

A CRITIQUE OF THE LEGAL FRAMEWORK GOVERNING DEFAMATORY CONDUCT IN ZAMBIA

By

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A dissertation submitted to the University of Zambia in partial fulfilment of the requirements of
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ABSTRACT

Owing to the increased exercise of the right to expression by the general public, there has been a corresponding increase in the number of defamation cases before the Courts of law. Therefore, there is need to put in place a legal framework that will adequately govern defamatory conduct in Zambia.

This dissertation focused on criticizing the legal framework governing defamatory conduct in Zambia. It examined whether the current legal framework adequately and effectively governs defamatory conduct as it currently prevails in Zambia. The study methodology was based on the use of secondary sources, evaluation of other academic materials and the analysis of questionnaire responses by respondents from different media institutions, lawyers and the legislature.

The dissertation established that defamatory conduct in Zambia is divided into civil defamation and criminal defamation. The legal regime governing civil defamation is the Defamation Act and the principles of common law in relation to defamation whereas the legal regime governing criminal defamation is section 69 of the Penal Code.

The dissertation further examined the legal regime in respect of civil defamation and criminal defamation in Zambia separately. This was done through the use of comparison with common law principle on defamation and the position of criminal defamation in other jurisdictions namely the United States of America, France and Ghana respectively. Through this, it was established that the current legal framework governing defamatory conduct in Zambia, does not adequately govern defamatory conduct in Zambia.

In view of the shortcomings of the legal framework governing defamatory conduct in Zambia, the dissertation made recommendation to the effect that there should be legislative reforms to the legal framework in order to enable it to adequately maintain the balance between ones right to freedom of expression and another persons' right to reputation.

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DEDICATION

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CHAPTER ONE: GENERAL INTRODUCTION

1.1 Introduction

English law and the law in many other jurisdictions tend to give effect to the ninth commandment that a man shall not speak evil falsely of his neighbor. The requirement to respect the reputation of others is a very cardinal one. This requirement borders on the need to respect the dignity and worth of fellow humans.

Lord Nicholls in the case of *Reynolds v Times Newspapers Ltd*¹ stated that:

Reputation is an integral and important part of the dignity of the individual. It forms the basis of many decisions in a democratic society which are fundamental to its well-being: whom to employ or work for, whom to promote, whom to do business with or to vote for. Once besmirched by an unfounded allegation, a reputation can be damaged forever, especially if there is no opportunity to vindicate one's reputation. When this happens, society as well as the individual is the loser. For it should not be supposed that protection of reputation is a matter of importance only to the affected individual and his family. Protection of reputation is conducive to the public good.

It is for this reason that one's reputation should be safeguarded by putting in place laws that contemplate the clash between the fundamental right to freedom of expression and the right reputation.

It is in the public interest that the reputation of public figures should not be debased falsely. In the political field, in order to make an informed choice, the electorate needs to be able to identify the good as well as the bad. Consistent with these considerations, human rights conventions recognize that freedom of expression is not an absolute right; its exercise may be

¹ [2001] 2 A.C. 127, HL.

subject to such restrictions as are prescribed by law and are necessary in a democratic society for the protection of the reputations of others.

Public interest entails that the law should provide effective means whereby a man can vindicate his reputation against calumny. At the same time, an individual should be able to accommodate the competing public interests. This can be done by permitting individuals to communicate frankly and freely with one another about matters in respect of which the law recognizes that they have a duty to perform or an interest to protect in doing so².

The law on defamation is one such field of law that while recognizing the importance of freedom of expression in a democratic society, tends to provide restrictions on one's freedom of expression in order to protect the reputation of others. In this regard, people should not engage in activities either by words, in writing or even by way of signs that tarnish the image of others. Such conduct is regarded as defamatory.³

Therefore, the above entails the provision of a conducive atmosphere in which the reputation of an individual will be protected and in which individuals can be free to communicate and exchange ideas. In this regard, the legal framework governing defamatory conduct in Zambia should be established in such a manner that it strives to create a balance between these two conflicting needs.

