

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

2023/HP/1169



BETWEEN:

AUGUSTINE MUKOKA**PLAINTIFF**

AND

COLLINS MUKWALA**DEFENDANT**

**BEFORE HON MRS JUSTICE S. KAUNDA NEWA THE 20th DAY OF
FEBRUARY, 2025**

For the Plaintiff : Mr. B. Mulunda & Ms. C. Nachimba, Messrs. Apton and
Partners

For the Defendant : Mr. R. Zambwe & Ms. V. Banda, Messrs Zambwe and
Partners

J U D G M E N T

CASES REFERRED TO:

1. *Sim v Stretch* 1936 ALL ER 1237
2. *The People v Edward Jack Shamwana and 12 others* 1983 ZR 122
3. *Gastove Kapata v The People* 1984 ZR 47
4. *Benny Mwiinga v Times Newspaper Limited (1988/1989)* ZR 178
5. *Bevin Ndovi v Post Newspaper Limited, Times Print Pak Zambia Limited* SCZ No 8 of 2011
6. *Post Newspaper Limited v Mulenga* Appeal No. 22 of 2014
7. *Given Lubinda v Edmond Lifwekelo and the Daily Nation Newspaper Limited* Appeal No. 2 of 2018
8. *Innocent Kahyata v Zesco Limited* Appeal No. 151 of 2022

LEGISLATION REFERRED TO:

1. *The Defamation Act Chapter 68 of the Laws of Zambia*

OTHER WORKS REFERRED TO

1. *Black's Law Dictionary, 8th Edition, by Bryan A. Garner*

2. *Carter – Ruck on Libel and Slander, 5th Edition, Lexis Nexis Butterworths, 1997, UK*
3. *Halsbury's Laws of England, 4th Edition, Volume 28 at paragraph 43*
4. *Winfield and Jolowicz on Tort, 17th Edition 2006*

1. INTRODUCTION

1.1 Augustine Mukoka, the Plaintiff herein, commenced this matter on 7th July 2023, by way of Writ of Summons which was accompanied by a statement of claim and the other requisite documents, seeking the following reliefs:

- i. A Court Order for an immediate unequivocal and unreserved apology by Collins Mukwala both on his Facebook page and the various platforms that he caused the comments to be circulated;*
- ii. A Court Order for damages for defamation in the sum of USD1,000,000.00;*
- iii. A mandatory injunction to compel Collins Mukwala by himself, his servants, agents or otherwise to immediately desist and cease the illegal defamation, slander or libel of Augustine Mukoka;*
- iv. Interest;*
- v. Any other relief that the Court may deem fit; and*
- vi. Costs.*

2. STATEMENT OF CLAIM

2.1 The claims as revealed by the statement of claim, are that Augustine Mukoka is a Freelance journalist, and a Zambian National, who is based in the United States of America, while Collins Mukwala is an Executive Committee Member of the Football Association of Zambia in Muchinga Province.

- 2.2 Augustine Mukoka averred that on 14th May 2023, he published an article on his Facebook page, which has a large following entitled **“FAZ ELECTORAL MALPRACTICE: How did Muchinga Province Produce an Unopposed FAZ Exco Member?”**.
- 2.3 He contended that at the material date, Collins Mukwala maliciously and malignly commented, and reacted to the article that he published, by making false allegations which were not in any way meant to respond to or make fair comments on Augustine Mukoka’s article, but were meant to attack and injure his character, national identity and in persona.
- 2.4 The assertion was that Collins Mukwala commented as follows:

“I walk a mile to avoid a fight bt when one starts, I don’t backdown an inch. The reason why you have so much time to write stupid things abt people is that you have nothing to do welofwa iwe. Mukoka Augustin Bakusungafya kubakashi bobbe I have no time to talk to a John solye ubwali like u. Are you not ashamed to follow your wife in diaspora just go and feed Porridge abana wemukulu?”

Try me I will talk about your family congole iwe.”

- 2.5 Augustine Mukoka contended that the reaction and comments which were made by Collins Mukwala in their natural meaning, entailed that Augustine Mukoka is a Lofa,

who is being kept by his wife, and that was why he had time to write articles that he published on his Facebook page. Further, that the said words meant that Augustine Mukoka only waited to be called to go and eat nshima, and that Augustine Mukoka unashamedly followed his wife in the diaspora just to go and feed porridge to the kids at his age, and also that he is a Congolese national.

- 2.6 Augustine Mukoka alleged that Collins Mukwala did cause the same malicious falsehood comments that he made against him, to be shared on various platforms, such as WhatsApp Groups which included the FAZ Executive Committee, the Muchinga Province platform, and on the Real AK 47 Zed Football fora, when Augustine Mukoka deployed a mechanism to stop Collins Mukwala from spreading falsehoods on Augustine Mukoka's Facebook Page.
- 2.7 It was further stated that on 16th May 2023, Augustine Mukoka, served on Collins Mukwala, a letter of demand for an unreserved apology for the malicious and defamatory comments, which were made against him, but Collins Mukwala declined to do so through an email.
- 2.8 He added that Collins Mukwala's comments amounted to defamation, as Augustine Mukoka's reputation had been lowered in the eyes of reasonable members of the society, the journalism profession and the football community at large.
- 2.9 Augustine Mukoka laid down the particulars of defamation as follows:

PARTICULARS OF DEFAMATION

- i. *Collins Mukwala's comment that Augustine Mukoka is a Lofa;*
- ii. *Collins Mukwala's comment that Augustine Mukoka is only kept by his wife and that Augustine Mukoka is only called to go and eat;*
- iii. *Collins Mukwala's comment that Augustine Mukoka only followed his wife in the diaspora to go and feed porridge to the kids at his age; and*
- iv. *Collins Mukwala's comment that Augustine Mukoka is a Congolese national.*

2.10 Augustine Mukoka contended that by reason of the above, his reputation, which is cardinal to his profession, had been harmed, and that his credit had been severely injured, while his reputation had been brought into scandal, odium and contempt.

2.11 It was further stated that Collins Mukwala had no legal justification for commenting on Augustine Mukoka's Facebook Page in the manner that he maliciously and falsely did.

3. DEFENCE

3.1 In his defence, Collins Mukwala admitted having written and published the statement on 14th May 2023, as alleged by Augustine Mukoka. He however, averred that the same was not done maliciously, as claimed by Augustine Mukoka, but rather, he was prompted by the statement which was written by Augustine Mukoka, wherein he alleged electoral

malpractice, in how Collins Mukwala was appointed as a FAZ Exco Member.

- 3.2 Collins Mukwala further stated that the statement was primarily done and published as a fair comment, on a matter of public interest, as criticism ought to be, and is recognized in any civilized system of law, as salutary for private persons who make themselves or their work the object of public interest.
- 3.3 He added that Augustine Mukoka embarked on a path of slandering him by alleging malpractice in the manner of his appointment as a FAZ Exco member.
- 3.4 Collins Mukwala denied having shared the statement that he wrote about Augustine Mukoka on various platforms, and stated that the statement that he wrote, was primarily meant to address the situation that arose at the instance of Augustine Mukoka, and was of public interest, and it was presented in a satirical manner.
- 3.5 In relation to the averment that Augustine Mukoka served him a demand letter in which he demanded an apology to be made for the article that Collins Mukwala wrote, Collins Mukwala's response was that his statement was not done maliciously as claimed, but it was born out of Augustine Mukoka's statement.
- 3.6 The particulars of defamation as alleged were denied, with Collins Mukwala stating that he merely made a fair comment on an issue of public interest, and that such was not suited for any apology to be rendered.

