

IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(CIVIL JURISDICTION)

2022/HP/0991



BETWEEN:

ANDREW MWANDA CHANDA
AND

PLAINTIFF

THE ATTORNEY GENERAL

DEFENDANT

BEFORE THE HONOURABLE MR. JUSTICE I. M. MABBOLOBOLO IN CHAMBERS ON THE 13TH DAY OF NOVEMBER, 2025.

For the Plaintiff: *Mr. E. Hambokoma – Messrs Himulambo and Company*

For the Defendant: *Mr. K. Malikebo, Ms. A. C. Chisenda, State Advocates – The Attorney Generals Chambers.*

JUDGMENT

A. CASES REFERRED TO:

1. *MUVI TV Limited v Charity Katanga (Appeal 77 of 2018)(2019) ZMCA;*
2. *Transparency International Zambia (TIZ) v Chanda Chimba III and Zambia Broadcasting Corporation 2010/HP/1176;*
3. *Zambia Railway Limited v Pauline S. Mundia, Briahvn Sialumba (2008) Z.R. 287;*
4. *Bevin Ndovi v The Post News Papers Limited SCJ No. 8 of 2011;*
5. *The People v Cornellias Mulenga (Chellah Tukuta case) (2021);*
6. *Donogue v Stevenson (1932) AC 562;*
7. *Zambia Daily Mail Limited v Geoffrey Bwalya Mwamba and Others (2015) Appeal No. 62 of 2013 (SCZ)*

8. *Fredrick Kunongona Mwanza v Zambia Publishing Company Limited* (1981) Z.R. 234
9. *Given Lubinda and others v Mukosha Funga and ORS* (2020/HP/0047) (2025) ZMHC 4 (28th February, 2025)
10. *Given Lubinda v Edmond Lifwekelo and Another* SCZ Appeal No. 20 of 2018
11. *Livingstone v Rawyard Company* (1880) UKHL 387 (13th February, 1880)
12. *Post Newspaper Limited v Sonny Paul Mulenga* Appeal No. 22/2014 (13th May, 2020).
13. *Lewis v Daily Telegraph* (1964) AC 234

B. LEGISLATION REFERRED TO:

14. *State Proceedings Act Chapter 71 of the Laws of Zambia.*

C. OTHER WORKS REFERRED TO:

15. *Halsbury's Law of England* (3rd Edition) volume 23
16. *Halsbury's Laws of England*, 4th Edition Volume 28 (2021)
17. *Understanding Defamation Law in Zambia an Article by Alex Gallardo*, Thomson Reuters Foundation and Bowmans (2022)
18. *Patrick Milmo and W.V. H. Rogers, Gatley on Libel and Slander*, 11th Edition, Sweet Maxwell, 2008
19. *Clerk and Lindsell on Torts* 5th Edition, London Sweet and Maxwell 1975
20. *Carter-Ruck, P.F. Carter-Ruck on Libel and Slander*, 5th Edition, Lexis Nexis Butterworths, 1997, UK.
21. *Phipson of Evidence* 4th Edition, Sweet and Maxwell (1907)

1.0. INTRODUCTION AND BACKGROUND

- 1.1. This is a Judgment on the Plaintiff's action commenced by way of Writ of Summons and Statement of Claim. The Plaintiff filed his Amended Writ of Summons and Statement of Claim on 29th June, 2022.
- 1.2. The Defendant filed the Defence on 28th September, 2022 which was later Amended on 5th March, 2025.

- 1.3. The Plaintiff filed into Court their Reply on 15th April, 2025.
- 1.4. The Plaintiff was at all material times employed as an Assistant Monitoring and Evaluation Officer by Lusaka Province Medical Office/ Centre for Disease Control and Prevention based at Mount Makulu Health Centre under Chilanga District Medical Office.
- 1.5. The Defendant is and was at all material times an institution by or against whom all civil proceedings by or against the state shall be instituted as provided by **Section 12 of the State Proceedings Act**.

2.0. PLEADINGS.

- 2.1. The Plaintiff claims that on or about October, 2016, he was employed by Lusaka Province Medical Office/Centre for Disease Control and Prevention (CDC), as a data entry clerk and was posted to Mount Makulu Health Centre upon signing his Contract.
- 2.2. It was stated that on account of his hard work and good performance, the Plaintiff, by 2021 had meritoriously earned himself four straight contracts and had risen to the position of Assistant Monitoring and Evaluation Officer.
- 2.3. It was the Plaintiff's claim that on 7th September, 2021 and 13th September, 2021 respectively, the Defendant herein through its agents did cause a publication in the 2021 Annual Performance Appraisal System (APAS) form, defamatory and malicious words against the Plaintiff. That the foresaid annual appraisal system form undergoes extensive and very substantial circulation within Lusaka Province Health Office, after it has been completed, for purpose of

proceedings and decision-making regarding renewal or non-renewal of contracts.

- 2.4. It was also claimed that further the annual performance Appraisal system (APAS) form, the Defendant through its agents in direct reference to the Plaintiff wrote the following false and malicious comment: "The officer is fairly committed to duty and needs some form of mentorship/IQ programs in understanding of PEPFAR indicators as this will help him improve on the quality of his work and demands of the job."
- 2.5. The Plaintiff would at trial aver that in paragraph 4.3 of the Annual Performance Appraisal System (APAS) form, the Defendant's agent made direct reference to the Plaintiff and without verifying the fact, affirmed the false and malicious comment when she commented that: "the Appraisee has reportedly had inefficiencies in performing his duties due to lack of understanding of indicators. He may improve with technical support."
- 2.6. That by the words complained of aforesaid in their natural and ordinary meaning, the Defendant's agents meant and were understood to mean that: -

2.6.1. *The Plaintiff's work performance is of poor quality and below standard.*

2.6.2. *That the Plaintiff is not able to achieve requisite quality of work performance unaided.*

2.6.3. *That the Plaintiff is not fit to hold the position of data entry clerk as he is basically unemployable.*

2.6.4. *That above all the Plaintiff is of questionable intellectual capacity.*

- 2.7. It was the Plaintiff's claim that the use of phases such as "*need for IQ programs, help him improve on quality of work, inefficiencies in performance duties and lack of understanding*" showed a dismal and hopeless situation of a poor performing employee with no redeeming qualities.
- 2.8. That the Plaintiff in a bid to resolve the matter internally, first issued personal demands to the agents of the Defendant requesting them individually to render apologies and publish the same within the confines of Mount Makulu Health Centre, whereupon both failed or neglected to do so despite being accorded a lot of time.
- 2.9. It was stated that following the dead-lock with the agents of the Defendant, the Plaintiff filed a formal complaint and demand for a suitable apology and withdrawal of offending comments with the office of the District Health Director, Chilanga in a letter dated 10th January, 2022.
- 2.10. That the District Health Director responded by calling for a meeting of most of the concerned parties, but did not include the officer who initiated the defamatory comments, Reagan Mungoni. During the said meeting, the Provincial Chief Human Resource, Mr. Christopher Katowa made it plain to the Plaintiff that it was impossible for the office to withdraw or expunge the defamatory comment from the Annual Performance Appraisal

System (APAS) form, and further the office would not issue or publish any apology regarding the defamatory comments of one Reagan Mungoni.

2.11. It was also claimed that during the meeting, the Provincial Chief Human Resource, Mr. Christopher Katowa, demanded that the Plaintiff makes an undertaking in writing not to litigate against the defamatory statement or in any way seek monetary compensation. Following Mr. Christopher Katowa's adamant not to render and publish an apology and insistence that the Plaintiff undertakes not to litigate or seek compensation, the Plaintiff escalated the complaint and demand to Ndeke House by way of a letter addressed to the Permanent Secretary dated 21st February, 2022.

2.12. The Plaintiff would at trial aver that he submitted the letter to the Permanent Secretary's Secretary, at Ndeke House, Ms. Rebecca Bwalya who later informed the Plaintiff that the letter had gone missing before the Permanent Secretary read it. When the Plaintiff re-submitted his letter to the Permanent Secretary, another Secretary to the Permanent Secretary, only identified as Sandra received it on behalf of the Permanent Secretary.

2.13. That when following up on the resubmitted letter of complaint, in March, 2022, at the Permanent Secretary's office, the Secretary identified as Sandra referred the Plaintiff to Human Resource Department, located on the 3rd floor of Ndeke House. In the Human Resource Department at Ndeke House, the Plaintiff was attended to by the Acting Chief Human Resource

Officer, identified only as madam Elise who advised the Plaintiff that his letter had gone missing, and hastened to urge the Plaintiff not to waste his time by resubmitting another letter as nothing would be done his case.

2.14. It was the Plaintiff's claim that madam Elise point blank advised the Plaintiff to *"just forget about the whole issue"*. Having not been accorded justice by the internal procedure, the Plaintiff had no option but to take recourse through litigation as the Plaintiff's situation at the office had continued deteriorating from bad to worse involving all manner of discrimination and threats of non-renewal of the then existing contract.

2.15. That the Defendant having declined or neglected to render an apology and/or respond to the Plaintiff's demand letter, the Plaintiff opted to institute legal proceedings. That by reason of the aforesaid, the Plaintiff has been severely injured in his credit and reputation which has been brought into scandal, odium and contempt. Further, that the Plaintiff's further employment prospects in similar or high positions has been hugely diminished by the false publications.

2.16. That true to the words of the Defendant's agents, though having worked very hard in the preceding years, the Defendant opted to terminate the Plaintiff's contract. Further that based on the threats by the agents of the Defendant and despite having worked for a long period for the Defendant, the Defendant declined to renew the Plaintiff's contract due to the threats

and/or purported non-performance alleged by the agents of the Defendants.

2.17. The Plaintiff claims for the following: -

2.17.1. Damages to be assessed by the Deputy registrar, as a result of malicious and defamatory publication caused by the 2nd and 3rd Defendants on the 7th and 13th day of September, 2021 respectively.

2.17.2. Damages for injury caused to the Plaintiff's reputation as a result of the Publication caused by the agents of the Defendant.

2.17.3. Damages for the loss of the employment caused by the malicious publications by the agents of the Defendant which led to the termination of the Plaintiff's contract

2.17.4. Exemplary Damages

2.17.5. Interest

2.17.6. Costs

2.17.7. Any other reliefs the Court may deem fit.

2.18. The Defendant filed into Court the Memorandum of Appearance and Defence on 28th September, 2022 and was Amended on 5th March, 2025.