The aim of this paper will be achieved in five chapters. Chapter one will give a general introduction of the subject, the statement of the problem, objectives of the study, hypothesis of the study, significance of study, methodology and an outline of the law of defamation. Chapter two will give an outline of the legal framework governing defamatory conduct in Zambia. In chapter three the paper will provide a critique of the legal regime governing civil

² G. Samuel, *Tort: Cases and Materials*, 2nd Ed (London: Sweet & Maxwell 2008), 294.

³ R.A.V. Heuston & R.V. Buckley, *Salmond and Heustons on Tort* (London: Sweet & Maxwell 2004), 145.

defamation in Zambia. Chapter four will also provide a critique of the legal regime governing criminal defamation in Zambia. In Chapter five the paper will outline a general conclusion, findings and recommendations of the paper.

1.2 Statement of the Problem

With the increasing number of defamatory cases in Zambia in the past 5 to 10 years, the legal framework governing defamatory conduct needs to be revisited to ascertain the extent to which it meets the intended objectives of defamatory laws i.e. to safeguard personal reputation and mitigate inhuman and degrading treatment that flows from violation of such reputation.

1.3 Objectives of the Study

The overall aim of the study is to provide a critique of the legal framework governing defamatory conduct in Zambia. However, the specific objectives of this paper are:

- (a) To explain the nature of defamatory conduct and the objects of defamatory laws.
- (b) To tabulate the legal framework governing defamatory conduct in Zambia.
- (c) To critically analyze the current provisions of the Defamation Act in relation to the objects of defamation law, in the context of a democratic country.
- (d) To critically discuss the criminalization of defamatory conduct in Zambia Vis- a – Vis other jurisdictions.

1.4 Hypothesis of the Study

That the legal framework governing defamatory conduct in Zambia does not provide adequate regulation to safeguard people's personal reputation and thus their human dignity.

1.5 Significance of Study

This research is very important and could not have come at a better time than this when people's exercise of their rights and freedom is on the increase in Zambia. This has consequently led to a rampant increase of defamation cases before the Courts of law today. Therefore, there is need to have a legal framework that will help in the proper regulation of defamatory conduct in Zambia. To this effect, this study is very useful as it provides a critique of the legal framework governing defamatory conduct in Zambia to ascertain the extent to which it serves its objects. It is also important as it gives insight on the gaps that law reform in this area should fill, to create a conducive environment for protection of human dignity and freedom of expression.

1.6 Methodology

In this study, secondary source of information will be used. This secondary source will include a review of literature on the subject. In very restricted cases, unpublished literature will be consulted. The study will also undertake field work by way of academic visits to media institutions both public and private, non - governmental organization and other stakeholders to gather information on their views concerning the proposed necessary legislative changes of this study to the current legal framework governing defamation conduct in Zambia. This will be done by administering questionnaires on the various stakeholders mentioned above. The author endeavors to use the foregoing methods to achieve the objectives of the study.

1.7 An Outline of the Law on Defamation

As already stated, defamation as an area of law, seeks to protect individual reputation. There is however, one conflict that this endeavor to protect the reputation of individuals has brought, i.e. the right to free speech and expression. In many cases there is clearly a conflict between one's rights to human dignity protected through protection of their reputation, or another's right to freedom of expression. The former is a fundamental right to enjoyment of one's life without fear of his or her reputation being dented and the latter, the very fabric on which democratic societies are founded, to encourage the right to extract information and expound it for the benefit of society.

1.8 Definition of Defamation

"Defamation" has been defined by many scholars and judicial officers. However, despite it being defined numerously, it's impressive to note that most of the definitions arrive at a similar meaning of what defamation is. Therefore, by definition, defamation is where the defendant publishes a statement about the plaintiff which reflects on the plaintiff's reputation so as to lower him in the estimation of right thinking members of society or which tends to cause the plaintiff to be shunned and avoided.⁴

1.9 Explanation of Defamation

The above definition of defamation brings out essentially three major elements. These have to be proved by a plaintiff in order to succeed in an action for defamation. He/she must show that the statement was defamatory, that the statement referred to the plaintiff and that there was publication of the statement.

