

PROMISE BONGANI MAPHOSA

Versus

OZIAS SIBANDA

IN THE HIGH COURT OF ZIMBABWE
CHEDA AND NDOU JJ
BULAWAYO 3 FEBRUARY 2003 & 1 APRIL 2004

Appellant in person
Respondent in default

Civil Appeal

NDOU J: On 31 December 2001, the appellant commenced action in this matter by summons issued at Plumtree Magistrates' Court. The appellant claimed from the respondent the sum of \$50 000,00 as and by way of damages for defamation plus costs of suit. The basis of the action in the court a quo was allegedly that on 22 December 2001, the respondent approached appellant at his work place at Jogo (Pvt) Ltd and shouted at him and accused him of being adulterer, further grabbed him by collar and threatened to assault him. These events allegedly took place in the presence of the appellant's work-mates and his employer. On 13 June 2002 the matter was heard by a Provincial Magistrate and the respondent was ordered to pay \$2 000,00 being assault damages together with costs of \$302,00. This decision did not go down well with the appellant resulting in this appeal. Firstly, the trial magistrate, on his own altered the appellant's claim from one of defamation to one of assault damages. There is nothing akin to competent verdicts in criminal charges in delict. On a claim for defamation the magistrate cannot instead award damages for another delict like assault. Secondly, the undisputed evidence clearly establishes

defamation (in addition to the assault). I propose to consider the undisputed testimony of the witnesses in turn on the crucial question of defamation.

Appellant: The respondent approached him at his work place, a shop. He assaulted him and accused him at the same time of teaching his (respondent's) wife and other people's wives to be prostitutes. He called him a prostitute. He accused him of being a bad character in the society. These utterances were made in the presence of three of his work-mates and a teacher at a local school. He said these utterances caused him a lot of embarrassment. The respondent did not challenge this testimony.

Edson Phiri: He is one of the appellant's work-mates present when the incident occurred. He said the respondent came to the shop and held appellant by collar. He tried to intervene in vain. The respondent said the appellant was teaching his wife to be a prostitute.

Respondent: He went to the shop where appellant is employed "to settle about a rumour that plaintiff (appellant) was having an affair with my wife ... I was very angry and I talked to the plaintiff." In his closing address he said – "... but I admit I harassed plaintiff". In his judgment the trial magistrate did not comment on the defamation evidence at all. Instead his focus was elsewhere. He said "defendant (respondent) had a moral duty to confront plaintiff if he was told by his wife that plaintiff had made love advances to her". That may be so, but does that justify making defamatory remarks against the appellant? I do not think so. There was no legal basis for the dismissal of the appellant's case. He brought a claim of defamation before a court of law and his claim cannot be dismissed on the moral grounds stated in the judgment of the court a quo. There is abundant uncontroverted evidenced of the

HB 40/04

defamation. The respondent did not raise any legal justification or defence to the claim for defamation. The court a quo misdirected itself by equating the respondent's so-called "moral duty to confront plaintiff", if he was told by her of alleged love advances, to a valid defence to a claim of defamation.

As far as quantum is concerned \$50 000 was out of line with the norm in 2001. The defamation took place in the presence of four persons. It was accompanied by assaults. A fair assessment of damages for defamation at the material time would have been \$20 000. The respondent only apologised at the police station.

Accordingly, the appeal is upheld with costs, and it is ordered.

1. That the order of the court a quo be and is set and substituted as follows:

"Judgment be and is hereby entered in favour of the plaintiff against the defendant for the payment of defamation damages in the sum of \$20 000,00 with costs."

2. The respondent to bear costs of this appeal.

Cheda J I agree