

EMMERSON MNANGAGWA
versus
GODFREY NYAROTA
and
ASSOCIATED NEWSPAPERS OF ZIMBABWE (PRIVATE) LIMITED

HIGH COURT OF ZIMBABWE
MAKONI J
HARARE, 15 May 2003 and 16 June 2004

Adv. H. Simpson, for the plaintiff
Adv. A.P. de Bourbon, for the defendants

MAKONI J: The plaintiff claims the sum of \$20 000 000-00 against the defendants jointly and severally, being damages for defamation which he allegedly suffered as a result of publication of three defamatory articles in *The Daily News*, which is owned, published and distributed by the second defendant. He also claims interest on the aforesaid amount at the prescribed rate with effect from 22 February 2002 and costs of suit.

The first article was published on 23 October 2001 and was headed "Mnangagwa fails to appear in court". The article appeared on pages 1 and 2 of the newspaper. The second one was published on 28 October 2001 and was headed "Mnangagwa visited jailed armed robber". It again appeared on pages 1 and 2 of the newspaper. The third one was published on 22 February 2002 and was headed "Mnangagwa's case takes new twist" and it again appeared on the 1st and 2nd pages of the newspaper.

The plaintiff alleges that the articles stated, *inter alia*, the following in relation to and with reference to him.

- (a) "Emmerson Mngangagwa, the Speaker of Parliament, once privately visited armed robber Tanyanyiwa George Chikanga while he was in prison."
- (b) "At some point Febby, when giving me a letter to deliver to George said Mnangagwa was doing his best to release him."
- (c) "Two weeks ago, Bartlett while preparing to pass sentence

established that Chikanga was previously convicted and sentenced to thirty five (35) years in prison on various counts of armed robbery. He, however only served nine (9) years. BARTLETT J unearthed this scandal in July after he had convicted Chikanga of armed robbery involving more than \$200 000-00."

- (d) "Leonard Zuze, a former prison inmate and friend of George Tanyanyiwa Chikanga, the hard core armed robber ordered release in March 2000 by the now Speaker of Parliament, Emmerson Mnangagwa before his full jail term claims, Chikanga hold him he is Mnangagwa's son."
- (e) "Febby Chikanga, George's mother used to visit her son at Harare Central and Chikurubi Prisons. She reportedly assured him that Mnangagwa, his father, was trying his best to have him released."
- (f) "Zuze alleges Feby Chikanga openly told her son and other prisoners in custody that George will not remain in prison for long because his father was an influential Cabinet Minister. Zuze says he was told by Chikanga that his mother alleged met Mnangagwa in Zambia during the liberation struggle."

The articles, in particular, the portions quoted above, suggest the following imputations of the plaintiff.

- i) that he is an unscrupulous and dishonest public figure who abuses his office to favour his relatives and those personally known to him;
- ii) that he is corrupt and unprofessional;
- iii) that he is prepared to cut corners and flout rules and regulations with flagrant disregard;
- iv) that he is an unfaithful man to his wife and family by virtue of his engaging in extra marital affairs;
- v) that he condones corruption.

At the commencement of the trial Mr *de Bourbon* indicated that the defendants were not persisting with the issue of liability. It then followed that the only issue remaining was that of quantum of damages. The plaintiff gave evidence on his behalf and the defendants did not call any evidence.

The plaintiff testified as follows.

He is sixty (60) years old and is presently the Speaker of Parliament since July 2000. Prior to that he was the Minister of Justice, Legal and Parliamentary Affairs, a post which he held for 12 years. He is a distinguished fighter and was one of the first freedom fighters to receive military training in Egypt and China and is the only survivor. He has held various high posts in Government and in the ZANU(PF) party in the past 20 years. During this period he built a reputation as a senior civil servant. He was also a special assistant to the President during and after the liberation struggle.

The plaintiff said allegations by, the defendants, are ridiculous, false and unfounded. The suggestion that he was unfaithful caused disturbance in his family. His daughters picked up the story on the Internet. At the time of publication of some of the articles, his wife was in hospital and this had a disturbing effect on both of them.

