

PETER SIWO v TIMES NEWSPAPERS ZAMBIA LTD (1987) Z.R. 46 (S.C.)

SUPREME COURT
NGULUBE, D.C.J., SAKALA AND GARDNER, JJ.S.
30TH SEPTEMBER, 1987 AND 23RD APRIL, 1987.
(S.C.Z. JUDGMENT NO. 7 OF 1987)

Flynote

Tort - Libel - Absolute privilege - Reasonable inference to be drawn from report - Comments thereon - Effect of:

Headnote

The appellant sued the respondent for damages for libel. The alleged libel arose out of news item headed "We will deal with TAW Culprits" and an opinion column published by the respondent, which alleged that the appellant had "connived to swindle" the government and plunder the people of Zambia for his own ends. Both the story and the opinion were based on a statement made by the Attorney-General to the National Assembly in which he disclosed that the appellant had greatly contributed to the government losing a breach of contract case to TAW International Leasing Inc.

The respondent argued that the words were a fair and accurate report of proceedings in public in the National Assembly and published on an occasion of privilege; alternatively, that the words were true and a fair comment. The High Court dismissed the action for Libel and the appellant appealed to the Supreme Court on the ground that the defence of absolute privilege could not avail - the respondent because the Attorney-General in his statement to the National Assembly had not used the phrase "connived to swindle" or said that the appellant was plundering society for his own ends.

Held:

Where privileged words could lead to a reasonable inference that a defendant was guilty of certain activities, it is not actionable to make reasonable comments thereon.

For the appellant: S.S. Zulu, Messrs Zulu and Co.

For the respondent: J.H. Jearey, Messrs D. H. Kemp and Co.

Judgment

GARDNER, J.S.: delivered the judgment of the court.

This is an appeal against a judgment of the High court dismissing a claim for damages for libel. The history of this case is briefly that the appellant was at the material time the Permanent Secretary in the Ministry of Works and Supply and the respondent is the proprietor of two newspapers known as the Times of Zambia and the

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Sunday Times of Zambia. In 1973 the Government of Zambia entered into an agreement with an

organisation known as TAW International Leasing, Inc. (herein after referred to as TAW) for a lease of a number of trucks and trailers. By the lease agreement dated the 1st of May, 1973, TAW agreed to supply the Government of Zambia with the agreed number of vehicles within one hundred and twenty days of that date. TAW defaulted in delivery of the trucks within the agreed time and in January, 1974, the Government of Zambia rescinded the contract. The matter went for arbitration in London where TAW's legal representatives produced two letters waiving the time for delivery of the trucks. These letters were written by the appellant but he had not informed the Government that he had written the letters, nor did he keep copies of the letters on the appropriate file. TAW claimed damages against the Zambian Government for breach of contract and the matter was settled by the Zambian Government's paying four million dollars to TAW. In 1981, the Minister of Legal Affairs and Attorney-General, Mr Chigaga made a report in the National Assembly setting out the history of the case, and on the 16th March, 1981, the respondent published an issue of the Times of Zambia containing a news item headed "We'll punish TAW Deal Culprits," and an opinion column, both of which were the subject of the action for damages for libel brought by the appellant. There was a further publication in the Sunday Times of Zambia, but Mr Zulu on behalf of the appellant has indicated that he does not intend to proceed with the appeal in that respect.

The specific passages in the newspaper which were the subject of the appellant's complaint were outlined by Mr Zulu as follows:

" Last week Legal Affairs Minister, Mr Gibson Chigaga named Education and Cultural Permanent Secretary, Mr Peter Siwo and former Permanent Secretary, of Legal Affairs, Mr Sebastian Zulu as some of the people who connived to swindle the Government over the TAW contract." and "People implicated in the controversial Thomas Alexander Wood (TAW) contract will be punished if investigations prove that they are guilty," Home Affairs Minister Mr Frederick Chomba has said. "We cannot leave things the way they are. Something will be done. Those found guilty will definitely be punished. " he said yesterday. and further

"Mr Chomba said yesterday the Government would study the case of the TAW contract and mete out appropriate punishment against the culprits. But he refused to indicate what action would be taken against them." Mr Zulu indicated that the words complained of in the opinion column were: "Mr Mulemba said in Kitwe that corruption cases would be dealt with firmly whenever therein enough evidence and Mr Chomba qualified his comment on people involved in the TAW saga that they would be punished "if investigations prove they are guilty".....

