

WELLINGTON NONDO

vs

MR. MBEVE

and

MRS. E. MBEVE

HIGH COURT OF ZIMBABWE

BLACKIE J

HARARE, 25 February and 24 April 2002

Mr C. Warara for the Plaintiff

The defendants in default

BLACKIE J: The plaintiff is the district manager, Chitungwiza, for the Zimbabwe Electricity Supply Commission. The defendants are husband and wife. They own and manage the Kombari Bottle Store at the Zengeza 2 Shopping Center in Chitungwiza.

On 14th March 2000, the defendants jointly wrote and signed a letter, headed Electricity Sabotage, which they subsequently sent to the members of the ZESA Board, the Chief Executive and Customer Services Director of ZESA, the President's Office –the Department of Energy & Transport - and the Chairman of the Committee for Parastatals in the Parliament of Zimbabwe. The letter stated that the plaintiff owned a bottle store next to theirs and that, in broad terms, he was using and abusing his position with ZESA to sabotage their business and promote his own. They alleged that he used his ZESA vehicle to supply his own bottle store and to report them to the police for imaginary infringements of the law. He unjustifiably cut off their electricity and deliberately frustrated their attempts to become reconnected. The plaintiff, they concluded, was 'notoriously undisciplined' and a 'total psychopath, who should ...be taken to a mental and not a management school. Surely, ZESA should do us proud without such madness'.

In this action the plaintiff sues the defendants jointly for defamation and claims \$250 000 damages. The allegations he says are completely untrue and defamatory and have caused him great distress and professional embarrassment. In their plea the defendants admit that the letter was written and sent by them as alleged but deny that it is defamatory and plead truth and justification for the allegations made by them.

When the matter came to trial, the defendants were in default. The plaintiff gave evidence on his own behalf. He denied the truth of all the allegations made by the defendants and stressed the personal distress and professional embarrassment that the

allegations had caused to him. He gave his evidence well and in a quiet and dignified manner. There was nothing in the way in which he gave his evidence to suggest that he exaggerated the distress and embarrassment that the defendants' allegations caused him. He admitted frankly that as far as his employers were concerned, the matter had been dealt with and resolved in discussion with his superiors, who accepted his version of events. Neither his career nor his prospects appear to have been affected by the allegations made by the defendants.

Notwithstanding the fact the fact that the plaintiff has fortunately not suffered any material or professional damage as a result of the allegations made by the defendants, the allegations made by them, which on the evidence before me were baseless, were very serious – abuse of office, corrupt dealing with a competitor and serious mental problems in the plaintiff. They are clearly defamatory. The allegations were circulated to people who had direct and indirect influence and power over the plaintiff's professional life. They were obviously circulated with the intention of having the plaintiff removed from his position with ZESA at Chitungwiza and possibly even dismissed from ZESA. Further, the defendants have made no effort to withdraw or apologise for their allegations. They defended their claims to the last minute and then, when the opportunity came for them to justify them publicly in court, they failed to appear.

I have been referred to a number of cases by the plaintiff's counsel. None of these cases (through no fault on the part of counsel) is directly relevant to the issue before me. In determining the quantum of damages to be awarded to the plaintiff for this defamation, I have taken into account the seriousness of the allegations, the fact that they are untrue, the extent of their circulation, to whom they were circulated and with what intention. I have also taken into account that defendants conduct in opposing the plaintiff's claim that the allegations were defamatory until the matter came to court and that they then failed to appear to justify their claims. I have also taken in to account the extent to which the Zimbabwe currency has devalued since the cases quoted to me were decided.

In the result the plaintiff is awarded damages in the sum of \$35 000 together with the costs of this action.

Warara & Associates, plaintiff's legal practitioners

Messrs Mukonoweshuro & Partners, defendant's legal practitioners.