

SHADRECK MUREHWA  
versus  
STEPHEN NYAMBUYA

HIGH COURT OF ZIMBABWE  
KUDYA J  
HARARE 17 and 18 May and 2 June 2010

**CIVIL TRIAL**

*J Dondo*, for the plaintiff  
*S J Chihambakwe*, for the defendant

KUDYA J: This is a contested action in which the plaintiff seeks damages for defamation in the sum of US\$20 000-00, interest thereon from 21 July 2009, being the date on which summons was issued, to the date of payment in full and costs of suit.

The action arose from the words allegedly uttered by the defendant at the two private meetings of the Mazoe Mansions Owners' Association held at the Mazoe Mansions, a block of flats in Harare, on 18 and 22 June 2009.

The plaintiff called the evidence of three witnesses and produced eight documentary exhibits. The defendant relied on the evidence of two witnesses and did not produce any exhibits. It was common cause that the plaintiff was the owner of Flat 208 while the defendant was a director of Mazoe Mansions (Pvt) Ltd which owned Flat 305 at the Mazoe Mansions. The owners formed the Mazoe Mansions Owners Association; one of whose objects was to collect levies from each of the sixty owners of the Mazoe Mansions. These levies catered for the payment of utility charges levied by the City of Harare and the Zimbabwe National Water Authority (ZINWA), and the wages, uniforms and transport allowances of four security guards and two caretakers who were employed by the association.

The plaintiff was the chairman of the association from 2001 until his dethronement on 22 June 2009. Exhibit 1 and 2, which were produced by the plaintiff and not challenged by the defendant showed that the association, under the chairmanship of the plaintiff, sued the defendant and his wife in the Magistrates' court in case number 35739/2002 for outstanding levies. A default judgment was entered against the defendant and his wife on 18 February 2003 and a warrant of execution against property was issued on 16 December 2003. The

plaintiff personally came to know the defendant at the meeting he called on behalf of his committee on 18 June 2009. The purpose of the meeting was to seek finance to fund the shortfall between high utility bills and low levies.

It is pertinent at this stage that I set out the two issues that were referred to trial at the pre trial conference that was held on 15 March 2010. These were

- :
1. Whether the defendant uttered the words complained of ; and
  2. The quantum of damages

The bulk of the evidence led by either party centered on the events that took place on 18 and 22 June 2009. There were some aspects that were common cause just as there were others that were in dispute. The onus to establish what transpired lies with the plaintiff. His evidence of the events of 18 June 2009 is captured in exh 4, a document he compiled entitled Mazoe Mansions Owners' Association Committee Meeting while those of 22 June 2009 are crystallized in exh 5, a document with a similar title. He alleged that he compiled these documents contemporaneously at each meeting. In his oral testimony he steered a closer course to these two documents.

The plaintiff estimated that more than 20 owners and tenants attended the first meeting. He called the meeting to order at 6:30 pm and set the agenda that had been circulated with the notice of meeting. He set out the purpose of the meeting. He was stopped in midstream by the defendant. The defendant entered into a dialogue with him with the others in quiet attention. The dialogue is reproduced in this judgment with the word "P" representing the plaintiff and "D" representing the defendant.

D: We are not here to hear that; we are here because funds are missing! Are you the one who went to the City of Harare to pay the bills?

P: Yes

D: Where are the receipts?

P: On the notice board

D: Did you bring the books of accounts?

