

IN THE COURT OF APPEAL OF ZAMBIA
HOLDEN AT LUSAKA
(Civil Jurisdiction)

Appeal No. 142/2020

BETWEEN:

LEVIS MUMBA

APPELLANT

AND

**ZAMBIA NATIONAL BROADCASTING
CORPORATION**

1ST RESPONDENT

ATTORNEY GENERAL

2ND RESPONDENT

GEOFFREY CHUMBWE

3RD RESPONDENT

Chashi, Majula and Sharpe-Phiri, JJA
On 15th February 2022 and 17th March, 2022

For the Appellant : *Mr. M.J. Katolo of Milner & Paul Legal Practitioners.*

For the 1st Respondent : *Ms. M. Undi of Eric Silwamba, Jalasi & Linyama Legal Practitioners.*

For the 2nd Respondent : *Not in Attendance.*

For the 3rd Respondent : *Mrs. S. Phiri – Hinji of Chifumu Banda & Associates.*

JUDGMENT

MAJULA JA, delivered the Judgment of the Court.

Cases referred to:

1. *Bevin Ndovi vs Post Newspapers Limited and Times Print Park Zambia* (2011) Vol. 1 472.
2. *Wilson Zulu vs Avondale Housing Project Limited* (1982) Z.R. 172.
3. *Khalid Mohamed vs The Attorney-General* (1979) Z.R.238.
4. *The Attorney-General vs Marcus Achiume* (1983) Z.R 1.
5. *Joseph Banda vs Zambia Publishing Company Limited* (1982) Z.R.4.
6. *Tolley vs Fry* (1930) 1 CB 469.
7. *Tse Wai Chum Paul vs Albert Cheng* (2001) E.M.L.R. 31

1.0 INTRODUCTION

- 1.1 The present appeal emanates from a judgment of the High Court delivered on 25th March 2020 that was presided over by Mrs. Justice M. Mapani-Kawimbe. The lower court dismissed the appellant's case and found in favour of the respondents, hence the appeal.

2.0 BACKGROUND

- 2.1 The appellant was a Town Clerk at the Chongwe Municipal Council where he served from September 2017 to 7th March 2018. There were allegations of illegal payments and financial mismanagement of resources that were brought to the attention of the Local Government Service Commission (LGSC). This prompted the LGSC to appoint a team to investigate the matter. Following the investigations, the LGSC suspended the appellant from employment on 18th January 2018 on the basis of abuse of authority and dishonest

conduct. This was done pursuant to the 1996 conditions of service for local government officers. The letter of suspension was authored by Mr. Lazarous Mulenda, the Secretary of the LGSC.

2.2 The Chairperson of the LGSC also held a press briefing at New Government Complex in Lusaka on 18th January, 2018 where he announced the suspension of the appellant and other directors of Chongwe Municipal Council. The press briefing was subsequently broadcast by the 1st respondent as a news item on 13.00 and 19.00 hours news. On the same date, the appellant's suspension was published by the Daily Nation newspaper and other social media platforms.

2.3 The appellant thereafter appeared before the LGSC disciplinary committee meeting on 25th February 2018. He was dismissed from employment on 7th March 2018. The appellant complained that the articles published by the respondents were defamatory and that they ruined his reputation in the estimation of right thinking members of society

3.0 FINDINGS AND DECISION OF THE COURT BELOW

3.1 After a thorough analysis of the evidence before her, the Judge in the Court below made the following findings of fact:

- a) That the respondents' statements complained of, referred to the suspension of senior management staff at Chongwe Municipal Council which included the appellant.

- b) The Judge found that the article referred to the appellant's position but did not single him out by name.
- c) On whether the published statements by the respondents were false and defamatory, the court found that the appellant had only acquired a total of 22 leave days and was only entitled to payment of those leave days. In other words the published statements were true.
- d) After examining the news articles complained of, she found that the appellant was not referred to as a criminal or fraudster but that this allegation stemmed from his amended statement of claim.
- e) She further found that the information about the suspension of senior officers at Chongwe Municipal Council published in the news was truthful and not malicious. In light of this, she found that the words complained of by the appellant were incapable of lowering his reputation or estimation amongst right thinking members of society.
- f) In addition, she found that the respondents had successfully raised the defence of fair comment.
- g) Regarding the counter claim, she found that there was no evidence led by the 2nd respondent to substantiate it and she accordingly dismissed it.
- h) In the final analysis, she dismissed all the appellant's claims for damages for libel, mental distress, anguish, anxiety, unreserved apology, interest and costs for want of merit.