2.19. It was stated that the Plaintiff was initially employed as Data Entry Clerk at the Mount Makulu Urban Health Centre in Chilanga District by the Lusaka Provincial Health Office to assist in implementation of activities set out in the Cooperative Agreement between the Centre's for Disease Control and

Prevention (CDC) which position was later changed from Data Entry Clerk to Assistant Monitoring and Evaluation Officer in 2020.

2.20. According to the Defendant, the Plaintiff was employed by the Centre for Diseases Control and Prevention (CDC) as Data Entry Clerk from 16th May, 2016 on a one-year renewable contract by the Lusaka Provincial Health Office. Further, that the Lusaka Provincial Health Office had a Cooperative Agreement with Centre for Diseases Control and Prevention Project which exists to maintain and sustain the Provinces' overall leadership and oversight for implementing a combination of high-impact HIV/AIDS prevention programs.

2.21. Further that, the said Centre also served to strengthen capacity development activities, while providing optimal health systems strengthening in support of continued and sustainable HIV epidemic control in Lusaka and Zambia at large. That the employer of the Plaintiff was the Lusaka Provincial Medical Office.

2.22. The Defendant's position is that the Plaintiff's employment position as Data Entry Clerk was merely changed to Assistant Monitoring and Evaluation in the year 2020. That the renaming of the position had nothing to do with the Plaintiff's assertions that he rose to that position due to his hard work and meritorious conduct.

2.23. It is the Defendant's contention that the comments under the Plaintiff's APAS were not malicious and defamatory as the

Plaintiff alleges. That the words used in the APAS were for the exact reason the APAS was created, for the professional development of the employee which culminates into improved service delivery.

2.24. That the Defendant will aver at trial that: -

2.24.1. *That the Annual Performance Appraisal System (APAS) is a tool used by Government for assessing work performance of an employee over a period of time and is an open system in which both employer and employee are active in the appraisal process as they both agree on the ratings regarding the different sections in the APAS;*

2.24.2. *That the Plaintiff sat with his immediate supervisor, Mrs. Milumbe to be appraised for the period September, 2020 to September, 2021 on the administrative aspects, covering the issue of attendance. That they both agreed on the ratings and the Plaintiff signed, entailing that he agreed with the ratings;*

2.24.3. *That as per procedure, after completing her portion of the APAS Mrs Milumbe then sent the document to be counter signed by the Monitoring and Evaluation Officer whose job is to oversee all Assistant Monitoring and Evaluation Officers in Chilanga District;*

2.24.4. *In counter signing the Plaintiff's APAS, the Monitoring and Evaluation Officer stated his observation from the*

technical aspect that the Plaintiff fell short of fully understanding the Cooperative Agreement (CoAg) indicators and that he needed training in the same;

2.24.5. That as per procedure, the APAS is to be signed by the District Health Director and as such the APAS was sent to the Director. The Director then engaged the Monitoring and Evaluation Officer on the comments provided regarding the Plaintiff who then gave an explanation, the Director agreed with providing training as this would help the Plaintiff improve on service delivery.

2.24.6. That the Plaintiff's use of the word publication which seems to connote some bad dealing on the part of Mount Makulu Urban Health Centre and Chilanga District Health Office is improper and the word "publicize" seems to suggest that the document was availed to people who were not supposed to see it when in fact not.

2.24.7. That the APAS of the Plaintiff was not circulated for every staff member to see as the APAS is conducted in confidence with full participation of the employees and the supervisor, therefore, the use of the word "publication" in the context by the Plaintiff is meant to mislead the Court.

2.25. The Defendant admitted that the District Health Director called for a meeting and made no comment as to the Plaintiff's allegation.

- 2.26. It was the Defendant's contention that the Plaintiff addressed a letter to the Permanent Secretary dated 21st February, 2022 and the choice by the Plaintiff to escalate the issue to the Permanent Secretary's Office was his own decision and not as a result of Mr. Christopher Katowa.
- 2.27. It was also contended that the Defendant had not received any complaints from the Plaintiff as regards his work environment having deteriorated and being discriminated against. That the Plaintiff continued to work in the same Department he was supposed to work in. That there was a typographical error in the Plaintiff's APAS, where 'IQ' was stated instead of 'QI' and an apology was rendered to the Plaintiff even before the District Health Director convened the meeting but that the Plaintiff was adamant to take the apology. Further, that any further apology was not necessary as the APAS was concluded in a correct manner with information accordingly reported as correct.
- 2.28. It was stated that the Plaintiff created a situation where he chose to misinterpret the need and rationale of an APAS and his misinterpretation of the Defendant's duty to act cannot be a reason to hold the Defendant liable. Further, that the Plaintiff must prove the allegation of the said publication and that the Plaintiff ought to demonstrate how the APAS which was conducted on employees had diminished any future prospects of his employment.
- 2.29. Lastly it was stated that the Plaintiff's Contract of Employment ran its course and was not renewed by minute dated 31st August

2022 for justified reasons. Further, that the Plaintiff is not entitled to any of the claims that the Plaintiff seeks.

2.30. The Plaintiff filed into Court a Reply to Defence on 15th April, 2025.

2.31. The Plaintiff stated that the position of Data Entry Clerk was significantly lower than that of Assistant Monitoring and Evaluation Officer. It could therefore not have been attained by mere change of position name. That on the contrary, the Plaintiff was meritoriously promoted to the position of Monitoring and Evaluations (M&E) Officer after Lusaka (LPHO) won a CDC contract as the main implementing Partner. Thus by raising the Plaintiff to the position of M&E Officer, it avoided expenses of outsourcing a Monitoring and Evaluations Officer, as had been the practice. That in other words, following the winning of the said contract, LPHO decided to promote the Plaintiff, the already existing staff from Data Clerk to Assistant Monitoring and Evaluation Officer, which was undisputedly a Much higher position.

2.32. According to the Plaintiff, the promotion was in recognition of his hard work and proficiency in data entry skills that both the District Information Officer(Mrs. Mapiki) and the Facility-In-charge (Mrs. Milumbe) repeatedly and singularly recommended the Plaintiff to various Ministry of Health cooperating partners such as Global fund, John Snow and to one Patrick Amanzi, to mention but a few, and as such the Plaintiff's 6 year contract

renewals were cleared without hitches or questions regarding job proficiency and hard work.

2.33. The Plaintiff's claim is that although his employer was Lusaka Province Medical Office, he was paid by CDC.

2.34. It was stated that the malicious comment made on the Plaintiff's APAS by the Defendant's agent, one Reagan Mungoni, during his brief acting position as District Information Officer, was apparently to settle scores with the Plaintiff, while the incumbent, Mrs. Mapiki, was on leave.

2.35. Further, that given the fact that the Plaintiff's job involved one Year contracts renewable on the basis of hard work and proficiency and that at the time Mr Mungoni acted as District information officer, the Plaintiff was in his sixth contract and he had never received complaint from any of his superiors regarding his work performance or the quality of data entered by him. That the comment made by Mr. Reagan Mungoni (who prior to taking up the acting decision-making Position as District Information Officer had always been known to threaten the Plaintiff with dismissal) was undoubtedly not only malicious but defamatory too.

2.36. It was also stated that it is misleading and unfortunate for the Defendant to argue that the words used in the APAS by Mr Mungoni during his one week of acting as District Information Officer, were for the exact reason the APAS was created. That it was evident that Mr. Mungoni had personal differences with the Plaintiff, as he was always threatening the Plaintiff and used the

brief acting position as an opportunity to settle scores with the Plaintiff.

2.37. That what Mr Mungoni did was reprehensible and an abuse of the APAS. Further, that Mr. Mungoni's action did not reflect the purpose of APAS as described by the Defendant. That the APAS was never intended to frustrate proficient and hardworking employees who were recognized by partner organizations.

2.38. Furthermore, that in any event, the substantive Officer, whom Mr. Mungoni acted for not only renewed the Plaintiff's contract without question for six consecutive years, but also showed confidence in his proficiency and hard work by recommending him to high profile cooperating partners of Ministry of Health such as Global Fund and John Snow. That from the forgoing, Mr. Mungoni's comment ought to attract befitting sanctions to the Defendant as prayed.

2.39. It was the Plaintiff's contention that at trial the Plaintiff would demonstrate that:

2.39.1. In August, 2021 the Plaintiff completed his APAS which was very favourably rated by the Facility In Charge who subsequently sent it to the District level where Mr. Reagan Mungoni who was, at the time, acting as District Information Officer, as Ms Mapiki was on a short leave. It was during that time that Mr Mungoni filled in his defamatory remarks on the Plaintiff's APAS form, which the District Health Director acknowledged

without noticing the mismatch with the favourable ratings from the Facility-In-Charge.

2.39.2. It was at provincial level where it was noticed that Mr Mungoni's comment was at variance with the information supplied by the Plaintiff's Facility In Charge. At the provincial level, they noticed that Mr. Mungoni's remark was not supported by the ratings of the Plaintiff's Facility-In-Charge. Consequently, the Province declined to process the Plaintiff's APAS on account of the mismatch between Mr Mongoni's defamatory remark and the positive ratings from the Plaintiff's Facility-In-Charge. When the Plaintiff's returned APAS form reached the District, the District Human Resource Officer, negligently gave the open form without putting in a sealed envelope to a CIDARZ driver who happened to have been going to the facility. A few days after it was delivered at the facility, Ms Nelly Lungu(ART) nurse notified the Plaintiff that his APAS form had been returned and was in her custody. After about two to three days, the Plaintiff, to his shock, found two known co-workers going through his APAS form which was negligently left in the data room. Before they noticed the Plaintiff enter the room, Mr Harrison (a DAP psychosocial counsellor) exclaimed out-loud in Nyanja: "this time Mungoni has completely destroyed Andrew

Chanda....that's the end of Andrew, he won 't survive this"

2.39.3. The data room served as office space for roughly 16 facility employees. It was also a reception for over 50 ART patients every day. This was the room where the Defendant's agents deliberately or negligently left the Plaintiff's APAS form, wide open, for two to three days after it was returned from the Province via the District. After collecting his APAS from the data room where it had been left exposed to third parties, the Plaintiff filled in a fresh form and again gave it to his in-charge who forwarded to the Province via the District. But the Province again returned it for the same reason since Mr. Mungoni, without furnishing any reasons, refused or neglected to align his comments with the relevant ratings.

