

**IN THE COURT OF APPEAL OF ZAMBIA**  
**HOLDEN AT LUSAKA**  
(Civil Jurisdiction)

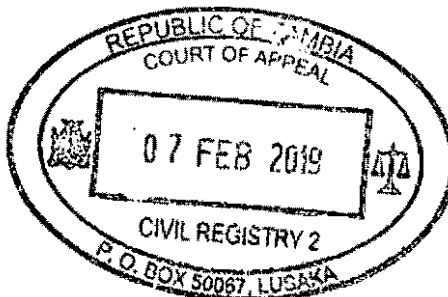
**APPEAL NO. 77 OF 2018**

**BETWEEN:**

**MUVI TV LIMITED**

**AND**

**CHARITY KATANGA**



**APPELLANT**

**RESPONDENT**

**Coram: Makungu, Sichinga and Ngulube, J.J.A**  
**On the 21<sup>st</sup> day of November, 2018 and 7<sup>th</sup> day of February,**  
**2019**

*For the Appellant: Mr. M.J Katolo of Messrs Milner and Paul Legal Practitioners*

*Respondents: Mr. T.S Benn of Messrs Shamwana and Company*

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**JUDGMENT**

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**Sichinga, JA** delivered the Judgment of the Court

**Cases referred to:**

1. *Flint v. Lovell* (1934) All ER 200
2. *Sata v. Post Newspapers* (1993 -1994) ZR 106 (HC)
3. *Tolley v. Fry* (1930) ICB 469
4. *Bevin Ndovi v. Post Newspapers Limited and Another* (2011) Vol. 1 472 (SC)
5. *Simon Kapwepwe v. Zambia Publishing Company Limited* (1978) Z.R IS (SC)

6. *Muvi TV Limited v. Phiri and Another* SCZ / 8/288 2014 (SC)
7. *Albert Jefferson Mkandawire v. Zambia Publishing Company Limited* (1979) ZR 238 (SC)
8. *Sim v. Stretch* (1938) 2 ALL ER 1237
9. *Rhesa Shipping Company SA v. Edmonds* (1985) 1 WLR 948
10. *Masauso Zulu v. Avondale Housing Project* (1982) ZR 172 (SC)
11. *Jameel v. Dow Jones and Company Incorporated* (2005) QB 946
12. *Benny Hamainza WYcliff Mwiinga v. Times Newspaper Limited* (1988-1989) ZR 177 (SC)
13. *Michael Chilufya Sata v. Chanda Chimba III, Zambia National Broadcasting Corporation, Muvi TV Limited and Mobi TV International Limited* 2010/HP/1282 (HC)
14. *Lynch v. Knight* (1861) 11 ALL ER 854.
15. *Zambia Publishing Company Limited v. Eliya Mwanza* (1979) ZR 76 (SC)
16. *John v. MGN Limited* (1997) QB 586
17. *Kalonga and Another v. Chisamanga and Another* (1988-1989) ZR 52 (SC).
18. *Parminter v Coupland* (1840) ALL ER 168

**Other Works referred to:**

1. *Winfield and Jolowicz on Tort*, 18<sup>th</sup> edition (Sweet and Maxwell, London, 1967)
2. *Gatley on Libel and Slander*, (Phillip Lewis) 8<sup>th</sup> edition (Sweet and Maxwell, London, 1981)
3. *Salmond on the law of Tort* 12<sup>th</sup> edition, ( Sweet and Maxwell, London 1951)
4. *Damages in Tort* ( David K. Allen) Sweet and Maxwell, 2000)

This is an appeal against the judgement of the High Court at Lusaka handed down on 15<sup>th</sup> February, 2018. The action was a

claim for damages and an apology for libel. In his judgment, the learned trial judge found for the plaintiff and awarded her the sum of K 20,000.00 as damages for defamation.