- 3.7 Collins Mukwala also denied that Augustine Mukoka's reputation had been lowered in the eyes of reasonable members of the society, the journalism profession and the football community at large, and that Augustine Mukoka had been brought into any public scandal, odium and contempt.

4. EVIDENCE AT TRIAL

- 4.1 At trial, Augustine Mukoka testified, and he called no other witness. Collins Mukwala equally testified, and he called no other witnesses.

PW1 – AUGUSTINE MUKOKA

- 4.2 In his testimony, Augustine Mukoka, identified his witness statement, which was filed on 7th November 2023, adding that it had his full names and that of his colleague, whom he had given a Power of Attorney, and who signed it on his behalf. He relied on the said witness statement, as his testimony.
- 4.3 Augustine Mukoka's testimony as contained in the witness statement, was that on 12th May 2023, he caused to be published an article entitled "**FAZ ELECTORAL MALPRACTICE: How Did Muchinga Province Produce an Unopposed FAZ Exco Member?**" which was at pages 10 to 15 of his bundle of documents.
- 4.4 He stated that following the article being published on his Facebook page, which had a wide and large following, Collins Mukwala maliciously responded and reacted to it, in a manner that was not meant to defend or make a fair

comment, but to maim, damage and discredit Augustine Mukoka's character and reputation.

- 4.5 In that regard, his testimony was that as opposed to reacting to Augustine Mukoka's article, Collins Mukwala resorted to using ad-hominem to discredit Augustine Mukoka's character, by making written comments, pointing to the fact that Augustine Mukoka was an untrustworthy person.
- 4.6 The evidence that was also given, was that, Collins Mukwala made comments on Augustine Mukoka's article which among other things, attacked and injured his persona, character and nationality, by suggesting that Augustine Mukoka is a Lofa, who was being kept by his wife, and that he followed his wife in the diaspora, just to go and feed his kids porridge at his age.
- 4.7 Further, that Augustine Mukoka is a Congolese national, and in that regard, he referred to pages 16 to 17 of his bundle of documents as the said comments.
- 4.8 Augustine Mukoka's testimony was further that the attacks were meant to paint a picture that he is a lazy, useless man, who feeds off his wife, when in fact Augustine Mukoka had worked for more than three (3) companies in the United States of America, and had also studied at a University in the United States of America.
- 4.9 Augustine Mukoka contended that he is not a Lofa, that he is happily married, and he further stated that he had children much later after he relocated. It was also his testimony, that he is a Zambian national, and holds a valid

National Registration Card. Augustine Mukoka testified that the allegations that were made by Collins Mukwala that he is a Congolese national, were only meant to create a xenophobic atmosphere around him, so that he could be looked at with a different eye from other Zambian nationals.

- 4.10 Still in his testimony, Augustine Mukoka testified that he is a freelance journalist by profession, and that the issues surrounding the election of Collins Mukwala in Muchinga Province, in which he went unopposed, was a matter of public interest, which Augustine Mukoka by virtue of his profession, was at liberty to inform the general public about, as regards the circumstances, facts and the manner in which Collins Mukwala was elected.
- 4.11 He added that on the other hand, Collins Mukwala had an unqualified privilege to make a fair comment on any article that Augustine Mukoka might have published, but that Collins Mukwala could not plead fair comment, after making a false statement, which was aimed at denigrating the character and reputation of Augustine Mukoka in the eyes of right thinking members of the society, and worse off the journalism profession, to which Augustine Mukoka belongs, adding that the said profession is character, credit and reputation sensitive.
- 4.12 Augustine Mukoka's testimony was that Collins Mukwala's opening statement in his attacks on him which read: "*I walk a mile to avoid a fight but when one starts, I don't backdown an inch*" was a clear indication that Collins Mukwala had

resolved to scandalize Augustine Mukoka, and that Collins Mukwala had clear intent to maliciously, injure the credit, character and reputation of Augustine Mukoka, so as to deter Augustine Mukoka from further discussing matters of public interest in Zambian Football.

- 4.13 He added that this was also evident from Collins Mukwala's conduct, when Augustine Mukoka deployed a mechanism to deter Collins Mukwala from spreading falsehoods on his page, when Collins Mukwala resorted to publish and spread falsehoods and injurious remarks on various platforms such as WhatsApp Groups, which included the FAZ Executive Committee, the Muchinga Province platform, and the Real AK 47 Zed Football.
 - 4.14 Augustine Mukoka testified that the various screenshots were at page 18 of his bundle of documents.
 - 4.15 His evidence was also that Collins Mukwala's attack on him, was only but one of the many attacks that journalists receive from persons holding public offices, who are ordinarily supposed to be accountable to the general public, but use their powers and authority to instill fear in journalists, so that they remain unaccountable and untouchable.
 - 4.16 Augustine Mukoka contended that there was a need to protect and safeguard journalists from unruly and uncivilized persons who held public offices, and that a message needed to be sent, that once you hold public office, you become amenable to public accountability.
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CROSS-EXAMINATION OF AUGUSTINE MUKOKA

- 4.17 In cross-examination, Augustine Mukoka testified that he is a freelance journalist, and a media consultant, who practiced in Texas, United States of America. He stated that he was claiming damages for injury to his reputation.
- 4.18 His testimony was also that he earned an estimated USD5,000.00 – USD10,000.00 a month, and that he had no proof of the same, as it was not part of his claims. Augustine Mukoka added that as a journalist of his repute, he was being called false names.
- 4.19 He told the Court, that he went to the USA in 2011, and that from that time, he had earned over USD1,000,000.00. However, Collins Mukwala had said that he had gone to the USA to become a *John solye ubwali*, and therefore, his claim was based on that.
- 4.20 It was further his testimony, that following that statement, Collins Mukwala's colleagues and friends had repeated those sentiments. Augustine Mukoka explained that their jobs as journalists, is based on factual reporting, and that if someone made a statement in that manner, people lost trust, and he could not get a contract. It was agreed that Augustine Mukoka had no proof to show the same.
- 4.21 Still in cross examination, Augustine Mukoka's evidence was that he felt defamed and insulted, which had damaged his reputation, as well as the public perception, and that there was evidence of that.

- 4.22 In stressing that there was proof of such damage, Augustine Mukoka stated that there was evidence to that effect. In that regard, he contended that Collins Mukwala had stated that he was a Congole, a *John Solye Ubwali*, who went to the USA to feed his children porridge, and that his wife kept him. Therefore, based on that, he was claiming USD1,000,000.00.
- 4.23 Augustine Mukoka explained that he is a media consultant, who interacted in that space, and that by the definition of defamation, the statements made were false.
- 4.24 His testimony was that *John Solye Ubwali* was a demeaning statement, and that being alleged to be kept by your spouse if untrue, was defamatory. Augustine Mukoka added that *John Solye Ubwali* meant that one was lazy, and they could not fend for their family, and were a dependent.
- 4.25 Still in cross examination, his evidence was that the words affected one's standing in society, and that he had suffered damage to his reputation, as a result of the said words.
- 4.26 Further in cross examination, Augustine Mukoka's evidence was that one may not have given reasons why he was denied a job, but his position was that it was due to what was said, and that he had suffered financial loss to an estimate of USD1,000,000.00.