2.39.4. That for the second time the Plaintiff found his APAs form on the data room table, exposed to third parties and not enclosed in an envelope. Workmates were emotionally commenting about the contents of the Plaintiff's APAS. Office-mates informed the Plaintiff that Mr Mungoni had brought his APAS form and had left it on the common table. That with a heavy heart, the Plaintiff collected his APAS form for the second time and filled in a fresh one.

2.39.5. *when the Provincial Human Resource noticed the same discrepant remark on the APAS form for the third time they decided to suspend the Plaintiff until completion of an investigation. The Facility In Charge later informed the Plaintiff that the investigation revealed that Mr. Reagan Mungoni failed to give any written or verbal explanation nor specified which CoAg report the Plaintiff was under performing in. That given the Plaintiff's good track record in his past contracts the Plaintiff's Facility-In-Charge and the District Information Officer had given the Plaintiff his 2020 to 2021 contract, which turned out to be his last.*

2.39.6. *That the Plaintiff at no time agreed to the baseless and malicious comment to the effect that he was incompetent and in need of mentorship and IQ boosting. As a matter of fact, the Province protested by returning the APAS form thrice, but the Acting District Information Officer maintained the offending IQ comment, which shows that the offending comment was not un-intended and an error.*

2.39.7. *That the Defendant was confusing two separate issues, the Plaintiff only agreed and signed for the statement of Mrs Milumbe (his supervisor) and not for the Acting District Information Officer, whose substantive position was District Monitoring and Evaluations officer and who had always threatened to "fix" the Plaintiff on*

grounds of personal issues. The substantive District Information officer (Mrs. Mapiki), was on leave when Mr Mungoni authored the defamatory statement. That the substantive District Information Officer had for six years not only highly recommended the Plaintiff for renewal of contract, but also had recommended the Plaintiff to various cooperating partners of the Ministry of Health, which wouldn't have been the case had the Plaintiff been incompetent as suggested by the then acting District Information Officer.

2.39.8. That the clarification is that the Plaintiff's In-Charge was Mrs. Milumbe, who was the only person the Plaintiff could sit with and agree regarding ratings of his APAS form, and from Mrs. Milumbe, the APAS did not go to Monitoring and Evaluation Officer but to the District Information Officer when at the material time the author of the defamatory statement was in acting capacity and took the opportunity to defame the Plaintiff, whom he was known to have personal differences with.

2.39.9. That the Defendant has either missed the gist of the defamatory comment or is deliberately trivializing the same. That by way of clarification, the defamatory Statement is attributable to the Acting District Information Officer and not to the Office of the Monitoring and Evaluations Office. Most importantly the Plaintiff will show that there was no information on the APAS

form which the Acting District Information Officer could have relied upon to come to conclude that the Plaintiff, for the first time in six years, fell short of understanding the indicators in question to the extent of requiring IQ boosting and mentorship. The malice in the statement is confirmed by the fact that the Plaintiff had no history of verbal or written warning as regards job performance and most importantly his data never got rejected at District or at Provincial level. It was for that reason that the author had been unable to explain which specific coAg indicators the Plaintiff might have been underperforming in and for which he needed not only training but IQ boosting.

2.39.10. The Defendant's statement is inaccurate the position being that when an Appraiser has a complaint, the District Health Officer engages not only the District Information officer, but the Facility In Charge (who has first-hand information regarding the appraiser's job performance). The Plaintiff will demonstrate that this procedure was not followed in this case Hence the escalation of the case.

2.39.11. That the Defendant ought to appreciate that there is a distinction between laid down procedure and breach of that procedure. That what transpired in this case amounted to blatant breach of procedure: following the return of Plaintiff's APAS from the Province on grounds of

Mr Mungoni's discrepant comment, the Acting Human Resource Officer at District level breached the Plaintiff's confidentiality by giving the Plaintiffs APAS form to Mr Ernest, an employee of CIDRZ to deliver at Chilanga facility. Mr Ernest who was merely visiting Chilanga handed over the Plaintiffs open APAS form (with defamatory comment) to an ART nurse, Nelly C. Lungu who negligently exposed it to third parties while in her custody. That to make matters worse she later dumped the open APAS form into the data room on Lance Yumba's table without caring to seal it in an envelope such that by the time the Plaintiff collected the document, most of the more than 60 people who used the data room had free access to the "confidential" APAS form for about three days before the Plaintiff managed to collect it. That also when the Province returned the Plaintiffs APAS for the second time, the author of the defamatory comment maliciously left the unenveloped confidential document in the data room without even notifying the Plaintiff who only went to pick it after hearing co-workers expressing concern about the defamatory comment on the Plaintiffs APAS form. It is therefore not in dispute that, third parties, who under normal circumstances should not have had sight of the Plaintiff's confidential APAS did have sight of it and read the defamatory comment (on account of negligence of the Defendant's agents both at the District

level as well as at the office). That it was in fact those third parties who notified the Plaintiff that his APAS was laying on a table. Hence, whether this publication was intentional or not intentional, it was publication non the less.

2.40. That the Plaintiff would also aver at trial that following the blatant refusal by the Defendant's agents to withdraw the defamatory comment from the APAS form, and following the Agents' chorus of threats to dismiss the Plaintiff with non-renewal of contract, and refusal to render an apology, the Plaintiff was left with no choice but to seek redress with the Permanent Secretary's Office. That in or about January 2022 the Defendant's Provincial Human Resources Officer, one Christopher Katowa issued a stern warning against any employee at the facility who would confirm reading the contents of the Plaintiff's APAS while it was in nurse Lungu's office or while it was exposed in the data room. Mr Katowa asked the Plaintiff to simply forget about the matter as it would not go anywhere.

2.41. It was stated that that Defendant's agents created an unbearably toxic work environment which the Plaintiff reported to the Facility-In-Charge on several occasions, but was ignored. Further that unknown to the Defendant, the agents eventually actualized their threats of not renewing the Plaintiffs contract through a letter dated the 30th of August 2022.

2.42. It is the Plaintiff's claim that the offending comment by the Defendant's agent could not have been an error. That nothing can be farther from the truth in that:

- i. Mr. Mungoni had always been issuing threats of getting the Plaintiff to lose his contract on account of petty jealous and personal differences. That he used his acting position in August, 2022, to abuse the power of the said office via the Plaintiffs APAS form.
- ii. Further that, the Province queried Mr. Mungoni's unsupported defamatory remark three times by returning the Plaintiff's APAS form. If the defamatory remarks were an error, the Defendant's agents would have used this opportunity to amend the offending comment. However, Mr. Mungoni had refused to change the comment, and further, to date, the offending statement is still intact and on record and no apology has ever been rendered. That instead the Defendant's agents responded with arrogance and disdain, threatening the Plaintiff with non-renewal of contract which had since been actualized.

3.0. THE HEARING

- 3.1. At the hearing held on 1st July, 2025, the Plaintiff Mr. Andrew Mwanda Chanda, aged 35 years, Assistant Monitoring and Evaluation Officer (currently unemployed) who resides at Mount

Makulu Flat B in Chilanga, Lusaka (hereinafter called **PW1**) testified and called one Witness.

- 3.2. **PW1** placed reliance on his Witness Statement filed on 27th May, 2025 for his Examination-In-Chief.
- 3.3. According to his recollection of events pertaining to this matter, **PW1** stated that he was an Assistant Monitoring and Evaluation Officer for Mount Makulu Health Centre Chilanga District Health Office at the time the problem arose in August 2021. That the Plaintiff had worked at Mount Makulu Health Centre from 28th October, 2016 up until the time his contract was abruptly terminated in September, 2022.
- 3.4. That **PW1** was in one-year contract renewable and enjoyed favourable yearly work performance evaluations from his Facility-In-Charge (Mrs. Milumbe) as well as the District Information Officer (Mrs. Mapiki) who frequently congratulated **PW1** on his work performance in regard to data processing. That as such, they highly recommended him for short term contracts with various cooperating partners, such that the annual contract renewals had become automatic based on high recommendations from all of **PW1**'s supervisors. Reference was made to pages 31 to 35, 36 to 38, 39 to 54, 55 to 57, 60 to 62, 69 and 70 to 72 of the Plaintiff's Bundle of Documents showing a short contract in 2012, a short contract in 2017, acknowledgement of receipt, acknowledgement of receipt (UTH-HAP), 2018 documents data audit, Certificate of completion for

an electronic data entry at the facility and community level in 2017 and short contracts for 2019 and 2020 respectively.

- 3.5. **PW1**'s testimony was that he discovered that the District Monitoring and Evaluation Officer (Mr. Mungoni) was regularly mistreating him and actively trying to paint him black in the eyes of all his superiors. That **PW1** took that to be mere workplace petty jealousy. That **PW1** would have occasional verbal exchanges with him from time to time but that **PW1** was not really bothered by Mr. Mungoni because his office was not involved in contract renewals which was a concern of most of the employees at the facility.
- 3.6. That the situation however took a bad turn for **PW1** in August, 2021, when at the time of submitting the annual APAS, the District Information Officer Mrs. Mapiki went on short leave and Mr. Mungoni acted in her absence. That **PW1** sat with his Facility-In-Charge (Mrs Milumbe) and received favourable ratings and she motivated him to maintain his good work performance.
- 3.7. It was **PW1**'s evidence that Mrs. Milumbe later forwarded his APAS forms to the District Health Office for countersigning. That **PW1** later learnt that the Province sent back his APAS forms as there was a discrepancy between the District Information Officer's comment and that of his Facility-In-Charge.
- 3.8. An averment was made that after some time, the ART nurse, Ms. Nelly Lungu called the Plaintiff to go and collect his APAS

forms from her office. That **PW1** got concerned to learn that the forms were delivered to her a few days earlier by a driver from CIDARZ, especially considering that the forms were open and not sealed in an envelope.