4.0 GROUNDS OF APPEAL

4.1 Dissatisfied with the outcome of his case, the appellant has brought this appeal on the following grounds of appeal:

- “4.1.1 The learned trial Judge erred in law and fact when she held that the Plaintiff was not referred to as a criminal element or fraudster when there was clear evidence adduced which showed that the plaintiff was referred to as a fraudster masquerading as a Chief Executive Officer.
- 4.1.2 The learned trial Judge erred in law and fact when she held that the statement complained of by the plaintiff were incapable of lowering his reputation as the information was truthful and not malicious, when the evidence adduced clearly demonstrated that as a result of the defamatory statement attributed to him, the plaintiff's reputation was lowered in the estimation of right thinking members of society.
- 4.1.3 The court below erred in law and fact when it held that the plaintiff only had twenty-two (22) days at Chongwe Municipal Council when the same court did find as a matter of fact that the plaintiff had more leave days in the service with the Local Government Service Commission.
- 4.1.4 The learned trial court erred in law and fact when it held that according to the conditions of service, benefits accrued by Council employees can only be claimed at respective

duty stations without citing the conditions of service which state so.

4.1.5 *The learned trial Judge erred in law and fact when she held that the defendant successfully raised the defence of fair comment contrary to the evidence on record which showed that the 1st defendant in publishing the defamatory statement acted under the impression that the information from Local Government Service Commission was authoritative and authentic and there was no need to verify such information before publishing it.”*

5.0 APPELLANT’S ARGUMENTS

5.1 The gist of the submissions in relation to ground one was that the finding by the learned trial Judge on page J60, that the appellant was not referred to as a criminal element or fraudster was perverse as she misapprehended the facts and could not reasonably have been made on a proper view of the evidence that was before her. In this regard we were referred to a press statement by Mr. Chumbwe where he said:

“..there is need to weed out fraudsters masquerading as Council Chief Executive.”

5.2 Counsel contended that it is sufficient that the defamatory statement was referring to the appellant even if he was not referred to by his actual name. For this proposition our

attention was drawn to quotations from **Clerk and Linsell on Torts** as well as Halsbury's Laws of England.

- 5.3 The thrust of the appellant's submission in ground two was that there was unchallenged evidence before the court proving that the publication by the respondents caused him to be shunned or avoided and exposed him to hatred contempt or ridicule in his capacity as an advocate of good standing. To support the proposition, Counsel alluded to the case of **Bevin Ndovi vs Post Newspapers Limited and Times Printpak Zambia**¹ where the Supreme Court stated as follows:

"A defamatory statement is one which tends to lower a person in the estimation of right thinking members of the society generally as to cause him to be shunned or avoided or expose him to hatred contempt or ridicule or to convey an imputation on him disparaging or injurious to him, to his office, professional calling or trade or business."

- 5.4 The crux of the appellant's submission in respect of grounds three and four, which were argued together, was that the finding by the lower court to the effect that an employee could only claim benefits at their respective duty stations without citing the requisite conditions of service to this effect was perverse. We were urged to interfere with the findings of the lower court on the authority of **Wilson Zulu vs Avondale Housing Project Limited**.²

5.6 Pertaining to ground five, Counsel contended that the news item by the 1st respondent appearing on page 258 vol.1 of the record of appeal was not fair comment as the publication was not based on accurate facts. That the comment was not objective and fair on account of the fact that the 1st respondent did not verify the information with the appellant before publishing it. The case of **Bevin Ndovi vs Post Newspapers Limited & Another**¹ was referred to, in which it was stated that:

“It is established that there are three requisites of the defence of fair comment. Firstly, the comment must be an observation or reference from facts not an assertion of fact. Secondly, the matter commented on must be of public interest. Thirdly, the comment must be fair or objective and not actuated by malice.”

5.7 It was also contended that contrary to the finding by the trial Judge that the respondents successfully raised the defence of fair comment, the evidence on record shows that the statement was published without verification from the appellant.