P: No

D: (Turning to the crowd) we are here because our funds are being misappropriated (in Shona mari dzedu dziri kudyiwa), our funds are not getting to the City of Harare; thats

- why we are having problems! May be you did not come prepared for us, if not bring the books of accounts; this meeting is over. At the next meeting we want to see all the receipts he is lying about.
- P: But everyone is free to see the books of accounts at any time. This meeting is in order for us to discuss the way forward on the City of Harare bills.
- D: I want someone to go to the City of Harare to get a print out so that at the next meeting we show you that our funds are not getting to the City of Harare. How much did you pay to the City of Harare?
- P: (supplied him the figures) I paid US\$ 1 500-00 and this month June US\$200-00. Other amounts I still remember, going back to previous months are US\$500-00, US\$300 and another US\$300-00
- D: So you paid US\$1 500-00
- P: Yes
- D: You paid US\$200-00
- P: Yes
- D: You paid US\$500-00 and US\$300-00
- P: Yes
- D: There is no transparency and accountability in this chap. At the next meeting we must choose people who are honest to represent us.

Thereafter the defendant adjourned the meeting at 7:15 pm to 22 June 2009. Exhibit 5 indicates that the meeting was still being held under the auspices of the committee of the association chaired by the plaintiff. It started at 6:40 pm and ended at 7:20 pm. The plaintiff laid the accounts prepared by the association's accountant on the table together with all the books of accounts for inspection. The attendance was slightly higher than at the previous meeting. His assurances that the association accounts were above board and invitation to the attendees to inspect them were rudely dismissed by the defendant who with the crowd's approval requested the late Mrs Chigwedere who had volunteered to obtain a print out from the City of Harare to give her findings. In his evidence in chief the plaintiff stated that the figures given by Mrs Chigwedere from the print out corresponded with the ones he had supplied at the first meeting. In exh 5 he added that she was advised that the City of Harare wanted to disconnect their water supply because the association had failed to make payments

for a period of three months. Her report elicited a groundswell of disapproval from the crowd which was broken by the defendant. He alleged that the defendant uttered the following words:

“Okay! Okay! Now we know what was going on and we need to find a way forward. We must find a new person who is honest to represent us. The current chairman has failed us. We must hire auditors to audit the books of accounts. We are not going to waste our time here to go through these books. Let us have a new committee in place today. The new team will give us a way forward.”

Exhibit 5 indicates as did the plaintiff in his oral testimony that thereafter a new committee was selected from volunteers who were present in violation of the association’s constitution. His protestations were contemptuously dismissed by the defendant. The new committee was tasked by the defendant with the approval of the crowd to appoint auditors to investigate the levies account and an estate agent to manage the water account.

The plaintiff further averred that an audit report was produced by the auditors appointed by the illegal committee which erroneously showed that the levies had not been properly appropriated to the various accounts. The audit relied on wrong information. It based total receipts on 65 units instead of 60 units; it wrongly indicated that the plaintiff and the accountant had personally been paid transport allowances when in reality they had received the funds for transmission to the six employees of the association. The auditors did not interview either the plaintiff or his former accountant. It did not indicate that though the levies were collected in US dollars from November 2008, the water bill paid to ZINWA had been paid in advance in local currency to February 2009. It wrongly assumed that all the members of the association were up to date in their payment of levies when an appreciable number were in arrears.

He understood the words uttered by the defendant during the first meeting to mean that he was a thief; a dishonest person who was also a liar. He understood the words uttered in the second meeting to mean he was a dishonest and an incompetent person who was not fit to hold office in the association. He was pained by these false accusations which are refuted firstly by exh 6, the print out from the City of Harare as confirmed by exh 7, the June 2009 bill from the City of Harare that showed that he paid US\$200-00 on 1 June and US\$1 500-00 on 9 June 2009, and exh 8, the accounts prepared by the accountant of his committee and which were circulated to all members before the second meeting. These documents demonstrate that he told the truth on the two dates in question about the appropriations made of the levied funds.

Exhibit 6 was obtained from the City of Harare on 4 March 2010. It showed that the plaintiff made cash payments of US\$10-00 on 18 February 2009; US\$100-00 on 20 March 2009; US\$300-00 on 7 May 2009; US\$300-00 on 15 May 2009 and US\$500-00 on 1 June 2009. He had made a total payment of US\$ 210-00 before the first meeting. Exhibit 7, the water bill from the City of Harare for June 2009 showed that he paid a total of US\$ 700-00 before the date of the first meeting. These were for the ZINWA water account which was taken over by the City of Harare. Exhibit 8 was an income and expenditure account prepared by the accountant John Lesley King which demonstrated that the levies were all accounted for.