⁴ M.A. Jones, *Textbook on Torts*, 4th Ed (London: Blackstone Press, 1993), 295.

1.9.1 Defamatory Statement

In *Youssouf v MGM Pictures Ltd*⁵, Slesser LJ defined a defamatory statement to include words which cause a person to be shunned or avoided. He pointed out that 'not only is the matter defamatory if it brings the plaintiff into hatred, ridicule or contempt by reason of some moral discredit on the plaintiff's part, but also if it tends to make the plaintiff to be shunned and avoided and that without any moral discredit on the plaintiff's part. It is for that reason that persons who have been alleged to have been insane or to be suffering from certain diseases, and other cases where no direct moral responsibility could be placed upon them, have been held to be entitled to bring an action to protect their reputation and their honour'.

Further, in the case *Charleston v News Group Newspapers*⁶ it was stated that words are defamatory if 'the natural and ordinary meaning is to be ascribed to the words of an allegedly defamatory publication which includes the inferential meaning which the words would convey to the mind of an ordinary, reasonable, fair minded reader'.

1.9.2 Reference to the Plaintiff

Further, the statement must make reference to the plaintiff, which reflects on his/her reputation so as to lower him/her in the estimation of right-thinking members of society. In *Mwinga v Times Newspapers Ltd*⁷ it was stated that 'in this country it is for the trial judge as trier of both fact and law to determine 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 should be noted that in dealing with statements that reflect on one's reputation, courts are very cautious not to allow any statement that a plaintiff would want to bring an action

⁵ (1934) 50 TLR 581

⁶ House of Lords (1992) 2 AC 65

⁷ (1988-1989) ZR 177

against. The courts have emphasized that it is only statements which reflect on the plaintiff's moral or social character that would warrant one to bring an action for defamation. In *Blennerhasset v Novelty Sales Services Ltd*⁸ the court held that 'the ridicules suffered by the plaintiff were transient and transparently unconnected with any moral failing'.

The interpretation of the phrase "right-thinking members of society" varies from case to case. This entails that depending on the facts of a case, this phrase may take a new meaning.

1.9.3 Publication

A publication was defined by Justice Mwanamwambwa J to mean 'the communication of a statement to at least one person other than the plaintiff or the defendants' wife'⁹. Even though it suffices that publication was only made to one person, the extent of the publication tends to affect the quantum of damages to one's reputation.

The word 'statement' as used in the definition has an extended meaning. This includes the publication of words, visual images, gestures and any methods of signifying meaning¹⁰. Further, it should be pointed out that in today's society, statements that may be harmful to one's reputation but are not improper may not sustain an action in defamation. For example, making an allegation that a woman was raped is prima facie not derogatory to her character in that people's consideration of such a victim is normally not to shun them but usually pity and counsel them.

1.10 Forms of Defamation

There are two major forms of defamation, namely libel and slander. The distinction between the two is purely historical in origin. Libel was in medieval times the preserves of the

⁸ (1933) 175 LT 393

⁹ Phiri v The Programme Manager Radio Maria – Zambia Chipata 21/HJ/31

¹⁰ M. Jones, *Textbook on Torts* 5th Ed (London: Blackstone Press 1996), 305.

ecclesiastical courts. These were concerned with the moral or spiritual aspects of the tort. The defamer was committing a sin, and the main objective was to recognize and punish that. It was a fortunate side effect that the victim would see his good reputation restored. A common law action on the case for defamatory words, which caused temporal loss (i.e. monetary loss recompensatable in damages) then, developed independently, becoming known as slander¹¹.

1.10.1 Libel

Libel, is a defamatory statement published in a permanent form and also visible to the eyes¹².