The salient details of the case concern a television news report prefaced with the following facts. On 7<sup>th</sup> June, 2013, the plaintiff Ms. Katanga, then serving as Commissioner of Police for Southern Province was holding a meeting in her office in Choma with a delegation from Lusaka. The premises also houses the provincial Minister, the Permanent Secretary and other government offices. Whilst the said meeting was taking place, one Assistant Superintendent Jane Lukonde attempted to enter Ms. Katanga's office. Ms. Katanga advised her not to enter. Lukonde remained at the door about 6 to 8 meters away from where the plaintiff sat and closed the door. Ms. Katanga's secretary came to check who was knocking on her boss' door and she equally advised Lukonde to wait in the secretary's office. Ms. Katanga continued with her meeting and a moment later, she heard a noise of someone shouting and crying outside her office. The plaintiff was later informed that the shout and cry was that of Assistant

Superintendent Lukonde. After the meeting ended, Ms. Katanga left her office to attend another meeting in Livingstone.

During her break time, Ms. Katanga was accosted by the appellant's reporter one Mwape, DW1 who inquired of an alleged fight between Ms. Katanga and Lukonde. The plaintiff denied the alleged fight took place and explained what transpired. She also advised Mwape to inquire from the provincial administration as the incident took place in public. Ms. Katanga was surprised to learn that the appellant aired the alleged story on its prime time news at 18:30 hours with the headline caption, "Katanga involved in a punch up with subordinate Assistant Superintendent Lukonde". This is the alleged libel. She was touched with annoyance to see the story aired. Ms. Katanga felt her reputation was injured given that she was appointed by the Republican President and that she was a lawyer.

Six months thereafter, she was transferred to the Northern Division and later to Lusaka Province, both transfers in the same capacity. On 14<sup>th</sup> June, 2013, the respondent's advocates wrote to the appellant pointing out the news article allegedly defaming her on 7<sup>th</sup>

and 8<sup>th</sup> June, 2013 and demanding *inter alia* an apology be published within 7 days of that letter. Despite the letter from counsel, no apology was rendered. On 5<sup>th</sup> July, 2013 a court action was instituted in the court below.

In his judgment of 15<sup>th</sup> February, 2018, the learned trial judge found that it was common ground that the appellant broadcasted a news article with the alleged libel complained of. The lower court found that the words complained of were defamatory of the plaintiff and awarded her with the sum of K 20,000.00 as damages. The learned trial judge rejected the appellant's defences of fair comment and justification as the defendant had failed to prove that the allegations contained in the article published were true in substance or fact.

The appellant has advanced four grounds of appeal as follows:

- 1. The court below erred in law and fact when it held that the plaintiff did not suffer any grave injury as a result of the defamation but still went ahead to grant the plaintiff damages in the sum of K 20,000.00.**

- 2. The learned trial judge erred in law and fact when he held that the respondent had proved her case when in fact she did not adduce any evidence to show that the publication by the appellant had lowered the respondent in the estimation of the society in which she operated.**
- 3. The award of K20, 000.00 as damages for defamation are excessive and unsupported by evidence.**
- 4. The court below erred in law and fact when it held that the article complained of had injured the plaintiff's reputation when the plaintiff's own evidence on record was that she had no proof to show that the article complained of injured her standing as Commissioner of Police and Lawyer or that she suffered stress and anxiety as a result of the publication.**

The appellant filed in written heads of argument on 15<sup>th</sup> May, 2018 wherein grounds one and three were argued as one and grounds two and four were equally advanced as one ground.

The gist of grounds one and three is that there was no evidence to support the allegation of defamation and the award of K 20,000.00

was excessive and unsupported by evidence. Mr. Katolo, learned counsel on behalf of the appellant, submits that the respondent did not lead any evidence to show that her reputation as a lawyer and Commissioner of Police was injured, lowered or damaged. That during cross-examination of the respondent, who was PW1, she testified that she did not have any evidence to show that her transfer from Southern Province to Northern Province and then to Lusaka Province were attributable to the publication. The respondent in fact testified that she could be assigned to work anywhere within the country, and that she had no evidence to show that the appellant's article affected her standing as Commissioner of Police or as an advocate. Counsel relied on the case of **Flint v. Lovell**<sup>(1)</sup> Where Green, LY said at page 202 that:

***"This Court will be disinclined to reverse the finding of trial Judge as to the amount of damages merely because they think that if they had tried the case in the first instance they would have given a lesser sum. In order to justify reversing the trial Judge on the question of the amount of damages, it will generally be necessary that***

***this court should be convinced either that the judge acted upon some wrong principle of law, or that the amount awarded was so extremely high or so very small as to make it in the judgement of this court on entirely erroneous estimate for the damages to which the Plaintiff is entitled"***

Mr. Katolo submitted that the learned trial judge's award of K20,000.00 as damages to the respondent is so extremely high and an erroneous estimate of the damages to which the respondent is entitled.

It is submitted that the respondent's testimony during cross-examination was that six months following the incident, she was transferred to Northern Province in the same capacity. Further that from Northern Province, she was transferred to Lusaka which was a show of confidence by the appointing authority of her ability to discharge her duties as a Commissioner of the Zambia Police Service. That the respondent admitted that she did not have any proof to show that her transfers were not administrative but as a result of the publication by the appellant. Mr. Katolo submitted



that the respondent did not have evidence that the publication by the appellant affected her standing as a Commissioner or that she had suffered stress, or anxiety as a result of the publication. That she admitted to not having any proof that the said publication had affected her standing as an advocate. Counsel contended that in the absence of proof of damage to the respondent's standing as Commissioner of Police and as an advocate, the award of K20, 000.00 with interest is extremely high. The case of **Sata v Post Newspaper**<sup>(2)</sup> was cited where Ngulube CJ, as he then was, sitting as a High Court Judge held *inter alia* that:

***"Where there was little actual loss suffered by a plaintiff, exemplary or punitive damages were not appropriate since the primary objective of an award for defamation was to vindicate and solatium rather than monetary compensation"***

Counsel contends that an award of K20, 000.00 with interest at short term deposit rate from the date of the writ to the date of judgment and thereafter at the current Bank of Zambia leading rate until full and final settlement is excessive. That since there was no

actual loss suffered, the court below ought to have awarded nominal damages.

In ground two, it is argued that the respondent did not adduce any evidence to show that the publication complained of lowered the respondent in the estimation of society. Mr. Katolo contends that for a plaintiff to succeed on a claim of defamation, the plaintiff must prove firstly, that the statement is defamatory, secondly, that the statement referred to the plaintiff; and thirdly, that the statement was published, that is, communicated to at least one person other than the plaintiff. **Winfield and Jolowicz on Tort (8<sup>th</sup> edition) at paragraph 12-3<sup>(1)</sup>** is cited as authority for this proposition. *It further states that for the statement to be defamatory it must:*

***"..... reflect on the person's reputation and tend to lower him in the estimation of right thinking members of society or tends to make them or avoid them".***

Counsel also cited the English case of **Tolley v Fry<sup>(3)</sup>** which states that:

***"Words are not defamatory however much they may damage a man in the eyes of a section of the community, unless they also amount to disparagement of his reputation in the eyes of right thinking men generally. To write or say of a man something that will disparage him in the eyes of a particular section of the community is not actionable within the large defamation"***

And the case of **Bevin Ndovi v Post Newspaper Limited and Times Print Park Zambia** <sup>(4)</sup> where it was stated that:

***"A defamatory statement is one which tends to lower a person in the estimation of right thinking members of society generally as to cause him to be shunned or avoided or expose him to hatred contempt or ridicule or to convey an imputation on him disparaging or injurious to him, to his office, profession, calling or trade or business"***

Mr. Katolo submitted that the respondent did not have proof to show that her transfer to the Northern Province which occurred six months after the incident was nothing more than an administrative

decision by her employer. That she in fact stated that her second transfer to Lusaka was a show of confidence which her employer had in her abilities to execute her duties as Commissioner in the Zambia Police Service. It is submitted that the respondent failed to adduce evidence to prove that the publication by the appellant caused her to be shunned or avoided or exposed her to hatred contempt or ridicule in her capacity as an advocate or Commissioner of Police. Mr. Katolo contends that under the circumstances, the respondent cannot be said to have discharged her burden in proving that the publication was defamatory.