He caused his legal practitioners to write exh 3 on 2 July 2009 seeking a retraction and an apology from the defendant, who however ignored his request. He averred that all the people who attended the meetings viewed him as a thief, liar and an incompetent person. Before these meetings he was held in high esteem by both owners and tenants as shown by his election every year to the position of chairman since 2001. Some of the tenants who used to greet him in the corridors and grounds of the flats now scurry for cover, avoid him and do not greet him any more. He was humiliated, pained, troubled and traumatized by the false allegations to the extent that as long as he lives he will never forget the events of these two days.

He was subjected to protracted and searching cross examination. He maintained his evidence in chief as regards the incorrectness of the audit report. He said it was instigated by the defendant and approved by the crowd without a quorum. The audit report was given to Nyasha Mutyambizi and residents were asked to get it from her.

He stuck to his version on the dialogue carried out between the defendant and him. In his evidence in chief he said during the first meeting murmurs were raised after the defendant raised the issue of misappropriated funds but no pandemonium broke out. During the second meeting the defendant led the crowd to take the action plan that he suggested. His record of events as contained in the exhibits showed that there was increased participation of the crowd. He accepted that he signed an affidavit in an application brought by the dethroned committee against the new committee in this court in case number HC 2568/10. He confirmed the accuracy of the main affidavit of Tawanda Shumba. Shumba deposed that at each of the two meetings in issue the meeting was hijacked by certain individuals to follow a certain agenda and without notice allegations were raised that elected members had misappropriated funds and levies and bills due to the City of Harare and ZINWA had not been settled. The affidavit

averred that allegations were raised against elected members who were unprocedurally dismissed. He retorted that in the context of that application those averments which he confirmed in his affidavit were correct. He referred to exh(s) 4 and 5 as the minutes of the two meetings in question.

He was adamant that the defendant accused him of theft and misappropriation of funds. No water was cut off or had been cut off. Other residents did not ask questions. He denied that the print out collected by Mrs Chigwedere showed that no payments had been made. He maintained that some people who used to greet him as a friend were avoiding him as a result of the unfounded accusations.

The second witness called by the plaintiff was Tapiwa Moswa. His version of the events of 18 June 2009 was to all intents and purposes the same as the plaintiff's. He also confirmed the plaintiff's testimony on the events of 22 June 2009. He stated that people at the block of flats used to believe in the plaintiff but due to the accusations in question his esteem had diminished. His testimony was unscathed by the innocuous questions that were put to him in cross examination.

The last witness called by the plaintiff was John Lesley King. He was the accountant for the association. He was close to the plaintiff whom he had worked with for close to ten years and held his professionalism as their chairman in high regard. His version of the events of 18 June 2009 was the same as that of the plaintiff and Tapiwa Moswa. He clarified that the payments to the City of Harare were for rates while those for water were paid in the sum of US\$1 700-00. He understood the words uttered by the defendant as a personal attack on the plaintiff that he had misappropriated the levies. He was surprised by the virulent attack on the plaintiff who was merely the chairman. He would have expected any attack on the misuse of funds to have been directed at him as he was the one who collected the levies and accounted for their disbursement. When he brought the updated accounts on 22 June 2009, which he had distributed under the doors of residents before the latter meeting, no one looked at them. The impression given by the defendant at the latter meeting was that funds were missing. He said the accusations of theft leveled by the defendant against the plaintiff lowered his standing amongst the crowd.

The thrust of the cross examination was designed to undermine his truthfulness in the light of Shumba's affidavit which the witness confirmed in case number 2568/10. He stated that Shumba's statement was substantially true. He confirmed that the plaintiff wrote exh 4

and 5 while standing and that he was in the habit of writing notes even though he was the chairman. He considered exh(s) 4 and 5 an accurate record of the events that took place on these two days.

