

JOHN NAMASHOBA MUCHABI v AGGREY MWANAMUFWENGA (1987) Z.R.
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SUPREME COURT
NGULUBE, D.C.J., CHOMBA, AND GARDNER, J.J.S.
17TH FEBRUARY, 1987.
(S.C.Z. JUDGMENT NO. 2 OF 1987)

Flynote

Tort - Defamation - Proof of - Evidence of language substantially the same.
Tort - Defamation - Proof of - Need to prove particular defamation pleaded.

Headnote

The appellant appealed against a judgment of the High Court dismissing a claim for damages for slander. The trial court held that the plaintiff's evidence did not substantially support his claim as pleaded.

Held:

- (i) In slander actions it is no longer necessary for the plaintiff to prove that the precise words were uttered. It is sufficient if he proves a material and defamatory part of them or words which are substantially to the same effect. *Tournier v National Provincial and Union Bank* (1) followed.
- (ii) The defamation pleaded must be proved. It is not sufficient to prove that other defamatory words alleging a different form of misconduct were used.

Case cited:

- (1) *Tournier v National Provincial and Union Bank of England Ltd.* [1923] All E.R. 550.

For the appellant: N. Kawanambulu, Shamwana & Co.
For the respondent: F. S. Chungu, Silweya & Co.

Judgment

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

This is an appeal from a judgment of a High Court dismissing a claim for damages for slander. In this judgment we will refer to the appellant and respondent as the plaintiff and defendant respectively.

The facts of the case are that on the 25th September, 1982, a public meeting was held at Maala in Namwala District and there was evidence that the purpose of this meeting was for the Provincial Political Secretary to address the people in connection with the forth - coming election of the President. It was alleged that at that meeting the defendant asked a question in which the alleged defamatory words were uttered.

There was evidence that the plaintiff was the presiding justice of the Maala Local Court, and, in the statement of claim, the plaintiff alleged that the defendant said:

"Why hasn't the Government sacked John Muchabi from his post as the presiding justice of Maala Local Court for corruption involving receiving bribes from people so that he decided cases in their favour. I had reported this matter to the Governor but I am surprised as to why the Government has not yet removed him from the post."

The statement of claim went on to say that by these words the defendant was understood to mean that the plaintiff was corrupt and unfit to hold a public post. In his defence the defendant pleaded a denial that he ever uttered the words and put the defendant to proof.

The plaintiff gave evidence to the effect that at the meeting he was present and the defendant asked a question in which he said:

"You tell people to vote always, yet we have complained against the presiding local court justice of his corrupt practices that he receives bribes from people and you do not want to chase him away."

The plaintiff called one witness in support of his claim. This witness said that the defendant at the meeting said:

"You Government people why don't you dismiss John Muchabi because he is a person who has taken a lot of bribes? If he is not dismissed that means we people of Maala will not vote properly during the forth-coming elections."

The defendant gave evidence in which he said that the relevant question he asked at the meeting was one in which he inquired what was being done about irregularities in all the Local Courts in general in the Namwala District. He denied that he mentioned any specific person or court at all. In support of his case the defendant called two witnesses, the Provincial Political Secretary and the District Governor. The first of these, DW2, said that at the meeting the defendant had said:

"What are people doing about administration of justice at Maala Local Court. We have reported a number of cases to the Hon. Member of the Central Committee about the same court but there is nothing happening. No action has been taken."

The second of the witnesses, DW3, and said that at the meeting the defendant said:

"Since the Member of the Central Committee convened to hear complaints from the people of maladministration at Maala Court people are anxious to hear what is happening to the complaint which the people raised to the Member of the Central Committee over maladministration in Local Court?"

In the course of the judgment dismissing the plaintiff's claim the learned trial judge commented that the evidence given by the plaintiff did not exactly support the statement of claim as far as the alleged words were concerned. In support of his finding that the plaintiff had not proved his case, the learned trial judge referred to Gatley on Libel and Slander, 7th edition paragraph 985, where it is said that the actual words spoken must be set out verbatim in order that the defendant may know the certainty of the charge, and may be able to shape his defence, and it is not sufficient to allege that the slanderer used such and such words, or to that effect.