3.9. Further that, when **PW1** went to collect his APAS forms, he was even more disturbed to find Mr. Harrison (a DAP Psychosocial Counsellor) going through his APAS forms while Lance Yumbe was seated on the opposite side of the data room table, where they had found **PW1**'s form negligently left by Nelly Lungu. That what caught **PW1**'s attention was that before Mr. Harrison noticed **PW1**, he exclaimed to Lance (in Nyanja) that *"...this time Reagan has completely destroyed Andrew Chanda..."*

3.10. It was stated that the data room where **PW1**'s APAS forms were left was a public area which served as office space to roughly 16 facility employees. That the said office also served as a reception and on average was visited by not less than 50 ART patients each day. Further, that as **PW1** collected his APAS forms from the data room, he wondered why the District Office had returned his APAS forms without sealing them in an envelope and in that state the forms were handed to a CIDARZ driver to deliver to the facility.

3.11. The Plaintiff went on to state that he proceeded to complete the second APAS forms and they were forwarded, that because the Acting District Information Officer maintained the same comment which was at variance with the ratings of his Facility-In-Charge, the form was again returned by the Province. That

to the Plaintiff's displeasure, he found his APAS forms negligently placed on the data room table and were open and not in an envelope. Further, that the Plaintiff later learned that they were left on the data room table by Mr. Mungoni and that the Plaintiff's workmates were commenting about the contents of his APAS forms. Reference was made to pages 65 to 68 in the Plaintiff's Bundle of Documents.

3.12. According to **PW1**, immediately word went around about the defamatory comment on his APAS, the cooperating partners stopped offering him short contracts. That even the organization which were enticing him to leave the Ministry and join them stopped making their overtures to **PW1**. That, that is how widespread the damaging effect of the defamatory remarks were.

3.13. It was testified that with a heavy heart, **PW1** collected his APAS forms for the second time and filled in a fresh set. That during the first week of September, 2021, **PW1** was called by the Provincial Human Resources Officer and was told to hand over everything and stop reporting for work.

3.14. That upon realizing how much Mr. Mungoni had abused his acting appointment by defaming **PW1** and then proceeding to expose his confidential APAS forms to third parties, **PW1** wrote a complaint letter to the District Office stating that Mr. Mungoni had unfairly used his acting appointment to breach his confidentiality by deliberately writing a baseless defamatory

comment on the his APAS and then exposing the confidential document to so many people during the whole process.

3.15. That unfortunately, the District Office refused to remove the offending comment from his APAS and further refused to render an apology. That instead, they started issuing threats of non-renewal of **PW1**'s contract for 2022 to 2023 if he continued pursuing the matter. Further, that Mr. Christopher Katowa went on to warn against giving evidence about the defamatory comment and the exposure of **PW1**'s APAS forms to third parties in the data room.

3.16. That as a result **PW1** was left with no choice but to escalate the complaint to Provincial level through the Office of the Permanent Secretary. On or about June 2022, **PW1** commenced this action against the Attorney General in respect of the malicious defamatory comment which was authored by Reagan Mungoni whilst Acting as District Information Officer upon realizing that District was adamant not to remove the offending remark or render a befitting apology.

3.17. It was also stated that on 30th August, 2022, the Provincial Health Officer notified **PW1** that his contract would not be renewed for the year 2022 to 2023 and that to date the Plaintiff has remained jobless. Reference was made to page 73 of the Plaintiff's Bundle of Documents.

3.18. During Cross-Examination, **PW1** stated that he wanted to be heard as he is seeking justice on what happened to him whilst he was working. That **PW1** is seeking an apology because his

job was contractual and the statement that was made as regards his work performance affected future contracts and that it affected his future opportunities to get employment from the partners of Ministry of Health.

3.19. The Witness stated that however, an apology would not be enough because his reputation suffered as a result of what had transpired. That **PW1** has not been able to find a job for about three (3) years and this has affected him and his family financially.

3.20. **PW1** stated that Mr. Mungoni, who was the District Monitoring Evaluation Officer wrote on the Plaintiff's APAS that he needed some form of mentorship and IQ programs. That this led to **PW1** not reporting for work until the matter was resolved. That **PW1** as a result was not reporting for work for almost three (3) months.

3.21. It was **PW1**'s testimony that the statement by Mr. Mungoni was circulated at the facility, in the Screening Room 3, the Data Room and the main server connecting all departments. That **PW1** personally saw this and evidence of this can be found on pages 65 to 68 of the Plaintiff's Bundle of Documents being a screen shot.

3.22. During further questioning the Plaintiff conceded that the defamatory statement was not contained in the aforementioned pages.

3.23. It was the Plaintiff's position that before publication of the defamatory statement, he was engaged in a number of programs

by the District Information Officer, Mrs. Mapiki and different stake holders under the Ministry of Health. That on certain occasions the Plaintiff was given special assignments (short contracts) to carry out for the Ministry of Health and the District. Reference was made to pages 36 – 38 of the Plaintiff's Bundle of Documents. That after the publication of the defamatory words, the Plaintiff did not receive any assignment or short contract.

3.24. The Plaintiff insisted that his reputation was affected, he however conceded that he did not have any evidence before court proving that he was not given short contracts because of the publication of his APAS forms.

3.25. The Plaintiff when referred to his Witness Statement and page 53 of the Defendant's Bundle of Documents, confirmed that the document in question was a contract bearing his signature.

3.26. When the Plaintiff was referred to page 54 and 57 of the Defendant's Bundle of documents and asked about the contract, his response was that it would expire on a certain date, and added that he did not agree that the contract would expire on that date because after the malicious statement by Mr. Mungoni, the Plaintiff wrote a complaint letter to the Provincial Office explaining what Mr. Mungoni had written on his APAS and sending it to the facility without following the Procedure.

3.27. The Plaintiff confirmed that it was his position that the contract was not renewed because of the malicious publication made on

the 7th and 13th September 2021. The Witness however conceded that the contract was renewed on 31st October, 2021 and also stated that after he was told not to report for work for three (3) months, **PW1** was told to go the Provincial office to verify if Mr. Mungoni's statement on the APAS was true. That investigations revealed that Mr. Mungoni's statement on the APAS was baseless and as a result the contract was renewed.

3.28. **PW1** averred that he understood the APAS and what it was for, that it was an internal document which was confidential and the public is not privy to it. **PW1** confirmed that the said document goes through a process of review by authorised people such as supervisors and the Permanent Secretary.

3.29. The Plaintiff stated that the APAS form that contained the defamatory statement as contained in his Statement of Claim was before Court. The Witness conceded that he had no evidence that other organisations were enticing him to leave the Ministry of Health and join them or that said offers stopped as a result of the actions by the Defendant's agents.

3.30. It was stated that the Plaintiff was recommended for a renewal of contract because after Mr. Mungoni's remarks, the Plaintiff was supposed to be given three (3) verbal warnings and three (3) written warnings through his immediate supervisors, the Facility-In-Charge. That during all the contracts **PW1** had, he had never received any complaint about his work performance and as a result he was given a contract after three (3) months.

- 3.31. The Plaintiff's position was that no efforts were made to resolve the matter amicably. When referred to page 47 of the Defendant's Bundle of Documents being Minutes held on 16th November, 2021, the Plaintiff confirmed that he was present at the said meeting and that he had been informed that the comment regarding his IQ was a typographical error that had since been corrected.
- 3.32. The Witness stated that he did not sign new APAS forms to rectify the error but signed them for his evaluation. The Witness confirmed that in accordance with page 57 of the Defendant's Bundle of Documents, renewal of contract is subject to performance, projected Human Resource and availability of funds. **PW1** also agreed that if there was no projected Human Resource or availability of funds then there would not be a renewal of contract.
- 3.33. In Re-Examination, **PW1** stated that he had received the APAS on two occasions, first in the Data Room and second in the Screening Room 3 where they had been left and he found them.
- 3.34. The Witness also stated that the Minutes aforementioned dealt with the issues of mentorship and IQ.
- 3.35. The Plaintiff called as his Witness Darry Nguwo Tembo, aged 61 years, a retired Nurse/Midwife and now a farmer who resides at Plot L 19664/M Mount Makulu, Chilanga, Lusaka (hereinafter called **PW2**).

- 3.36. For Examination-In-Chief, the Witness relied on her Witness Statement dated 27th May, 2025.
- 3.37. It was **PW2**'s testimony that she was Acting Nurse In-Charge at Mount Makulu Health Centre. That sometime in 2017, the In-Charge had gone to school and **PW2** was the supervisor who worked very closely with the Plaintiff. That **PW2** got to know the Plaintiff very well from the time he joined the facility somewhere around 2016. Reference was made to Page 69 of the Plaintiff's Bundle of Documents being a Certificate of Completion for the Electronic Data Entry at Facility and Community Level.
- 3.38. It was testified that **PW1** could compile data which was aggregated by Heads of departments and later they would go through it as a facility and had data review meetings before it could be sent to the District Office at the end of the month. That this was done to make sure that data was complete and accurate. Reference was made to pages 58 and 59 in the Plaintiff's Bundle of Documents being HIA1 and HIA2 data reporting tools.
- 3.39. An averment was made that **PW2** could not remember when the report was returned to the facility because it had mistakes in it. That during the time **PW2** worked with the Plaintiff, the Plaintiff was very dedicated, passionate such that he gained a nickname as "data man"
- 3.40. In Cross-Examination the Witness stated that she retired on 7th April, 2024.
- 3.41. No further questions were asked in Cross-Examination.

3.42. There was no Re-Examination and this marked the end the Plaintiff's case.

3.43. The Defendant called four (4) Witnesses in its Defence. The first was Dr. Leah Namonje, aged 44 years, a Medical Doctor, based at Ministry of Health as a Monitoring and Evaluation Officer for T.B and resident at Plot No. 14880/F/M Libala Waterworks, Lusaka (hereinafter referred to as **DW1**).

3.44. **DW1** for her Examination in Chief relied on her Witness Statement filed on 31st March, 2025. It was stated that **DW1** was the Director for Chilanga District Health Office at the time the incident that gave rise to this claim occurred.

3.45. It was **DW1**'s testimony that the Government utilize the Annual Performance Appraisal System (APAS) to assess the performance of its employees. APAS is an open system where both the employer and the employee participate actively in the process. They jointly agree on the ratings in various sections of the form. The purpose of the system is to facilitate professional development and improve the quality of service delivery. Reference was made to pages 36-46 of the Defendant's Bundle of Documents being the APAS for the period October 2020 to September 2021.