RE-EXAMINATION OF AUGUSTINE MUKOKA

- 4.27 In re-examination, Augustine Mukoka stated that he is a freelance journalist and that he covered different events. He clarified that he had applied to cover the Women's World Cup in New Zealand and Australia.

4.28 It was his testimony that in 2017, he had covered the events and he was paid, but FIFA denied him accreditation to the World Cup, so he could not cover the World Cup, and he lost income.

4.29 That marked the close of the case for Augustine Mukoka.

DW1 -COLLINS MUKWALA

4.30 Collins Mukwala produced his witness statement as his testimony. It was his evidence in that witness statement, that on 14th May 2023, Augustine Mukoka published an article on his Facebook page, where he alleged that Collins Mukwala's appointment as a FAZ Executive Committee member was stained in malpractice, and that he was not capable and deserving of the position.

4.31 He stated that the article further pointed to other allegations of malpractice within the FAZ leadership, who engineered his appointment using underhand methods, a position which he stated was untrue.

4.32 It was further Collins Mukwala's testimony, that upon seeing the Facebook post on Augustine Mukoka's page, he was discombobulated, and he replied under the article which he stated, made false and unfounded allegations against himself, as well as the leadership of FAZ, and allegations which he verily believed, were aimed at bringing the institution under serious disrepute.

4.33 His continued evidence was that following his response to the article, there was a brief exchange of words between himself and Augustine Mukoka, and as a direct

consequence, he made some comments which he believed amounted to fair comment.

- 4.34 Collins Mukwala testified that the attack by Augustine Mukoka in his article, was malicious and vindictive, and that its' only aim was to render him incompetent in the eyes of society, and that Augustine Mukoka based his allegations on speculation and lies, which he had responded to, in a similar fashion.
- 4.35 It was his evidence, that unhappy with his reply, which was a direct response to the article which was in the public domain, Augustine Mukoka wrote to him through his lawyers on 15th May 2023, claiming damages for defamation, adding that his comments on the article were defamatory in nature, and thereby, he was claiming damages.
- 4.36 The assertion was that the comment on the article was primarily meant to address the situation that arose at the instance of Augustine Mukoka, and was of public interest, and that it was presented in a satirical manner.

CROSS-EXAMINATION OF COLLINS MUKWALA

- 4.37 In cross-examination by Ms. Nachimba, Collins Mukwala when referred to paragraph 5 of the statement of claim, which was at page 3 of Augustine Mukoka's bundle of pleadings, agreed that he wrote the statement as pleaded. His position was that it was a fair comment, which meant that he was responding to something, which had injured one.
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- 4.38 His evidence was also that a *Lofa* is someone who is not in formal employment, and that it did not mean, one who did nothing. He explained that by stating that Augustine Mukoka is a Congole, he had meant to state that he was a loafer, insisting that, that was what he knew.
- 4.39 Collins Mukwala also in cross examination, testified that Augustine Mukoka was invited by his wife to go and join her in the USA, and that it was in the public domain that Augustine Mukoka's wife was in the USA, and that he went to join her there.
- 4.40 His testimony was that he is married, and that if he was not in formal employment, and someone called him a loafer, then it was true.
- 4.41 Collins Mukwala was unaware that fair comment related to matters of public interest. He stated that he commented on the article that Augustine Mukoka wrote, as it injured him. On being referred to paragraph 4 of his witness statement, Collins Mukwala testified that Augustine Mukoka wrote an article on his Facebook page, stating that his position as Chairman had been bought.
- 4.42 He denied having bought anyone or asking anyone to withdraw their candidature, and Collins Mukwala contended that the article by Augustine Mukoka was a statement and not a question.
- 4.43 On being referred to the article that Augustine Mukoka wrote, which was at page 1 of Collins Mukwala's bundle of

documents, his evidence was that his comments responded to the queries that Augustine Mukoka had raised.

- 4.44 Collins Mukwala in that regard, testified that it was fair comment to say that Augustine Mukoka is a Congolese, justifying the same as being because, Augustine Mukoka hurt his feelings. It was agreed that Collins Mukwala held a public position, and he told the Court that the article was meant to scandalize him.
- 4.45 Further in cross examination, Collins Mukwala testified that he was accused of buying a position, and that it dented his reputation. He took the view that it would not have been fair to comment on how he got the position, as Augustine Mukoka had concluded that he was corrupt. Therefore, he expressed his feelings over what Augustine Mukoka wrote.
- 4.46 When cross examined by Mr. Mulunda, Collins Mukwala stated that he knew Augustine Mukoka personally as a journalist, and that Augustine Mukoka is a brother to his friend. Collins Mukwala however did not know that Augustine Mukoka had a job somewhere.
- 4.47 It was his evidence, that he was a public office bearer, and that it was the first time that he had held such a position.
- 4.48 The continued testimony in cross examination, was that Collins Mukwala was approached by journalists who wished to ask him questions.
- 4.49 His evidence was that Henry Kawimbe also contested for the position, but he withdrew during the elections, and thus Collins Mukwala remained unopposed. It was his testimony

that a year later, Henry Kawimbe was given a position at FAZ after he applied for it. It was agreed that they both vied for public office.

4.50 Collins Mukwala denied that Augustine Mukoka was doing his job as a journalist, by asking questions as he went out of his way, by stating that the position was bought in paragraphs 4 and 5 of the article, which was at page 15 of Augustine Mukoka's bundle of documents.

4.51 That marked the close of the case for Collins Mukwala.

5. DECISION OF THIS COURT

5.1 I have considered the evidence and the submissions.

FACTS NOT IN DISPUTE

5.2 It is common cause, that Augustine Mukoka is a Freelance Journalist who is based in the United States of America. It is not in contention, that Collins Mukwala is an Executive Committee Member of FAZ in Muchinga Province. The facts which are also not in dispute, are that on 14th May 2023, Augustine Mukoka published an article on his Facebook page that has a large following entitled "**FAZ ELECTORAL MALPRACTICE: How did Muchinga Province Produce an Unopposed FAZ Exco Member?**"

5.3 It is uncontested that on the same date, Collins Mukwala wrote a statement commenting on Augustine Mukoka's article.

ISSUES IN DISPUTE

5.4 It is in dispute whether Collins Mukwala's statement defamed Augustine Mukoka, and whether Augustine

Mukoka is entitled to damages as a result. It is also in contention, whether Collins Mukwala should render an unreserved apology to Augustine Mukoka.

ANALYSIS

- 5.5 In this matter, Augustine Mukoka alleged in the statement of claim, that Collins Mukwala maliciously and malignly commented, and reacted to the article that he published, by making false allegations which were meant to attack and injure his character, national identity and in persona.
- 5.6 He further contended that Collins Mukwala's comments amounted to defamation, as Augustine Mukoka's reputation had been lowered in the eyes of reasonable members of society, the journalism profession and the football community at large.
- 5.7 Augustine Mukoka also alleged that his reputation which is cardinal to his profession, had been harmed, and that his credit had been severely injured, while his reputation had been brought into scandal, odium and contempt.
- 5.8 At trial, Augustine Mukoka testified that in reacting to the article that he wrote, Collins Mukwala resorted to using ad hominem to discredit his character, by making written comments pointing to the fact that Augustine Mukoka is an untrustworthy person.
- 5.9 In his defence, Collins Mukwala averred that his statement was not made maliciously, but rather, it was prompted by Augustine Mukoka's article, where he alleged electoral malpractice in how Collins Mukwala was appointed as a FAZ

Exco Member. Collins Mukwala contended that his statement was primarily done and published as a fair comment on a matter of public interest.