The plaintiff produced two letters as Exhibit 1 and 2. Exhibit 1 is a letter from second defendant addressed the plaintiff dated 30th of January 2002. In the letter second defendant's senior reporter, one Pedzisayi Ruhanya sought for plaintiff's comments to the allegations which are the subject matter of the suit. Paragraphs two and three of the letter read and I quote -

“During the course of our investigations into the early release from prison of armed robber, George Tanyanyiwa Chikanga, it was revealed to us by certain sources, one of them closely linked to you, that the convicted man is, in fact, your own son.

Our sources are adamant that Chikanga's release was as a result of this close relationship with you.”

The second letter is from the plaintiff's legal practitioners

addressed to the second defendant and to the attention of Pedzisayi Ruhanya. It is dated the 31st of January 2002. In the letter plaintiff's legal practitioners advised that the plaintiff denied being related or personally known to George Chikanga and his mother. On the issue of Chikanga's early release they advised the second defendant to refer to official documents pertaining to the matter and were advised to channel all communications relating to the matter to the Ministry of Justice, Legal and Parliamentary Affairs.

The concluding paragraph read as follows:-

"Should you proceed to publish such malicious falsehoods our client will sue you for damages for defamation. We are further directed that in the event of litigation arising, this letter shall be produced in the court which will be asked to award substantial damages as your refusal to heed this warning will prove that any allegations you may publish were published deliberately and maliciously."

The plaintiff further testified that there were two publications after this letter was sent. One of the publications is the article published on the 22nd of February 2002 which is also the subject matter of the present litigation. Plaintiff said that he expected an apology which apology he would have accepted from the defendants after receiving the letter from his attorneys. There was no such apology but instead the defendants went on to publish further articles. He said the first defendant knew that he was a high standing figure in society, the Government and the ruling party and that this was purely a character assassination.

On the issue of circulation of the paper, the plaintiff stated that the paper was circulated throughout the country and was well read.

On the aspect of the defendant's sources, the plaintiff said that the defendants could have interviewed George Chikanga and

could have checked with Prisons whether he paid visits to Chikanga. The fact that they did not do so indicate malice on their part.

The plaintiff also stated that he was exonerated by two inquiries one conducted by the Ministry of Justice, Legal and Parliamentary Affairs and the other by the Attorney-General's Office. The plaintiff produced as Exhibit 3 article published by the defendants on the results of the inquiry. He commented that the article was published on page five of the paper and it was not given the same prominence as the articles complained of which were published on pages 1 and 2 of the paper. The article was published after the matter had been set down for trial in a bid to reduce damages. There was no retraction of the earlier articles and there was no apology. He said that the paper, had for two years, insisted on the story despite protestations. He said the defendants should have done their own independent inquiry particularly after receiving the letter from plaintiff's attorneys. He asked the court to show its displeasure at people responsible for manning newspapers who abuse their privilege. He said such false articles damage one's reputation, career, and social and political standing.

Under cross-examination, the plaintiff was asked whether Exhibit 3 (the article publishing the results of the inquiry) set the record straight and that it had an appropriate heading and a decent photo although published at page 5. He responded that it set the record straight to the extent that the defendants had now admitted what he told them two years ago but they had insisted that he was wrong.

Plaintiff admitted that he lost his parliamentary seat in June 2000 to the Movement for Democratic Change and was appointed

Speaker of Parliament. He explained that he lost the seat because he did not campaign as his wife was in hospital at the time. He was not appointed a non-constituent MP as he declined the offer in deference to his seniors who had also lost the elections. Plaintiff also admitted that he continues to hold office within the party as the Secretary of Administration, a Politiburo and Central Committee member. He also agreed that he continued to have very high profile and was invited to attend the convention of the African National Congress party in South Africa. He also agreed that he was on the list of smart sanctions.

The plaintiff denied that he had any aspirations to be the President of Zimbabwe and explained that there was no vacancy in that post.

Plaintiff also admitted that his political and public profile continue to be as high as it has been for many years and added that it is the incidents, as complained of, that tend to ruin or derogate on his standing.

The plaintiff denied knowledge of a suit instituted against the defendants for a \$100 million by a Minister in Government. He also denied the fact that his suit was an equal campaign to ruin the paper financially and explained that his intention was not to cripple the Daily News but that they should not tell lies about people.