It seems to me that the plaintiff and his witnesses were credible witnesses. They narrated the events that transpired on the two days in question. Their testimonies reinforced each other. I do not find that the evidence of the plaintiff and King contradicted that of Tawanda Shumba. The context and emphasis in Tawanda Shumba's affidavit and the supporting affidavits of the plaintiff and King were different from those pertaining in the present matter. Tawanda Shumba was dealing with the unprocedural removal of the plaintiff's committee. He was not concerned with the part played by the defendant who was not a party in case number HC 2568/10. The affidavit is concise and brief on the events of the two days in question. It does not seek to record in detail what transpired. That it does not deal with the part played by the defendant is demonstrated by the admissions made by the defendant as to the part he played in asking questions to the plaintiff, the contents of which are missing in the affidavit. The contents of Shumba's affidavit do not undermine the credibility of both the plaintiff and King. Their stories were corroborated by Tapiwa Moswa whose version was not seriously challenged in cross examination.

The defendant's version was that he attended both meetings as the owner of flat 305. The agenda was to discuss an increase in levies in order to prevent water disconnections by the City of Harare. The attendees wanted to know if bills had been paid from the levies that had been collected. He arrived when there was pandemonium and he brought order by proposing a resolution which would establish whether the City had been paid. Mrs Chigwedere agreed to go and collect the necessary print out. He paid US\$5-00 to facilitate the production of the print out. He denied accusing the plaintiff of theft but admitted that he talked to him as chairman and not in his personal capacity. On 22 June 2009 Mrs Chigwedere brought the print out, which showed that the City of Harare was owed some money as very little had been paid. A new committee was chosen and an estate agent was to be approached to administer the water account. He stated that he declined to apologize to the defendant as he had not defamed him in any way.

Under cross examination he denied that he harbored a grudge against the plaintiff for instituting on behalf of the association the 2002 action. The 35 people in attendance were angrily shouting at the plaintiff for the steep increase he suggested of levies from US\$40-00 to

US\$140-00 per month. He could not answer the question why the plaintiff would sue him if he steered the meeting away from pandemonium. He was evasive to the question whether he believed money had been misappropriated. He denied leading the two meetings in attacking the plaintiff but accepted that he suggested suitable resolutions to the problem that were adopted by the meetings. He did not recall seeing the books of accounts on 22 June.

The defendant was economical with the truth. He was evasive and argumentative under cross examination. He was a poor witness.

He called the evidence of Nyasha Eunice Mutyambizi, a final year law student at the University of Zimbabwe who resides at the block of flats in question. She attended both meetings. The purpose of the first meeting was to discuss the increase of levies from US\$40-00 to US\$170-00 per month to forestall water disconnections by the City of Harare which demanded payment of close to US\$10 000-00. Thirty five people were in attendance. She confirmed the plaintiff's minutes that the meeting started at 6:30 pm. The plaintiff explained the agenda and what was required of the meeting. The attendees listened in silence. In her version she used the term "the people asked" without identifying who asked which question. The questions that she attributed to "the people" were similar to those attributed to the defendant by the plaintiff and his witnesses. She averred that when the plaintiff failed to produce proof of payment pandemonium broke out which triggered the intervention of the defendant. The defendant calmed the tempestuous crowd by asking probing questions. The examples she gave under cross examination of these questions were similar to those attributed to the defendant by the plaintiff and his witnesses. The meeting ended after Mrs Chigwedere volunteered to go and collect the print out from the City of Harare. The defendant did not accuse the plaintiff of misappropriation of funds. He did not do so even on 22 June after the print out brought by Mrs Chigwedere showed that no payments had been made between January and June 2009. Her version of the contents of the print out was at variance with that of the defendant. It was also at variance with the version of the plaintiff. She was also the only witnesses who averred that the women, whom she could not identify, who were at the meeting then accused the plaintiff of misappropriating the levies. The meeting ended with the appointment of an interim committee made up of volunteers after the plaintiff's committee was dissolved. She became the secretary of the new committee. She confirmed King's version that he prepared exh 8 for the meeting of 22 June. She saw exh 8 under her door before the second meeting was held. She also stated that the audit sanctioned by her committee was inconclusive

on the question whether the levies were misappropriated. She did not confirm the suggestion put to the plaintiff during cross examination that a witness would be called to show that the plaintiff misappropriated funds.