5.10 He denied that Augustine Mukoka's reputation had been lowered in the eyes of reasonable members of society, the journalism profession and the football community at large, as a result of his statement. Collins Mukwala also denied that Augustine Mukoka had been brought into any public scandal, odium and contempt.

5.11 At trial, Collins Mukwala testified that he was discombobulated when he saw Augustine Mukoka's article, which he stated made false and unfounded allegations against himself, as well as the leadership of FAZ. He added that the allegations, which he verily believed were aimed at bringing the institution under serious disrepute, prompted him to reply to the article. Collins Mukwala's defence was that he made a fair comment to the article.

5.12 *Defamation* is defined in **Black's Law Dictionary, 8th Edition, by Bryan A. Garner** as follows:

"The act of harming the reputation of another by making a false statement to a third person.

...

...the publication of a statement which tends to lower a person in the estimation of right-thinking members of society generally; or which tends to make them shun or avoid that person." P.H.

Winfield, A Textbook of the Law of Tort § 72, at 242 (5th ed. 1950)."

5.13 Defamation was also defined in the case of **Sim v Stretch** ⁽¹⁾ where it was stated that:

"It is a false statement about a man to his credit, or one which exposes him to hatred, ridicule or contempt or causes him to be shunned or avoided."

5.14 The Supreme Court has guided on what elements must be proved in an action for defamation. In the case of **Post Newspaper Limited v Mulenga** ⁽⁶⁾, they quoted from the learned author; **Carter – Ruck on Libel and Slander, 5th Edition, Lexis Nexis Butterworths, 1997, UK** which states that;

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

- 1. Defamatory (defamation)**
- 2. Refers to the respondent (identification)**
- 3. Has been published to the third person (publication)."**

5.15 In this matter, the words complained of by Augustine Mukoka read as follows:

"I walk a mile to avoid a fight bt when one starts, I don't backdown an inch. The reason why you have so much time to write stupid things abt people is that you have nothing to do welofwa iwe."

Mukoka Augustin Bakusungafya kubakashi bobo I have no time to talk to a John solye ubwali like u. Are you not ashamed to follow your wife in diaspora just go and feed Porridge abana wemukulu?

Try me I will talk about your family congole iwe.”

WHETHER THE WORDS WERE PUBLISHED?

- 5.16 The first element in proving an action for defamation is that the article must be published.
- 5.17 Augustine Mukoka stated that Collins Mukwala responded to the article that he wrote on his Facebook page, and that Collins Mukwala also caused the said statement to be shared on various platforms such as WhatsApp Groups, which included the FAZ Executive Committee, the Muchinga Province platform, and on the Real AK 47 Zed Football, after he deployed a mechanism to stop Collins Mukwala from spreading the falsehoods on his Facebook page.
- 5.18 Collins Mukwala’s evidence was that following his response to Augustine Mukoka’s article, there was a brief exchange of words between himself and Augustine Mukoka, and as a direct consequence, he made some comments which he believed amounted to fair comment.
- 5.19 The statement which Collins Mukwala wrote, which is at page 18 of Augustine Mukoka’s bundle of documents, shows that the statement was made in reply to Augustine Mukoka’s article on Facebook. At page 20 of Augustine Mukoka’s bundle of documents is a WhatsApp Messenger group
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named 'Real AK 47 DED FOOTB...' and a member named Collins stated as follows:

“He thought he can scare me with ka demand...In ZiareArmy there’s no apologies. Mukoka Augustine...”

5.20 In light of this, there is no dispute that the statement that Collins Mukwala wrote was published.

WHETHER THE WORDS REFERRED TO AUGUSTINE MUKOKA?

5.21 The second element in the proof of defamation, is that it must be shown that the words published referred to the plaintiff.

5.22 In the case of ***Benny Mwinga v Times Newspaper Limited*** ⁽⁴⁾ it was held that:

“It is for the Plaintiff to prove reference to him, and this is so whether his identity has been put in issue by the pleading or not, for unless he can prove that the defamatory imputation was published of and concerning him, he has no cause of action.”

5.23 In this matter, this element has not been disputed. Augustine Mukoka testified that following the article that he wrote, Collins Mukwala maliciously responded and reacted to it, in a manner that was not meant to defend or make a fair comment, but to maim, damage and discredit Augustine Mukoka’s character and reputation.

- 5.24 In his testimony, Collins Mukwala stated that the attack by Augustine Mukoka in his article was malicious and vindictive, and it was aimed only at rendering him incompetent in the eyes of society, and that Augustine Mukoka based his allegations on speculation and lies, to which Collins Mukwala responded in a similar fashion.
- 5.25 A perusal of the statement that Collins Mukwala wrote which is the subject of dispute in this matter, shows that Augustine Mukoka was mentioned by name in the said statement. Therefore, it is not in issue that Collins Mukwala was referring to Augustine Mukoka in the statement.

WHETHER THE WORDS PUBLISHED WERE DEFAMATORY?

- 5.26 Having established that the words were published and that they referred to Augustine Mukoka, what is to be determined is whether the said words were defamatory of Augustine Mukoka?
- 5.27 In order to establish whether the words complained of were defamatory, *Halsbury's Laws of England, 4th Edition, Volume 28 at paragraph 43* states that:

"...the Court must first consider what meaning the words would convey to the ordinary person. Having determined the meaning, the test is whether, under the circumstances in which the words were published, the reasonable person would be likely to understand them in a defamatory sense.

...

Similarly, words will be defamatory if they impute conduct the reasonable person considers discreditable, even though in the author's stated view is that such conduct is proper."

- 5.28 In the statement of claim, Augustine Mukoka contended that in their ordinary and natural meaning, the words that Collins Mukwala wrote, entailed that Augustine Mukoka is a *Lofa*, who is is being kept by his wife, and that was why he had time to write articles that he published on his Facebook page. The assertion was further that the said words meant that Augustine Mukoka only waited to be called to go and eat nshima.
- 5.29 It was also Augustine Mukoka's contention, that the said words meant that he unashamedly followed his wife in the diaspora, just to go and feed porridge to the kids at his age, and also that, he is a Congolese national.
- 5.30 In his witness statement, Augustine Mukoka testified that the attacks were meant to paint a picture that he was a lazy, useless man who fed off his wife, when in fact Augustine Mukoka had worked for more than three (3) companies in the United States of America, and he had also studied at a University in the United States of America.
- 5.31 Augustine Mukoka's evidence was that the allegations that were made by Collins Mukwala that he is a Congolese national, were only meant to create a xenophobic atmosphere around Augustine Mukoka, so that he could be looked at with a different eye from other Zambian nationals.