3.46. It was stated that the Plaintiff was employed as a contract employee under the Lusaka Provincial Health Office and was required to undergo an appraisal for the period from October, 2020 to September 2021. In accordance with the laid down

procedure, once the Plaintiff's APAS is signed by his supervisors, it is then sent to the District Health Director for counter signing. Consequently, the APAS was forwarded to her in her capacity as District Health Director.

3.47. That as per **DW1**'s practice for countersigning forms for officers with whom she did not directly work with on a daily basis, she would contact the Facility-In-Charge for a performance oversight. **DW1** would also review the comments in the APAS form in order to provide her own comments.

3.48. It was **DW1**'s evidence that after reviewing the comments in the APAS form and reviewing feedback from the Plaintiff's supervisors, **DW1** concluded that the Plaintiff would require support and supervision on PEPFAR indicators. Thereafter the same was forwarded to the Provincial Health Office.

3.49. Further, that sometime in August 2021, shortly after forwarding the said APAS, **DW1** received a call from the Provincial Health Office informing her that errors had been identified in some of the APAS forms, including those for the Plaintiff. Furthermore, that **DW1** contacted the Facility-In-Charge, advising them of the errors concerning some officers' APAS forms and directed that they have the officers redo their performance appraisals for the period October, 2020 to September, 2021. That the Plaintiff's appraisal was one of the APAS's that needed to be redone.

3.50. That the APAS forms were returned for corrections and **DW1** forwarded them to the registry for dispatch to the respective officers at the District.

- 3.51. **DW1** testified that on 17th September, 2021, **DW1** again received the Plaintiff's APAS forms for countersigning which she did by endorsing the comment that "Reportedly not able to meet some requirements due to inadequate knowledge on some PERFAR indicators. He needs technical support/supervision on PEPFAR indicators" Reference was made to pages 36 to 46 of the Defendant's Bundle of Documents being the Plaintiff's APAS for the period October, 2020 to September, 2021.
- 3.52. Further, that shortly thereafter, **DW1** was issued a Demand Letter regarding her countersigning of the Plaintiff's APAS. That the Plaintiff was demanding a public apology and an amount in the sum of ZMW 3,000,000.00. **DW1** immediately brought the issue to the attention of the Provincial Health Office.
- 3.53. That on 16th November, 2021, **DW1** convened a meeting in her capacity as District Health Director to help resolve the concerns raised by the Plaintiff through his lawyers. Reference was made to pages 47 to 48 of the Defendant's Bundle of Documents being Minutes of the meeting held in Chilanga District dated 16th November, 2021.
- 3.54. That at the said meeting, the Plaintiff stated that his grievance stemmed for a comment made by his supervising officer indicating that he had a low IQ. That however, Mr. Christopher Kutowa clarified that upon reviewing the comment, it was determined that it was a typographical error, with the intended term being "QI" (Quality Improvement), not "IQ". Reference was

made to pages 47 to 48 of the Defendant's Bundle of Documents aforesaid.

- 3.55. It was also testified that following this, the Plaintiff was advised that the comment was simply a typographical error that had since been corrected. The Plaintiff was also advised to withdraw his demand. That in response, the Plaintiff apologised and indicated that he would withdraw the matter from his legal team. Further, that he was advised to formalize his withdrawal by submitting a letter to the District Health Office. However, to date, no such letter had been recorded as having been received.
- 3.56. During Cross Examination, **DW1** confirmed that a statement as alleged by the Plaintiff was contained in the APAS. The Witness also stated that for the delivery of APAS forms, the Ministry of Health uses people who work within the Ministry as government workers and those who are supported by partners. Further that **DW1** could not state how the APAS forms were delivered to the Plaintiff because when she signs, the secretary picks them up, takes them to the Registry and the Human Resource Office then has a mode by which they are delivered.
- 3.57. It was **DW1**'s response that in addressing the Plaintiff's grievance, the main discussions were around the QI which had wrongly been written as IQ. That when she received the complaint letter about the low IQ, **DW1** consulted her boss, the Provincial Health Director, and had suggested to him that they were going to have a meeting with the complainant. That it was

suggested that a neutral party should be present, who turned out to be Mr. Katowa.

- 3.58. It was stated that the main subject of the meeting was the IQ remark. The witness confirmed that the Plaintiff had stated that a lot of people had sight of the APAS and were making fun of him as a result. That however, the Plaintiff was assured that the APAS was for the use within the organisation and not for others i.e. the District and Province. Further, that the IQ statement did not mean that he was not working and that **DW1** had also praised the Plaintiff for being hardworking.
- 3.59. It was also **DW1**'s position that the Plaintiff was not the only one who was appraised. That the purpose of the APAS was on improving performance and that no one had lost employment as a result. That the APAS had been delivered to the data room which was the Plaintiff's office. That the APAS forms can be delivered either by a government driver or a Driver from CIDERS employed by CDC.
- 3.60. It was **DW1**'s evidence that the APAS can be received either by the person who is being assessed or by the In-Charge. The witness stated that as regards countersigning one needs to get feedback from others. Further, that if **DW1** was not working directly with the appraisee, she would have to get in touch with his immediate supervisor for feedback so that she would have knowledge of the people being appraised.
- 3.61. Responding further, **DW1** was not sure of how many people she had engaged but she recalled having called Mrs. Milumbe, the

In-Charge and that Mrs. Milumbe gave her feedback that the Plaintiff was hardworking which she agreed with because most of the time she visited the facility, the Plaintiff was always around. That the Plaintiff was working primarily for PERFAR and he also worked for HMIS.

3.62. It was **DW1**'s confirmation that the supervisor at PERFAR was also Mr. Mungoni. From whom she had gotten feedback that the Plaintiff needed to improve because of certain abbreviations that were being used. That **DW1** also had prior feedback from other supervisors who visited the facility. That with that, **DW1** was confident to approve the reviews in terms of improving the quality of work.

3.63. It was also testified that the IQ issue arose in the first APAS. That the second APAS was done a few weeks later. That the second APAS had been done by the time the IQ issue was raised. That **DW1** in the second APAS still maintained that there was need to improve in other areas. **DW1** denied that it took the complaint for them to notice the IQ issue, stating that by the time the complaint arose, they had already done the second APAS. Further, that the big issue was the statement about the IQ and that, that was the main focus.

3.64. No questions were asked in Re-Examination.

3.65. The second Witness was Reagan Mungoni, aged 37 year, a Monitoring and Evaluation Specialist and resident at Acacia Hills, Chilanga (hereinafter called **DW2**). For his evidence in

Examination in Chief **DW2** relied on his Witness Statement filed on the 31st March, 2025.

- 3.66. It was **DW2**'s evidence that he was the Monitoring and Evaluation Officer for the Chilanga District Health Office at the time the incident that gave rise to this claim occurred. That, **DW2** is currently holding the same position, but is now based at Kanyama Level 1 Hospital. That as the Monitoring and Evaluation Officer at Chilanga District Health Office, his role involved supervising all the Monitoring and Evaluation Assistants and working closely with them.
- 3.67. It was averred that the Plaintiff, was employed as a contract employee under the Lusaka Provincial Health Office and was required to undergo an appraisal for the period from October, 2020 to September, 2021. In accordance with procedure, **DW2** received the Plaintiff's APAS for countersigning as his supervisor.
- 3.68. Further that, having worked closely with the Plaintiff and having objectively assessed the Plaintiff's Performance, **DW2** recorded his professional observations, which were to the effect that the Plaintiff needed some form of Mentorship or QI programs to better understand PERFAR indicators with the intention of helping him improve his work performance, particularly regarding the PERFAR indicators, which are critical in the data entry function for the department.
- 3.69. It was stated that **DW2** then forwarded the forms to the District Health Director for processing as per procedure. That **DW2** later

learned that the Plaintiff's APAS forms, along with other APAS forms, contained errors and were returned to each individual for corrections. That shortly thereafter, **DW2** was issued a Demand Letter regarding his countersigning of the Plaintiff's APAS. That the Plaintiff was demanding a public apology and an amount of ZMW 3,000,000.00.

3.70. It was also stated that **DW2** later learned that the Plaintiff's grievance stemmed from his comment where **DW2** had indicated "IQ" and that this error had since been rectified.

3.71. During Cross-Examination, **DW2** stated that the officer is engaged where shortcomings have been noted. That thereafter, feedback is given to the officer with performance issues. That at the time of appraising an officer, if such issues have not been resolved, they are supposed to be reflected in the appraisals as a way of helping that particular officer in the areas where they may need some assistance, training or mentorship as part of the recommendation.

3.72. It was **DW2**'s response that the APAS is a document that is used for government employees to assess the performance of all employees. That the Plaintiff happened to have been part of that process in 2020 to 2021.

3.73. Additionally, that on several occasions the Plaintiff was engaged through various forms of communication i.e. phone calls, WhatsApp, group communications and through other supervisors at District and Provincial levels.

- 3.74. Further, that in August, 2020, all employees completed their APAS forms from the facility level. Once the same were signed, they were taken to the District Office. That the supervisors were required to countersign, that at that time **DW2** countersigned not only for the Plaintiff but for others as well. That from there the forms were forwarded to the District Health Director. That after, they are taken to the Human Resource Office and finally to the Provincial Office.
- 3.75. That the APAS forms for the Plaintiff and other employees had some issues or errors discovered at Provincial level. That the APAS forms that were found to contain errors were returned to the District and thereafter forwarded to various facilities for the affected officers to redo them. That however the mode of transportation for the APAS forms does not fall under **DW2's** office but that of the Human Resource Office.
- 3.76. The Witness denied engaging the Plaintiff to stop seeking redress as he was putting his career at risk. When referred to pages 65 to 68 of the Plaintiff's Bundle of Documents **DW2** denied that he was part of that conversation, stating that any person can serve any number as Reagan and that there is no evidence pointing that he was a part of that conversation.
- 3.77. No questions were asked in Re-Examination for **DW2**.
- 3.78. The third Witness was Lance Yumba, aged 32 years, an Assistant Monitoring and Valuation Officer under the Ministry of Health based at Kayama Level 1 Hospital and resident in Musamba, Chilanga (hereinafter called **DW3**).

