

SAMUEL MAKARA  
versus  
ALOIS DZIKITI

HIGH COURT OF ZIMBABWE  
MATHONSI J  
HARARE 13 November 2013 & 27 November 2013

*P. Kawonde*, for the plaintiff  
*B. Maruva*, for the defendant

### **Civil Trial**

MATHONSI J: The plaintiff is currently the acting headmaster of Tsatsi High School in Domboshava but his homestead, where his wife still resides, (their children, the oldest of which is 25 with the youngest aged 10 years, having moved out or are attending school), is at Majuru line in Goromonzi. At the material time, he was the headmaster of Mkombami High School in Goromonzi, a post he was forced to vacate on 19 September 2011 following disturbances and accusations levelled against him.

The defendant is a peasant farmer residing at Chirima village in Goromonzi. At the material time, he was a parent and vice chairperson of the School Development Committee (“SDC”) which was part of the administrative structures of Mukombami High School where the plaintiff was the headmaster.

The plaintiff has sued the defendant for payment of the sum of US\$12 000-00 as defamation damages arising out of a letter dated 6 September 2010 authored by the defendant, addressed to the Provincial Education Director in Marondera which was copied to the District Education Officer, the Head Office in the Ministry of Education and the Member of Parliament, as well as a statement allegedly uttered by the defendant while addressing a meeting held at the school on 12 December 2010.

The plaintiff averred that to the extent that the letter stated of him that he was an unprofessional and unethical headmaster unfit to run a school and that he embezzled school funds, it was wrongful and defamatory of him. Further that it was intended and understood by the readers of it to mean that the plaintiff is a dishonest, unprofessional and unethical person who embezzled public funds.

He averred further that at a meeting of 500 villagers and parents held at Mukombami High School in December 2010, the defendant had read the contents of his letter of 6 September 2010 and went on to make a statement in Shona language that:

“Pano pane homwe yakabooka”

Which he translated to mean that “there is a thief stealing funds here”, resulting in the plaintiff being jeered by the crowd. The said words are, in the context in which they were uttered, wrongful and defamatory of the plaintiff in that they were intended and were understood by the villagers to mean that he is dishonest, unprofessional, unethical and that he embezzled public funds.

In this plea, while admitting having authored the letter of 6 September 2010 and also insisting that the plaintiff had indeed misused school funds, the defendant denied that the letter complained of was defamatory of the plaintiff. While admitting having uttered the words complained of at the meeting held in December 2010, the defendant denied that they were directed at the plaintiff, that they were intended to mean that the person to whom they were directed was a thief and that all that they meant was that money was not being used for implementation projects but was being diverted to less important projects.

The issues for determination at the trial were identified by the parties at a pretrial conference held before a Judge as follows:

1. Whether the defendant’s letter of 6 September 2010 addressed to the Provincial Education Department was wrongful and defamatory of the plaintiff.
2. Whether the words uttered by the defendant in December 2010 were directed at the plaintiff and if so, whether they were wrongful and defamatory of the plaintiff.
3. The quantum of damages, if any, suffered by the plaintiff.

The plaintiff testified that he completed training as a teacher at Belvedere Teachers College in 1985 and held teaching positions at various schools before landing the position of headmaster at Mukombami High School in 2003. He remained in that position until his unceremonious dismissal on 19 September 2011. As a member of the local community, cherishing a homestead some 2 kilometres away from the school, he was held in high esteem he having introduced computer programs, his school was accorded “A” level status in 2006 with his pioneer class doing very well, he managed to complete the roofing of the school’s class room blocks, and repaired buildings and furniture at the school. He was generally doing well and enjoyed cordial relations with the community until his spectacular fall from grace owing to the letter written by the defendant on 6 September 2010.

The plaintiff produced the letter in question, exhibit 1, which reads in pertinent part as follows:

“GROSS MALADMINISTRATION

Sir, please let me bring to your attention proof of overwhelming evidence of maladministration at Mukombami High School under the leadership of Mr S. Makara. As the current vice-chairman of the SDC, having been dropped from the post of chairperson in a boardroom coup which was single-handedly masterminded by Mr Makara in a bid to work with a chairperson who would rubber stamp everything he advocates, I have been deeply disappointed by the serious acts of omission and commission by Mr Makara.

