

SEBASTIAN SAIZI ZULU v TIMES NEWSPAPERS (ZAMBIA) LIMITED (1985)
Z.R. 30 (S.C.)

SUPREME COURT
NGULUBE, D.C.J., GARDNER AND MUWO, JJ.S.
13TH FEBRUARY AND 15TH MARCH, 1985
(S.C.Z. JUDGMENT NO 7 OF 1985)

Flynote

Tort - Libel - Fair comment - Contest - Reference in Hansard - Reference to other sources.

Tort - Libel - Meaning of words - Function of court - Interpretation by witnesses - Irrelevance of.

Headnote

The defendant, the proprietor of a newspaper, publisher alleged defamatory comments about leaders, referring to them as "hangers-on and lacking dedication to the humanistic cause" and that others have got away with the TAW scandal". The trial judge upheld the defence that the words were neither understood to refer or capable of referring to the plaintiff and in respect of the second remark upheld a defence of fair comment. The plaintiff appealed.

Held:

- (i) Where words are alleged to be defamatory in their ordinary meaning it is neither for the plaintiff nor for any witness to give evidence as to or to interpret the meaning of the allegedly defamatory statement. This is the proper prerogative and function of the court;
- (ii) The alleged scandal having been discussed in Parliament could therefore be said to have originated therefrom and newspaper articles which reported or purported to report the scandal as discussed in Parliament can properly be referred to for the purpose of ascertaining the content of the statement under complaint.

Cases referred to:

- (1) Zambia Publishing Co. Ltd. v Kapwepwe (1974) Z.R. 294.
- (2) Zambia Publishing Co Ltd v Joes Haulage (Z) Ltd., S.C.Z. Judgment No.2 of 1984 (unreported).
- (3) Kemley v Foot [1952] All E.R. 501

For the appellant: In person.

For the respondent: J.Jearey of D.H. Kemp and Company.

Judgment

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

For convenience we will refer to the appellant as the plaintiff and to the respondent as the defendant which is what they were in the action. The plaintiff has appealed again the dismissal by the High Court of a libel action which he had brought against the defendant.

The action arose out of lengthy article entitled "Wanted: Younger leadership" published by the Defendant in its Sunday Times of Zambia newspaper of 2nd May, 1982, the relevant passage from which reads:

"And so President Kaunda has turned 58, two years short of 60. He is not getting any younger. And with this being recognised it becomes important to take a critical look at what supporting role other leaders are giving him in running the affairs of State.

Are most of the leaders in the Party and its Government as committed as President Kaunda is? On the available evidence the question should be answered in the negative. A good number of the leaders are hangers-on and lack depth and dedication to the humanist cause. The upshot of this all is that quite number of them have been involved in scandals. Or as one cynic put it: 'In Zambia today you are no leader unless you survived sordid scandal.' Examples abound. There are at present in leadership men whose hands have been soiled by the Kanyama funds murk. And of course others have got away with the TAW scandal. The list is long."

The two sentences complained of as being defamatory of and referable to the plaintiff were:

- (a) "A good number of leaders are hangers-on and lack depth and dedication to the humanist cause." and
- (b) "And of course others have got away with the TAW scandal."

In relation to (a), the learned trial judge upheld the defence that the words were neither understood to refer nor capable of referring to the plaintiff; and in relation to (b), he upheld the defence of fair comment made without malice upon a matter of public interest. We will deal with each of the two statements in turn.

The plaintiff, who has argued his own appeal, has asked us to reverse the findings made by the Court quo and to enter judgment in his favour. With regard to the statement about "hangers-on" and so forth, it is the plaintiff's submission that, as the Defendant chose to illustrate the type of leader therein criticised by citing the TAW scandal (with which the plaintiff was identified), he was referred to and included in that statement and that, therefore, it was immaterial that the main thrust of the article was directed to the then "present" leadership.

