

**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA**
(Civil Jurisdiction)



2015/HP/0857

B E T W E E N :

KILLIAN IVES MULENGA

PLAINTIFF

AND

THE ATTORNEY GENERAL

DEFENDANT

**Before Honourable Mrs. Justice M. Mapani-Kawimbe on 21st
February, 2017**

For the Plaintiff : *In Person*
For the Defendant : *Major C. Hara, Deputy Chief State
Advocate*

J U D G M E N T

Case Authorities Referred To:

1. *Rodger Chitengi, Sakuhuka v Sassali Lungu, The Attorney General, Times of Zambia, Times Printpak Zambia Limited and Newspaper Distributors Limited (2005) Z.R. 48*
2. *John Namashoba Muchabi v Aggrey Mwanamutwenga (1987) Z.R 110*

Other Works Referred To:

1. *Halsbury's Laws of England, Volume 28, 4th Edition*

The Plaintiff issued Writ of Summons on 9th June, 2015 endorsed with the following claims:

- (i) *Damages in the sum of K250,000,000.00 for slander in the way of profession.*
- (ii) *Interest on (i) at the current Bank of Zambia lending rate to the date of full and final payment.*
- (iii) *Costs*
- (iv) *Any other relief the Court may deem fit.*

In his Statement of Claim, the Plaintiff stated that he is an Advocate of the High Court and Supreme Court of Zambia practicing in the firm of Kumasonde Chambers. The Defendant is sued as the Legal Advisor of the Government of the Republic of Zambia.

The Plaintiff further stated that on 20th April, 2015, Mr. Bornwell Katita Kamoya and 3,523 others, retained Messrs Kumasonde Chambers, to pursue their claim of underpayment of accrued interest, which arose from the case of ***Nasando Isikanda (suing on his behalf and in his capacity as National Chairman of the Voluntary Separatees of Zambia and 3523 others) v The Attorney General – 2002/HP/1055.***

The Plaintiff states that on 21st April, 2015, he wrote a letter to the Permanent Secretary, Ministry of Justice, where he enclosed the computation of the under-payment of accrued interest, only in respect of twenty five claimants. The Plaintiff averred that on 6th May, 2015 he wrote another letter to the Permanent Secretary, Ministry of Justice where he urged the Government to settle the Plaintiffs' claim based on the Consent Order dated 29th May, 2008.

The Plaintiff also averred that he and his client attended a meeting at the Ministry of Justice where after the parties agreed to hold a subsequent meeting at which, his client and the Ministry's technical staff met to reconcile his clients' claim.

The Plaintiff further avers that on 4th June, 2015, he met the Permanent Secretary and Mr. Evans Mumbi, an Assistant Accountant, at the latter's office, where he went to make an inquiry on his clients' claim of an unpaid sum of K10,000,000.00. After the meeting, the Permanent Secretary promised to respond to the Plaintiff in writing over his client's claims.

The Plaintiff states that he equally requested the Permanent Secretary to formally apprise him of the progress made on his clients' claim of underpayment of accrued interest. The Plaintiff avers that the Permanent Secretary was infuriated by his request and ended up rebuking him in the presence of Mr. Mumbi. Further, the Permanent Secretary was restrained from physically molesting the Plaintiff by Mr. Mumbi.

The Plaintiff claims that the Permanent Secretary then falsely and maliciously told him that ***"because you have no clients that is why you are making false claims, you are a thief"*** in the presence of Mr. Evans Mumbi.

The Plaintiff states that the words in their natural and ordinary meaning meant that the Plaintiff was dishonest, fraudulent and just wanted to extort money from the Government. The words also meant that he was incompetent and unfit to practice law. In consequence of the said words, the Plaintiff claims that he was greatly injured in his credit and reputation as an advocate.

The Defendant settled a Defence on 13th August, 2015. It admitted that the Permanent Secretary was an employee of the Ministry of Justice and that it is the Government's Legal Advisor. It also admitted that the Ministry of Justice received a letter from the Plaintiff's law firm on its appointment as advocates for Mr. Bornwell Katita Kamoya and 3,523 others.

The Defendant averred that after it received the Plaintiff's letter of demand, the Permanent Secretary asked the Plaintiff and his client to attend a meeting at the Ministry of Justice. A further meeting was arranged between the Plaintiff's client and the technical staff of the Ministry of Justice to verify the claims presented by the Plaintiff's clients.

The Defendant further averred that at a subsequent meeting held by Mr. Kamoya, Mr. Simenza (representative of the Voluntary Separatees Association) and the Defendants' technical staff, it was established that the Plaintiff's clients' claim was false and baseless. The Defendant states that the Permanent Secretary explained the outcome of that meeting to the Plaintiff at his office, where Mr.