I have discovered that statutory instrument 87 of 1992 paragraph twelve (12) section (c) calls for the appointment of ‘an honorary secretary honorary treasurer who need not be members of the committee’. However this is not the case at Mukombami High School at all. In fact even in my new capacity as vice SDC chairperson, I do not know who is serving as the honorary secretary and an honorary treasurer. All that Mr Makara does is to work with the chairperson, not with the entire SDC Committee. At present Mr Makara works with Mrs Madamombe the chairperson only, and the two literally meet on a daily basis and all decisions are made by the two. A case at hand is the brick moulding project which no other member except the chairperson was consulted. This case concerns 20 000 bricks and what baffles us the other SDC members is how they arrived at the price.

I have also discovered that paragraph 13 of the same instrument and its subsequent sections have been grossly flouted. No Mukombami High School SDC chairperson presides over any meeting, but it is the school head, S. Makara, who simply lectures to the committee on what he wants and makes sure that issues to do with tenders and quotations are his sole prerogative.

At one point in 2009 after the teachers had raised complaints against the headmaster about corruption and lack of transparency, Mr Makara was asked by the PED to report to the PED’s office with representatives of the teachers, and the SDC. At that time I was the chairperson but he chose to go with Mrs Chinomwe, then my deputy in the SDC.

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Now regarding this statutory instrument 87 of 1992 pamphlet, I strongly feel Mr Makara has demonstrated historical lack of transparency. He has treated the document as his closely guarded secret because he has never allowed us to have a look at it. I am pleased I now have my own copy. If he really wanted us to know our powers as enshrined in the Act, he should have photocopied the document for all SDC members as the school has two photocopying machines that the parents bought.

I also discovered a case of embezzlement of funds by Mr Makara. The school clerk gave me an inventory of all the trips that he made on behalf of Nash after we discovered that while Nash was funding these, he was also claiming

similar amounts from school coffers. The late Innocent Mberi, then an SDC member asked why he had to do this and his answer was that Nash took long to disburse the money for his T&S. Strange enough, Mr Makara has never refunded the money. Perhaps the absence of an honorary secretary and honorary treasurer has served him well in this regard. I am personally disgusted, and strongly believe this is only the tip of the iceberg.

Yours faithfully

A. Dzikiti  
CC (1) DEO  
(2) Head Office  
(3) MP Zhanda”

The plaintiff testified that as a result of that letter, he was summoned by the Regional Director to Marondera where he was shown the letter and directed to return to the school and respond to the issues raised. He duly responded after which the Regional Director again summoned him, the defendant and another teacher to his office where the defendant was asked what he meant by the contents of the letter. He became evasive and was unable to justify the accusations. The Regional Director undertook to investigate the matter and indeed the District Education Officer duly came to the school and made certain enquiries. He is not aware of the contents of the report the DEO compiled.

The plaintiff went on to say that on 3 December 2010 the defendant and 6 teachers at the school proceeded to the local chief, Chikwaka and invited him to the school to see for himself that school funds were being mishandled. He gathered this information from one Ananias Chigwande, the chief's clerk. This led to a meeting being convened at the school on 12 December 2012. It is the defendant who gathered people including village heads and there was a crowd of about 500 people.

The chief's clerk who chaired the meeting told the gathering that it was the defendant who had caused the people to gather and asked the defendant to stand and address the meeting on why he had called them. Where upon the defendant stood up but he lost his marbles and was unable to explain himself. After gathering courage the defendant started addressing the crowd and as he did so he was reading from a document, which the witness believes to be exhibit1, as the thrust of his delivery was what is contained in that letter. The defendant specifically told the crowd in shona that:

“Pano pane homwe yakabooka” which according to the court translator means “here there is a pocket that is torn.”