On ground four, Mr. Katolo submitted that the trial judge's findings of fact that the respondent had suffered injury due to the publications by the appellant was made upon a misapprehension of facts before the court. At page J25 of the judgment, the trial judge found that the publication had depicted the respondent as a violent, non-law abiding individual and that this injured her reputation which could reasonably be said to have caused her distress and anxiety. Further the learned trial judge found that no evidence was led to show whether she was shunned or disadvantaged as a result

of the defamation. From these findings, it is submitted that the trial judge rightly noted that the respondent did not lead any evidence to prove that she was shunned and/or disadvantaged by the publication. That the trial court had no material on record to reach the conclusion that the respondent's reputation had been injured. Mr. Katolo submitted that on the contrary, the evidence on record showed that the respondent was enjoying a show of confidence from her employers by way of a transfer to Lusaka. In sum, learned counsel contends that in the absence of proof of injury to reputation, the trial court ought not to have held that there was any injury to the respondent's reputation.

In his oral submissions, Mr. Katolo restated what was contained in his written submissions that there was no evidence to show that the respondent's standing had been lowered by right thinking members of society. That the court below fell in grave error to hold that the article was defamatory and award damages of K20, 000.00. He urged us to allow the appeal with costs.

Mrs. Benn, learned counsel for the respondent filed in heads of arguments dated 15<sup>th</sup> June, 2018 and wholly relied on them. With

respect to grounds one and three on the award of the sum of K 20,000.00 as damages, she submitted that a party found guilty of defaming another is liable to pay damages to the party whose reputation has been injured. Even though injury is not proven, the damages will still be awardable. **Phillip Lewis, Gatley on Libel and Slander**<sup>(2)</sup> was cited where it states that:

***"In cases of libel and slander actionable per se, the plaintiff need not prove actual damages for the law presumes, that some damages will follow in the ordinary course of things, from the mere invasion of his absolute right of reputation."***

And the case of **Simon Kapwepwe v Zambia Publishing Company Limited**<sup>(5)</sup> which stated *inter alia* that:

***"...the primary object of awarding damages for defamation is to offer vindication and solatium..."***

On the sum awarded by the court below, Mrs. Benn contended that the damages were neither excessive nor minimal considering the factors that were laid in the case of **Muvi TV Limited v Phiri and**

**another**<sup>(6)</sup>. In sum, it is contended that in *casu*, the appellant was found to have defamed the respondent and damages automatically followed. That the award was in any event insufficient and nominal taking into consideration all the factors to be considered according to **Muvi TV Limited v Phiri and another, *Supra***.

On grounds two and four, Mrs. Benn initially highlighted the definition of defamation and what amounts to a defamatory statement. That according to the learned authors of **Salmond on the law of Tort (12<sup>th</sup> Edition)** at page 322:

***"Defamation is a false statement or suggestion of fact to the prejudice of a man's reputation".***

A similar notion of defamation was cited as per the case of **Albert Jefferson Mkandawire v Zambia Publishing Company Limited**<sup>(7)</sup> where the Supreme Court stated that:

***"...to write a man that he had fallen below standards of his profession may be treated as defamatory of him especially when the comment is based on untrue facts"***

In describing a defamatory statement, learned counsel relied on the case of **Sim v Stretch**<sup>(8)</sup> where Lord Atkin stated:

***"A defamatory statement is one which injures the reputation of another by exposing him to hatred, contempt or ridicule, or which tends to lower him in the esteem of right thinking members of society."***

It is submitted that it is trite law that he who alleges must prove. That after the respondent brought her action in the court below; the appellant raised several defences including fair comment and justification, which it failed to prove on a balance of probabilities. The cases of **Rhesa Shipping Company SA v Edmonds**<sup>(9)</sup> and **Masauso Zulu v Avondale Housing Project**<sup>(10)</sup> refer.

