

TIMES NEWSPAPERS ZAMBIA LIMITED v LEE CHISULO (1984) Z.R. 83 (S.C.)

SUPREME COURT

NGULUGE, D.C.J., GARDNER AND MUWO, J.J.S.

4TH DECEMBER, 1984

(S.C.Z. JUDGMENT NO. 19 OF 1984)

Flynote

Damages - Appeal - Interference with quantum of damages.

Tort - Defamation - Apology - Effect of.

Headnote

A District registrar awarded K18,000.00 damages for imputations of unspecified misconduct. An adequate apology which had been tendered late was regarded by the court as an aggravating feature. The defendant appealed.

Held:

- (i) An appellate court will not interfere with an assessment of damages unless the lower court had misapprehended the facts, or misapplied the law or where the damages are so high or so low as to be an entirely erroneous estimate of the damages to which a plaintiff is properly entitled.
- (ii) An adequate apology will, in most cases virtually expunge the damages arising out of any defamation. This is so even where such apology is tendered late.

Cases cited:

- (1) *Kapwepwe* (see 1973 and 1974 Z.R. on pages 292 and 207 respectively).
- (2) *Eliya Mwanza v Zambia Publishing Company* (1979) Z.R. 79.
- (3) *Times Newspapers (Zambia) Limited v Wilfred Collins Wonani* (1983) Z.R. 131.

For the appellant: L.P. Mwanawasa, of Mwanawasa and Company.

For the respondent: B.C. Mutale of Ellis and Company.

Judgment

NGULUBE, D.C.J.: delivered the judgment of the court.

This is an appeal from an assessment of damages by the High Court in which the respondent was awarded the sum of K18,000 as damages for

p84

libel. The libel in question, appeared in the appellant's newspaper of 27th February, 1982, under the heading "Top lawyers in certificate poser" and alleged that the respondent had not been granted a practising certificate for that year. Judgment was by consent and the learned district registrar thereupon assessed the compensatory damages at K10,500 and exemplary damages at K7,500. We have been asked to find that the damages awarded in this case were so high as to be erroneous. We bear in mind the principles which we have repeatedly referred to in cases of this nature, namely that we will not interfere with an assessment of damages unless the court below has misapprehended the facts or misapplied the law or when we consider that the damages are so high or so low as to be an entirely erroneous estimate of the damages to which a plaintiff is properly entitled.

In this particular case and as already noted, the libel complained of arose out of a publication alleging that the plaintiff advocate had not been granted a practising certificate. In assessing the damages, the learned district registrar was referred to a number of decided cases, notably the *Kapwepwe* cases (1) which concerned libellous imputations against a former Vice President and

outstanding politician in which it was alleged' among other things, that he had been guilty of treasonable activity. The cases referred to included *Eliya Mwanza and Zambia Publishing Company* (2), (in which the plaintiff was accused of dishonesty) and several other cases. In our opinion, we regard that the imputations in those cases were far more serious than the imputation which arises, by alleged implication, in this particular case. For that reason, we find that the comparison which was made with the old cases was unsuitable and wrong in fact and on principle. The imputation in this case, put at its highest, was that the plaintiff may have been guilty of some misconduct which was not specified. We find that on the impacts and despite the able arguments put forward by Mr Mutale, the respondent, who was an in-house advocate working for a particular employer, had in fact suffered no actual damage as a result of the publication of the article complained of. In addition, it is common cause that an adequate apology was tendered, albeit a few days late. We certainly consider it to have been wrong in principle to treat such an adequate apology as an aggravating feature in the case when, in terms of the decided cases, such as *Times Newspapers Zambia Limited v Wonani* (3), in which the judgment was delivered last year, we have said that a sufficient apology will, in most cases, virtually expunge the damages arising out of any defamation.

It follows from what we have observed that we consider the damage awarded in this case as being far too high in the circumstances, and we therefore, propose to interfere. The damages appealed against are set aside and this includes the exemplary damages which the apology alone precluded from arising in this case. On the facts and in all the circumstances of this case, we were very nearly tempted to award contemptuous damages since we do not consider that this was a suitable case for the respondent to take up. But we must recognise the fact that the advocates for the parties and the parties themselves appear to have agreed among themselves that there was some kind of defamation for which some damages

p85

are due and for that reason, we propose to award some damages in substitution for the sum which we have set aside. These we assess in the sum of K300.

With regard to cost and having regard to what we have said, and also to the fact that the appellant had originally advanced a ground of appeal which necessitated the preparation, by the respondent, of a rather substantial supplementary record of appeal, the appropriate order will be that there be no order as to costs. In other words, each party will bear its own costs of this appeal.

We are informed that the damages which we have set aside were paid to the respondent. Application has now been made that the respondent be allowed to repay this amount by instalments. We grant the application and order that the money be refunded by instalments to be agreed between the parties in default, there is liberty to apply. Such application is to be made to a High Court judge in chambers.

Appeal allowed