5.8 With these submissions, we were called upon to allow the appeal with costs.

6.0 1ST RESPONDENT'S ARGUMENTS

- 6.1 In response to ground one, the 1st respondent stated that its duty as a broadcasting corporation is to inform the nation of current affairs or matters of public interest. This is in line with the provisions of section 7(1) of the Zambia National Broadcasting Corporation Act, Chapter 154 of the Laws of Zambia. The 1st respondent further contended that the findings of fact of the learned trial Judge were supported by the evidence before her and therefore the appeal must fail. Further that the appellant's actions in inaccurately capturing the statements of the respondents were misleading.
- 6.2 In relation to ground two, Counsel asserted that the lower court correctly observed that the appellant did not lead evidence to demonstrate to the court that he had in fact suffered harm to his reputation. It was contended that the appellant thus lamentably failed to discharge the burden of proof in line with the case of ***Khalid Mohamed vs The Attorney-General***³.
- 6.7 Counsel pointed out that grounds three and four do not relate to the 1st respondent hence no arguments would be proffered in response.
- 6.8 Moving on to ground five, Counsel submitted that the defence of fair comment was successfully raised by the respondent and

thus the trial court cannot be faulted in this regard. We were urged to dismiss the appeal with costs.

7.0 2ND RESPONDENT'S ARGUMENTS

7.1 In relation to ground one, learned Counsel for the 2nd respondent argued that an appeal should only be made on a point of law or on a point of mixed law and fact. Counsel pointed out that the lower court made a finding of fact that the plaintiff was not referred to as a criminal element or fraudster, and that the said alleged statement was not uttered by the respondents. That it was therefore erroneous for the appellant to appeal on a point of fact. The case of ***The Attorney-General vs Marcus Achiume***⁴ was called in aid where the court held:

“An appellate court will not easily interfere with a trial court’s findings of fact unless the finding is perverse, made in the absence of relevant evidence, or a misapprehension of facts and could not have reasonably been made if a proper view of the evidence had been taken.”

7.2 Pertaining to grounds two and five, it was contended that the respondent raised defences of justification and fair comment which succeeded in the lower court. That the press statement issued by the 2nd respondent was true, especially as it was issued after a thorough investigation conducted by the Local

Government Service Commission. As authority for the proposition, Counsel called in aid the case of ***Banda vs Zambia Publishing Company Limited***⁵ where it was held:

“To an action for libel, a plea of justification is a complete defence.”

7.3 In respect of grounds three and four, it was stoutly argued that the lower court was on firm ground when it held that the appellant commuted more leave days than had accrued to him. Further, that leave days accrued at one local authority could not be transferred to another local authority as the authorities were distinct body corporates. Counsel observed that the appellant had accrued only 22 leave days at Chongwe Municipal Council for which he was paid.

7.4 In conclusion, Counsel argued that the entire appeal is based on a misapprehension of the law and facts as the respondents' statements against the appellant were justified and made in fair comment. We were called upon to dismiss the appeal with costs.

8.0 3RD RESPONDENT'S ARGUMENTS

8.1 The gist of the 3rd respondent's submission in respect of ground one, was that the learned trial Judge was on firm ground when she held that the appellant was not referred to as a criminal element or fraudster because the said words were not in the articles complained of such as the Daily Nation

tabloid of 24th January, 2018. After closely examining the news articles complained of, the court found that the appellant was not referred to as a criminal element or fraudster. Instead the allegation stemmed from the appellant's own amended statement of claim.

8.2 Counsel asserted that the appellant has therefore failed to show that the trial court erred in arriving at its findings based on the facts that were before it.

8.3 As regards grounds two and five it was submitted that the defences of justification and fair comment were successfully raised by the respondents with the effect of cancelling any defamatory statements.

8.4 The thrust of the submission in respect of grounds three and four was that the alleged defamatory statements were justified by the respondent hence the appeal should be dismissed with costs.

9.0 HEARING OF THE APPEAL

9.1 The matter came up for hearing of the appeal on 15th February, 2022. Learned Counsel for the parties substantially relied on the heads of arguments filed on 7th August, 2020, 17th February, 2020, 7th September, 2020 and 28th September, 2020.

9.2 Mr. Katolo, on behalf of the appellant, sought leave to file the appellant's heads of argument in reply. He contended that

had just been served with the 3rd respondent's heads of argument. Counsel was granted leave to file the head of arguments in reply.

9.3 The heads of argument in reply were filed by Mr. Katolo on 22nd February, 2022.

9.10 In his reply to the 3rd respondent's submissions, Mr. Katolo reiterated that the appellant was referred to as a criminal or fraudster and that he was the Chief Executive at the time. Counsel contended that the finding by the learned Judge was therefore, contrary to the evidence presented to her.