Learned counsel concurred with the appellant's submission that three things must be proven in order for a court to determine whether a person has been defamed or not. Namely, that the statement must be defamatory, that it must refer to the plaintiff; and that it must be published and communicated to at least one person other than the claimant. **Winfield and Jalowicz on Tort (18<sup>th</sup> Edition) at paragraph 12-3** refers.



It is submitted that it is not in dispute that the statement referred to the respondent and further that it was broadcasted on the appellant's prime time news and vernacular news session thereafter. Therefore it was viewed by many people.

Mrs. Benn submits that the appellant's contention that the statement was not defamatory because it did not injure the reputation of the respondent is without merit. Reference was made to the learned authors of **Salmond on the law of Tort**<sup>(4)</sup>(12<sup>th</sup> Edition) at page 321 where it states that:

*"Although libel and slander are for the most part governed by the same principles, there are two important differences:*

*1. Libel is not merely an actionable tort, but also a criminal offence, whereas slander is a civil injury only.*

*2. Libel is in all cases actionable per se, but slander is, save in special cases, actionable only on proof of actual damage....."*

Further reference is made to the learned authors of **Gatley on Libel and Slander, (8<sup>th</sup> Edition), (Sweet and Maxwell London, 1981)**

where it states that:

***"In cases of libel and slander actionable per se, the plaintiff need not prove actual damages for the law presumes, that some damages will follow in the ordinary course of things, from the mere invasion of his absolute right to reputation"***

The English case of **Jameel v Dow Jones and Company Incorporated**<sup>(11)</sup> was also cited wherein it was stated that in cases of libel, it is an irrebuttable presumption that damage has been caused. It is submitted that in *casu* the appellant could prove that the respondent had suffered no damage but was not permitted to rely on that fact to escape liability.

Mrs. Benn submitted that in light of these authorities, it is clear that in cases of defamation classified as libel, there is no strict requirement to prove damage as libel is actionable per se. Therefore the only thing that requires determination is whether the statement was defamatory. That in the case of **Benny Hamainza**

**Wycliff Mwiinga v Times Newspaper Limited**<sup>(12)</sup> the Supreme Court stated that:

*"In this Country, it is for the trial judge as trier of both fact and law to determine whether, as a matter of law, the words complained of were capable of being understood to refer to the plaintiff and if so whether, as a matter of fact the words were reasonably understood to refer to the plaintiff."*

It was counsel's submission that the trial judge, as a trier of both fact and law, is not only limited to determining the issues in the case but should also determine whether the statement complained of is defamatory. To buttress this submission, the High Court case of **Michael Chilufya Sata v Chanda Chimba III, Zambia National Broadcasting Corporation, Muvi TV Limited and Mobi TV International Limited**<sup>(13)</sup> was relied upon for its persuasive value. In that case Matibini. J (as he then was) stated that:

*"The starting point therefore is to consider whether the words complained of are defamatory of the plaintiff. This is a question of fact. I am therefore required to*

*decide at the outset whether the words complained of are reasonably capable of being a defamatory meaning in the minds of reasonable persons. The true test according to the authorities is whether in the circumstances in which the statement was published, reasonable persons to whom the publication was made, would understand it of the plaintiff, and in a defamatory sense. In ascertaining whether or not the words complained of in their natural and ordinary meaning. In this regard, I must ask myself the question whether a reasonable man could reasonably come to the conclusion that the words complained of were defamatory of the plaintiff".*

It is submitted that the **Michael Chilufya Sata** case brings the notion of the 'reasonable man' to the fore and/or what constitutes reasonableness in the law of Torts. That under the guidance of **Winfield and Jolowicz on Tort Supra** the following was said of the 'reasonable man'

*"Lord Bowen visualised the reasonable man as ' the man on the Clapham Omnibus'. He has not the courage of*