He understood that statement to mean that as a pocket is something where valuables are stored, when it is torn it means that someone is stealing. At the school he was the chief accounting officer and as such the custodian of school funds. When one makes a statement attributed to the defendant in a school situation, they meant that the headmaster was stealing school funds. As a result, the crowd started jeering and mocking him shouting that as the plaintiff was stealing money they no longer wanted him at the school and that he must be removed. One parent Victor Mupfuma told the chief that he must facilitate the plaintiff's speedy removal. In order to contain the crowd, the chief undertook to look into the matter. Through out the meeting, the plaintiff was not accorded an opportunity to respond and never said anything.

Much later on 20 July 2011, the defendant came to the school in the company of about 11 other parents. The defendant was holding a silver key. They were in a violent mood forcing the plaintiff to flee into the bush leaving his bicycle behind. He hid in the bush as some form 4 boys and a teacher hunted him down baying for his blood. Meanwhile the defendant locked his office. Later that day while he was at home, some school boys passed by hurling insults at him accusing him of stealing school funds. The plaintiff never returned to the school that term.

When he gathered courage to go back at the beginning of the third term of 2011, he found his office locked. The defendant came and advised him that he did not want to see him at the school again. On 14 September 2011 the defendant and his friends who included one Gabriel Musa proceeded to the Head Office in Harare and advised the office that they no longer wanted the plaintiff at the school because he was stealing from them. They said if the plaintiff was not removed immediately they would kill him. He returned to the school on 18 September 2011 in the company of the police to do a handover take over with one Alexander Senderai under the watchful eye of the defendant, as the school pupils jeered him.

The plaintiff stated that up to now, the community regards him as a thief. His wife, who remains at the homestead, is regarded as the wife of a thief. Although he now works elsewhere, when he goes home from time to time, he is still being jeered and ridiculed by children and parents each time he drops off at Juru Growth Point, when he used to be regarded as a respectable person. He has suffered the ignominy of being transferred from his school and now works 80 kilometres from his home all because of the false accusations of the defendant. He is of the view that he is entitled to defamation damages of \$12 000-00.

The plaintiff was subjected to a lengthy cross examination which focused on trying to establish that he had indeed mismanaged funds, even though the defendant's defence as avowed in his plea was that there was nothing defamatory in what the defendant had said of the plaintiff. Counsel took the plaintiff through an audit report which was produced in November 2009, almost a year before the statements complained of were published. Surprisingly that audit report as well as minutes of meetings that were referred to were not produced as evidence.

It was suggested to the plaintiff that he had indeed embezzled a sum of \$85-00 because the auditors had directed that he should refund that money. The witness explained that the issue had arisen out of the November 2009 audit and that the reason he had been asked to return the money was that himself and another SDC members had been paid certain sums of money when there were no minutes recording the decision to pay them that money. He duly repaid it along with other members. The money involved school trips he had undertaken during the Zimbabwe dollar era which he claimed after introduction of US dollar because the school had no money in 2008. The auditors felt that some of the trips should not have been undertaken.

On the issue of honorary treasurer and honorary secretary, he explained that it is not compulsory to have such posts as it is up to the school to decide whether to appoint one or not. In their case the relevant committee had agreed not to fill the posts.

On the brick project, he stated that this was a project authorised by the committees and minutes to that effect are available. For the defendant to state as he did in his letter, on the bricks, was not only false but also defamatory of him.

On the issue of Nash trips, the plaintiff stated that he did not hold any post in Nash, an independent organisation, and did not undertake any trips for Nash. The defendant had stated that he stole the money when he did not, and the auditors never said that.

Louis Pitso Tsonziwa also gave evidence on behalf of the plaintiff. He is a villager in Chikerema Village in Goromonzi. He attended the meeting of 12 December 2010 and corroborated the plaintiff's evidence on what transpired at that meeting including the words uttered by the defendant. He understood the words to mean that the plaintiff was stealing money from the school. As the people were becoming violent, the chief calmed them down.

On the plaintiff's reputation, the witness testified that the people of the community believed what was said of the plaintiff at the time and wanted him to be removed. However,

with hind sight, they now realise that they caused the removal of a good person who was innocent.

