

Judgment No. S.C. 126/99
Civil Appeal No. 129/98

KEFASI SIBANDA vs TEDIOUS SIBANDA

SUPREME COURT OF ZIMBABWE
GUBBAY CJ, EBRAHIM JA & SANDURA JA
BULAWAYO, NOVEMBER 29 & DECEMBER 8, 1999

The appellant in person

The respondent in person

EBRAHIM JA: The appellant was sued by the respondent for \$6 000 for defamation. The trial magistrate found for the respondent and awarded him \$700 in damages. It is with this decision that the appellant is dissatisfied and against which he has appealed to this Court.

In simple terms it was the respondent's allegation that the appellant had defamed him by saying to him in the presence of the respondent's wife that he was a homosexual in that he had a habit of having sexual intercourse with other men. It is common cause that the parties were not on the best of terms although they were neighbours living on "Government" premises. The subject of the dispute between them was as to who was the rightful owner or which of them had the right to the use of the garden which formed part of the property they resided in. Both gave evidence before the trial court and called witnesses.

The learned magistrate carefully analysed the evidence of the two parties in the following terms:

“The only way (the) court can try to find as to which of the two parties is telling the truth is by finding as to who between the two is a credible witness and who is not and also by assessing as to which of the two versions makes sense. Having said that, I will be quick to highlight the weakness in the defendant’s defence in that, to begin with, the defendant told this court that when he arrived home he never spoke to the plaintiff but was speaking to the two ladies who were in his house but, however, when (the) defendant was cross-examining (the) plaintiff (the) defendant said that (the) plaintiff came and stood by the door and asked if he was talking to him, to which he replied by saying that he was talking to him about the garden which he was cultivating. So there is no way the defendant can deny that when he arrived, whatever he said was being directed to the plaintiff and not that he was simply talking to the two ladies who were in the house. Secondly, (the) defendant told this court that there was no time at all when he behaved violently towards the plaintiff. The question here is, why would the defendant have opted to pay a deposit fine if things had happened in the manner that he has explained in this court and why in the first place would the police have invited him to pay a fine if he had explained to them what he told this court. Thirdly, it was the defendant’s evidence that it was the plaintiff who was violent by picking (up) some stones after their altercation. The question here is why would (the) plaintiff have taken the problem (trouble?) to travel all the way to the police station during that late hour of the night if he had been so aggressive.

By denying obvious facts, like acting violently on the night in question what the defendant is doing is actually weakening his own credibility and thereby strengthening the plaintiff’s case. I won’t say much about the evidence of the witnesses for both sides but would however point out that I have found (the) plaintiff’s witness to be a credible witness in that she was not protective since she was open enough to reveal that there was some other day when (the) defendant told her that her husband had told him that he would cultivate that garden until he reached the defendant’s anus but not on the day in question. On the other hand, (the) defendant’s first witness was too protective in that in her evidence-in-chief she was careful enough to omit to mention that (the) defendant insulted (the) plaintiff in any way.

This court finds no reason as to why (the) plaintiff would have chosen to label himself a homosexual if no such words were uttered on the day in question, especially taking into consideration that homosexuality is almost taboo in the African culture.

(The) defendant must have, out of anger, said that (the) plaintiff was used to having sexual intercourse with other men, thus calling him a homosexual and if he said so, such utterances are obviously defamatory, since the words

spoken by the defendant lower the standing of the plaintiff in society to a great extent.

Having pointed out the weaknesses in (the) defendant's defence, I would enter judgment for the plaintiff. It is ordered that the defendant pay \$700,00 damages for defamation plus costs of suit."

In my view, this reasoning is beyond criticism. The probabilities favour the respondent's version of events and his evidence received the support of the witness called by him.

Accordingly, the appeal must fail and it is so ordered. Both parties appeared in person and I therefore make no order as to costs.

GUBBAY CJ: I agree.

SANDURA JA: I agree.