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People (Zambians non-citizens) may be arrested and hauled before courts for corruption or committing any other felony but as long as they can hire a clever lawyer or the prosecution blunders on a technicality they will come out clean. This should prevail in our humanist society, where man is the centre of all things. But should people who hold public offices have so much licence to use and plunder society For their own ends?

It must be noted that once a public officer is suspected of being corrupt, no matter whether finally he is acquitted or not brought before the law the public has lost confidence in him

Everybody is waiting for the anti - corruption commission to bite not with rubber teeth.

Tanzania has given us a good example on how to deal with public officers who misuse their positions. In the last few weeks no less than five top men have had their heads rolling when President Nyerere swung the axe public leaders who are seen to be working against the national interest should be removed as publicly as their appointments were made."

Paragraph 37 and 38 of the appellant's statement of claim read as follows:

" 37. By the said words, the Defendants meant and were understood to mean as follows:

- (i) That criminal investigations had been instituted against the plaintiff for playing some corrupt role in the TAW/GRZ case.
- (ii) That the plaintiff would or was likely to be arrested for corruption or some criminal offence he committed in connection with the TAW case.
- (iii) That the plaintiff would be or was likely to be prosecuted in court for corruption or for some criminal offence committed in connection with the TAW case.
- (iv) That the plaintiff is a corrupt person who connived with Mr S. S. Zulu and Mr. T. A Wood to swindle the Government of the Republic of Zambia and as a result the Government lost the arbitration case in London.
- (v) That the plaintiff, if convicted by court of law, would definitely be punished.

(OPINION

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- (vi) That the plaintiff was involved in a case of corruption and that he would be dealt with firmly.
- (vii) That if arrested and prosecuted for corruptions the plaintiff may be acquitted by hiring a clever lawyer or on a technicality when the prosecution blunders, however the Zambia public will have lost confidence in him and will not forget that he is a corrupt person.

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- (viii) That the plaintiff who holds a public office has had so much licence to use and plunder society for his own ends.
- (ix) That the plaintiff will be subject to investigation by the Anti - Corruption Commission for his corrupt role in the TAW case.

38. By reason of the said publication, the plaintiff has been brought into hatred, odium, ridicule, scandal and contempt and has suffered damage to his credit and reputation. The plaintiff therefore claims damages against the Defendants."

The defence of the respondent was that the words were a fair and accurate report of proceedings in public in the National Assembly and published on an occasion of privilege, alternatively that the words were true and alternatively fair comment.

The learned trial judge in dismissing the appellant's claim found that the words complained of were fair comment and it is against that finding that the appellant now appeals.

In view of the fact that the respondent's defence was in part that the words complained of in the article were a fair and accurate report of proceedings in the National Assembly it is necessary to give a precise of the proceedings of the National Assembly upon which the article and opinion complained of were said to be based: In the course of the proceedings the Minister of Legal Affairs and Attorney-General, Mr Chigaga said that Mr Siwo (the appellant) was the Permanent Secretary in the Ministry and continued: "his role has greatly contributed to the Government losing the case. . . . He played a very significant and indeed a very key role in the whole TAW affair:

- (i) As the then Permanent Secretary of the then Ministry of Power, Transport and Works, he examined and commented on TAW's proposal to lease the trucks;
- (ii) He participated in all the negotiations which preceded the signing of the contracts;
- (iii) On the 22nd October, 1973, he signed a waiver letter addressed to TAW. By this waiver letter, he waived the breach of contract committed by TAW, namely, failure to deliver the trucks within 120 days.

Hon. Members: Shame!"

Mr Chigaga:

"By this letter, he further assured TAW that GRZ will accept delivery of trucks when they arrive in Lusaka without indicating any time limit."

Mr Chigaga: "The other point is that this letter, Mr Speaker, Sir was prepared and brought to Mr Siwo to sign by Mr S. S. Zulu, who was then acting for TAW International and Mr Tom Wood."

Mr Musangu: "A nation of scandals."

Mr Chagaga: "The other point is that this document was not put in the file so that it was unknown to the Government until the case stated."