The defendant also gave evidence. I must state from the outset that he did not make a good witness. His demeanour was very bad, he was loud and discordant and contradicted himself. A peasant farmer who is also a parent at the school, the defendant is 73 years old and has held the position of both chair and vice chairperson of the SDC. The highlight of his testimony was his apparent failure to read the letter he claims to have authored on 6 September 2010. He evidently struggled with the pronouncement of words he claims to have authored. In the end, down to his knees during cross examination, he begged counsel to read extracts of the letter on his behalf. After all, his level of education is standard 6, which he says he choked out a long time ago. He ended up admitting that he wrote the letter in question with the assistance of someone he refused to disclose.

Be that as it may the defendant confirmed that he authored the letter of 6 September 2010 and uttered the exact words complained of at a meeting of parents held on 12 December 2010. In respect of the letter he denied that there was anything defamatory in its contents and in respect of the words uttered at the meeting he insisted that they were not directed at the plaintiff but at the entire administration of the school which included himself.

The defendant stated that as a member of the SDC he had misgivings with the manner the finances of the school were handled. He had suggested to the plaintiff that they should purchase an order book where they would record every order they made before signing any cheque for payment. They never agreed until he was forced to write the letter complained of. In the letter, he said that he did not accuse anyone of stealing money but only pointed out that they were not using school funds in a transparent manner. A simple reading of the letter, which makes direct reference to the plaintiff and the indiscretions he allegedly committed will prove the fallacy of the defendant's claim.

In respect of the bricks which are mentioned in the letter, the defendant said that the school had contracted people to mould 20 000 bricks and paid them for that number but physically they only moulded 12 000 bricks meaning that both himself and the plaintiff were cheated by the contractors. Again reference to the letter will show that this is not the complaint that the defendant made to the Provincial Director. In the letter he complained of not being consulted, how the tender was handled and how the price was arrived at.

On the Nash funds, the defendant stated that the issue had been raised at an SDC meeting by one member who is now deceased, who had wanted to know why the plaintiff

was using school funds to travel on Nash business when Nash was paying him for these trips as well. He stated that the plaintiff had defended his actions saying that he had to use school funds because Nash took too long to reimburse him and that when it did the money would be returned to the school. To the defendant there was nothing defamatory about that reference to Nash trips.

The defendant was adamant that his letter is not defamatory and that it did not accuse the plaintiff of being a thief. Significantly he was silent on the accusations of the embezzlement of school funds which he levelled against the plaintiff in that letter.

Regarding the meeting of 12 December 2010, the defendant, as I have already stated, admitted having said the words that there was a torn pocket through which school funds were leaking. He denied that those words meant that the plaintiff was a thief. As far as he was concerned, the statement only meant that school funds were not being handled properly and it was not directed against the plaintiff but against the whole school administration. He denied having read the letter of 6 September 2010 at that meeting. He certainly could not because he failed to read it in court. In his estimation only 211 people attended the meeting and not 500 as alleged by the plaintiff.

Looking at the totality of the evidence, in the particular the reaction of the people who attended the meeting in jeering the plaintiff and the determination of the defendant and his colleagues in pursuing the issue all the way up to head office seeking the removal of the plaintiff, there can be no doubt that not only did the defendant utter the words, he directed them at the plaintiff and they meant that the plaintiff was the cause of the leakage of school funds. It is for that reason that Victor Mupfuma, and other parents told Chief Chikwaka that they no longer wanted the plaintiff at the school and that he should be removed. They understood the statement to mean that the plaintiff was stealing school funds.

So determined was the defendant to see off the plaintiff that he and other parents later visited the head office to demand the removal of the plaintiff. The defendant did not attempt to deny that he is the one who locked the plaintiff's office when he was chased away from the school. In fact the defendant triumphantly stated that even when the District Education Officer pleaded with them to allow the plaintiff to remain at the school, he had declared that they had had enough of him and could not budge. That way the plaintiff was ejected from his post as headmaster.

In that regard the defendant's claim that he had demanded the removal of the plaintiff with haste simply because he had failed to bring any development to the school for the 7 years

he had been head master, is not only discordant but clearly at variance with the contents of the letter of 6 September 2010 and the defendant's utterances at the meeting of 12 December 2010. I reject that claim. The defendant, who exhibited unbelievably high levels of overzealousness and immaturity for someone of his age, had a stone to grind with the plaintiff for procuring his removal from the esteemed position of Vice Chairperson of the SDC and set about fighting to regain his post by making a disparaging allegations against the plaintiff. The defendant's conduct gave credence to the saying that age does not always come with wisdom. At times it comes strolling alone.

