

**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NUMBER 175 OF 1994**



BETWEEN:

ISAAC NGWIRA AND ANOTHER PLAINTIFF

and

FINANCIAL OBSERVER DEFENDANT

CORAM: E.B. TWEA, REGISTRAR
Msisha, Counsel for the Plaintiff
Defendant/Counsel absent

RULING

The plaintiffs, who are husband and wife brought an action for defamation against the defendant: a public newspaper.

It was the plaintiff's evidence that the defendant published an article referring to a family of Ngwira's wherein it was alleged that the wife asserted herself over the husband to send their children on to a bridal party. The bridal party having met with an accident and the children having been injured, the husband decided not to visit them while in hospital.

The plaintiff told this court that they took this article to be referring to them. It was the evidence that it is a fact that their children were on a bridal party of their neighbour's wedding and that they were involved in an accident and got injured which resulted in them being hospitalized. However, it was not true, they said, that there were differences between them or that the wife asserted herself over the husband or that the husband neglected to visit them while in hospital.

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The defendant filed a defence and after directions were granted, they failed to comply. The plaintiffs applied and had defendant defence struck out. The defendant never sought to re-instate the defence. Judgment was entered and liability thereby decided.

During the hearing of evidence for assessment, the defendant did not turn up. The plaintiff asserted that the defendant never sent any of its employees to ascertain the veracity of the story and when asked about their source the defendant preferred to keep the anonymity of their source and ignored the lawyers' letters.

It was the evidence of the plaintiff and their witness that after the article by the defendant their friends were surprised and thought that they were pretending to be a happy family. They even thought that the second plaintiff had started bossing over her husband.

Having heard the evidence it is clear that PW2's friends thought lowly of her because they got the impression that she had become bossy over her husband. Further they thought that her family's status had changed for a male to a female dominated one to which the first plaintiff was resentful.

This is about what one gets from the evidence adduced. Was PW2 shunned, or lowered in her esteem? From the evidence I think the answer is positive. The witness was not of the view that PW2 had equal status in family affairs as had PW1. In my view the same would be the answer as regard PW1; that his status was more equal than PW2. I, therefore, find that the two were lowered in the estimation of their colleagues.

Further from the conduct of the defendant, it is clear that the defendant never thought that the two parties had equal right. From PW2's and PW3's evidence it is clear that the first plaintiff's position was more acknowledged than second plaintiff, that he was not worth of any respect from his wife and children. I should also mention on the outset that the conduct of the defendant when this was brought to their attention was contemptuous. They did not even care about the injury done to the plaintiff. The defendant insisted that they had their source which was confidential. In the case of Duguid vs. Storey 1923-60, 1 A.L.R. (m)1, the court said that the factors to be taken into account when assessing

general damages for defamation are the number of people the materials are published to, their importance, the ease with which the plaintiff can clear his character, circumstances creating the defence of privilege and the attitude of the defendant during trial.

In this case the publication was in a newspaper with a sizeable circulation, the plaintiffs cannot easily clear their character and there are no circumstances to assume privilege on the part of the defendant. I therefore award each K15,000 damages for defamation with costs.

PRONOUNCED IN CHAMBERS this 6th day of May, 1997, at Blantyre.



E.B. Twea
REGISTRAR