9.11 Pertaining to grounds two and five, Mr. Katolo posited that the publications complained of by the appellant were defamatory and lowered his reputation as a Legal Practitioner in the estimation of right thinking members of society. On this basis, the defence of fair comment should not stand.

9.12 Finally on grounds three and four, Counsel submitted that there was no break in service by the appellant when he moved from other Councils to Chongwe Municipal Council. This entailed that he had 108 leave days as opposed to the finding by the trial Judge that he had 22 days and was only entitled to those days. Mr. Katolo asserted that it was, therefore, defamatory for the respondent to publish that the appellant had commuted more leave days which he did not have.

9.13 With these submissions, learned Counsel beseeched the court to allow the appeal with costs.

10.0 DECISION OF THIS COURT

10.1 We have perused the record of appeal, the arguments as well as the authorities referred to us by the parties. In the 1st ground of appeal, the appellant is dissatisfied with the Judge's finding that there was no evidence that the appellant was referred to as a fraudster masquerading as a Chief Executive. According to the appellant, there was clear evidence to this effect. He has referred to the learned Authors of ***Clerk & Lindsell on Torts*** for the proposition that the defamatory statement was referring to the appellant even though he was not referred to by his actual name and that a description of him would suffice or where the statement is reasonably understood as referring to him. It has been argued that even if a claimant has not been referred to by name it will suffice if the ordinary sensible reader with knowledge of special facts could understand the statement to refer to him. The learned authors of *Halsbury's Laws of England* have also been referred to in this regard

10.2 The argument has been that the words complained of were directed at the appellant being the Chief Executive Officer at Chongwe Municipal Council. Our attention has further been drawn to the press statements specifically at pages 261 where it was stated:

“As at October, 2017 the Town Clerk Mr. Levis Mumba had accrued 22 leave days but paid himself commutation of leave days for 30 days which days he did not have.”

10.3 The respondents on the other hand are contending that this ground of appeal is based on findings of fact. That it is trite law that an appeal should only be on a point of law or on a point of mixed law and facts. It has been submitted that the lower court held that the statement attributed to the appellant was in fact not uttered by the respondents. Therefore, it was erroneous for the appellant to appeal on findings of facts. To cement their position, they have drawn our attention to the cases of the ***Attorney General vs Marcus Achiume***⁴ which guides on when an appellate court can interfere with findings of fact and the case of ***Khalid Mohamed vs Attorney General***³ as to when an appellate court may draw its own inferences contrary to those of the trial court.

10.4 In our considered view, we are inclined to agree with the arguments by the respondent, that the issue in contention is a finding of fact. It was a finding by the learned trial Judge that the appellant was not referred to as a criminal element or fraudster. This was after scrutinizing the evidence before her. We have equally examined the evidence and cannot fault her for arriving at her decision.

10.5 As guided by the authorities of ***Marcus***⁴ and ***Khalid***³ referred to by the respondent, we as an appellate court should be

hesitant to interfere with findings of fact unless we are satisfied that the said findings are perverse, made in the absence of relevant evidence or made upon a misapprehension of facts.

10.6 Also of critical importance is the fact that an appeal can only lie on a point of law or on a point of law mixed with facts which is not the case in the present case. For these reasons we find no merit in the first ground of appeal and we dismiss it.

10.7 In the second ground of appeal, the appellant is dissatisfied with the finding by the court below that the statements complained of were incapable of lowering his reputation as the statements were truthful and not malicious. It has been posited that it was erroneous for the trial court to arrive at this conclusion when there was evidence which was adduced that demonstrated that as a result of the defamatory statement attributed to him, the appellant's reputation was lowered in the estimation of right thinking members of society.

10.8 To buttress his argument, the appellant has referred us to a number of authorities on tort such as **Winfield And Jolowicz on Tort** which articulate which elements need to be proved to succeed on a claim for defamation.

10.9 Additional authorities such as ***Tolley vs Fry***⁶ and ***Bevin Ndovi vs Post Newspapers Limited and Times Printpak***

Zambia¹ which articulate the principle of what constitutes defamatory statements have been referred to. It has been argued that there was evidence led during the course of trial that he was shunned and ridiculed and further there was evidence of what transpired when he had applied for employment. There was a letter from the Legal Practitioners Committee to the effect that he could not be a partner at a firm but only an Associate. The contention is that this evidence was unchallenged, that the publication from the respondents caused him to be shunned and ridiculed in his standing as an advocate at the bar. It is against this background that he has urged us to find merit in this ground of appeal.

