

CEDRIC STEELE
versus
EDWARD HAMADZIRIPI CHIPOPE
and
PATRICK MADZIMA

HIGH COURT OF ZIMBABWE
MAKONI J
HARARE, 3 March 2010 and 19 August 2010

Unopposed Application

E T Moyo, for the plaintiff
No appearance for the defendants

MAKONI J: The plaintiff issued summons out of this court claiming damages in the sum of \$100 000-00, interest at the prescribed rate from date of issue of summons to date of payment and costs of suit.

The basis of the claim is that the plaintiff, as a representative of R.C.L.I (Pvt) Ltd (“the company”) and the defendants, entered into an agreement of sale whereby the company sold to the defendants a night club. The defendants failed to meet the terms of the agreement. The parties then entered into another agreement which extended the time within which the defendants were to pay the deposit. The agreement had a clause to the effect that if the defendants failed to meet the terms of the agreement, any amount paid as deposit will be forfeited by the seller. Again the defendants, after having paid a deposit, failed to pay the balance of the purchase price. The company then cancelled the agreement and forfeited the deposit paid by the defendant.

The night club was operated from rented premises. The defendants had also entered into a lease agreement with the landlord Mickeys Investments (Pvt) Ltd as represented by Mr Ranchord. The lease agreement was also cancelled as the defendants failed to pay the agreed rentals.

The defendants then approached Mr Ranchord and uttered words to the effect that the plaintiff was a fraudster and had cheated them out of a deal. They also uttered the same words to several police officers which led to the plaintiff being summoned on 29 June 2010 by

sergeant Singini, and sergeant Maringamoyo and on 7 July 2010 by sergeant Mushininga. The plaintiff was cleared and no criminal proceedings were instituted.

It is the plaintiff's case that the words uttered were defamatory. The words was i.e. fraudster and a cheat would to any ordinary person mean that the plaintiff was a dishonest business man who was a swindler and had tricked the defendants out of their money. The plaintiff also suffered embarrassment by reporting to the police.

The plaintiff's evidence, went were unchallenged is that he is a well known businessman in the entertainment industry. He had always maintained a good business reputation. The defendants' utterances were a direct attack on his honour. No retraction or apology has been made by the defendants.

The fact that they uttered the words fraudster and a cheater to his landlord is a clear indication that they meant to tarnish his credibility with the landlord in order to diminish his good standing in the landlord's opinion.

The defendants did not defend the matter. The plaintiff's claim that the words uttered are defamatory has not been challenged. The words were uttered to the landlord and to the police. It will be presumed that the publication was with the intention to injure. See *Tekere v Zimbabwe Newspapers (1990) Ltd & Anor* 1986 (1) SA 275 (H) at 278 H-279 A.

This leaves the issue of determination of the quantum of damages. The purpose of an award of damages in a defamation suit has been defined in a number of cases within and outside our jurisdiction. I can do no better than quote ROBINSON J in *Shamuyari ra v Zimbabwe Newspapers (1980)Ltd & Anor* 1994 (1) ZLR 443 (H) at 503 A-D:

“The difficulty in assessing damages is expressed thus in Amerasinghe's Defamation in the Law of South Africa and Ceylon

‘The assessment of damages for injury to feelings stemming from the loss of an abstraction such as reputation is not easy, since it involves the placing of a money value upon abstractions’.

(b) LORD HAILSHAM put it quaintly when, in *Cassell & Co Ltd v Broome & Anor* (1972) 1 All ER 801 (HL) at 825e (1972) AC 1027 at 1072 G, he said that “the whole process of assessing damages where they are ‘at large’ is essentially a matter of impression and not addition”.

(c) In *Argas P & P Co Ltd v Inkatha Freedom Party* 1992 (3) SA 579 (A) at 590 E, GROSSKOPF JA, when delivering the judgment of the Appellate Division of South Africa, said:

“Our Courts have not been generous in their awards for *solatia*. An action for defamation has been seen as the method whereby a plaintiff vindicates his reputation and not as a road to riches”.

The factors that I will take into account in assessing damages in the matter are:

- A. The content of the article which includes the defamatory matter.
- B. The nature and extent of the publication, including the aspect of republication of the defamatory matter.
- C. The plaintiff’s standing, that is to say, his reputation, character and status.
- D. The nature of the defamation.
- E. The probable consequences of the defamation.
- F. The conduct of the defendants from the time the defamatory matter was published up to the time of judgment, including
 - (i) their reliance on the persistence in a plea of justification;
 - (ii) the question of any malice on their part;
 - (iii) the question of any retraction of and apology for the publication of the defamatory matter
- G. The recklessness of the publication.
- H. Comparable awards of damages in other defamation suits and the declining value of money.

See *Shamuyarira’s case supra*.

The words uttered by the defendants of the plaintiff point him in bad light taking into account that he is a well known businessman. The words were blatant lies as the plaintiff was cleared both in civil and criminal courts. The content therefore aggravates the damages.

The defamatory utterances were published to the plaintiff’s landlord and to the police. The publication was not very wide.

The plaintiff by the nature of his business has to uphold his character, credibility, honesty, good business ethics. The defendants’ utterances were meant to tarnish his image in the eyes of his landlord and ultimately his business credibility. In my view, the plaintiff has not established the extent to which the words had tarnished his image in the eyes of the landlord and other business associates. It would have assisted if he had led evidence from the landlord and the other business associates. This mitigates the damages.

The defendants have not apologized to the plaintiff despite the fact that the plaintiff was cleared in both the civil and criminal courts.

Comparable awards in other defamatory suits in our jurisdiction will not be of any assistance as they were not awarded in foreign currency. There is also a danger of relying on awards in other jurisdictions as our economies are so different.

Taking into account all the factors outlined above and the purpose of awarding defamation damages, I estimate that an award of US500-00 is appropriate.

In the result I make the following order:

1. The first and second defendant, jointly and severally one paying the other to be absolved, pay to the plaintiff the sum of US500-00 plus interest at the prescribed rate from date of judgment to date of full payment.
2. The first and second defendants shall pay the plaintiff's costs of suit.

Scanlen & Holderness, plaintiff's legal practitioners