How else can one explain the energy and industry committed by the defendant in pursuing the plaintiff through the letter of 6 September 2010, his visit to the chief to request a parent's meeting which eventually took place on 12 December 2010 during which he continued making accusations against the plaintiff and there after taking the trouble to attend at the Regional Office in Marondera still making accusations against the plaintiff before proceeding further to the Head Office in Harare to give ultimatums about the removal of the plaintiff? There after the defendant omnipresence in matters involving the plaintiff was felt when he led a group to lock the plaintiff's office on 20 July 2011 and there after when he oversaw his final removal on 19 September 2011 but not before he had earlier told the DEO who pleaded the plaintiff's case that "enough is enough". He was bellicose through out. It was the kind of determination one would expect to be propelled by overwhelming evidence of impropriety on the part of the plaintiff.

But alas when given an opportunity to defend his claims of theft and embezzlement, the defendant was a huge disappointment. He dithered, huffed and puffed to near breathlessness but could not point to any evidence of that. Even his claims of embezzlement turned out to arise from an audit report provided in November 2009 which had been dealt with and finalised through the same offices he was now addressing as if he had suddenly stumbled onto something new.

The only useful evidence given by Ephraim Masiko who testified for the defendant was that the plaintiff was respected by the community prior to the meeting of 12 December 2010 but lost that after that event.

Was the defendant's letter of 6 September 2010 wrongful and defamatory of the plaintiff? The heading of that letter is "gross maladministration" and its salutation speaks of overwhelming evidence of it at the school under the leadership of the plaintiff. It goes on to

accuse the plaintiff of ignoring the SDC in running the school which would be unprofessional given that SDCs are provided for by law and form part of the administration.

The letter also accuses the plaintiff of mishandling a tender for bricks and arriving at a price for the bricks under unclear circumstances. It accuses him of corruption and lack of transparency before sensationally accusing the plaintiff of “embezzlement of public funds”. The defendant signed off by expressing his personal disgust and maintaining that what he had outlined was only a tip of the iceberg.

Now the policy of the law is to protect on the one hand the right of an individual to the maintenance of his reputation while on the other hand protecting the right of full and free discussion of matters of public interest; *Hertzog v Ward* 1912 AD62 at 70. Our law of defamation has to strike a workable balance between these rights and interests, the right to unimpaired reputation and the right of free speech.

In his book, The Law of Defamation In South Africa, Juta & Co Ltd at pp 34-35) the learned author J.M Burchell, commends the definition of defamation given by Van der Merwe & Oliver that:

“Defamation is seen as an ‘unlawful, intentional publication of words or conduct concerning a specific person whereby his good name, reputation or estimation in the community is impaired.’ Both unlawfulness and intention are stressed as essential elements of the delict and a clear distinction is drawn between the two concepts. Defamatory matter may take the form of words or conduct and Van der Merwe & Oliver’s definition highlights this point -----  
----- Defamation by an individual, in the light of the above definitions and the contemporary case law is therefore the unlawful, intentional, publication of defamatory matter (by word or conduct) referring to the plaintiff, which causes his reputation to be impaired”

I entertain no doubt in my mind that the letter of 6 September 2010 was wrongful and defamatory of the plaintiff. I have already highlighted the defamatory aspects of it. I therefore answer the first question or issue in the affirmative especially as the defendant has not established any of the defences which exclude unlawfulness namely truth for the public benefit, fair comment, privileged occasion, consent or any other defences excluding unlawfulness.

I have already made a finding that the words uttered by the defendant at the meeting of 12 December 2010 were directed at the plaintiff. It is for that reason that the parents turned against him, started jeering him and demanded that he be removed. As they did that the defendant, who would want us to believe that he did not direct those words to the plaintiff,

did nothing to rescue the plaintiff. Neither did he move in to correct the misconception that the parents had about his statement. For the defendant to then argue that the words were directed at the entire administration, himself included, in the circumstances of that meeting, is simply redherring. Where the plaintiff in a defamation suit has not been mentioned by name or description such as his office or occupation, he must state facts upon which he relies as pointing to the fact that the statement complained of referred to or concerned him: *Mohadi v The Standard & Ors* HH 16/13.