10.10 The respondents however take a different view. That the press statements issued by the 2nd respondent was truthful and was issued after a thorough investigation was conducted by the LGSC into the allegations at the Chongwe Municipal Council. It has been argued that the plea of the defences of fair comment and justification were successful because the press statements issued were truthful.

10.11 In this regard reliance has been placed on the case of

Joseph Banda vs Publishing Co Limited⁵ as authority for a plea of justification. It was held in the aforecited case as follows:

“a plea of justification is a complete defence to an action for libel but to establish this defence the defendant must establish and prove that the defamatory imputation is true in substance and fact.

10.12 From our perspective, the plea of justification succeeded.

The court considered whether the statements uttered were true or not. There was indeed an investigation that was conducted by the LGSC into allegations at Chongwe Municipal Council. On account of the foregoing, we find the second ground of appeal to be devoid of merit and dismiss it.

10.13 The third and fourth grounds of appeal are intertwined and we shall deal with them together. In the third ground the court below is being attacked for finding that the appellant only had a total of 22 leave days at Chongwe Municipal Council. She also found that he had more leave days with the LGSC.

10.14 In the fourth ground, the grievance is linked to the third ground in which the appellant argued that the trial Judge fell into error when she held that according to the conditions of service, benefits accrued by council employees can only be claimed at respective duty stations without citing the conditions of service which state so.

10.15 In this vein, it has been argued that it is trite that in employment contracts leave days are an accrued right and are

paid regardless of the mode of exit. The contention by the appellant is that he had accrued a total of 108 days from the various councils and there had been no break of service prior to working at Chongwe Municipal Council. The contention is that the employer remained LGSC and therefore it was erroneous for the court to have separated the leave days which the appellant had accrued from the other councils from these acquired at Chongwe Municipal Council.

10.16 The thrust of the appellant's arguments is that since he had 108 days and had commuted 30, it was thus defamatory to have published that he had commuted more leave days than he actually had. It is against this backdrop that it has been argued that the accrued leave days from various councils amounted to accrued rights.

10.17 Moving on to the fourth ground, the dissatisfaction arises from the trial Judge having held that the benefits accrued by council employees could only be claimed at respective duty stations. The contention is that this conclusion was arrived at without referring to the specific conditions of service. We have been urged to interfere with this finding as it was perverse and made in absence of relevant evidence. The case of ***Wilson Masauso Zulu vs Avondale Housing***² has been called in aid in this regard.

10.18 On the other hand, the respondents have submitted that it is not in dispute that the appellant had only acquired 22 leave

days and therefore could only commute these 22 days. The argument that he had accrued leave days in other local authorities and therefore could commute any number of leave days was misconstrued. That for the leave days accrued in other authorities, the responsibility was on those other local authorities to pay as the leave days were not transferable.

10.19 Our view is that it is an undisputed fact that the appellant had only accrued 22 leave days whilst employed at Chongwe Municipal Council. It is also not in dispute that he had acquired other leave days from various local authorities. The question that arises is whether Chongwe Municipal Council bore the responsibility to pay out the commutation of the leave days acquired from the other local authorities. The starting point is reviewing the Local Government Act Cap 281 of the Laws of Zambia, in particular section 6. It provides as follows:

“6. Every council shall be a body corporate with perpetual succession and a common seal, capable of suing and of being sued in its corporate name, and with power, subject to the provisions of this Act and of any other written law, to do all such other acts and things as a body corporate may do by law and as are necessary for, or incidental to, the carrying out of its functions and powers as set out in this Act.”

10.20 Flowing from the foregoing, it is trite that councils are established as body corporates. Being a body corporate each

council is a separate entity distinct from the others with its own assets and liabilities. That being the case, the assets and liabilities of one local authority cannot be transferred to another local authority. The long and short of these conditions of service is that benefits accrued by council employees can only be claimed at their respective duty stations. Therefore, we find nothing untoward with the findings of the court below that the appellant only had a total of 22 days at Chongwe Municipal Council. This did not amount to a defamatory statement.

10.21 The argument by the appellant that he had more leave days in service with LGSC cannot stand for the foregoing reasons given the fact that councils are distinct body corporates. Accordingly, there is no merit in the third ground of appeal.