*Achilles, the wisdom of Ulysses or the strength of Hercules, nor has he the prophetic wisdom of a clairvoyant. He will not anticipate folly in all its forms, but he never puts out of consideration the teachings of experience and so will guard against the negligence to be common....Nobody expects the man on the Clapham Omnibus to have any skill as a surgeon, lawyer, a doctor, or a chimney-sweep unless he is one; but if he professes to be one, then the law requires him to show such skill as any ordinary member of the profession or calling to which he belongs or claims to belong, would display."*

Premised on the above authorities, learned counsel submitted that the lower court did not err when it found that the respondent had proved her case because in the minds of reasonable persons, the statement "**Katanga involved in punch-up with her Subordinate Assistant Superintendent Lukonde**" imputes that the respondent engaged in violent and unprofessional conduct.

We have given consideration to the arguments advanced by both parties in this appeal, the evidence on record and the judgment of

the court below. As counsel for the parties have done, we shall equally consider the grounds in the same manner.

The gist of the grounds one and three is that despite the fact that the court below found that the respondent did not suffer any grave injury as a result of the defamation, the lower court granted her damages of K20,000.00 which are excessive and unsupported by evidence.

The starting point is the finding of the trial judge at page J25 where she stated that:

***"..I note that the plaintiff did not suffer any grave injury as a result of the defamation. She retained her job and was transferred to Lusaka in the same position before she was eventually posted to the Copperbelt. The plaintiff admitted in cross examination that her transfer to Lusaka was a show of confidence in her by the appointing authority. No evidence was led to show whether she was shunned or disadvantaged as a result of the defamation. I am cognisant of the fact that in an***

***action for defamation, damage is presumed and there is no need for proof of actual damage."***

We are securely of the view that the learned trial judge was apt in his analysis of the law. The learned author of **Damages in Tort** (David K. Allen<sup>(4)</sup>) states at page 194 that:

***"Libels and those slanders not requiring proof of special damage are actionable per se and damages are available for both the non-pecuniary and the pecuniary consequences of the defamatory statement."***

It is trite law that libel refers to a defamatory statement made in permanent form such as writings, pictures or radio and television broadcasts. Libel is actionable in tort without proof that its publication has caused special damage to the person defamed.

The learned trial judge found that the respondent had not led any evidence to show that she was shunned or disadvantaged as a result of the defamation. In our view, he rightfully came to a conclusion that since libel is actionable per se, damage is presumed and there is no requirement for proof of actual damage.

In the case of **Lynch v Knight**<sup>(14)</sup> the House of Lords of England, per Lord Wensleydale said:

***“Mental pain or anxiety the law cannot value, and does not pretend to redress, when the unlawful act complained of causes that alone, though where material damage occurs, and is connected with it, it is impossible a jury in estimating it, should overlook the feelings of the party interested.”***

Further, in the case of **Zambia Publishing Company Limited v Eliya Mwanza**<sup>(15)</sup> the Supreme Court held *inter alia* that:

***“(iv) Injury to reputation and natural hurt to feelings need not be pleaded or proved.”***

The court went on to award a sum of K7, 500.00 as compensation.

In *casu*, the respondent was a senior police officer and a lawyer. As such the learned trial judge found that the respondent having proved that the statement complained of was libelous, was entitled to an award of damages since the article painted her in a bad light given her profession.



The case of **John v MGN Limited**<sup>(16)</sup> states, in considering an award of compensatory damages in defamation:

***"The successful plaintiff in a defamation action is entitled to recover as general compensatory damages such seen as will compensate him for the damage to reputation, vindicate his good name, and take account of the distress, hurt and humiliation which the defamatory action publication has caused. In assessing the appropriate damages for injury to reputation the most important factor is the gratuity of the libel, the more closely it touches the plaintiff's personal integrity, professional reputation, honor, courage, loyalty and the core attributes of his personality, the more serious it is likely to be."***

The record shows that whilst the appellant availed the respondent an opportunity to tell her side of the story, it rejected it without any justification. Further at page 62 to 63 of the record of appeal, the respondent through her advocates, requested the appellant to

apologise for publishing a falsehood. An apology was not forthcoming and the respondent commenced an action.