She was cross examined. The defendant telephoned her some weeks after the second meeting. He asked her on behalf of the estate agent who the members of the new committee were. After he received summons he asked her for the minutes of the two meetings. She had the print out collected by Mrs Chigwedere in her file. She did not produce it. The audit report commissioned by her committee showed that by June 2009 US\$1 700-00 had been paid for water and US\$1 325-00 for rates; figures partly confirmed by exh 6 and 7. She admitted for the first time during cross examination that there was a question and answer session between the defendant and the plaintiff at the first meeting. This was contrary to her evidence in chief where she averred that she did not identify the many people who questioned the plaintiff. Her version was also contrary to the defendant's averment that he was not involved in a dialogue with the plaintiff. For a person who was at the meeting she was unwilling to fully disclose the part played by the defendant in leading the rebellion against the plaintiff at both meetings. She failed to identify the names of the residents who took a more prominent role in questioning the plaintiff at these meetings. She confirmed that the general feeling at the block of flats was that the plaintiff was removed from office for misappropriating funds. She stated that contrary to what the plaintiff alleged, he saw the files and accounts that were tabled by the plaintiff at the second meeting.

The plaintiff gave his evidence in a quiet and dignified manner. He was not shaken in cross examination. His testimony was supported by Tapiwa Moswa and John Lesley King. I found both Mr Moswa and Mr King as honest, candid and forthright witnesses who did not exaggerate. The exhibits that were produced confirmed that he told the truth. His version was also confirmed by the defendant's witness Nyasha Mutyambizi. The probabilities also favour his version. The residents did not wish to pay the high utility fees levied by the municipality. They found a willing spokesperson in the defendant who sought an accounting of the funds that had been paid by his fellow members. He adopted an aggressive attitude towards the plaintiff which was designed to show that he had personally misappropriated the funds. That he held that underlying belief is clear from the accusatorial tenor in his questions and the suggestions by his counsel in cross examining the plaintiff that he had misappropriated the levies.

The defendant was a poor witness. He was not able to give a straightforward story. He was argumentative and evasive during cross examination. He falsely sought to portray himself as the knight in shining armor who rescued the plaintiff from an irate crowd of residents. The defendant and his witness gave contradictory versions on the core issue of the words uttered by the defendant. The defendant denied engaging in a question and answer session with the plaintiff; a posture adopted by his defence witness in her evidence in chief. She however cracked under cross examination and reluctantly gave a glimpse of the overarching role played by the defendant during the two meetings in question. I formed the distinct impression that she gave a contrived version of events in her evidence. I therefore accept the evidence of the plaintiff and his witnesses where it differs with that of the defendant and his witness.

I find that the defendant uttered the words that maligned the plaintiff as a thief; a liar, a dishonest and an incompetent person. Counsel were agreed that these words are intrinsically defamatory.

The next issue for determination is the measure of damages due to the plaintiff. Mr *Dondo*, for the plaintiff, did not refer to any useful cases in this jurisdiction or beyond that may serve as useful beacons in estimating the measure of damages due to the plaintiff. The only case he cited was *Zimbabwe Newspapers (1980) Ltd & Anor v Bloch* 1997 (1) ZLR 473 (S). Mr *Chihambakwe*, for the defendant, did not refer to any case that would assist me in estimating the appropriate damages due to the plaintiff. Rather he prayed for the dismissal of the plaintiff's claim on the basis that he had failed to prove his damages.