On being asked what his attitude would be if the Daily News were to publish an apology, he replied that he would be very happy but he would still pursue the matter because when he told the defendants the truth, very early in the matter, they did not take heed.

It was put to plaintiff that this was "a rags no riches" case to which plaintiff replied that that was not his intention. He

explained that he was not suing for the money but as a matter of principle to restrain other journalists of like minds.

Plaintiff was offered an apology on the front page of the paper and he responded that the Daily News is correcting at the end of the road but it refused to take the warning sent to it by his lawyers at the beginning.

In re-examination the plaintiff said that exhibit 3 did not contain an apology and that until the trial date, there was no apology forthcoming from the defendants.

The plaintiff gave his evidence very well and in a clear and straightforward manner. Very few questions were put to him and he was not in any way shaken under cross-examination. In fact very little of his evidence was challenged.

As already been stated in a number of cases, the assessment of damages in cases of this nature is not an easy task. See *George Chinengundu v Modus Rustications (Pvt) Ltd* HC 135/92 in which the following passage from *Tekere v Zimbabwe Newspapers (1980) Ltd & Anor* 1986 (1) at p 289 by SANDURA JP was quoted:

“The assessment of damages in a case such as this (defamation also) is not an easy exercise because it is difficult to recompense the plaintiff for the insult perpetrated against him and the pain which he suffered as a result of false allegations leveled against him. However there are certain factors which are relevant in the assessment of damages for defamation. These factors are the content of the defamatory article, the nature of the publication, the plaintiff’s standing, the extent of the publication, the conduct of the defendant and the recklessness of the publication.”

See also *Shamuyarira v Zimbabwe Newspapers (1980) Ltd and Anor* 1994 (1) ZLR 445 (H) 503E - H.

Mr *Simpson*, for the plaintiff in his closing address,

submitted that the court should award punitive damages mainly for the following reasons.

The plaintiff is an extraordinary man and a champion and he suffered because of these publications. His family also suffered. There was no apology tendered until during the trial. The defendants were reckless about the publication in particular after receiving the letter from plaintiff's attorneys. The first defendant, who caused the damage was not even in attendance and it points to lack of conscience. He asked the court to consider a figure that has not been seen in the courts before.

Mr *de Bourbon*, for the defendants submitted that the articles were defamatory of the plaintiff but one of the articles published plaintiff's denial and as a result the public had balanced view of the matter.

He submitted that the gravaman of the articles had been retracted by exhibit 3. He admitted that there was no apology in this matter. He further submitted that the court should take into account that the plaintiff said he would not have sued if the defendants had not persisted with the publications. He said this is not a rags to riches issue but to restore the character of the plaintiff. The defendants had done this from the publication of exhibit 3 and the decision to accept liability. The defendants also tendered an apology which was denied. He further submitted that the Press will cease to function if damages were awarded as suggested by plaintiff. He suggested an amount of \$50 000-00.

On the issue of punitive damages, he said it is not part of the law to punish the press but to correct harm done to plaintiff as damages are simply a *solatium*. He referred the court to the following cases: *Nyatanga v Editor, The Herald & Anor* 2001 (1) ZLR 63 (H), *Shamuyarira v Zimpapers (supra)*.

In assessing the appropriate damages, I will adopt the approach taken by ROBINSON J in *Shamuyarira's* case (*supra*) p 503. The approach is to list the relevant factors to be taken into account in assessing damages and then deal with them *seriatim*. The factors relevant in this matter are listed hereunder:-

- (a) the content of the article which includes the defamatory matter;
- (b) the nature and extent of the publication;
- (c) the plaintiff's standing, that is to say his reputation, character and status;
- (d) the probable consequences of the defamation;
- (e) the conduct of the defendants from the time the defamatory matter was published up to the time of judgment including:
 - (i) their reliance on and persistence in a plea of justification,
 - (ii) the question of any motive on their part,
 - (iii) the question of any retraction or apology for the publication of the defamatory matter;
- (f) the recklessness of the publication;
- (g) comparable awards of damages in other defamation suits and the declining value of money.