- 5.32 He contended that Collins Mukwala's opening statement was a clear indication that he had resolved to scandalize Augustine Mukoka, and that Collins Mukwala had a clear intent to maliciously injure his credit, character and reputation, so as to deter Augustine Mukoka from further discussing a matter of public interest in Zambian Football.
- 5.33 In cross-examination, Augustine Mukoka stated that *John Solye Ubwali* meant that one was lazy, and could not fend for their family, and they were a dependent.
- 5.34 Augustine Mukoka in the submissions, stated that this Court should take judicial notice of the localized usage of the phrases such as '*welofwa, bakusungafye kubakashi bobo, John solye ubwali* and *Congole*' in interpreting and appreciating the impact and effect that Collins Mukwala's statements had on Augustine Mukoka's reputation, particularly that they were false, his social standing and his nationality at large.
- 5.35 In support of that assertion, he relied on the case of ***The People v Edward Jack Shamwana and 12 others*** ⁽²⁾ where it was held that:

“The Court may take judicial notice of facts which are common knowledge and in doing so may simply refer to its own record...”

- 5.36 When cross-examined, Collins Mukwala stated that a *Lofa* is someone who is not in formal employment, and that it did not mean that someone was doing nothing. His evidence was also that he knew Augustine Mukoka personally as a

journalist, and that he is a brother to his friend. Collins Mukwala, however, did not know that Augustine Mukoka had a job somewhere.

- 5.37 In his submissions, Collins Mukwala stated that the words complained of '*welofwa, bakusungafye kubakashi bobo, John solye ubwali* and *Congole*' in their natural and ordinary meaning, could not reasonably be interpreted or be understood by any reasonable man, to be defamatory of Augustine Mukoka, and consequently to injure his reputation.
- 5.38 Collins Mukwala's submission was that the word, '*welofwa*' meant a person who was not in formal employment. It was also submitted, that Augustine Mukoka admitted that he is a freelance journalist, and that is not considered to be traditional or formal employment. Therefore, it could not be reasonably understood to be defamatory, and lowered Augustine Mukoka in the estimation of right-thinking members of the society, as alleged.
- 5.39 The submission was further that '*John solye ubwali*' in the ordinary sense, merely meant that 'John come eat Nshima' and was subject to interpretation, as it bore a meaning other than the words themselves, ordinarily carry *pima facie*.
- 5.40 It was also submitted that Augustine Mukoka should have pleaded or alleged legal innuendo, by his pleadings which ought to have been specifically pleaded, and that Augustine Mukoka should have tendered into evidence, extrinsic facts

to support the legal innuendo, in Order to establish its' true meaning.

- 5.41 The submission in the alternative, was that Augustine Mukoka should have pleaded the ordinary and natural meaning of the words, in the manner provided in **Order 82 Rule 3(1) of the Rules of the Supreme Court of England 1965, 1999 Edition.**
- 5.42 Still in submission, Collins Mukwala contended that Augustine Mukoka could not merely implore this Court to take judicial notice of the localised usage of the phrases complained of, in interpreting and appreciating the impact and the effect that Collins Mukwala's comment had on his reputation, because the meaning of the words could not be said to be so notorious, that the need to call for evidence to interpret them would be embarrassing or a waste of the Court's time.
- 5.43 In that respect, the case of **Gastove Kapata v The People** ⁽³⁾ was relied on, where it was held as follows:

“It is trite law that judicial notice is the cognisance taken by the Court itself of certain matters which are so notorious, or clearly so established, that the need to adduce evidence of their existence is deemed unnecessary. This is simply a commonsense device by which the Court's time and the litigant's expenses are saved. It is important, however, that, in taking judicial notice

of (notorious) facts, courts should proceed with caution.

Thus, if there is room for doubt as to whether a fact is truly notorious, judicial notice should not be taken of it.”

- 5.44 In determining whether the words that were uttered by Collins Mukwala in the statement were defamatory, as guided in the case of ***Post Newspaper Limited v Mulenga*** (6), and the passage in ***Halsbury’s Laws of England*** which has been seen above, the Court must first consider what meaning the words would convey to the ordinary person.
- 5.45 In this matter, it will be noted that Augustine Mukoka first published an article on his Facebook page, in which he raised questions of Electoral malpractice in the FAZ Executive Committee elections, and questioned how Muchinga Province produced an unopposed Muchinga Province Exco Member.
- 5.46 Collins Mukwala stated that the statement that he wrote, which Augustine Mukoka alleges to be defamatory, was made in response to the said article.
- 5.47 The article that Augustine Mukoka wrote, is at pages 12 to 17 of his bundle of documents, and the statement in response to the article that Collins Mukwala wrote, is at page 18 of the same bundle of documents. That statement has been seen in paragraph 5.15 above.
- 5.48 The article that Augustine Mukoka wrote, read as follows:

“FAZ ELECTORAL MALPRACTICE: How did Muchinga Produce An Unopposed FAZ ExCo Member?”

The caliber of the FAZ Executive Committee member for Muchinga Province leaves much to be desired.

Until recently, I didn't understand how Muchinga arrived at its' decision for the FAZ Provincial Chairmanship.

In the 2021 FAZ Constitution, the Provincial Chairman becomes one of the 13 elected Executive Committee members (never mind the illegal constituency-less ZPL representative who brings the count to 14).

When you interact with the Muchinga FAZ official either in person, cyberspace or through third parties, you will have to pinch yourself several times to admit he is the head of football in that part of the country.

The question I always ask; is this the best that Muchinga could have produced?

My inner being has refused to take YES for answer. When did withdrawing from an election become a qualification to work at the FAZ Secretariat? And what qualifications were required for Kawimbe's position at Football House? Who forced Kawimbe

to withdraw from the provincial election in Muchinga?

Was there a form of inducement? Who paid Kawimbe to pave way for Mukwala? Was the FAZ Secretariat job part of the bargain?

I know that Mukwala does not have the financial capacity to sweet-talk anyone out of a competitive electoral race. Who engineered the Muchinga provincial election on his behalf?

To Kamanga and Kashala, these are genuine questions asked to public officers. In case they are construed as defamatory, they are not. Please provide the answers.

A common Bemba adage states uwipusha taluba (loosely translated as he who asks does not get lost and the wise from the east would add kufunsa sikulakwa (loosely translated as asking is not a sin).

And drawing from the Book of Life- the Bible- in Mathew 7:7 we are commanded to ask so it may be given to us.

Therefore, I ask; who engineered the Muchinga FAZ Provincial elections to deliver Mukwala as Both FAZ president Andrew Kamanga and his former general secretary Adrian Kashala must answer some questions surrounding the outcome

of that provincial election, particularly the installing of Collins Mukwala as chairman.

After the Muchinga winner was announced, his strongest contender identified as Henry Kawimbe, who abruptly withdrew from the race, was a few months (if not weeks) later rewarded with a job at Football House (FAZ Secretariat).

To be fair to Kawimbe, I have since Monday this week attempted to get hold of him. He holds some nondescript position at Football House.

Unfortunately, Kawimbe has not responded to my calls or questions. Thankfully, he responded to a couple of text messages until I stated, "I want to find out why you withdrew from the FAZ Muchinga provincial elections in 2020."

It's my prayer that Kawimbe will give me an opportunity to ask these questions. Suffice to state, what does Kamanga and Kashala know about this development?

When did withdrawing from an election become qualification to work at the FAZ Secretariat? And what qualifications were required for Kawimbe's position at Football House? Who forced Kawimbe to withdraw from the provincial election in Muchinga?

For all I know, there are some brilliant football brains in Muchinga who can competently

contribute to the game, not ba “wakulekafye” please.

My curious mind has always been asking questions quietly. And it seems I am getting close to the answer.