- 3.79. **DW3** stated that he was an Assistant Monitoring and Evaluation Officer for the Chilanga District Health Office at the time the incident that gave rise to this claim occurred. That **DW3** is currently holding the same position, but is now based at Kanyama Level 1 Hospital. That during **DW3**'s tenure at Mount Makulu Health Facility, he worked in the same capacity with the Plaintiff and they shared the same office space.
- 3.80. It was averred that as an Assistant Monitoring and Evaluation Officers at Mount Makulu, one of their primary duties was to enter data into the online Health Management Information System (HMIS) for the District.
- 3.81. **DW3** testified that given that they were the only two individuals in the department, the Plaintiff and himself organised their workload by sharing tasks on a monthly basis. That sometime between August 2021 and September 2021, **DW3** and the other officers at the facility were required to undergo their annual performers appraisals. That **DW3** completed his appraisal forms and submitted them to the necessary office. That later, they were informed that some officers, including himself, had to redo their annual appraisals as the previously submitted forms had been found to contain errors.
- 3.82. It was **DW3**'s evidence that later, the Plaintiff informed and showed him the comment made by the countersigning officer, which stated that the Plaintiff needed Mentorship/ IQ training for PERFAR indicators. That the Plaintiff expressed concern over that comment.

- 3.83. That however, the indication for the requirement of mentorship on PERFAR indicators was not surprising to **DW3**, as on several occasions, when the Plaintiff was assigned the task of entering LPHO/DH152 data entries, errors were identified and flagged by Mr. Reagan Mungoni, the Monitoring and Evaluation Officer. That on those occasions, corrections had to be made to the said entries.
- 3.84. During Cross Examination, **DW3** testified that in his line of work, they discuss the quality of data provided from the facility. That there are measures for that and the process involves the In-Charge reviewing the data before submitting to the District.
- 3.85. When **DW3** was asked if there were issues with data being transmitted to the District between 2020 to 2022, **DW3** answered in the affirmative and stated that sometimes, they would not capture data accurately. Further that **DW3** was not aware of any queries the In-Charge had raised with the Plaintiff's work.
- 3.86. No questions were in Re-Examination.
- 3.87. The Fourth and last Witness to be called by the Defendant was Christopher Katowa, aged 41 years, a Chief Human Resource Officer at the Ministry of Health Headquarters and resident at Plot No. 30144, Rockview, Chalala, Lusaka (hereinafter referred to as **DW4**).

3.88. For His Examination in Chief, the Witness relied on his Witness Statement filed on 31st March, 2025.

3.89. It was **DW4**'s testimony that he was the Chief Human Resource Management Officer based at the Lusaka Provincial Office at the time the incident that gave rise to this claim occurred. **DW4** currently hold the same position, but that he was now based at the Ministry of Education.

3.90. That as the Chief Human Resource Management Officer based at the Provincial Office, his role was primarily to supervise all Human Resource Management functions at the provincial level. This included overseeing the performance appraisals, employment contracts, and personnel management for staff at facilities under the Provincial Health Office.

3.91. It was **DW4**'s testimony that the Plaintiff was employed as a Data Entry Clerk at Mount Makulu Urban Health Centre in Chilanga District, under the Lusaka Provincial Health Office. That in 2020, the position of Data Entry Clerk was re-designated to Assistant Monitoring and Evaluation Officer. Reference was made to the Plaintiff's contract of employment for the period of November 2016 to March 2017 in the Defendant's Bundle of Documents.

3.92. It was testified that the government utilizes the Annual Performance Appraisal System (APAS) to assess the performance of its employees. According to **DW4**, APAS is an open system where both the employer and the employee participate actively in the process by jointly agreeing on the

ratings in various sections of the APAS form. That the annual appraisal forms are not designed to assess an individual's IQ but rather to evaluate job performance, including work quality, achievements, and contributions within the role. Reference was made to Pages 45 to 46 of the Defendant's Bundle of Documents being the Interpretation of the APAS form for the Plaintiff for October, 2020 to September, 2021.

3.93. It was also testified that between August and October 2021, the Human Resource Unit Lusaka Provincial Health Office, received APAS forms from Chilanga District for various officers. Upon reviewing the received APAS forms for processing, **DW4** noticed the information on some forms was not synchronised. The Chilanga District Health Office was provided with guidance to the effect that the officers whose APAS forms contained errors should be rectified accordingly.

3.94. It was stated that the Provincial Health Office then forwarded the erroneously filled in APAS forms to the District Health Office for them to be returned to the respective officers. That during this time, between September and October 2021, the Provincial Health Office received communication indicating that there was a dispute over the performance appraisal of the Plaintiff, involving his supervisor, Mr. Reagan Mungoni, and the District Health Director, Dr. Leah Namonje.

3.95. That as the Chief Human Resource Management Officer, **DW4** was surprised to learn that the Plaintiff's advocates had raised a Human Resource Management dispute before bringing the

- issue to the attention of the administration. That **DW4**'s office then engaged the Chilanga District Health Office over the dispute and the alleged damaging remarks and arranged for a meeting to be held in Chilanga to help resolve the dispute.
- 3.96. That on 16th November, 2021, a meeting was convened. Reference was made to pages 47 to 48 of the Defendant's Bundle of Documents being Minutes of the meeting held in Chilanga District dated 16th November, 2021.
- 3.97. Further, that the Plaintiff stated that his grievance stemmed from a comment by his supervising officer indicating that he had a low IQ. Upon reviewing the comment, it was determined that the reference to "IQ" was a typographical error and the intended term was "QI". That following that, **DW4** advised that the comment was simply a typographic error, which had since been rectified, following the Plaintiff's resubmission of his appraisal forms. **DW4** stated that he also recommended that the Plaintiff's demand be withdrawn.
- 3.98. An averment was made that in response, the Plaintiff apologised and indicated that he would withdraw the matter from the legal team. That the Plaintiff was advised to submit his offer to withdraw of the demand letter in the form of a letter to the District Health Office. However, no such letter had been recorded as having been received.
- 3.99. That the Plaintiff submitted his Annual Performance Appraisal System (APAS) forms for the period October 2020 to September, 2021 and those forms were fully processed. Reference was made

to pages 36 to 46 of the Defendant's Bundle of Documents being the Plaintiff's APAS for the period October, 2020 to September 2021.

3.100. That the Plaintiff's contract was renewed for the period 2021 to 2022. Reference was made to pages 53 to 58 of the Defendant's Bundle of Documents being the Plaintiff's contract of employment for the period of October 2021 to September, 2022.

3.101. It was stated that the Plaintiff was appraised for the period October, 2021 to September, 2022. Reference was made to pages 59-71 of the Defendant's Bundle of Documents being the Plaintiff's APAS for the period October, 2021 to September, 2022.

3.102. During Cross-Examination, it was **DW4**'s testimony that the APAS was initiated at the facility, that from there, the forms were taken to the District Health Officer for further processing. That from the District Office after important signatures are appended, the forms were transmitted to the Provincial Health Office. That there a person like the Chief Human Resource Officer checks them. Further, that the procedure used to handle them is confidential and that **DW4** was not in a position to answer how the forms were mixed up at Chilanga.

3.103. It was **DW4**'s response that he was not in a position to know who gave the Plaintiff his forms.

- 3.104. Responding further and to the best of **DW4**'s Knowledge, the first form that had IQ and not QI had a recommendation to renew the Plaintiff's contract for a further one year. That even as the forms were taken to the Provincial Health Office, that was the recommendation which was sitting on the document. That the reason the forms were returned, among a few others, was that when the documents were received, a quality check on them was conducted to ascertain if the comments and recommendation were all in harmony.
- 3.105. It was DW4's position that the dispute was about the typographical error because the Plaintiff had not complained about the recommendation to renew his contract. That the document that had the typographical error was not fully processed and what led to the Plaintiff being recommended for a contract was the revised APAS and not the one with the typographical error.
- 3.106. That the Head Office was on firm ground that it was a typographical error because the APAS is a process that is administered very transparently and that is why it replaced the confidential appraisal system. That in that document, all comments made by the supervisors are seen by the subordinates, who confirm that they agree with the comments. That this is done before the document goes any further.

3.107. The Witness stated that at the meeting the Plaintiff had agreed to apologise and that they considered that everything had been resolved.

3.108. In Re-Examination, the Witness stated that the APAS is not accessible to third parties. It is a document that is handled by the person being appraised, the supervisor, countersigning officer and finally, the officer who is overall by completing part 4.3 of the form. That for this reason people who have access are Registry Officers and Human Resource Officers for analysis. That the aforementioned officials are not regarded as third parties.

3.109. The Defendant dispensed with the evidence of two other Witnesses and this marked the end of the Defendant's case.

4.0. THE PARTIES FINAL SUBMISSIONS

4.1. The Plaintiff filed his final submissions on 21st July, 2025. According to the Plaintiff this Court had three (3) legal issues to determine, are as follows:

4.1.1. Whether the tortious claim for defamation against the state can be sustained.

4.1.2. Whether the words attributed in the APAS form were defamatory in nature.

4.1.3. Whether the Plaintiff is entitled to exemplary damages.

4.2. It was submitted that the Defendant through its agents made a defamatory comment on the Plaintiffs APAS forms, which is not in dispute and that the confidential APAS forms were subsequently intentionally or negligently published by;

4.2.1. In the first instance availing to a stranger outside the organisation a CIDARZ employee to return to the facility the confidential APAS documents unsealed; and

4.2.2. The stranger leaving the APAS in the screening room where the ART Nurse then took the Defendant's APAS to the data room table leaving the confidential document unsealed, in the open on the data room table accessible to an indeterminate number of staff not privy to the contents of the APAS documents who included outsiders/none staff members.

4.2.3. In the second instance after about a week the Plaintiff's APAS document was returned to the facility and again left unsealed, in the open on the data room table accessible to an indeterminate number of staff members not privy to the contents of the APAS documents who included outsiders.

4.3. It was stated that the Defendant's agents had no knowledge of what transpired with regards how the Plaintiff's APAS was handled. That no checks were done to ascertain that the Plaintiff's APAS, a confidential document had been handled with due care, confidentiality and it was not exposed to third parties not privy to its contents. Further that the primary focus of the

Defendant's agents was to ensure the Plaintiff that the defamatory comment on the Plaintiff's APAS was a typographical error.

