

**SANELISO MKHARO**

**And**

**DUMISANI NDLOVU**

**And**

**BEATRICE BRUNETE NDLOVU-KHUMALO**

**And**

**KUKHANYA NDLOVU**

**Versus**

**CHIDO TARIRO JAKAZA**

IN THE HIGH COURT OF ZIMBABWE  
KABASA J  
BULAWAYO 24 FEBRUARY AND 27 MARCH 2025

**Civil Trial**

*A. Mhaka*, for the plaintiffs  
*W. Madzimbamuto*, for the defendant

**KABASA J:** The plaintiffs issued summons against the defendant claiming US\$500 000 in damages for defamation. This amount was apportioned at US\$125 000 for each of the four plaintiffs.

The plaintiffs' claim arises from a statement the defendant uttered at the plaintiffs' sister's funeral. The statement is not disputed but the defendant contends that the statement was made in her capacity as a family friend "sahwira", the content of which was truthful, fair and meant to counsel the plaintiffs. Such statement was neither wrongful nor defamatory.

The matter was referred to trial for determination of the following issues:-

1. Whether or not the defendant uttered and published the statement complained of by the plaintiffs.

2. Whether or not the said statement was defamatory of the plaintiffs, one or more of them.
3. Whether or not the plaintiffs, one or more of them suffered damages as a consequence of the defamation by the defendant.
4. Whether or not plaintiffs, one or more of them are entitled to the payment of damages as claimed or in any sum.
5. Whether or not the plaintiffs, one or more of them are entitled to the costs of suit in the matter.

The third plaintiff's case did not see the light of day as absolution from the instance was granted due to her failure to appear on the date of trial. The trial therefore proceeded with the remaining three plaintiffs.

## **THE EVIDENCE**

### **Saneliso Mkharo**

Saneliso is elder sister to the deceased, at whose funeral the words complained of were uttered. She testified to the effect that the defendant expressed gratitude for the good things that had been done for the deceased. She went on to state that deceased had died with "a painful heart" as her living conditions were dire.

The uttered statement, which was not disputed was produced and marked exhibit 1. The full text reads:-

"While in Bulawayo, what you did, you sowed a seed of love to your aunt to her point of death. Keep doing that. When I got to Marylin's sick bed and I asked where is Nkosa? It was said "Nkosa went back yesterday", going back you did well, you did well. I thank you my nephews/nieces, thank you.

What I want to say is that we do not have the time we think we have. My wish and my heart, God, if it were possible that Marylin would wake up soon, because if she was to say the things she said on her bed, it would sound as if I am exaggerating. The pain and grief that was on this girl was too much, testify on my behalf people. I said testify on my behalf (crowd response)" Amen.

You know what, I would ask on her bed. There are moments that define us as friends. You could see, I asked Marylin, does so and so know. I blasted Natasha at the hospital, I reprimanded her and you are not telling people. She said "Mama take the phone." I would read the chats and see that this one said this this one said that. In my mind I

thought only if people know or her relative doctor would want her to get better and take her to Harare.

Because at the hospital where she was and the situation that she was in, ask about the blanket she was using “It was dirty and rotten” (says a lady in the crowd). She was putting on that green uniform known as general. She said clean this for me, remove these. I said ah girl this is not your house, so I want to say to my relatives, if we love each other let us truly do so. Marilyn told me a lot I have nothing to hide. I have deliberately omitted some of the utterances but I will tell them to appropriate recipients. Gang, to the siblings that remain, if you want to enter heaven for sure, girls love one another, don’t fight one another, don’t insult each other and don’t build a reputation of scolding each other over money. You will leave it behind. I say it will be left behind.

It pains me a lot. Where is mai Juju? She said I did not know that Marilyn has relatives of this calibre, she cried, as the person who was taking care of Marilyn, she cried in the kitchen. I asked “what is it?” She said I am hurt. Marilyn was lying down at the rank, after being removed from doctor Mukove, she was unable to bring her back home from the rank, surely the type of person like Marilyn?

This “white person”, “This ‘white person’ slept at the rank “this British slept at the rank. All is vanity Marilyn. “It is well” She is in a better place Marilyn you are in a better place, down here on earth there are fake people. There are people who lie, they are liars, they are liars. I was anxious, that if I see flowers on her coffin. I will kick them away, because she doesn’t need them. I will throw them away, I am still anxious, forgive me I may end up doing wrong thing. Forgive me I may do the wrong thing.”