It has taken a considerable time to collaborate the answers coming out of the mind boggling questions on me.

In trying to understand these responses, I have learned that the outcome of the FAZ 2020 Muchinga Provincial election was allegedly engineered by some ‘top-dogs’ (this is not an insult, google if you don’t know) at FAZ.

If you have covered FAZ elections or participated in them, you should not be surprised that polls can be engineered.

From FAZ to FIFA, the election come with a lot of underhand methods. And apparently, Muchinga was not an exception.

The Muchinga one was classic.

Both FAZ president Andrew Kamanga and his former general secretary Adrian Kashala must answer some questions surrounding the outcome.

Therefore, I ask; who engineered the Muchinga FAZ provincial elections to deliver Mukwala as chairman?

These questions should not create any raucous from men or their surrogates who claim their leadership is anchored on the principles of transparency, accountability and integrity.

I submit.

Attached is a photo of Kawimbe and screenshot showing part of the 127 candidates that were cleared to contest the 2020 FAZ elections.”

5.49 Augustine Mukoka particularized the defamation as follows:

- a. *Collins Mukwala’s comment that Augustine Mukoka is a Lofa;*
- b. *Collins Mukwala’s comment that Augustine Mukoka is only kept by his wife and that Augustine Mukoka is only called to go and eat;*
- c. *Collins Mukwala’s comment that Augustine Mukoka only followed his wife in the diaspora to go and feed porridge to the kids at his age; and*
- d. *Collins Mukwala’s comment that Augustine Mukoka is a Congolese national.*

5.50 The first statement in the statement that Collins Mukwala wrote, is as follows; *‘I walk a mile to avoid a fight bt wen one starts, I don’t back down an inch.’*

5.51 Augustine Mukoka testified that these words were a clear indication that Collins Mukwala had resolved to scandalize him, and that Collins Mukwala had clear intent to maliciously injure the credit, character and reputation of Augustine Mukoka, so as to deter Augustine Mukoka from

further discussing a matter of public interest in Zambian Football.

- 5.52 Those words, when considered in their ordinary and natural meaning establish that Collins Mukwala was of the view that Augustine Mukoka had started a fight with him by publishing an article that referred to him, and that Collins Mukwala would not back down from the fight.
- 5.53 The second statement read that; *'The reason why u have so much time to write stupid things abt people is that you have nothing to do welofwa iwe'*.
- 5.54 That statement in its' natural and ordinary meaning meant that Collins Mukwala was of the view that Augustine Mukoka had nothing worthwhile to do, and that was the reason why he wrote stupid things about people.
- 5.55 The third statement was as follows; *'Mukoka Augustin Bakusungafye kubakashi bobo iwe I have no time to talk to a John Solye ubwali like u.'*
- 5.56 In the witness statement, Augustine Mukoka testified that this statement which was published by Collins Mukwala, in its' natural and ordinary meaning, was meant to paint a picture that he is a lazy useless man, who feeds off his wife. Further, that by stating that he is a Congole, it was meant to create a xenophobic atmosphere around him so that he could be looked at with a different eye from any other Zambian.
- 5.57 It was Augustine Mukoka's evidence in cross examination that *John solye ubwali* means that one is lazy and cannot

fend for their family, and is a dependent. Augustine Mukoka in the statement of claim contended that the word “*welofwa*” means that he is a *lofa* who is kept by his wife. In his evidence, Augustine Mukoka did not offer a meaning for the word *Lofa* but simply denied, that he was a *Lofa*, and he stated what he did for a living.

5.58 Collins Mukwala on the other hand in cross examination, testified that a *Lofa* is one who is not in a formal job, and that it did not mean that the person did nothing. He further testified that by stating that Augustine Mukoka is a Congole, he meant that he is a *Lofa*, according to his knowledge.

5.59 It will be noted that both Augustine Mukoka and Collins Mukwala imputed different meanings to the words that Collins Mukwala stated in respect of Augustine Mukoka by calling him “*welofwa*” and “*Congole*”. Augustine Mukoka as the person alleging, bore the burden of establishing what the words in the statement meant, in their natural and ordinary meaning.

5.60 Augustine Mukoka did not call any evidence other than himself, to contradict what Collins Mukwala had testified as the meaning that was imputed to the said words.

5.61 The last part of the statement was as follows; ‘*Are you not ashamed to follow your wife in diaspora just go and feed Porridge abana wemukulu? Try me I will talk about your family congole iwe.*’

5.62 Augustine Mukoka stated in the witness statement that those words in their ordinary and natural meaning, meant

Collins Mukwala was asking him whether he was not ashamed, that he had followed his wife to the USA, simply to go and feed their children porridge at his age.

- 5.63 Collins Mukwala did not deny that meaning, as was assigned to the words in their natural and ordinary meaning by Augustine Mukoka. Therefore, that is what those words meant. The last statement in the paragraph shows that Collins Mukwala was daring Augustine Mukoka to provoke him, and Collins Mukwala would speak about his family.
- 5.64 I have stated that some parts of the statement that Collins Mukwala wrote are in vernacular language, such as “*John solye ubwali*” and “*Congole*”.
- 5.65 In the submissions, Augustine Mukoka urged the Court to take judicial notice of the phrases, placing reliance on the case of ***The People v Edward Jack Shamwana and 12 others*** ⁽²⁾.
- 5.66 In his submissions, in defence, Collins Mukwala, argued that the words complained of, are not so notorious, that there was no need to call in evidence to interpret them. He relied on the case of ***Gastove Kapata v The People*** ⁽³⁾ to support that position.
- 5.67 With regard to the Court taking judicial notice of certain issues, as guided in the case of ***Gastove Kapata v The People*** ⁽³⁾, the Supreme Court stated that judicial notice is the cognizance taken by the Court itself, of certain matters which are so notorious, or clearly so established, that the

need to adduce evidence of their existence is deemed unnecessary.

5.68 In the case of *Innocent Kahyata v Zesco Limited* ⁽⁸⁾, the Court of Appeal held that:

“It is trite that Courts can take judicial notice of facts when those facts are generally known within the Court's jurisdiction or are capable of accurate and ready determination by resorting to sources whose accuracy cannot reasonably be questioned. These facts may be either of the kind that are universally known or are capable of verification from unquestionable sources. In other words, Courts can take judicial notice of matters with which men of ordinary intelligence are acquainted. This principle was enunciated in the old English case of Hoare v Silverlock.”

5.69 I have stated that in this matter, Augustine Mukoka and Collins Mukwala offered different meanings to word *John solye ubwali*, *Lofa* and *Congole*, and no independent evidence was called by Augustine Mukoka to contradict the meaning that Collins Mukwala assigned or ascribed to those words. That being the case, and the words not being those that are of common notoriety, judicial notice of the said terms cannot be taken.

5.70 However, a careful reading of the statement itself, shows that Collins Mukwala asked Augustine Mukoka whether he was not ashamed to have followed his wife in the diaspora, just

to go and feed porridge to the children, after he had stated the words *“the reason why you have so much time to write stupid things about people is that you have nothing to do, welofwa iwe Mukoka Augustin bakunsingafye kubakashi bobo iwe I have no time to talk to a John solye ubwali like you.”*

5.71 By writing like that, Collins Mukwala gave context to the phrases that he had used in vernacular, so that any person who read the statement could understand it. Collins Mukwala clarified that Augustine Mukoka had followed his wife in the diaspora to go and feed porridge to the children at his age, and he therefore had nothing to do, but to write stupid things about people.