The factors that a court has regard to in estimating defamation damages were set out in by ROBINSON J in *Shamuyarira v Zimbabwe Newspapers (1980) Ltd & Anor* 1994 (1) ZLR 445 (H) 503E – H which was followed with approval in *Mnangagwa v Nyarota & Anor* HH 153-04 at pp 8 - 9 of the cyclostyled judgment and *Mugadziwa v Shoko* HH 34-06. The eight factors are:

- (a) the content of the article which includes the defamatory matter;
- (b) the nature and extent of the publication;
- (c) the plaintiff's standing, that is to say his reputation, character and status;
- (d) the probable consequences of the defamation;
- (e) the conduct of the defendants from the time the defamatory matter was published up to the time of judgment including:

- (i) their reliance on and persistence in a plea of justification,
  - (ii) the question of any motive on their part,
  - (iii) the question of any retraction or apology for the publication of the defamatory matter;
- (f) the recklessness of the publication;
- (g) comparable awards of damages in other defamation suits and the declining value of money.

These factors have often been applied to written articles. They, however, can be applied with suitable changes to oral utterances. In *casu* the defamatory words portrayed the plaintiff as a thief; a dishonest person, a liar and an incompetent leader who was not fit to hold the chairmanship of the association. The words uttered lowered the dignity and esteem with which the plaintiff was held at the block of flats in question by all those who were present. The plaintiff alluded to the pain he felt during the duration of both meetings. That pain still subsists because according to the plaintiff, Mr Moswa and Miss Mutyambizi, the generality of residents at the block of flats believe that the plaintiff was removed from office because he misappropriated their funds. The content is an aggravating feature. The injury to his reputation, character and status affected his standing amongst fellow members of the association and their immediate families. It did not spread to his workplace or affect his employment chances as he is a retired individual. The plaintiff did not demonstrate any other probable consequences of the defamation. The injury to his standing was limited to the membership and their close families, who appear to be the only people interested in the affairs of their association.

They were uttered at two private meetings of about thirty five residents and owners at a block of flats in connection with the affairs of their association. The publication was limited to those in attendance and their immediate families and would pale into insignificance when compared with that found in the *Bloch* case, *supra*, which was published in a newspaper with a wide circulation.

The conduct of the defendant from the time the words were uttered has aggravated the injury. He was given an opportunity to retract the words and render an apology. He refused to do so. Even during the trial he, against the weight of the evidence continued to protest his innocence. The defendant is a professional architect in his own right. He deliberately allowed

malice arising from an action initiated by the plaintiff in 2002 on behalf of the association against him and his wife to cloud his better judgment.

The above factors assist the court in arriving at a suitable award of damages. No comparable case was brought to my attention. In *Minister of Defence & Anor v Jackson* 1990 (2) ZLR 1 (SC) at 8E-F GUBBAY JA stated that:

- “(7) Awards must reflect the state of economic development and current economic conditions of the country. See *Mair's case, supra*, at 29H; *Sadomba v Unity Insurance Co Ltd & Anor* 1978 RLR 262 (G) at 270F; 1978 (3) SA 1094 (R) at 1097C. *Minister of Home Affairs v Allan S-76-86* (not yet reported) at p 12 of the cyclostyled copy. They should tend towards conservatism lest some injustice be done to the defendant. See *Bay Passenger Transport Ltd v Franzen* 1975 (1) SA 269 (A) at 274H.
- (8) For that reason, reference to awards made by the English and South African courts may be an inappropriate guide, since conditions in those jurisdictions, both political and economic, are so different”.