That the plaintiff was a national leader in the past, as a Permanent Secretary and Solicitor - General, was not in dispute. But his contention in this regard is that, having identified him in the context in question, whether mistakenly or not, the statement became deferrable to him. On behalf of the defendant, Mr Jearey argues that the burden of the article referred to present and not past leaders and that, accordingly, the ordinary reader would be unlikely to assume that the "hangers-on" included past leaders. He submits that the reference to the TAW scandal would have been understood to include several other individuals who

are still leaders and who are mentioned in the National Assembly debates and not only the plaintiff, Mr Wood and Mr Siwo as contended by the Plaintiff.

The learned trial judge held that, since the word "leader" is defined in the Leadership Code, and since the plaintiff was not, at the time of the publication, caught by such definition, the plaintiff was not, affected by, or included in, any discussion in the article directed at the then "present" leadership. In the view that we take it is unnecessary for us to delve into the definition of leader since, in our considered opinion, that is not the issue in this case. The issue, as we see it' is whether or not, in the context in which it appears, the statement about "hangers-on" was capable of being understood to refer to the plaintiff. If it can be so understood, it would be wholly unnecessary for us to discuss whether or not the readers must have known that the plaintiff was no longer a leader; or, for that matter, whether or not the Leadership Code or any other enactment has given a definition which included or excluded a person in the plaintiffs position at the material time. To the extent, therefore, that the learned trial judge resolved this issue with reference to the Leadership Code, we are satisfied that he had misdirected himself as to the proper approach. We are therefore at large.

While we agree that the burden of the article referred to the then "present" leadership, yet the citing in the context set out of the TAW scandal (which itself was not disputed in its reference to the plaintiff, though a past leader) did, in our opinion, bring in and include the plaintiff. We agree with the plaintiff's submission that it is immaterial that he was wrongly referred to in the discussion of a class to which he no longer belonged. Indeed, it has long been immaterial that a defendant did not intend to refer to a particular plaintiff so long as the words in question could be understood by reasonable people who know the plaintiff to refer to him: (see para. 292 of Gatley on Libel and Slander, 8th edition).

This brings us to consider whether the statement about "hangers-on" in its ordinary and natural meaning, meant and was understood to mean, as pleaded, that any such person concerned is not a humanist and is, therefore, "Undesirable and a disgrace in the Zambian society." It was argued by the plaintiff that the expression "hangers-on" was of itself derogatory in whichever sense it is to be understood. The defence pleaded was a denial that the words bore or could be understood to bear the alleged or any other defamatory imputation. Once again, the full statement complained of reads:

"A good number of leaders are hangers-on and lack depth and dedication to the humanist cause."

As we see it, the statement is an entire statement and the whole of it must be read and understood in that light. In this regard, neither the expression "hangers-on" nor any other can legitimately be severed and construed in isolation. We should re-affirm, at this stage, the established rule that where words are alleged to be defamatory their ordinary meaning it is neither for the plaintiff nor for any witness to give evidence

p33

as to, or to interpret, the meaning of the allegedly defamatory statement. This is the proper prerogative and function of the Court. In this connection we refer to *Zambia Publishing Co. v Kapwepwe* (1) in particular the judgement of Baron, D.C.J. at page 301 from line 37; and also to

Zambia Publishing Co. Limited v Joes Haulage(2). We have looked at the whole statement in issue as other reasonable ordinary men would and we find that the derogatory imputations sought to be drawn are far fetched and do not arise on a plain and ordinary reading of the words used. As we see it, the statement in its full context suggests no more than that some people in the leadership have not made any significant contribution towards the advancement of the appropriate national cause therein referred to. Some other interpretation to a similar effect would be reasonable and acceptable, but we do not agree that the defamatory imputations such as those pleaded or contended in the submissions could or did arise. That disposes of the appeal in so far as it relates to "hangers-on".

We now turn to the second part of this appeal namely, the argument that the defence of fair comment ought to have been, and should now be, rejected in relation to the second statement. As already noted this other statement stated that:

"And of course others have got away with the TAW scandal." The Plaintiff has advanced, broadly speaking, two main arguments under this part. The first is to the effect that the learned trial judge was wrong in finding that the TAW scandal referred to in the article complained of meant and was understood to mean one and the same scandal as the TAW scandal referred to in the National Assembly. The second argument is to the effect that; since the defendant's version of the TAW scandal consisted of false and unfounded allegations made by them in previous newspaper issues, the defendant had asserted in the article under complaint that the plaintiff had got away with some criminal offence."