- 4.4. Furthermore, that the standing procedure of having the confidential documents delivered directly to the Facility-In-Charge who in turn engages the appropriate officer the APAS relates to was not followed.
- 4.5. A submission was made that it is not in dispute that the Defendant's defamatory comment identifies the Plaintiff as it was made with full knowledge on his APAS form by the Defendant's agents. Further that, the defamatory comment harms the Plaintiff's character, business, occupation or employment. That in any event, one can prove libel even without proof that its publication caused harm or injury to the person. Reference was made to the case of **Muvi TV Limited v Charity Katanga**¹.
- 4.6. It was stated that this claim can be sustained because none of the possible defences are available to the Defendant in this case. That the defamatory comment made by the Defendant's agents had no factual basis and could therefore not be said to be justified as fair comment. Reliance was placed on the case of **Transparency International Zambia (TIZ) V Chanda Chimba III and Zambia National Broadcasting Corporation**².
- 4.7. Further that other defences for civil defamation under the Defamation Act as justification, absolute privilege and common law are not available to the Defendant in this case.

- 4.8. It was submitted that even if the Plaintiff's immediate supervisor had rated him poorly (which they didn't in this case), to question an employee's level of intelligence in that manner would still be unjustifiable and reprehensible. That the Defendant had advanced a narrative that the defamatory comment made on the Plaintiffs APAS by the Defendant's agent was a typographical error. Yet at the same time attempting to justify the defamatory comment as being reflective of the Plaintiff's performance thus contradicting the narrative that defamatory comment was a typographical error. The witness statement of the first witness at paragraphs four and nine indicates that the first witness (counter-signing officer/ District Health Director) independently reviewed the defamatory comment and agreed as counter-signing with the defamatory comment on the Plaintiffs APAS in both instances.
- 4.9. It was also submitted that the facts show that the comment was not a typographical error, that it was made either intentionally or negligently without due care, with no reasonable care to avoid an act or omission, the Defendant's agents could reasonably foresee would injure the Plaintiffs person and career, which very type of mischief the law of tort came into existence to cure.
- 4.10. That it is very peculiar that this narrative that the defamatory comment was a typographical error begun being advanced only after the Plaintiff raised a grievance regarding the

defamatory comment, in two (2) letters dated 10th January, 2022 and 21st February, 2022 respectively.

4.11. That the Plaintiff's persistence to seek redress culminated into the meeting that attempted to resolve the grievance in February, 2022 after he sent the second letter to the Provincial Office on 21st February, 2022. The meeting date was back dated to reflect November 2021 in an attempt to align with the new contract the Plaintiff had been given in November 2021. This was to make it appear as though this typographical error narrative had been advanced in November 2021, prior to the new contract being given to the Plaintiff. In actual fact this narrative was only advanced over six months after the defamatory comment was made and after the new contract had already been given and was underway.

4.12. It was submitted that no apology was made by the Defendant's agents for the defamatory comment which they claimed was a typographical error. That the Defendant also raised the defence of fair comment, which according to the Plaintiff is not applicable in this case because one fundamental ingredient/ element required for this to be employed was missing. That being, a factual basis, which is a key ingredient for the defence of fair comment. Reliance was placed on the case of **Transparency International**

Zambia (TIZ) v Chanda Chimba III and Zambia National Broadcasting Corporation².

- 4.13. That making a comment that the Plaintiff performed so poorly that he needed IQ programs to improve his performance was without a doubt crossing the line, quite extreme and actually very far from being factually correct as the Plaintiff had an undisputed track record of good performance. That specifically in the performance review period the APAS covered, it was not disputed that the Facility-In-Charge gave the Plaintiff a good performance review.
- 4.14. That the Plaintiff's co-worker who was in the same role at the facility at the time, when asked on oath before this Court as a witness for the Defendant, if any concerns had been raised by the Facility-In-Charge in the performance review period to do with the Defendant's work quality, responded on oath that there were no concerns that he was aware of raised by the Facility-In-Charge regarding the work quality of the Defendant.
- 4.15. It was submitted that it is undisputed that the Plaintiff had received good performance reviews from all other appraisers both at facility and District level in the consecutive six years he had worked and never had his IQ questioned on account of his work performance at any point in these preceding six years. That due to the Plaintiff's good performance at work, he was recommended by his superiors for other short-term contracts within the Ministry of Health and also with high profile cooperating partners.

4.16. A submission was made that the defamatory words attributable to the Defendant amounted to a groundless and false statement which had the effect of tarnishing, harming as well as damaging the plaintiff's reputation and career.

4.17. It was stated that the Plaintiff is entitled to exemplary damages because neither regard nor remorse has been shown by the Defendant for making a defamatory comment regarding the Plaintiff, which the Defendant through its agents proceeded to either intentionally or negligently expose to a CIDRZ employee and further left the confidential APAS document in the open in two instances on the data room table which was accessible to an indeterminate number of staff not privy to the contents of the APAS document including outsiders/non staff members. Reference was made to the **Tukuta**⁵ case and it was stated that the conduct of the Defendant's agents was unjustifiable, reprehensible and deserving of punitive sanctions in the form of exemplary damages.

4.18. The Court's attention was drawn to the **Alex Gallardo** in his text entitled "**Understanding Defamation Law in Zambia**"¹⁷ where he aptly states that the Plaintiff who is successful in proving a defamation claim against a Defendant by law is entitled to exemplary damages for the harm to their reputation and dignity.

4.19. Lastly, that no apology was given to the Plaintiff by the Defendants agents, not even to help advance their alleged typographical error narrative. As such the Plaintiff stands

entitled to exemplary damages, especially also considering factors such as the extent of the damage caused to the plaintiff's reputation and employment/career. Reference was made to **Muvi TV Limited v Charity Katanga**¹

4.20. The Defendant filed final submission on 4th September, 2025.

It was stated therein that the Plaintiff in this matter alleges that a defamatory remark was published by the Defendant on 7th and 13th September, 2021 in his APAS form by allowing a stranger outside the organization to carry APAS forms. that when the Plaintiff was asked to give evidence to that effect, the Plaintiff referred this Court to pages 65 to 68 of the Plaintiffs Bundle of Documents which showed an alleged conversation between fellow employees; specifically, Reagan Mungoni and another employee.

4.21. It was submitted that the Plaintiff failed to bring before Court evidence that his APAS forms were delivered unsealed and left open to an indeterminate number of staff members not privy to the contents. That the alleged conversation on page 65 to 68 of the Plaintiff's Bundle of documents does not prove or substantiate the Plaintiff's claim of publication of the defamatory comment.

4.22. That the Plaintiff failed to show this Court the APAS forms that contained the alleged defamatory statement. That if such publication to a third party had transpired, then the Plaintiff should have produced it before this Court to support his claim.

- 4.23. It was submitted that the Plaintiff was reliably informed that the “IQ” comment was a typographical error that had been corrected prior to the meeting being held and that this was evidenced in the APAS form produced by the Plaintiff in the Plaintiff’s Bundle of Documents on pages 5 to 17. That based on the aforementioned, it is clear that the Plaintiff had failed to prove publication of his APAS form containing an alleged defamatory remark as the only individuals that had access to it are authorized personnel of the Ministry of Health.
- 4.24. It was also submitted that the Plaintiff failed to show the injury that he had suffered as a result of the alleged defamatory statement. That is was clear from the evidence before Court that following the alleged defamatory comment, the Plaintiff was given a new contract owing to the fact that it was acknowledged that the Plaintiff was a hard worker. Further that the APAS is a private document that is not privy and accessible to outsiders or organisations outside the government.
- 4.25. Further that there was no loss of employment as the renewed contract run its course of 12 months and was not further renewed because the contract renewal was not just subject to performance but also availability of funds as outlined in clause 16 of the said contract. That the contract could not be renewed due to unavailability of funds and the same was communicated to the Plaintiff. Reference was made to made to page 73 of the Plaintiff’s Bundle of Documents.

- 4.26. It was stated that a person who commences a civil action must prove his case against the Defendant in order to succeed in his claim. Reliance was placed in the learned authors of **Phipson on Evidence**²¹, in paragraph 6-06, at page 151.
- 4.27. Relying on the case of **Frederick Kunongona Mwanza V. Zambia Publishing Company Limited**⁸ stated that in order for a party to succeed in a claim for defamation and the recourse emanating from it, it is paramount that he who alleges must prove and that the Plaintiff has failed to do that.
- 4.28. The Defendant relying on the **Halsbury Laws of England, paragraph 10**¹⁶, the case of **Given Lubinda and Others v Mukosha Funga and ORS**⁹ and **Gatley on Libel and Slander**¹⁸ on defamation stated that the Plaintiff had failed to give evidence of how the internal confidential APAS form was given to a third party unauthorised to view its contents. That the Plaintiff failed to produce the APAS that contained the defamatory statement but instead produced into evidence the corrected APAS form. Reference was made to page 5 to 17 of the Plaintiff's Bundle of Documents.
- 4.29. That the Plaintiff had failed to substantiate his claim that word of the defamatory comment was circulated so much so that Plaintiff stopped receiving offers and contracts from Ministry of Health's cooperating partners.
- 4.30. Placing reliance on the case of **Given Lubinda V Edmond Lifwekelo and Another**¹⁰ it was stated that defamation is dependent on right thinking members of society and not how

the Plaintiff felt about the publication. That an article or publication will be defamatory if its effect is to expose a claimant to hatred, contempt, ridicule or lower the Claimant's reputation in the estimation of right-thinking members of society, generally.

4.31. It was submitted that from the foregoing it is clear that for the Plaintiff to succeed in his claim for defamation, a claimant must lead evidence to prove that the publication complained of lowered the Plaintiff's reputation in the estimation of the right-thinking members of society generally. That the Plaintiff admitted that a meeting was held and that at the said meeting he was informed that it was a typographical error on his form which was ultimately corrected prior to the meeting and that once the issue was resolved he returned to work and a new contract was signed.

4.32. That this proved that the Plaintiff did not suffer any consequential damage to his reputation as his contract was renewed prior to the meeting being held. Further that, the Plaintiff ought to have led cogent evidence, such as witness testimonies, to show that the estimation of his reputation by right-thinking members of society had been lowered or that he had been exposed to hatred, disparage or injury in his office or profession as a consequence of the Defendant's Publications, as was guided by the Supreme Court in the case of **Given Lubinda V Edmond Lifwekelo and Another**¹⁰, cited above.