In my view the plaintiff has succeeded in setting out facts pointing to the fact that the statement referred to him. The defendant has also sought to argue that the words “homwe yakabooka” which he admitted uttering at a meeting of 211 according to his statistics were not defamatory. The translation given to those words by the court translator is roughly that at the school there is a pocket that has a hole through which school funds are leaking. In the context in which those words were uttered, directed as I have found at the plaintiff, they meant and were indeed understood as meaning that the plaintiff was the cause of the leakage. The idiomatic words carry a meaning that was understood by the audience that the defendant was addressing that there was pilfering at the school.

The learned author, J.M Butchell *op.cit* at p92 makes the important point that:

‘Although words are *per se* defamatory the plaintiff may still allege an ‘innuendo’ (secondary meaning), the object of which is to highlight the sting of the imputation. The highlighting of the sting of the imputation is not strictly speaking an innuendo in the true sense, as the imputation can be derived from the words themselves. Further more the legal or true innuendo arises from special circumstances known to the hearers. Highlighting the sting of the imputation has been described as a ‘*quasi innuendo*’ and as a semantic exercise purporting to be a paraphrase or elaboration of the words to which the objection is taken.’

I am satisfied that the words carried the sting of the imputation that the plaintiff was stealing school funds and hence must face the consequences – ejection from the school.

Finally I have to deal with the question of the quantum of damages. Defamation, by its very nature is concerned with a person’s estimation in the community the emphasis being on compensating the plaintiff as opposed to making an example of the defendant.

Certain general factors have evolved which affect the assessment of damages and they include the character of the plaintiff, it being mitigatory that the plaintiff generally has a bad reputation, extent of the publication, as the wider the publication the heavier the damages will be, the nature of the imputation; and standing of the plaintiff, partial

justification as truth is a factor to be taken into account in mitigating damages and retraction and apology.

What we have here is a man who was the headmaster of a High School who was also a villager in a rural set up. He therefore occupied a high pedestal in that community. The defamatory letter was published to his superiors and the local Member of Parliament under circumstances pointing to a desire to force them to relieve the plaintiff of his duties. The words complained of were directed at a gathering of more than 200 anxious parents which is a wide publication indeed. The imputation was that a whole headmaster was guilty of misusing school funds which imputation no doubt diminished the plaintiff's standing in society. The defendant did not retract any of the statements he made sticking to them right up to the end.

Against those "aggravating" factors should be juxtaposed the mitigating factors of partial justification in the sense that the defendant as a member of the SDC was justified in raising concerns about the manner in which the school was being run under the stewardship of the plaintiff. Except that not only did he overstep the bounds but also failed to prove the truthfulness of his accusations. There is also the fact that the plaintiff admittedly had serious problems with his teachers and was spending a lot of time litigating against them. He was quickly losing grip and this did not help his reputation.

Ultimately, the whole process of assessing damages is essentially a matter of impression and not addition: *Cassell & Co Ltd v Broome And Anor* (1972) AC1027 (HL) 1072G. I have not been referred to any authorities on quantum of damages, Mr *Kawonde* the plaintiff's counsel having elected not to make submissions as he had undertaken and Mr *Maruva* for the defendant having taken the view that the plaintiff is not entitled to any damages.

However after balancing the factors I have alluded to above, I come to the conclusion that the plaintiff has not proved his claim for \$12 000-00. Instead the justice of the matter demands that he be compensated in the sum of \$7 000-00.

In the result, it is ordered that:

1. The defendant shall pay to the plaintiff as defamation damages, the sum of \$7 000-00 together with interest thereon from the date of judgement to date of full payment in full.
2. Costs of suit.

*Kawonde and Company*, plaintiff's legal practitioners  
*Messrs Mugwadi & Associates*, defendant's legal practitioners