5.72 Thus, was the statement defamatory?

5.73 In the case of ***Given Lubinda v Edmond Lifwekelo and the Daily Nation Newspaper Limited*** ⁽⁷⁾ the Supreme Court with regard to a statement being defamatory, stated that:

“The learned authors of Clerk and Lindsell on Torts 11th Edition state the test at pages 1315 and 1316 as to whether a statement is defamatory or not as being:

Whether the matter complained of was calculated to hold the Claimant up to hatred, contempt or ridicule. This ancient formula was however insufficient in all cases. Lord Atkins in Sim v Stretch applied the test, “would the words lower the Claimant in the

estimation of right thinking members of society generally”, Or...(would the words) likely to affect a person adversely in the estimation of reasonable people generally. The alternative or which would cause him to be shunned or avoided must be added...”

The passage we have quoted in the preceding paragraph shows that an article or publication will be defamatory if its effect is to expose a claimant to hatred, contempt or ridicule; or lower the claimant’s reputation in the estimation of right-thinking members of society or to be shunned or avoided. A claimant must therefore lead evidence to prove that the publication complained of, had this effect, not on him, but right-thinking members of society generally.

*Clerk and Lindsell drew their inspiration to the foregoing from the cases of *Sim v Stretch*, *Holdsworth Ltd v Associated Newspapers Lt* and *Tolley v JS Fry and Sons Ltd*. The learned authors go further at page 1316 of the text to explain that in determining whether or not a statement is defamatory, the Court should give the material in question its’ natural and ordinary meaning.*

Coming back to our case, and applying the texts we have difficulty holding that the publication as being defamatory on the evidence led by the

Appellant because it shows that it is the emotions of the appellant and not his reputation which was harmed. He categorically stated that it depressed him as is evident from his testimony at page 142 of the record of appeal. This is an emotional feeling.

Damage to reputation is felt by how right-thinking members of society generally perceive you after the publication and not how you feel about the publication or the emotions that it draws out of you. The public either shun and hold you in contempt or hate and avoid and ridicule you thereby lowering your standing in society generally.

For this reason, it is incumbent upon a plaintiff to lead evidence through his witnesses, the right-thinking members of society, to show that the publication complained of had such effect on them, especially that he specifically pleaded that this was the effect it had as we have stated in paragraph 8 of this Judgment.”

5.74 I will return to this issue.

WHETHER THE DEFENCE OF FAIR COMMENT SUCCEEDS?

5.75 In order to determine whether Collins Mukwala is liable for defamation, it is imperative to consider the defence of fair comment that he raised.

5.76 **Section 7 of the Defamation Act Chapter 68 of the Laws of Zambia**, states that:

“In an action for libel or slander in respect of words consisting partly of allegations of fact and partly of expressions of opinion, a defence of fair comment shall not fail by reason only that the truth of every allegation of fact is not proved if the expression of opinion is fair comment having regard to such of the facts alleged or referred to in the words complained of as are proved.”

5.77 In the case of **Bevin Ndovi v Post Newspaper Limited, Times Print Pak Zambia Limited** ⁽⁵⁾, the Supreme Court stated that in **Winfield and Jolowicz on Tort, 17th Edition 2006**, it states that there are three (3) requisites for the defence of fair comment to stand.

5.78 The Court noted as follows in that regard:

“One is that the comment must be an observation or inference from facts, not an assertion of fact. Second is that the matter commented on must be of public interest. Third is that the comment must be fair or objective; it should not be actuated by malice. Malice vitiates fair comment.”

5.79 Augustine Mukoka testified that Collins Mukwala statement was not meant to defend or make a fair comment, but to maim, damage and discredit Augustine Mukoka’s character and reputation. He added that Collins Mukwala resorted to using ad-hominem to discredit his character by making

written comments pointing to the fact that Augustine Mukoka is an untrustworthy person.

- 5.80 Augustine Mukoka testified that he had worked for more than Three (3) companies in the United States of America, and that he had also studied at a University in the USA. Augustine Mukoka further stated that he is happily married, and that he had children much later, after he relocated. His evidence was that he is a Zambian national.
- 5.81 In cross examination, Augustine Mukoka told the Court that he was unable to show proof of his estimated monthly earnings, or that he had earned over USD1,000,000.00 since he moved to the USA. He was also unable to show proof that he could not get a contract as a result of Collins Mukwala's statement.
- 5.82 In raising the defence of fair comment, Collins Mukwala stated that he had responded to Augustine Mukoka in a similar fashion to the article that he wrote about him, which Collins Mukwala stated was malicious and vindictive, and that its' only aim, was to render him incompetent in the eyes of society, and that Augustine Mukoka based his allegations on speculation and lies.
- 5.83 As guided in the case of ***Bevin Ndovi v Post Newspaper Limited, Times Print Pak Zambia Limited*** ⁽⁵⁾, for a defence of fair comment to succeed, it must be an observation or an inference from facts, and not an assertion of fact. Secondly, the matter commented on, must be of public interest. Then

thirdly, the comment must be fair or objective; it should not be actuated by malice. Malice vitiates fair comment.

5.84 In the said case, the Supreme Court stated that:

“Gatley is of the same view. He defines comment as a statement of opinion on facts. He observes: “A libellous statement of fact is not a comment or criticism on anything. It is comment to say that a certain act which a man has done is disgraceful or dishonourable; it is an allegation of fact to say that he did the act so criticised.” He adds that the facts upon which the comment is based must be true. That a writer may not suggest or invent facts, or adopt as true or untrue statements of facts made by others, and then comment on them on the assumption that they are true. That if the facts upon which the comment purports to be made do not exist, the defence of fair comment must fail: See Gatley on Libel and Slander 5th Edition [1960], paragraphs 587, 588 and 600.”

5.85 As already seen, Collins Mukwala testified that he responded to Augustine Mukoka in a similar fashion as the article that Augustine Mukoka wrote about him was malicious and vindictive. Collins Mukwala also stated that he knew Augustine Mukoka personally as a journalist, which shows that he was aware of his profession, despite stating that he did not know that he had a job somewhere.

- 5.86 A perusal of the statement that Collins Mukwala wrote, shows that it made assertions of fact in respect of Augustine Mukoka having followed his wife in the diaspora to go and feed porridge to children, and asked if he was not ashamed of having done so.
- 5.87 The statement did not make any observations or draw any inferences from the article that Augustine Mukoka wrote, which has been seen above, and alleged malpractice in the elections of the FAZ Muchinga Committee, which saw Collins Mukwala being unopposed as Chairman. Rather, in the statement, Collins Mukwala attacked Augustine Mukoka personally by asserting facts.
- 5.88 FAZ is an Association that is registered under **Section 23 of the Sports Council of Zambia Act Chapter 142 of the Laws of Zambia** by virtue of **Section 11 of the said Act** which provides for associate bodies of the Sports Council of Zambia.
- 5.89 The Sports Council of Zambia has mandate, among others, to provide for the registration and affiliation to the Council of all national sports associations, which include football.
- 5.90 In **Section 9 of the Act**, the functions of the Sports Council of Zambia are listed as:

“9. (1) The functions of the Council shall be to-

(a) disseminate the policies of the Government in the matter of sports and to that end keep itself fully informed of those policies;