Evans Mumbi was present. The Defendant admitted that the Permanent Secretary told the Plaintiff that Messrs Malipenga & Company had already represented his clients on the same claim.

The Defendant averred that the Permanent Secretary never uttered the slanderous words attributed to him and that he merely stated that the Plaintiff's clients' claim was false and baseless.

At trial the Plaintiff, **Killian Ives Mulenga** testified as **PW1**. His evidence was mostly recapitulated from his Statement of Claim. He told the Court that on 9th April, 2015, Messrs Kumasonde Chambers, where he is Managing Partner was retained by Mr. Bornwell Katita Kamoya and 3523 others. The firm was instructed to pursue their clients' claim of underpayment of accrued interest arising from the case of ***Nasando Isikanda v the Attorney General***.

PW1 testified that he wrote a letter to the Permanent Secretary, Ministry of Justice, on 21st April, 2015, where he enclosed the computation of the underpayment of accrued interest. He also testified that he did not receive a response to his letter and

consequently wrote the Permanent Secretary another letter, where he urged the Government to settle his clients' claim in full. PW1 further, testified that his clients' claim was based on the Consent Order dated 5th May, 2008, and that he also received instructions from his clients to pursue their other claim of an unpaid sum of K10,000,000.00.

It was PW1's evidence that he met the Permanent Secretary together with Mr. Evans Mumbi, Assistant Accountant on 4th June, 2015, at the Ministry of Justice. The purpose of the meeting was to establish progress made on settling his clients' claims. PW1 testified that Mr. Mumbi explained the origin of his clients' claim of K10,000,000.00 after which, the Permanent Secretary promised to formally revert to Messrs Kamusonde Chambers.

PW1 told the Court that the Permanent Secretary told him that Messrs Malipenga & Company had represented his clients on the same claim. PW1's evidence was that by uttering those words, the Permanent Secretary meant that all his clients in the claim of K10,000,000.00 belonged to Messrs Malipenga & Company.

According to PW1, he told the Permanent Secretary that his client's instructions to Messrs Malipenga & Company were different from his.

PW1 testified that he asked the Permanent Secretary to formally apprise him of progress made on his client's claim of underpayment of accrued interest. According to PW1 his request infuriated the Permanent Secretary who rebuked him the presence of Mr. Mumbi. PW1 further, testified that the Permanent Secretary was physically restrained from assaulting him by Mr. Mumbi.

PW1 further testified that the Permanent Secretary told him that he agreed to represent his clients because he did not have a clientele and just wanted to extort money from the Government. Further, the Permanent Secretary called him a thief and did not care if he sued him.

It was PW1's evidence that the words uttered to him by the Permanent Secretary in their ordinary meaning meant that he was dishonest, fraudulent, incompetent and untrustworthy to practice law.

It was PW1's testimony that he was greatly injured in credit and reputation as an advocate by the words of the Permanent Secretary. He concluded with a prayer to Court to award him damages and the other reliefs set out in his claim.

The witness was not re-examined.

In cross-examination, PW1 testified that there was nothing defamatory in the letters in the Plaintiff's Bundle. However, the defamatory words were contained in his Statement of Claim.

PW2 was **Bornwell Katita Kamoya**. He testified that on 9th April, 2015, he appointed Kumasonde Chambers as his advocates together with 3523 others who voluntarily separated from the Government. PW2 told the Court that he instructed Messrs Kumasonde Chambers to pursue their claim of unpaid accrued interest and the unpaid amount of K10,000,000.00 which arose from the case of ***Nasando Isikanda v Attorney General***. According to PW2, the Ministry of Justice erroneously stated that it had settled the K10,000,000.00 claim in its accounts of 15th July, 2009, when in fact not.

PW2 testified that on 20th May, 2015, he met the Principal Accountant-Mr. Chipalo, Internal Auditor-Mr. Chikumbi, both of the Ministry of Justice and the Director-Administration- Public Service Management Division Mr. Simfukwe, to reconcile the claim, but failed to agree on the disputed figures.

PW2 stated that as a qualified accountant he had reconciled the disputed figures and found that their claim had not been settled. PW2 told the Court that Messrs Malipenga & Company represented them in 2014 in their claim for unpaid salary arrears from 2002 to 2004, which, culminated to the Consent Order dated 29th May, 2008. PW2 testified that the Ministry of Justice had abrogated the Consent Order and it was not true that Messrs Kumasonde Chambers had been engaged to pursue that claim.

In cross-examination, PW2 stated that he did not attend the meeting held at the Ministry of Justice on 4th June, 2015.

The witness was not re-examined.