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Mr Chalwe: "Ha! That is very serious..... "

"In November, 1983, at the invitation of Thomas Alexander Wood, President of TAW, Mr Peter Siwo visited the United States of America to see the progress on the manufacture of trucks by General Motors:

(v) On 29th November, 1973, the then Secretary to the Cabinet, Mr P. J Chisanga, instructed Mr Siwo to rescind the contracts with TAW:

(iv) On 11th January, 1974, have signed another waiver letter addressed to TAW whereby he re-affirmed the contents of his earlier waiver letter, dated 22nd October, 1973, and further armed TAW that all the contracts were still in full force and that G.R.Z will accept the delivery of the trucks when they arrive in Lusaka;

I will read the contents of that letter. The letter was signed by Mr Siwo and witnessed by Mr

Sebastian Zulu - Mr S. S. Zulu.

.....The letter dated 11th January, 1974, was prepared and brought to Mr Siwo by Mr S. S. Zulu and Mr Tom Wood of TAW International unsigned. There is no copy in the file and the letter is not known by any other official in the Government except Mr Peter Siwo....."

"Mr Chagaga: "On 19th February, 1974, we sent a notice of rescission of contract to TAW.

These two documents, namely the two waiver letters, were unknown to the GRZ and there were no copies on the files of the Ministry of Power, Transport and Works. They were given to Mr Siwo to sign as I have already said, by Mr S. S. Zulu and Mr Tom Wood. Mr Zulu at that time was already acting for TAW International and no longer for the GRZ. "

Hon. Members: "Shame! "

Mr Chigaga: "These letters were first produced to the Government of the Republic of Zambia when the case started. That was the first time they saw that these letters had been signed.

I mentioned in my earlier statement, in a summary form that there was a cancellation but there were waivers although I did not put it exactly in this way. I said a letter was written to TAW indicating that the trucks would be accepted.

I also said, in my earlier statement, that the notice from Ministry of Legal Affairs, the letter of cancellation, was not adequate. The ministry did not give adequate notice.

The draft letter was prepared and a covering letter signed by the then Hon. Minister of State for Legal Affairs and Solicitor - General, Miss Lombe Chibesakunda, the two factors, as I said, the waiver letter and the inadequacy of the notice which was given, contributed to the failure of the Government in this case - if you look at my earlier statement, you will find that I put this under the heading, 'Legal hitches in the GRZ's case.' "

Mr Chigaga then went on to tell the House the details of the payment of four million dollars damages together with costs and interest.

Mr Zulu's first and second "founds of appeal relate to the fact that despite the striking out of numerous paragraphs of the Statement of Claim which were explanations of the appellant's conduct, the respondent's advocates had been allowed to cross - examine on such matters. After the court had indicated that these grounds of appeal were not material, Mr Zulu did not proceed further with them.

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In support of his third ground of appeal, Mr Zulu pointed out that in the whole of the proceedings in the National Assembly the phrase "connived to swindle" was not mentioned at all. He maintained that to say that the Minister had said that the appellant was one of the persons who connived to

swindle the Government was a misstatement of fact because the Minister had never used those words. He referred the court to paragraph 698 of *Gatley on Libel and Slander*, (8th edition) where it is stated that the defence of fair comment does not extend to cover misstatements of fact however bona fide.

The fourth ground of appeal related to the opinion column in respect of which Mr Zulu argued that the reference to the people involved in the TAW saga referred to the appellant and the reference to plundering society for their own ends was based on a misstatement of fact because the Attorney-General in his statements in the National Assembly used no words which were capable of being construed as meaning that the appellant was plundering society for his own ends.

In reply, Mr Jeary, on behalf of the respondent argued that although the words "conniving to swindle" were not used, they were a fair and reasonable inference to be drawn from what the Attorney-General did say. Mr Jeary itemised all the actions of the appellant to which the Attorney-General had referred including the key role played by the appellant, his participation in all the negotiations before the signing of the contract, his signing of the waiver letters, his failure to retain copies of the letters on the file, the fact that the letters were brought by Mr Zulu for him to sign, his visit to the United States at the invitation by the President of TAW, his failure to obey instructions to rescind the contract and his contribution to the failure of the Government in its case. It was argued that all these matters justified the inference that the Attorney-General was accusing the appellant of conniving to swindle the Government. In this connection Mr Jeary argued that to swindle does not necessarily mean to obtain money or material benefit, but that one of the meanings was to deceive. In this case, he argued, the signing of the waiver letters and the concealment of their existence was clearly a deceit as a result of which a substantial sum of money was paid to settle TAW's claim and it was fair to say that the Government was swindled.