A. THE CONTENTS OF THE ARTICLES WHICH INCLUDED THE DEFAMATORY MATTER

The defendants published three articles about the plaintiff. All three articles appeared on the first and second pages of the Daily News. They were headed, in big bold letters, **"MNANGAGWA FAILS TO APPEAR IN COURT,"** **"MNANGAGWA'S VISITED JAILED ARMED ROBBER"** and **"MNANGAGWA'S CASE TAKES NEW TWIST"**. The import of

the publications was that the plaintiff who is now Speaker of Parliament, had facilitated the release a jailed armed robber George Chikanga who was his son. He had met the mother, Febby Chikanga, in Zambia. He had at one point visited Chikanga in prison.

It is not in dispute that the publications impugn the plaintiff as:

- (a) Corrupt, inefficient and unprofessional.
- (b) An unfaithful man to his wife and family by engaging in extra marital affairs.
- (c) A man who condones corruption.
- (d) Unscrupulous and dishonest public figure who abuses his office.

B. THE NATURE AND EXTENT OF PUBLICATION

The Daily News was a daily national publication. Plaintiff led evidence, which was not challenged, that the Daily News circulated throughout the country and was well read. He did not know the figures of the circulation of the paper. I will accept plaintiff's evidence that the paper was well read by the general public and that it was widely distributed throughout the country. As a result I am satisfied that the three publications reached a wide section of the public in Zimbabwe.

C. THE PLAINTIFF'S STANDING THAT IS TO SAY HIS REPUTATION, CHARACTER AND STATUS

The plaintiff is presently, the Speaker of Parliament since 2000. Prior to that he was the Minister of Justice, Legal and Parliamentary Affairs a post he held for 12 years. He is a distinguished freedom fighter. He was a special assistant to the

President during the liberation struggle. He is a member of the Politburo and the Central Committee. He has held various high posts in government and the ruling party ZANU(PF). The evidence by the plaintiff about his standing was uncontroverted and I will accept it.

D. THE PROBABLE CONSEQUENCE OF THE DEFAMATION

The plaintiff's evidence was that the falsehoods published by the defendants damaged his character as a high figure in society, government, the party and as a family man. He described the publications as character assassinations and that they damage one's reputation and career. Under cross-examination the plaintiff made the following admissions:

- A. The he was still the Speaker of Parliament.
- B. That he continued to hold office within the party.
- C. That he continued to have high profile in society.
- D. That his name appears on the list of smart sanctions.

The line of questioning was to show that the plaintiff's standing was not affected to any significant extend by the publications. As already been stated in a number of cases the fact that the plaintiff may not have been adversely affected in his career as a result of the defamatory publication about him does not make the publication any less defamatory nor should it affect the award of damages. See *Chinengundu's case (supra)* at p 16 of cyclostyled judgment and *Shamuyarira's case (supra)* at p 508 E-G. I will therefore accept the plaintiff's evidence that the publication damaged his career and standing in society.

E. THE CONDUCT OF THE DEFENDANTS FROM THE TIME OF PUBLICATION OF THE DEFAMATORY MATTER UP TO THE TIME

OF JUDGMENT

The defendants in their plea raised the defence of justification. They persisted with the defence at the pre-trial conference and only admitted liability at the beginning of the trial. Because of their persistence with the defence of justification, until trial proceedings, there was no retraction of the articles and there was no apology. An offer to publish an apology on the front page of the paper was only made during the proceedings. The plaintiff's response was that he would be happy with an apology but would not drop the suit as the defendant persisted with the publications despite his warning made through his legal practitioners.

The defendants published an article submitted as Exhibit 3, titled "Mnangagwa cleared of improper release of convict." on page five of the Daily News. The article was published on the 8th of May 2003 eight days before the trial date. There was no retraction or an apology in that article. It was plaintiff's view, which I share, that the article was published with an intention to reduce the quantum of damages at trial.

It is clear from the above that from the time of publication of the three articles, the defendant persisted with the defence of justification when in my view, they could not sustain it. They did not publish a retraction or an apology.

F. THE RECKLESSNESS OF THE PUBLICATION

The defendants published two of the articles without getting the plaintiff's comment. These are the articles of the 23rd October 2001 and 25th October 2001. They then wrote to the plaintiff on the 30th of January 2002 to get his comments. They requested that the plaintiff respond by 4th February 2002. In the letter, the

defendants mention that they received the information from certain sources one of them closely linked to the plaintiff.