The Defendant's only witness was **Evans Mumbi**, an Accountant at the Ministry of Justice, who testified as **DW1**. His evidence was that on 4th June, 2015, the Permanent Secretary called him to his office where he met PW1. The Permanent Secretary asked him to give a response to Mr. Nasando Isikanda's letter on a claim for K10,000,000.00.

According to DW1 his response was that the Accounts Department had settled the claim and further, all payments made to the voluntary separtees had been reconciled. In short, the Plaintiff's clients' claim had no basis. It was DW1's testimony that after the explanation, the Permanent Secretary released him from his office, leaving PW1 behind.

In cross-examination, DW1 denied that the Permanent Secretary told PW1 that he would revert to him after he had verified his clients' claim of K10,000,000.00. DW1 admitted that the Permanent Secretary made reference to Messrs Malipenga & Company, adding that the Ministry's verification of the

K10,000,000.00 was precipitated by law suit that had been instituted by Messrs Malipenga & Company.

DW1 denied that the Permanent Secretary uttered the words "*because you have no clients that is why you are making false claims, you are a thief*". DW1 further denied that he restrained the Permanent Secretary from physically molesting PW1 because he was seated behind his desk throughout the meeting. Further, the Permanent Secretary had a problem with his legs, which restrained his movement.

The parties filed written submissions, which are on record. I am very grateful for their submissions. I shall not reproduce them suffice to state that I will take them into account in the judgment.

I have seriously considered the pleadings, evidence adduced and written submissions of the parties. The issue that falls for determination is whether the Plaintiff was slandered by the Permanent Secretary?

There is no dispute that PW1 was retained by Mr. Bornwell Katita Kamoya and 3,523 others, to pursue their claim of underpayment of accrued interest arising out of the case of ***Nasondo Ikasanda v the Attorney General***. It is also not in dispute that PW1 wrote letters to the Permanent Secretary, Ministry of Justice, which culminated into their meeting of 4th June, 2015, and that DW1 attended that meeting.

The contention in the matter arises from the Plaintiff's claim that during that meeting he was slandered by the Permanent Secretary who uttered the words "***because you have no clients that is why you are making false claims, you are a thief***".

The **Learned Authors of Halsbury's Laws of England** at paragraph 10, 4th Edition, define a defamatory statement as one:

"which tends to lower a person in the estimation of right thinking members of society generally or to cause him to be shunned or avoided or to expose him to hatred, contempt, or ridicule, or to convey an imputation on him disparaging or injurious to him in his office, profession, calling or trade or business":

In the case of **Rodger Chitengi Sakuhuka v Sassassali Lungu, The Attorney General, Times of Zambia, Times Printpak**

Zambia Limited; and Newspaper Distributors Limited¹ the Supreme Court stated that:

“any imputation which may tend to injure a man’s reputation in business, in employment, calling or office carried on or held by him is defamatory.”

Further, in the case of **John Namashoba Muchabi v Aggrey Mwanamufwenga**² it was stated that:

“in slander actions it is no longer necessary for the plaintiff to prove that the precise words were uttered. It is sufficient if he proves a material and defamatory part of them or words which are substantially to the same effect.”

From these authorities, it is clear that the requirements for proving slander are conjunctive. That is to say:

- i) a statement must be made against a person which tends to lower the person in the estimation of right thinking members of society;
- ii) the effect of the statement should cause the person it is made against to be shunned or avoided, or exposed to hatred, contempt or ridicule; and

- iii) the statement must be conveyed to society in a way that is disparaging or injurious to a person's office, profession, calling or trade or business.

After carefully analysing the evidence adduced, I have come to the inescapable conclusion that the Plaintiff has failed to prove his case. The Plaintiff has not adduced evidence to show that the Permanent Secretary uttered the slanderous words attributed to him. Further, there is no proof that that has been presented to Court to show that the Plaintiff has been shunned, avoided or ridiculed by society as a result of the slander. In addition, the Plaintiff has not led evidence to show that the slander was communicated to the world at large.

I would dare to say that by removing the Permanent Secretary from this action, the Plaintiff weakened his case in that he denied himself an opportunity to challenge the Permanent Secretary Mr. Josephs Akafumba in Court. The Plaintiff sought to rely on the evidence of DW1 which was unhelpful to his cause. I had the opportunity of observing DW1 in Court and he appeared to be

composed and truthful. As a result, I have no basis for discrediting his evidence and not accepting his account of the meeting of 4th June, 2015.

Accordingly, I dismiss this action and award the Defendant costs to be taxed in default of agreement.

Leave to appeal is granted.

Dated this 21st day of February, 2017


M. Mapani-Kawimbe
HIGH COURT JUDGE