The foregoing statement caused this witness pain as it implied that they were bad. She felt embarrassed and her dignity was impaired. As a Christian she strives to do good. She loved the deceased who had her own grown up children, and she was a “grown up woman.” There were relatives, work colleagues, in-laws of their sons and daughters, church mates, neighbours and deceased’s friends who heard the words. The image she portrayed to the general public was not what these words portrayed.

In conclusion she reduced her claim from US\$125 000 to US\$50 000.

**Dumisani Ndlovu**

He is a brother to the deceased. He associated himself with the first witness’s evidence. He is a medical doctor by profession.

**Kukhanya Ndlovu**

She is a sister to the deceased. She is a pastor of the Evangelical Lutheran Church. She too associated herself with the first witness’s evidence.

**Michael Thabiso Ndlovu**

He is a son to the deceased. He described the relationship the deceased had with her siblings as good and that they loved each other. He disputed the portrayal of his mother having died a bitter person.

**Chido Tariro Jakaza**

She is the defendant, a friend to the deceased, known in the Shona language as “sahwira.” Her evidence was to the effect that she gave a speech at the deceased’s funeral in her capacity as a family friend. What she said was true and as deceased’s close friend she witnessed the life the deceased lived and the deceased used to confide in her. She had financial problems that saw her being locked out of her home due to rent arrears.

Her daughter, Natasha, took the deceased to Botswana to receive medical attention but brought her back on 22 December 2023. The deceased was admitted at Gweru General Hospital where she had to change into a stained green hospital uniform. Her situation was bad. She advised deceased’s daughter, Natasha, to tell deceased’s siblings how bad the deceased’s condition was. She was shown text messages where the siblings promised to pray for the deceased. The witness visited the deceased daily and none of the siblings came to visit until the deceased’s death on 27 December 2023. The deceased shared with her what was on her heart and asked her to share this after her death, including the fact that she felt neglected by her relatives.

At the deceased’s funeral she spoke as a family friend and was responsible for arranging all catering services. She was the one in charge. The deceased’s siblings knew who she was and that is why she was allowed to not only speak but to also be in charge of the funeral.

She did not speak out of malice but only said the truth as is expected of a family friend.

The issues to be determined in this matter are whether the words uttered were defamatory, entitling the plaintiffs to an award of damages and the quantum thereof.

**THE LAW**

In *Masuku v Goko & Anor*, HH 127-2006 PATEL J (as he then was) articulated what defamation is and the approach to adopt in such cases. The learned Judge had this to say:

“According to Feltoe: *A Guide to the Zimbabwean Law of Delict* (2<sup>nd</sup> ed) at p 33

“Defamation causes harm to reputation, that is, the estimation in which a person is held by others) (his good name and standing). A defamatory statement is one which is published and injures the person to whom it refers by lowering him in the estimation of reasonable, ordinary persons generally; it diminishes his esteem or standing in the eyes of ordinary members of the general public. It may also cause the target of the statement to be shunned or avoided or may expose him to hatred, ridicule or contempt. Finally, a person can be defamed by casting aspersions on his character, trade, business, profession or office.”

What is the test to determine whether a person has been defamed?

The learned Judge went on to cite BARTLETT J in *Chinamasa v Jongwe Printing and Publishing Company (Pvt) Ltd & Anor* 1994 (1) ZLR 133 (H), *Madhimba v Zimbabwe Newspapers* (1980) Ltd 1995 (1) ZLR 391 (H), which test was adopted in *Moyse & Ors v Mujuru* 1998 (2) ZLR (S), as:-

- “(a) First, consider whether the words as specified are capable of bearing the meaning attributed to them, that is, whether the defamatory meaning alleged is within the ordinary meaning of the words,
- (b) Secondly, assess whether that is the meaning according to which the words would probably be reasonably understood; and
- (c) Thirdly, decide whether the meaning identified is defamatory.”

It is important not to lose sight of the occasion at which the words complained of were uttered. The court will take judicial notice of the concept of “sahwira” in the African Culture. Such a person is given the licence to speak the truth, no matter how unpalatable it may be. A “sahwira” is given the licence to say that which many may want to say but are inhibited from saying. What is important however is that such licence is not meant to allow a “sahwira” to peddle lies and malign people’s characters.