These views have been religiously followed in many cases involving the assessment of general damages. See *Hokonya & Anor v Chinyani & Ors* 1995 (1) ZLR 102 (HC) at 128B-C, *Zvobgo v Modus Publications (Pvt) Ltd* 1995 (2) ZLR 96 (HC) at 113G-H, *Chinamasa v Jongwe Printing & Publishing Co (Pvt) Ltd & Anor* 1994 (1) ZLR 133 (HC) at 170F and *Shamuyarira v Zimbabwe Newspapers (1980) Ltd & Anor* 1994 (1) ZLR 445 (HC) at 519F-G.

That these views apply in defamation cases was recognised by ROBINSON J in the *Chinamasa* case, *supra* at 170 F where he stated:

“I also take note of the comment at 8 E-F that awards should reflect the state of economic development and general economic conditions of the country and tend towards conservatism. I am aware that *Jackson v Minister of Defence* does not relate to defamation but to personal injuries. I am, however, of the view that those comments which I have quoted from GUBBAY JA (as he then was) are relevant in deciding the approach to damages in defamation matters as well”.

In making my estimation I am guided by the fact that Zimbabwe presently utilizes a multicurrency regime in which the American dollar and South African rand dominate. The purchasing power of these currencies has been distorted by Zimbabwe’s unique environment which necessitates the use of currencies over which it has no sovereign right of control over money supply growth but has to rely on export performance, grants, loans, remittances from Zimbabweans in the diaspora and direct foreign investment flows to accumulate these foreign

currencies. Both our monetary and fiscal authorities have minimal influence over the availability of these currencies. The cost of goods and services and the determination of wages and salaries are skewed by the low foreign currency pool available in the country. Thus while Zimbabwe predominantly uses the US\$ and ZAR our courts cannot award the amount of damages that are awarded in American and South African courts. The Gross Domestic Product of these economies is huge in comparison with Zimbabwe. These economies are able to absorb high awards which are unsustainable in Zimbabwe, hence the low and conservative awards routinely awarded by our courts.

The *Bloch* case *supra* is incomparable to the present matter. In that case Mr Bloch was awarded a total of \$85 000-00 in local currency. Between January 1996 and January 1997 the exchange rate between the local dollar and the United States dollar fell from \$9-00 to \$10-50. The award in the Bloch case was approved by the Supreme Court in May 1997. The figure in local currency was equivalent to approximately US\$8 000-00.

In *Maphosa v Sibanda* HB 40/2004 in which Maphosa sued the respondent for defamation for calling him an adulterer in the presence of his work-mates and employer and was awarded damages on 1 April 2004 in the sum of \$20 000-00 on appeal to the High Court. The exchange rate of the local currency to the US\$ was fixed at \$4 196-00 on 12 January 2004 and had fallen to \$5 730-00 by December 2004. The sum of \$20 000-00 was equivalent to approximately US\$5-00.

At the time *Mugadziwa, supra*, was awarded \$10 million on 15 March 2006, for defamation arising from the contents of a letter of misconduct written to public officials in the civil service, \$99 202 Zimbabwean dollars were equivalent to the US\$. The award was equivalent to US\$100-00. These comparisons merely serve as a guideline in the search for an award which takes into account the purchasing power of the US\$ locally which has been distorted by our peculiar operating economic environment. Our economic environment is characterized by an underperforming manufacturing base and weak exports. The reality at present is simply that the US\$ is not available in Zimbabwe in the quantities we would wish.

In my estimation the defamation of the plaintiff in the present case was greater in intensity than in both *Maphosa v Sibanda* and *Mugadziwa v Shoko, supra* but much less than in the *Bloch* case.

After assessing the factors outlined above, I estimate that the plaintiff is entitled to damages in the sum of US\$500-00.

Accordingly, it is ordered that:

The defendant shall pay the plaintiff;

- a) Defamation damages in the sum of US\$500-00 together with interest at the prescribed rate from 21 July 2009 to the date of full payment;
- b) Costs of suit.

*Chinamasa, Mudimu, Chinogwenya & Dondo*, plaintiff's legal practitioners  
*Chihambakwe, Mutizwa & Partners*, defendant's legal practitioners