It is common ground that the statement under discussion assumes relevant meaning only when and if the reader has some knowledge previously acquired from other sources. In this regard, the plaintiff relied on previous articles published by the defendant not only for his identification with the subject statement but also for the facts which he contends were not truly stated so as to afford the defendant the plea of fair comment. On the other hand, the defendant in their defence pleaded to the effect that the relevant facts were contained in the privileged debates of the National Assembly as reflected in two reports which are on record. The plaintiff contends, and asks us to find, that, contrary to the defendant's plea in the defence, the comment was not based on the Parliamentary debates but was in fact based on the previous newspaper articles; that such previous articles falsely alleged that the TAW scandal resulted from the plaintiff and others "conniving to swindle the Government"; that no such statement was made in Parliament, and that accordingly, the comment that the Plaintiff and others got away with

p34

the TAW scandal was not justified. It was the plaintiff's submission that the defendant's previous articles implied that the plaintiff had committed a criminal offence and that the getting away with it, therefore, meant that he had not been punished for a criminal offence, when he had committed none. We have been informed that the plaintiff has instituted other proceedings in respect of those other articles.

Mr Jearey, on the other hand, submits that the previous newspaper articles should be referred to only for the limited purpose of identifying the plaintiff. He submits further that, as the Plaintiff chose not to consolidate his various Court actions and since the Plaintiff did not, in his Reply to the

Defence, dispute the averment that the comment was based on Acts which had their origin in the privileged debates of Parliament, the Plaintiff's submission should not be entertained. It was his submission that this Court should not pronounce upon the falsity or truth of the previous articles which are themselves the subject of their pending litigation in the High Court.

As we have already stated, the statement complained of can only be understood by reference to facts obtainable from other sources. We entertain some doubts as to whether the ordinary reader of the article complained of would ordinarily have read the Hansard. For present purposes, however, there is evidence on record that the alleged TAW scandal was discussed in Parliament and can therefore be said to have originated from there. We also find that, as the previous newspaper articles (which reported or purported to report the scandal as discussed in Parliament) were properly introduced into the record, they can be referred to for the purpose of ascertaining the context of the statement under complaint. For this purpose, it is unnecessary, it would be highly undesirable, for us to make any finding as to the truth or otherwise of the contents thereof; our only interest in those articles being limited to ascertaining what was written for the purpose of fixing the context, as already stated.

From the sources to which we have referred, we note that various matters and events were alleged to have transpired in relation to certain contracts between TAW International Leasing Corporation and the Government of Zambia. Such events allegedly included the signing of certain waiver letters (waiving certain breaches of contract by TAW) by a Mr Siwo allegedly at the instance and request of the plaintiff and a Mr Wood. It is also recorded, particularly in the Hansard, that certain Government officials played various roles in the matter and that ultimately the Government failed to give sufficient notice of rescission of the contracts. The Government paid some money to TAW at an arbitration in London. It is not in dispute that members of Parliament considered these events to be scandalous.

As can be seen from the foregoing, there were pleaded in defence certain of the events surrounding the TAW issue which are borne out by the sources to which we have referred. The case of *Kemsley v Foot* (3) which Mr Jearey cited is in point since we find that there was established, in this case, a sufficient substratum of fact upon which the comment

p35

could be based. We find in particular that the events surrounding the "waiver letters" were sufficient justification for the comment and once this is so, as it is, the reference to the TAW scandal need not relate to any alleged "conniving to swindle". We further find and hold that reference to getting away with it does not mean that the scandal must have been criminal. We are satisfied that there can be no basis for confirming the comment made to any particular facet of the scandal as reported in the various documents on record. As we see it, therefore, the fact that members of Parliament referred to "scandal" in relation to the TAW affair justified its description as a scandal.

It is also not in dispute that, as at the time of the publication complained of, no disadvantage or penalty of any kind whatsoever was incurred by, or visited upon, those implicated in the affair.

We find and hold that the determination by the Court below, that the defence of fair comment was

available, must be upheld. This appeal cannot succeed and we dismiss it, with costs to be taxed in default of agreement.

Appeal dismissed