On the 31st of January 2002 the plaintiff's attorneys responded to the letter. They advised that the plaintiff denied the allegations and the last paragraph of that letter reads as follows:-

“Should you proceed to publish such malicious falsehoods, our client will sue you for damages for defamation. We are further directed that in the event of litigation arising, this letter shall be produced to the court which will be asked to award substantial damages as your refusal to heed this warning will prove that any allegations you may publish were published deliberately and maliciously.”

The defendants did not take heed of the warning and on the 22nd of February 2002 published yet another article with the headline: **“MNANGAGWA CASE TAKES NEW TWIST”**. The article was published on page one and two and it is a fairly long article. It contained defamatory matter against the plaintiff. It commented about the two letters referred above and it quotes the letter written by plaintiff's attorney to the defendants. Immediately after the quotation from the letter the reporter comments.

“This is not the first time that Manikai has made such spurious threats to sue the Daily News on behalf of Mnangagwa.

He has in the past made similar threats even when his client had quite clearly not been defamed.”

From reading the above article one would assume that the defendants had a firm case against the plaintiff but as it turned out they did not. The defendants admitted liability at the beginning of the trial.

It is my view that, after receiving the letter from plaintiff's attorney the defendant should have reconsidered their position.

They should have re-assessed their information and checked again with their sources before proceeding to publish another article. This was recklessness on the part of the defendants and it aggravates the matter.

G. COMPARABLE AWARDS OF DAMAGES IN OTHER DEFAMATORY SUITS AND DECLINING VALUE OF MONEY

I will restrict myself to decided cases where the plaintiff's status in those cases is comparable to the plaintiff's status in this case.

In *Zvobgo vs Modus Publications (Pvt) Ltd* 1995(2) ZLR 96H, *Eddison Zvobgo* was defamed by an article published by the defendants in the Financial Gazette which suggested that he was vindictive, dishonest and evil minded.

He was a politician of many years and a well known public figure who was a Minister in the Government. He was a legal practitioner by profession. There was no retraction or apology. He was awarded damages in the sum of \$20 000.00 in August 1995.

In *George Chinengundu vs Modus Publications (Pvt) Ltd* HH135/92, *Chinengundu* was defamed by an article which was published in the Financial Gazette which suggested that he was dishonest, corrupt and was prepared to obtain votes by grossly improper means. He was at the time of publication, a prominent politician and Deputy Minister in a Ministry of Law and Order. By the time of such he had been elevated to the bench. He was also a legal practitioner by profession. He was awarded damages in the sum of \$23 000.00 in July 1992.

In *Chinamasa vs Jongwe P & P Co (Pvt) Ltd & Anor* 1994 (1) ZLR 133H, the plaintiff was defamed by an article published in

the people's voice which suggested that the plaintiff who was the Attorney-General might be charged with fraud he committed whilst he was a legal practitioner in private practice. The plaintiff was a person of impeached character and was an experienced and respected lawyer who held the office of the Attorney General. In January 1994, he was awarded damages in the sum of \$30 000.00.

In *Shamuyarira's case (supra)* the plaintiff was defamed by an article published in the Chronicle suggesting that he was implicated in a corruption scandal in which a number of Government Ministries were implicated. He was the Minister of Foreign Affairs and had been a Minister in the Government of Zimbabwe since 1980. He was an Honourable person.

There was no apology or retraction. He was awarded damages in the sum of \$15 000.00 in May 1994.

The awards in the above matters were made some time back and there is need to take into account the depreciation of the value of the Zimbabwean Dollar. To quote from SMITH J in *Nyatanga's case (supra)*, the fall in value over the last 12 to 18 months has been horrendous" at page 68.

Taking into account all the factors, I am of the view that punitive and exemplary damages are called for.

As a result of the foregoing judgment is entered for the plaintiff against the defendants, jointly and severally, the one paying the other to be absolved, in the sum of \$5 000 000 together with interest at the prescribed rate from 22nd February 2002 and costs.

Messrs Ahmed & Ziyambi, plaintiff's legal practitioners
Messrs Granger & Harvey, defendant's legal practitioners.