- 4.33. A submission was made that contrary to the Plaintiff's testimony that because of the alleged defamatory comment he lost his employment and his contract was terminated, the evidence on record showed that the Plaintiff's contract was renewed. This was because he was considered to be a hard worker that merely required more training on PEPFAR indicators to improve his performance in that area. That therefore, the typographical error did not affect him as his contract was renewed.
- 4.34. That the Plaintiff claims damages as he believes that the typographical error made by the defendant was not a mistake but rather a malicious attempt to defame and cause humiliation to him, and that it caused injury to his reputation and led to the termination of his employment. That the basis of awarding damages is to bring the wronged party, as far as money can do, to a position he would otherwise have been in had the wrongful act not have been occasioned by the other party. Reliance was place on the case of **Livingstone V Rawyard Company**¹¹.
- 4.35. It was submitted that the Plaintiff did not suffer any damage as his contract was renewed despite the typographical error on his APAS form and the Plaintiff admitted at trial that once he expressed his concerns about the comment on his APAS form, a meeting was held to address his concerns and he agreed that he did fill in new APAS forms which corrected the typographical error and he continued his employment until his contract expired.

4.36. Reliance was placed on the case of **Zambia Daily Mail Limited Geoffrey Bwalya Mwamba and Others**⁷ and it was submitted that the Supreme Court stated in the aforementioned case that for exemplary damages, it is necessary for a Plaintiff to show that the statement was made in bad faith or recklessness and that the statement was made for material gain. Because that was not shown in that case, the exemplary damages were removed.

4.37. It was also submitted that the Defendant in this matter made a typographical error on the Plaintiffs APAS form which was corrected thus there was no bad faith or recklessness intended on the part of the Defendant. This was evidenced by the fact that the Plaintiff himself failed to produce the APAS form where the alleged defamatory remark was made because it was dispensed with due to the error. That therefore, the Plaintiff is not entitled to any damages as there was no defamation occasioned to him and he has failed to satisfy the requirements for a claim for defamation.

5.0. CONSIDERATION AND DECISION OF THE COURT

5.1. I have considered the Pleadings by both Parties, the evidence before me and the submissions made on behalf of the parties. I am grateful for the industry of Counsel.

5.2. The gist of the Plaintiff's case is that on 7th September, 2021 and 13th September, 2021 respectively, the Defendant's agents

published in the 2021 Annual Performance Appraisal System (APAS) defamatory and malicious words against the Plaintiff. The said words are as follows:

- i. The officer is fairly committed to duty and needs some form of mentorship /IQ programme in understanding of PEPFAR indicators as this will help him improve on the quality of work and demands of the job.*
- ii. The Appraisee has reportedly had inefficiencies in performing his duties due to lack of understanding of indicators. He may improve with technical support.*

- 5.3. It was the Plaintiff's contention that the said words ought to have been confidential as the APAS form is a confidential document but was recklessly left unsealed in the data room that was accessible to at least sixteen other employees and outsiders. That as a result thereof the Plaintiff suffered ridicule from other staff members. Further, that as a result of the same, the Plaintiff also lost employment opportunities with the Ministry of Health cooperating partners. Furthermore, that his contract with the Ministry of Health had not been renewed because of the defamatory statements.
- 5.4. That from the forgoing the Plaintiff is entitled to the reliefs under paragraph 2.17 herein.
- 5.5. The Defendant's case on the other hand is that the offensive word referring to the Plaintiff's IQ was a typographical error

which was corrected before commencement of this matter. It was also the Defendant's assertion that the APAS forms are confidential in nature and meant only for use within the government for purposes of assessing an employee's work performance. That the said documents are not at any time released to the public. Further that the Plaintiff did not suffer any damage as a result of the aforementioned statements as his contract with the Ministry of Health for the period 2021 to 2022 was renewed.

- 5.6. It was stated that the APAS form is an internal document which could not have prevented the Plaintiff from getting employment with any other organisation. It was also emphasized that the Plaintiff's contract had been renewed following the alleged defamatory statements and accordingly run its course, therefore the alleged defamatory statements had no effect on the Plaintiff's employment whatsoever. It was also emphasized that the Plaintiff has in this case failed to satisfy the elements of defamation in order to be entitled to the reliefs claimed herein.
- 5.7. From the onset, it is important to state that the onus is on the Plaintiff to prove his case on a balance of probability as was stated in the case of **Zambia Railway Limited v Pauline S. Mundia, Brian Simumba**³ that:

"The old adage is true that he who asserts a claim in a civil trial must prove on a balance of probability that the other party is liable".

5.8. I note that the Attorney General has been sued in this matter for the actions of the employees of the State in tort. **The State Proceedings Act** in **Section 4(1)(a)**¹⁴ states that:

4. (1) Subject to the provisions of this Act, the State shall be subject to all those liabilities in tort to which, if it were a private person of full age and capacity, it would be subject
(a) in respect of torts committed by its servants or agents;

5.9. From the forgoing section it is clear that the State can be held liable for the acts in tort including defamation of its employees. This matter is therefore correctly before this Court.

5.10. The Plaintiff in this matter as aforesaid is alleging that defamatory statements were published by the Defendant's agents. The Plaintiff is required to prove certain elements in order for him to succeed in an action for defamation. The learned author **Carter -Ruck on Libel and Slander**²⁰, at **page 35** states that:

"In any action for defamation, whether it be libel or slander, the respondent must prove that the matter complained of:

a. is defamatory (defamation)

b. refers to the respondent (identification)

c. *has been published to a third party (publication).*”

5.11. From what has been stated above, it becomes necessary to ascertain if a statement is indeed defamatory. **Halsbury’s laws of England**¹⁶, at **paragraph 43** states that:

“In deciding whether or not a statement is defamatory, the court must consider what meaning the words would convey to the ordinary man. Having determined the meaning, the test is whether, under the circumstance in which the words were published, a reasonable man to whom the publication was made would be likely to understand it in a defamatory sense.”

5.12. I have also considered the Supreme Court case of **Post Newspaper Limited v Sonny Paul Mulenga**¹² where the Court referred to the case of **Lewis v Daily Telegraph Limited**¹³ which states that:

“there is no doubt that in the actions for libel the questions is what the words would convey to the ordinary man: it is not one of construction in the legal sense. The ordinary man does not live in an ivory tower and he is not inhibited by a knowledge of the rules of construction. So, he can and does read

between the lines in the light of his general knowledge and experience of worldly affairs.”

- 5.13. It is important to state that the APAS form containing the alleged defamatory statements had not been produced before this Court. However, the Defendant has not denied that such a document existed. The question for this Court therefore is can an ordinary person have understood the words alleged to be defamatory as defaming the Plaintiff in the minds of a right-thinking person?
- 5.14. A reasonable reading and understanding of words which have been reproduced above, would be that the Plaintiff needed training in order to better understand PEPFAR indicators. The ordinary reading of the words does not seem to suggest that the Plaintiff has a low IQ. From the forgoing although the statements were referring to the Plaintiff, an ordinary person would not have understood them to mean that Plaintiff possessed a low IQ.
- 5.15. Further **DW3** in his Examination-In-Chief stated that the alleged defamatory statement was shown to him by the Plaintiff. That when he saw the same he was not surprised because the Plaintiff always had some issues with entry of data for PEPFAR. The testimony of **DW3** in this regard was not challenged or questioned by the Plaintiff in Cross Examination. From the evidence before me it would appear that the Plaintiff may have

indeed needed to improve on his knowledge of PEPFAR indicators and the statements were pointing to that fact.

5.16. From the evidence before me, the APAS that contained the IQ remark was corrected as evidenced by page 12 of the Plaintiff's Bundle of Documents. However, the spirit of the comment was maintained, in that in the corrected APAS forms too stated that the Plaintiff had inadequate knowledge of some PEPFAR indicators and needed technical support.

5.17. From the forgoing I am inclined to agree with the Defendant that the IQ remark was indeed a typographical error that was corrected before this suit.

5.18. I note from the Defendant's Bundle of Documents that the APAS form is a standard one consisting of multiple pages. The provision for the alleged defamatory comments is not on the first page of the document but should have been on page 8 and 9 of said document. I also note that the Plaintiff has not brought forth any evidence that anyone saw the said comments. **DW3** claimed that the said comments were shown to him by the Plaintiff himself. There is no evidence to show that the said statement was published by the Defendant's agents. In fact, the evidence before me suggests that the Plaintiff himself upon seeing the comments that grieved him began to publish the same. There is evidence before me that more than one APAS form was returned to the facility. **DW3** is on record stating that his form was returned as well.

- 5.19. From the forgoing it is quite odd to imagine that other staff members could only have been interested in the Plaintiff's APAS form so much so that they would read all of it and discover the comments on page 8 and 9 respectively, when it had been returned with other forms.
- 5.20. In light of what has been stated above, I am of the view that an ordinary right-thinking person reading the alleged defamatory comments could not have concluded that the Plaintiff possessed a low IQ. In addition, although the said statements were understood to refer to the Plaintiff, there is no evidence that the same were published by the Defendant's agents. In fact, from the record it is clear that the Plaintiff published his personal and confidential APAS form to **DW3**.
- 5.21. The Plaintiff also alleged that the said comments affected his future prospects of getting employment. From the record it is clear that the APAS form is an internal confidential document which is not released to third parties. I fail to see how his future prospects would have been affected if he intended to work with other organisations. I also note that the incident in question happened in 2021. The Plaintiff received a contract renewal for the Period 2021 to 2022. The import of this is that the said comments did not affect his employment with Ministry of Health either for the period under review.
- 5.22. I find that the Plaintiff has failed to prove all the elements of defamation or that he suffered any damage as a result of the statements and for this reason his action must fail.

6.0. CONCLUSION

6.1. Having found that the Plaintiff did not prove defamation on a balance of probability, I decline to grant the reliefs sought and accordingly dismiss this matter.

6.2. Each Party to bear their own Costs.

**SIGNED, SEALED AND DELIVERED AT LUSAKA THIS 13TH DAY
OF NOVEMBER, 2025.**



**I. M. MABBOLOBOLO
HIGH COURT JUDGE**