the defendant terminated the plaintiff’s employment and asked Banesh to pay the plaintiff his terminal benefits. In the circumstance, the plaintiff lost a monthly salary income of K1,000. The “an unknown Director” was not called as a witness either in this court or the court below.

There is CCTV on the premises and two guards manning the gate to the premises. There is no evidence on the record either from a video footage or the two guards that the two drums belonging to the company were indeed stolen and by the plaintiff.

The plaintiff sued the defendant in the local court alleging that the defendant insulted him for no apparent reason. These are the facts in brief.

The issues that fall for determination by this court as I see them are as follows:

1. Whether the plaintiff having sued the defendant in the local court for use of insulting language can now on appeal sustain an action for defamation of character; and
2. Whether Plaintiff having sued the company for defamation of character in the local court can proceed against the defendant in the subordinate court over the same claim.

Having identified the issues for determination, I now apply the law to the facts. Although the plaintiff in the court below sued the defendant for insults, the facts proved before this court disclose a civil wrong or tort of defamation. **Section 15 of the Subordinate Court Act, Chapter 28 of the Laws of Zambia** requires that Law and equity be administered concurrently and provides as follows:

“S15. In every civil cause or matter which shall come in dependence in a Subordinate Court, law and equity shall be administered concurrently; and a Subordinate Court, in the exercise of the jurisdiction vested in it by this Act, shall have power to grant, and shall grant, either absolutely or on such reasonable terms and conditions as shall seem just, all such remedies or reliefs whatsoever, interlocutory or final, as any of the parties thereto may appear to be entitled to, in respect of any and every legal or equitable claim or defence properly brought forward by them respectively, or which shall appear in such cause or matter; so that, as far as possible, all matters in controversy between the said parties respectively may be completely and finally determined, and all multiplicity of legal proceedings concerning any of such matters avoided; and, in all matters in which there is any conflict or variance

between the rules of equity and the rules of the common law with reference to the same matter, the rules of equity shall prevail.”

From the clear wording of section 15, this court is vested with power to grant all such remedies or reliefs whatsoever as any of the parties may appear to the court to be entitled to in respect of legal or equitable claim which shall appear in the cause so as to ensure finality in the determination of matters and for the avoidance of multiplicity of actions. In the premises there is nothing to stop this court on appeal from granting relief to the plaintiff who proves a tort of defamation against the defendant even if he originally had sued for use of insulting language in the local court.

A plaintiff in an action for defamation must prove three things:

- 1. that the words are defamatory;***
- 2. that they refer to the plaintiff; and***
- 3. they were maliciously published.***

It is *prima facie* defamatory for the defendant to say that the “an unknown Director” of the company saw the plaintiff steal two drums belonging to the company. Clearly the statement refer to the plaintiff and tend to lower the esteem or respect in which the plaintiff is held by his workmates. I am satisfied that the statement is untrue as there is no evidence to support the alleged theft of the two drums belonging to the company. Further, the defendant acted on hearsay statement by the “an unknown Director” who was not called as a witness either in this court or the court below.

In order for defamation to take effect the defamatory statement must be communicated to at least one person other than the plaintiff. Communication to the plaintiff himself is not sufficient for defamation is an injury to one’s reputation, and reputation is what other people think of a man, and not his own opinion of himself. There is no doubt that the defamatory statement was at least communicated to one person other than the plaintiff. There is evidence on

the record that when the plaintiff reported for work on the 22nd October, 2016 Banesh and Handyman his workmates asked him about the alleged theft. The defendant in this case confirmed that after he had terminated the plaintiff's employment Banesh paid him his terminal benefits.

The defamatory statement was malicious as it was made in bad faith in that the matter was false and the defendant published the same without having taken reasonable care to ascertain whether it was true or false.

The fact that the plaintiff has sued the company in the local court over the same wrong, that does no defeat the plaintiff from sustaining an action against the defendant before this court. The "an unknown Director" an agent of a company known as Reddy Investment Limited initiated the defamation of the plaintiff on the 21st October, 2016 and the same wrong was repeated by the defendant on the 22nd October, 2016. It follows therefore, that the plaintiff has a right of action against the company as well as the defendant. According to **HANDBOOK OF MEDIA LAWS IN ZAMBIA by Alfred W. Chanda and Mufalo Liswaniso, published by Zambia Independent Media Association**, at page 40:

"Every repetition of defamatory words is a fresh publication and creates a fresh cause of action."

The only question that remains to be resolved is: what damages should I award the plaintiff? In my view the conduct of the defendant deserves punishment. The defendant is wantonly cruel and insolent in that he acted in contumelious disregard of the plaintiff's rights. I therefore enter judgment in favour of the plaintiff in the sum of K16, 000.

I order costs to the ~~defendant~~ ^{plaintiff} to be agreed and in default be assessed by the Clerk of Court.

Delivered in open court this 8th day of June, 2017.

c (1) c 4 c

Humphrey Matuta Chitalu
RESIDENT MAGISTRATE

