

ALOIS GURAJENA
versus
NGONIDZASHE CHIYANGWA

HIGH COURT OF ZIMBABWE
TSANGA J
HARARE, 2 August & 19 October 2023

Unopposed Civil Claim (Motion Court)

A Paradzayi, for the plaintiff
No appearance by defendant

TSANGA J: The plaintiff, as Chief Executive Officer of Murehwa District Council, issued summons on 15 June 2023, claiming a sum of US\$500 000.00 as damages from the defendant for alleged defamation. The defendant having failed to enter an appearance to defend, the plaintiff applied for default judgment in motion court. He was requested on 19 and 26 July to attend to his affidavit of evidence and to justify the amount claimed. He filed supplementary affidavits.

The claim is founded on the allegation that the defendant, whom he says puts himself forward as a journalist, has from the period extending from April 2023 to date, published and was still publishing defamatory posts on his face book page called Murehwa TV Online and on his various WhatsApp groups. These posts accuse him of being a corrupt public officer, a convicted thief and embezzler, someone with no qualifications for his professional practice as well as someone who abuses his office as CEO of Murehwa District Council. The defendant is also said to have at one time video recorded him whilst accusing him of stealing public funds. He circulated the video on various groups which were downloaded on several social media platforms. He is also said to have created a group called “Council Mafia” mobilizing the community to further publish malicious information about him. His gripe is that these posts were and are not true and are being made with the intention of damaging his reputation. He emphasises that he holds public office and is a business man. As a result of the posts, he states

that he is now being regarded with hatred contempt and ridicule or disesteem by his subordinates, board members, clients and relatives as well as members of the public at large. His lawyers had written a letter of demand for an apology and retraction but instead the defendant had circulated the letter of demand on his WhatsApp groups, an act he says was a further perpetration of defamatory conduct.

In essence, he asserts that these defamatory statements which were published were false and were done with malice. He asserts that he has suffered financial loss and claims US \$500 000.00. He also seeks costs on a higher scale.

Every person has a right to protect their dignity and the role of defamation laws is to ensure that those whose identity has been harmed have some recourse or redress. The right to dignity and freedom of expression are also constitutionally protected in ss 51 and 61 of the Constitution of Zimbabwe¹. Truth and falsity are the contending assertions in defamation actions and therefore given that the defendant did not enter an appearance to defend, the claim rests on the ability of the plaintiff to counter the assertions made by the defendant to the satisfaction of the court so that it can make an informed decision if any damages are to be paid. The assessment of damages comes in where the court is satisfied that indeed there were defamatory statements made against a plaintiff, which were published, and, were false. They must have also been made with malice and financial loss must have been suffered.

Notably the published claims of corruption touch on his official conduct. The claim for damages is made against a person running a local news service. The public has a vested interest in knowing the affairs of their community and the press in any form plays an important role in checking the powers of public officials. As stated in *Madhimba v Zimbabwe Newspapers* (1980) LTD 1995 (1) ZLR 391 (HC):

“.....a characteristic shared, I believe, by all who walk this earth is to be stung and hurt by criticism. But the right to express criticism is the lifeblood of a free land. A strength of character not shared by all is the ability to listen objectively to criticism, to disregard and forget that which is ill-informed or biased, and to accept and learn from that which is fair and correct. Such a strength is particularly necessary for all those who choose to appear in the public eye, be they politicians, government officials, leading business persons, sports personalities or newscasters.”

Plaintiff’s duty is to explain fully why he says the claims are false, given that from falsity arises the issue of malicious publication. It is also important to have a clear picture so as not to

¹ Amendment (No. 20) Act, 2013 (Act 1 of 2013)

stifle those who seek public officials to account for their conduct. This being a civil action the proof required is on balance of probabilities.

Regarding the alleged theft referred to, the plaintiff attached the publication of a story in September 2022 in which he was said to have been implicated in the theft of US\$1 750.00 which he sent it to his wife. Whilst the plaintiff avers that he is a public officer his affidavit does not explain how the issue of the alleged theft of the US\$1 750.00 arose or how it was resolved which would make the defendants claims untrue. He does not explain or rather deliberately leaves out information as to whether he was indeed ever arrested or investigated convicted or acquitted on any theft allegation. He seems to deliberately avoid disclosing or dealing with this issue. In *Chinamasa v Jongwe Printing & Publishing Co (Pvt) Ltd & Anor* 1994 (1) ZLR 133 (HC) which the plaintiff cites the defence of fair comment or qualified privilege was discussed in respect of newspapers. It is an acceptable defence barring malice or improper motive. In this instance there is no proper analysis of why that defence would not be open to the defendant, since the genesis of the allegations are omitted by the plaintiff. It seems most unlikely the assertions complained of were entirely without a context. The applicant in his affidavit of evidence does not engage with the facts in order for the court to come to an informed decision as to where the defendant was coming from and whether he indeed defamed the applicant.

In other words, I am unable to make an informed decision on the context of the utterances or the alleged recklessness of the defendant in publishing the statement or whether the statements are baseless at all given the plaintiff's role as a public official and that the utterances are coming from a person said to be working as a journalist.

Regarding his lack of qualifications for the post, plaintiff attached Annexure E published on Murehwa TV Online by the defendant which shows he holds PhD from Calvary University. Next to it is a notice by the Ministry of Education listing this University as being one of the unregistered degree offering institutions operating outside the law in Zimbabwe. The first question to be decided with regards to alleged defamatory statements is whether the words complained of were capable of bearing the defamatory meaning attributed to them. The next part of the enquiry is whether the meaning pleaded is the meaning which would probably be reasonably understood. Lastly, the court also looks at the question of whether the meaning as

identified, is defamatory. (See *Chinamasa v Jongwe Printing & Publishing Co (Pvt) Ltd & Anor* above.)

It is difficult to see how the defendant's alleged comment becomes defamatory if he does not hold proper qualifications at least within the Zimbabwean context since the institution was not recognized here. The issue of why qualified privilege would not apply needed to be addressed by the plaintiff in his affidavit of evidence.

There is also not much said by way of the actual damage suffered. Plaintiff says he has lost business opportunities but does not detail how. What plaintiff does without addressing these issues fully is to zero in on the ridiculous claim for US\$500 000.00 which even if I am wrong that he failed to show on a balance of probabilities that he was defamed, is an amount way beyond the sums that have been awarded by this court. His loss was still not proven even with the supplementary heads of argument. The cases largely drawn on are from a different monetary era and are nowhere near the amount claimed.

In the absence of the vital information on the falsity of the statements, I have no choice but to dismiss the plaintiff's claim as in my view he has failed to show the falsity of the statements even on a simple balance of probabilities. As the claim was undefended there will be no order as to costs.

Accordingly, plaintiff's claim is dismissed with no order as to costs.

Mufari & Paradzayi, plaintiff's legal practitioners