With reference to the statement of the Ministry of Home Affairs that the people implicated in the TAW contract would be punished if proved guilty, Mr Jeary argued that such words were not an imputation of guilt and had no defamatory meaning in relation to the appellant.

With reference to the opinion column Mr Jeary argued that the words used did not arise from the article referring to conniving to swindle; he maintained that they were based on the comments referred to as the beginning of the column concerning the punishment of wrong-doers generally. We do not agree with Mr Jeary's last argument and we are quite satisfied that the words referring to conniving to swindle and plundering society for his own ends both referred to the appellant. The news story referring to the appellant's having been named as one of the persons concerned in swindling, and the opinion column referring to plundering were adjacent in the same edition of the newspaper. The first paragraph of the opinion column referred to the

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people involved in the TAW saga and the same column commented on plundering of society for their own ends. Although the first words of the opinion column are "Mr Mulemba said in Kitwe that corruption cases will be dealt with firmly" it is clear that the column referred to the appellant as being one of the people involved in what was called the TAW saga, and he was therefore subject to the general criticism including the reference to plundering.

The allegations of swindling and plundering society for his own ends are quite obviously defamatory and the respondent can only succeed in its defence if the words used are supported by facts. In this respect the facts consisted of the words used by the Attorney-General in the National Assembly. We agree with Mr Jeary that the words used by the Attorney-General need not tally exactly with the report and comment by the respondent, it is sufficient if a reasonable inference can be drawn from the words used by the Attorney-General to support the reports and comments by the respondent.

Mr Jeary argued that the reference to swindling in the newspaper articles was justified because the verb to swindle did not necessarily mean doing something for monetary or other gain but could mean deceit on its own. We have already indicated that in our view the newspaper article and the opinion column both refer to the appellant. It follows, therefore, that the words swindling and plundering as used by the respondent refer to the same activities of the appellant. The word plunder can only mean wrongfully taking money or some material thing, and it is clear that in both instances the respondent was alleging that the appellant carried out his activities for the purpose of gain.

The question before this court is not whether the appellant swindled the Government and plundered the people, but whether the words of the Attorney-General in the Nations Assembly could lead to a reasonable inference that the appellant was guilty of such activities. It is common ground that the Attorney-General did not use the expression "conniving to swindle" or "plunder". It is also common ground that the Attorney-General said that the appellant had written waiver letters without authority and concealed the copies of such letters as a result of which the Zambian Government suffered a loss of four million dollars which had to be paid to TAW. There is no doubt that the Attorney-General meant that the appellant had deceived the Government. The Attorney-General also said that one of the things that the appellant had done was to visit the United States at the invitation of the President of TAW. It is clear from the context that the Attorney-General's reference to that visit was an indication that in his view the visit had a sinister meaning. Throughout the Attorney-General's address to the National Assembly, setting out the actions of the appellant, he was interrupted by cries of "Shame", "A nation of scandals" and "Ah that is very serious." It is obvious that the Attorney-General was saying that the appellant had done something wrong and it is equally obvious that the members of the National Assembly thought that the appellant's actions as related by the Attorney-General were shameful and scandalous. It certainly cannot be argued that the Attorney-General was saying that any of the actions of the appellant were innocent, and we accept that the meaning of the Attorney-General's words was that the appellant had been involved in deceitful activities in the course of which he had been to the United States at the invitation of the man who subsequently won the arbitration case against the Government and received four million dollars.

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This was a clear suggestion that the appellant, because of his questionable association with the President of TAW and his deceitful conduct on behalf of that organisation, was himself a beneficiary from such conduct. It follows, therefore, that the respondent's use of the word swindle in the newspaper article was a fair and accurate report of the privileged proceedings in the National Assembly. The use of the word plunder in the opinion column, although very strong, was

nevertheless fair comment rising out of the meaning of the Attorney-General's privileged words, and there is a complete defence to the action. As the Attorney-General's words before the National Assembly led to the comments of the Minister of Home Affairs, the respondent's report of such comments was equally covered by the same defence.

For the reasons we have given the appeal is dismissed with costs to the respondent.
Appeal dismissed .