10.22 Regarding the claim for benefits, this could only be claimed at the respective duty stations. Notwithstanding the fact that the court below did not specifically cite the conditions of service, it is the Local Government Act, Cap 281 of the Laws of Zambia which has established these councils to be body corporates. That is the basis upon which the appellant cannot claim from Chongwe Municipal Council for the other accrued leave days. Ground four is equally bereft of merit and we dismiss it.

10.23 Ground five is intertwined with the second ground as the appellant is dissatisfied with the lower court's finding that the respondents had successfully raised the defence of fair

comment. It has been argued that this was contrary to the evidence on record which showed that the 1st respondent in publishing the defamatory statements acted under the impression that the information from LGSC was authentic and there was no need to verify such information before publishing it. Section 8 of the Defamation Act, Cap 68 of the laws of Zambia provides for the defence of fair comment. Counsel submitted that the defence of fair comment exists to provide freedom of expression by commenting on matters of public interest. We have also been referred to the case of ***Tse Wai Chum Paul vs Albert Cheng***⁷ on the elements to be established for the defence of fair comment to succeed. The other case of ***Bevin Ndovi vs Post Newspapers***¹ has been called in aid.

10.24 The appellant's grievance is that the news item published by the 1st respondent is one-sided and there was no effort to capture his side of the story. It has been contended that there were no facts to establish with due certainty that the allegations contained in the press briefing were true. In a nutshell, the thrust of the appellant's argument is that he was denied an opportunity to be heard. But that the 1st respondent maliciously proceeded to publish the story and, therefore, the defence of fair comment cannot stand.

10.25 The 1st respondent is of the view that the LGSC was authoritative and released an authentic statement. That the

news report was substantively based on an official press statement issued by the chairperson of the LGSC, Mr Amos Musonda. Further, that it was only published after the LGSC had conducted their investigations over the allegations of financial mismanagement. The provisions of the Constitution of Zambia, Article 228 which establishes the LGSC has been drawn to our attention. It has been submitted that the Constitution clothes the LGSC with the responsibility to oversee the function of the local authorities. Our attention has further been drawn to the Service Commissions Act which vest power in the LGSC pursuant to section 16(1). It has been argued that the LGSC mandate to exercise supervisory power over local authorities, the 1st respondent cannot be faulted for relying on the official statement of the LGSC, as the source of information was authoritative and reliable. The 1st respondent has submitted that therefore the trial Judge was on firm ground when she held that the defendants had successfully raised the defence of fair comment.

10.26 We have carefully addressed our minds to the rival arguments in relation to whether the defence of fair comment was successfully raised. The ingredients to establish the defence are well noted and, for example, in the **Bevin Ndovi**¹ case, it has been indicated that there must be three ingredients to establish fair comment, the first one being the observation or reference from facts not an assertion of fact. Secondly, the matter commented on must be of public

interest. Thirdly, the comment must be fair or objective and not actuated by malice.

10.27 The Judge in the court below considered all the three elements and provided the basis for arriving at her judgment. It is clear to us that it is not in dispute that the chairperson of LGSC did provide information to the 1st respondent regarding the allegations of financial mismanagement at Chongwe Municipal Council. The LGSC does exercise supervisory power over local Councils and Mr. Amos Musonda who was a chairperson of the LGSC did publish a report which report we must hasten to mention was after investigations had been conducted.

10.28 The 1st respondent placed reliance on the report as being one which was authentic. According to the evidence on record, upon receipt of the information the 1st respondent did attempt to contact the appellant. However, the efforts proved fruitless. The matter that was reported on regarding the irregularities at Chongwe Municipal Council was of public interest. There is no evidence that the comment was actuated by malice. The fact that the appellant was not reached for comment does not in and of itself mean that there was malice on the 1st respondent's part or that defamation was established.

10.29 We see no basis upon which we can assail the findings of the trial Judge that the defence of fair comment succeeded taking into account the reasons we have advanced. We are of the

view that this ground of appeal lacks merit and we dismiss it forthwith.

11.0 CONCLUSION

12.1 In the net result we have arrived at the inescapable conclusion that all the five grounds of appeal are unmeritorious and we dismiss them with costs to the respondents to be taxed in default of agreement.



J. Chashi

COURT OF APPEAL JUDGE



B. M. Majula

COURT OF APPEAL JUDGE



N. A. Sharpe-Phiri

COURT OF APPEAL JUDGE