- (b) register sports groups as national sports associations;*
- (c) ensure that sports groups at all levels conform to the rules and norms governing the particular sport;*
- (d) develop, promote, control and encourage all forms of amateur and professional sports on a national basis in conjunction with national sports associations;*
- (e) encourage and assist in the formation of sports associations in Zambia, and to encourage the affiliation of those associations to appropriate international organisations;*
- (f) assist financially or otherwise, any team or individual in representing Zambia in any competition in or outside Zambia;*
- (g) assist financially or otherwise, any citizen of Zambia who is a member of a national sports association in obtaining training in or outside Zambia which would qualify him as an instructor, coach or organiser of any form of sport;*
- (h) raise and maintain a fund from any source and by such means as the Minister may approve to enable the Council to carry out its functions;*

- (i) develop and maintain national and provincial sports complexes and other sports facilities;**
- (j) stimulate, through the appropriate authorities, the provision, development and maintenance of equipment and facilities for all kinds of sports and ensure their equitable distribution and proper use;**
- (k) ensure that sports groups at all levels maintain proper accounts and, where necessary, supervise and direct the maintenance of such accounts;**
- (l) control the award of national colours;**
- (m) exercise disciplinary powers in cases of breach of the provisions of this Act or regulations made under it;**
- (n) establish the status of national and representative teams;**
- (o) do such other acts and things as may be conducive to the development, control, regulation and promotion of sports, the elimination of undesirable parties in sport and the enforcement of the provisions of this Act or any regulations made under it.”**

5.91 Ensuring compliance of national sports associations to the rules and norms that govern them, is a function that is placed on the Sports Council of Zambia. Therefore, it is of

public interest that there is such compliance. Augustine Mukoka by his article that he published on his Facebook page, questioned such compliance.

- 5.92 The personal comments on Augustine Mukoka that Collins Mukwala made by the statement, cannot therefore, by any stretch of imagination be deemed to be comments on an issue of public interest, as they did respond to the article, but attacked Augustine Mukoka as a person.
- 5.93 Lastly, the comment cannot be said to have been fair or objective in the absence of any facts to support the assertions, even though Augustine Mukoka did not adduce evidence to show his earnings as a freelance journalist, as Collins Mukwala being the person raising the defence, had a duty to substantiate that defence in line with the principle that in Order for a comment to be fair, it must be an inference or observation from facts and not an assertion of fact.
- 5.94 Collins Mukwala's statement was an attack on Augustine Mukoka's character and reputation, and it was meant to deter him from further writing anything in relation to the FAZ elections or his having scooped the position as FAZ Exco Member for Muchinga Province unopposed, as can be seen from the opening remarks in the said statement.
- 5.95 Accordingly, the elements of fair comment have not been satisfied, and the defence fails.

WHETHER AUGUSTINE MUKOKA SUCCEEDS ON THE CLAIM FOR DEFAMATION?

- 5.96 Augustine Mukoka claims damages for defamation and an unequivocal and unreserved apology from Collins Mukwala both on his Facebook page and the various platforms on which Collins Mukwala caused the comments to be circulated.
- 5.97 It is trite that a person who alleges, must show proof of the allegation. I have referred to the decision in the case of ***Given Lubinda v Edmond Lifwekelo and the Daily Nation Newspaper Limited*** ⁽⁷⁾ where the Supreme Court guided that damage to reputation is felt by how right-thinking members of society generally perceive you after the publication, and not how you feel about the publication or the emotions that it draws out of you.
- 5.98 They stated that the public either shun and hold you in contempt or hate and avoid and ridicule you, thereby lowering your standing in society generally.
- 5.99 It was also stated, that for this reason, it is incumbent upon a plaintiff to lead evidence through his witnesses, the right-thinking members of society, to show that the publication complained of had such effect on them.
- 5.100 In this matter, Augustine Mukoka by his pleadings, alleged that the publication of the statement by Collins Mukwala on his Facebook page which has a large readership and other platforms, saw his reputation being lowered in the eyes of

reasonable members of society, the journalism profession and the football community at large.

5.101 At trial, he did not call any witnesses whom he alleged were reasonable members of society, or from the journalism profession and the football community at large, who because of the statement, had lowered their estimation of him and they had either avoided, shunned or ridiculed him as a result.

5.102 It is worth noting that when cross examined, Augustine Mukoka stated that he felt defamed and insulted, which damaged his reputation, as well as the public perception and that there was evidence to that.

5.103 In the case of ***Given Lubinda v Lifwekelo & Daily Nation Newspaper Limited*** ⁽⁷⁾, the Supreme Court held that:

“We have difficulty holding the publication as being defamatory on the evidence led by the Appellant, because it shows that it is the emotions of the Appellant and not his reputation which was harmed. He categorically stated that it depressed him as is evident from his testimony at page 142 of the record of appeal. This is an emotional feeling. Damage to reputation is felt by how right-thinking members of society generally perceive you after the publication and not how you feel about the publication or the emotions it draws out of you.”

- 5.104 As already seen, Augustine Mukoka did not bring any evidence in the form of right-thinking members of society as witnesses, to speak to his reputation having been lowered as alleged and pleaded. Further, he did not produce any documentary evidence to show the comments that were made by right-thinking members of society as to how they perceived him, after the statement was published, even on his Facebook page after he published the article, and Collins Mukwala wrote the statement that he alleged was defamatory.
- 5.105 Augustine Mukoka also alleged that he was denied coverage of the Women's Football World Cup in New Zealand and Australia after he applied, but the accreditation was denied. He stated that he had previously covered the events in 2017, and therefore, he lost income.
- 5.106 However, Augustine Mukoka did not produce the application that he made for accreditation to cover the Women's Football World Cup in New Zealand and Australia or the response that he was given to show that indeed the refusal to accredit him to cover the said world cup, was as a result of the statement that Collins Mukwala wrote which was defamatory.
- 5.107 In fact, in cross examination, Augustine Mukoka told the Court that no reason was given for the denial of the accreditation, but he attributed it to the statement that Collins Mukwala wrote.

6. CONCLUSION

- 6.1 The evidence establishes that the statement or article that Collins Mukwala wrote with respect to Augustine Mukoka, in its' natural and ordinary meaning was meant to portray that Augustine Mukoka as a person who does not work, has a lot of free time to write articles such as the one that he wrote about Collins Mukwala.
- 6.2 Further, the article was meant to establish that Augustine Mukoka was just being kept by his wife in the diaspora, while he fed the children porridge, at his age. Therefore, he is an unworthy person. This on the face of it, was defamatory as it was unsubstantiated.
- 6.3 However, Augustine Mukoka did not adduce any evidence to show how the said statement had lowered his reputation in the eyes of right-thinking members of society, as defamation is a tort that injures reputation. On that premise the claim fails and it is dismissed.
- 6.4 The claim for damages for defamation having failed, the claim for Collins Mukwala to make an unreserved apology to Augustine Mukoka on his Facebook page and the various platforms on which Collins Mukwala caused the statement to be circulated equally fails.

6.5 Costs of the action go to Collins Mukwala which shall be taxed in default of agreement. Leave to appeal is granted.

DATED AT LUSAKA THE 20th DAY OF FEBRUARY, 2025

S. Kaunda

**S. KAUNDA NEWA
HIGH COURT JUDGE**