Mr Kawanambulu on behalf of the appellant put forward three grounds of appeal. The first was that the learned trial judge erred in holding that the plaintiff's evidence did not substantially support his claim as pleaded. In support of this ground, Mr Kawanambulu referred this court to a number of cases and in particular the well known case of *Tournier v National Provincial Union Bank* (1) in which at page 557 Scrutton, L.J., indicated that it was sufficient to prove a claim for slander if the words in the evidence were not exactly the same as the words in the pleadings but were words to the same effect.

We are satisfied that the learned trial judge was in error in assuming that the reference in Gatley, which states that the plaintiff must set out in the pleadings the actual words spoken in verbatim form, meant that the words given in evidence must be exactly the same as the words in the statement of claim. In fact there is ample authority, in addition to the *Tournier* case quoted by Mr Kawanambulu, to the effect that in slander actions it is no longer necessary for the plaintiff to prove that the precise words were uttered. It is sufficient if he proves a material and defamatory part of them or words which are substantially to the same effect (Gatley on Libel and slander 8th edition, paragraph 1304). In this case the statement of claim alleged that the defendant had said that the plaintiff was guilty of bribery and corruption. Both the plaintiff and his witness gave evidence that the defendant used words complaining that the plaintiff had taken bribes, and we are quite satisfied that the words alleged in evidence were to the same effect as the words alleged in the statement of claim. It follows, therefore, that we agree with Mr Kawanambulu in respect of this ground of appeal which succeeds.

The second ground of appeal was that even if the words proved in the trial were different from these pleaded, the learned trial judge failed to consider whether the words of the witnesses DW2 and DW3 were a material and defamatory part of the words complained of. In support of this argument Mr Kawanambulu did not at this stage challenge the trial judge's findings that he did not believe the plaintiff and his witnesses nor the defendant himself and that he was satisfied that the two defence witnesses DW2 and DW3 were speaking the truth. Mr Kawanambulu argued that, although the defence witnesses had not confirmed that the defendant had spoken of bribery and corruption by the plaintiff, the references to maladministration were "words to that effect." He said that, because the allegation of maladministration

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against the presiding local court justice was obviously defamatory and gave grounds for an action for damages, it followed that allegations of corruption and of maladministration were "words to the same effect" because they had the same result. With regard to that argument we are of the view that Mr Kawanambulu has been misled by the English phrase "to that effect." The word "effect" in the

phrase does not mean "result." The whole phrase is intended to refer to words with a like meaning; the result is not intended to be considered. We are quite satisfied in this particular case that the plaintiff, having claimed that he was slandered by the use of the words alleging bribery and corruption, cannot succeed by giving evidence only of words alleging maladministration. The second allegation, although possibly defamatory, is completely different. It follows, therefore, that this ground of appeal must fail.

The last ground of appeal was that the learned trial judge erred in placing reliance on the evidence of DW2 and DW3. In this respect Mr Kawanambulu put forward two supporting arguments. The first was that, it being found that the defendant himself was untruthful when he said he had not referred to any individual, or to Maala Local Court, the defence put forward by the defence must fail and the learned trial judge then should have again looked at the evidence of the plaintiff and his witnesses and accepted that evidence. It was argued that at this stage he was wrong to consider the evidence of any other witness at the meeting. There is no rule of law or practice to this effect and although there may be cases where, if the defendant is not believed, the evidence of the plaintiff will be accepted, that does not apply in cases such as the present one where it is important for the court to ascertain what words were said at a special meeting and to consider whether these words are defamatory or whether they are in accordance with the pleadings. In this particular case it was obviously proper for the learned trial judge to take into account the evidence of every witness, especially having regard to the fact that some of the witnesses were independent. The second part of the argument put forward by Mr Kawanambulu under this ground was that the evidence of the two witnesses was contradictory. We have examined that evidence of both witnesses and we are quite satisfied that there was no inconsistency in the evidence and certainly no contradiction. This ground of appeal must also fail.

This appeal can be reduced to the question of whether or not it was proved that the words alleged to have been said by the defendant in the statement of claim were in fact said by the defendant at the time of the meeting. Despite the fact that there was evidence of a possible defamation of the defendant with regard to the allegation of maladministration, we are satisfied that defamation was not pleaded and that the defamation pleaded was not proved. Although the appellant succeeded on his first ground of appeal, the misdirection did not affect the finding of the learned trial judge that the plaintiff's version of the words used could not be believed and that the version given in the evidence of DWs 2 and 3, which was properly accepted as the true version, did not support the pleadings.

The appeal is dismissed with costs to the respondent.
Appeal dismissed