What role does a “sahwira” play at funerals? Both counsel for the plaintiffs and defendant quoted from the authors, Munyoro *et al* in a journal titled “*The Role of sahwira (deceased friend), humour and jokes during funerals: - Evaluating the Dual Process Model of Grief Theory.*”

Whilst *Mr Mhaka* quoted the text which speaks to a sahwira’s role as one to uplift spirits of the bereaved by introducing moments of joy and ensuring the smooth flow of the funeral process aimed at alleviating the burden of grief, the same authors also state that:-

“Sahwira is a very important person during funerals ... His role is described in Budya Shona as “kuuraya bonga” which literally means “To kill a wild cat” and it implies that he would say the truth without fear of being victimised or attacked ... If the deceased owned evil powers or charms, the Sahwira tells all the people the degree of such evil power. He would say that the deceased should go with his bad things ... His role is still practiced in our modern world.”

It is therefore important to note that none of the plaintiffs could categorically deny that the defendant spoke the truth and became the deceased’s mouth-piece. The defendant was residing in Gweru where deceased resided and visited her in hospital from time of admission to the day she breathed her last. Her observations of the deceased’s state were not shown to be false. She had bought a night dress for her so the deceased could discard the old stained hospital uniform. The defendant had to repeatedly question the deceased’s daughter regarding communication with the deceased’s siblings hoping that the siblings would come through and alleviate the deceased’s plight.

The truth tends to sting and can hurt but that does not make it any less the truth. The deceased’s son who sought to suggest that what the defendant said was not true, revealed that he never saw his mother from the time she was ill in Botswana to the time she was brought back and admitted to Gweru General hospital. He had no idea as to what the deceased’s condition was and what the defendant witnessed and shared with the deceased.

The plaintiffs and the deceased’s son were not even aware of the duration of deceased’s stay in hospital. Asked on the issue of deceased wearing dirty clothes whilst in hospital, the first plaintiff curiously responded:-

“Where do I come in on that?”

Earlier on this same witness had said the deceased had her own children and she was a “grown woman”, suggesting that it was not this witness’s responsibility to provide for the deceased at her hour of need. It may be correct that the siblings had no legal obligation to provide for their ailing sister but they should also not take exception to the family friend stating that fact.

None of the plaintiffs tendered evidence to controvert the deceased’s description of the deceased’s situation. The second plaintiff candidly, to his credit, admitted that he had tendered no evidence to show that the defendant was lying when she spoke at the deceased’s funeral.

In *Gurajena v Chiyangwa* HH 559-23 TSANGA J dismissed an unopposed claim for defamation damages making the important observation that:-

“Truth and falsity are the contending assertions in defamation actions ... The assessment of damages comes in where the court is satisfied that indeed there were defamatory statements made against a plaintiff, which were published and were false. They must have also been made with malice and financial loss must have been suffered.”

The learned Judge went on to say:-

“In the absence of the vital information on the falsity of the statements, I have no choice but to dismiss the plaintiff’s claim as in my view he has failed to show the falsity of the statements even on a simple balance of possibilities.”

In *Mushunje v Zimbabwe Newspapers* (1980) Ltd HH 47-17 CHAREWA J also made the point that, to constitute defamation, the statement must be false and must be made to a third person other than the defamed.

In *Mahere v Gappah* HH 367-24, the injurious statements made against the plaintiff were false and obviously said out of malice. The plaintiff therefore succeeded in her claim for damages, albeit, at a reduced amount to that claimed.

Counsel for the plaintiffs correctly submitted that every person has a right to protection of their dignity as enshrined in the Constitution of Zimbabwe, Act 1 of 2013.

Where a person peddles lies against another in a manner that hurts their reputation and social standing, a case for defamation damages would be made, as was the case in the cases cited herein.

I am unable to hold that the plaintiffs were defamed. The defendant’s statement was not shown to be false nor was it shown to have been uttered with malice.

The plaintiffs failed to show the falsity of the statement. This case smacks of wounded pride but ought not to have culminated in a civil suit.

That said however, a case for punitive costs has not been made. Costs are in the discretion of the court. I find nothing calling for censure to warrant an award of costs at a punitive scale.

In the result I make the following order:-

1. Absolution from the instance is granted against the third plaintiff.
2. The first, second and fourth plaintiffs' claim be and is hereby dismissed.
3. The plaintiffs shall pay costs at the ordinary scale, jointly and severally, the one paying, the others to be absolved.

*Mhaka Attorneys*, plaintiffs' legal practitioners  
*Kajokoto and Company*, defendant's legal practitioners