In the case of **Kalonga and Another v Chisanga and Another** <sup>(17)</sup> the Supreme Court held that:

***"An adequate apology, no matter that it was tendered late, has the effect of extenuating the seriousness of the defamation and therefore of the quantum of damages."***

In that case the defendants had tendered an apology after the plaintiff had commenced an action. The plaintiffs were awarded the sum of K 6,000.00 as compensatory damages which the Supreme Court reduced to K 1,000.00. Therefore, taking this into account in this fact and the devaluation of currency, we have no reason to fault the learned trial judge on his findings and award of K20, 000.00. We accept the respondent's submissions that the appellant acted with malice when it broadcasted and published the defamatory statement without taking into account the respondent's side of the story.

For the foregoing reasons, we find no merit in grounds one and three and we dismiss them accordingly.

With regard to grounds two and four, the gist of these grounds is that the lower court erred when it held that the respondent had proved her case showing that the publication had injured her reputation when in fact no evidence was adduced to support her case and that the court below erred when it held that the words complained of injured the respondent's reputation in the absence of evidence.

We have considered the words of the learned authors **of Winfield and Jolowicz on Tort (16<sup>th</sup> Edition)** where they state that:

***"Defamation is the publication of a statement which reflects on a person's reputation and tends to lower him in the estimation of right thinking members of society generally or tends to make them shun or avoid them."***

In our understanding, libel is actionable per se, and injury to reputation is presumed. However, as agreed by counsel, what must be proved by a claimant are the following elements:

1. The statement must be defamatory;
2. The statement must refer to the claimant, viz identify him/her;
3. The statement must be published, that is, communicated to at least one person other than the claimant.

In *casu*, the learned trial Judge considered the ordinary and natural meaning of the words complained of and found that they suggest that the respondent was involved in a physical altercation with her subordinate whilst on duty. The lower court took into account what DW1 said was his understanding of the words complained of. The record shows that DW1 accepted under cross-examination that the words complained of meant the respondent was involved in a physical fight with her subordinate. Taking into account the admission, the learned trial judge found the words complained of to be defamatory of the respondent.

We are persuaded by the finding in the case of **Parmitter v Coupland**<sup>(18)</sup> that the trial court was on firm ground. In that case a newspaper published about the late Mayor in the borough of Winchester. The newspaper imputed 'partial' and corrupt conduct, and ignorance of his duties as Mayor and Justice of peace of the

borough. There had never been any investigation of the Mayor to suggest so. The House of Lords found that the publication was without justification or lawful excuse, which was calculated to injure the reputation of another by exposing him to hatred, contempt or ridicule. Our view is that the publication in this matter satisfied the first element.

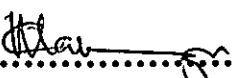
The next consideration is whether the statement referred to the respondent. We find that this element was not in issue and the court below aptly so found that the person referred to in the words complained of was the respondent.

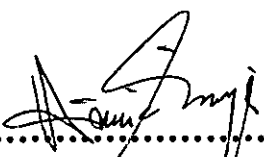
The last element of defamation is that the statement must be of or communicated to at least one person. It is equally not in dispute that the publication complained of was aired on Muvi TV during its prime time television program at 18:30 hours and it was repeated the following morning in vernacular. The respondent testified that this triggered phone calls to herself from lawyers and officers in command. We will thus not belabor this point save to agree with the finding of the learned trial court.


We thus equally dismiss grounds two and four for lack of merit.

The net result is that all grounds of appeal are dismissed.

We award costs to the respondent to be taxed in default of agreement.

  
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**C.K. MAKUNGU**  
**COURT OF APPEAL JUDGE**

  
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**D.L.Y. SICHINGA**  
**COURT OF APPEAL JUDGE**

  
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**P.C.M. NGULUBE**  
**COURT OF APPEAL JUDGE**