Examples of publications that amount to libel include, writings, printings and pictures, Libel is actionable per se, i.e. the plaintiff need not prove actual damage suffered. The law presumes that some damage will follow in the ordinary course of things from the mere invasion of his absolute right to reputation.¹³ Its main focus is on the safeguarding of individual reputation, public good and interest. It is as a result of its safeguarding of public good and interest that libel can be both a crime and a tort.

As regards libel as a crime, it should be noted that the publication of written defamatory words is not only an actionable wrong but also a crime punishable by way of a fine or imprisonment. But the publication of spoken words, however scurrilous or malicious does not constitute this crime unless the defamatory words are broadcast or published in the course of performance or a play.¹⁴ Justification (the truth) under libel as crime is not a defence unless the publication was for the public benefit. Hence, in matters of public interest, 'the adage goes true that, the greater the truth, the greater the libel'¹⁵, It is in the interest of the public that this adage is correct. The essence of libel as a crime is that public order is threatened or

¹¹ M. Jones, *Textbook on Torts* 5th Ed (London: Blackstone Press 1996), 294.

¹² M.P. Mvunga & S.P. Ng'ambi, *Mvunga and Ng'ambi on Torts* (Lusaka: UNZA Press 2011), 263.

¹³ P. Lewis, *Gatley Libel and Slander* (London, Sweet and Maxwell 1981), 652.

¹⁴ P. Lewis, *Gatley Libel and Slander* (London, Sweet and Maxwell 1981), 653.

¹⁵ G. Samuel, *Tort: Cases and Materials*, 2nd Ed (London, Sweet & Maxwell 2008), 316.

public decency is outraged. A true allegation is more likely to achieve this than an obvious fabrication.

On the other hand, libel as a tort is interested in the protection of an individual's reputation. Under it, mere publication of a defamatory statement in a permanent form suffices regardless of whether the defamatory statement is made in the course of a performance or not. Further, as opposed to libel as a crime, justification under libel as a tort is a defence for as long as the defendant proves that the statement is substantially true.

1.10.2 Slander

Slander is a defamatory statement published in a transient form¹⁶. It is the transience nature and limited scope of publication that makes slander less damaging than libel. Unlike libel, slander is actionable on proof of actual damages such as the loss of a job, a tenancy or business. The loss of the hospitality of a friend can also fall within this scope but only insofar as such loss can be expressed in a tangible form.¹⁷

There are four main exceptional circumstances under which slander can become actionable per se.

- (a) The imputation of crime. It should be noted that the crime must be of a serious nature in that it must carry a possible custodial sentence. It is suggested that such a circumstance is exceptional in that belief in criminality will lead to isolation hence putting the plaintiff in jeopardy.¹⁸ An allegation that the plaintiff is a convict is an example of an act that falls within this exception.

¹⁶ M. Jones, *Textbook on Torts* 5th Ed (London: Blackstone Press 1996), 307.

¹⁷ P. Lewis, *Gatley Libel and Slander* (London, Sweet and Maxwell 1981), 119.

¹⁸ M.P. Mvunga & S.P. Ng'ambi, *Mvunga and Ng'ambi on Tort*, (Lusaka: UNZA Press 2011), 257.

(b) The imputation of a venereal disease. It has been suggested that the rule is wider than venereal disease in the strict sense. It seems to be the case that the disease should not simply be contagious, but should carry some moral opprobrium.

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(c) Office, profession, trade, calling or business. This by far is the most important exception among them all as it is the most frequently invoked. It is actionable per se, to impute to any person unfitness, dishonesty or incompetence in any office, profession, calling trade or business carried on by him/her at the time when the slander was published¹⁹

(d) Unchastity of a woman. Statements published, which impute unchastity or adultery to any woman, shall not require any actual or special damages to be proved to render it actionable. Further, statements that also tend to allege that a woman is a lesbian have also been included under this exception.

1.11 Defences

Just as it is in any other area of law, any claim of damage by the plaintiff due to the defendant's actions also requires that defences be available to the defendant. This enable the defendant to rebut or justify the accusations labeled against them by the claimant. Therefore, it is in this regard that the defences of defamation are significant.

There are several defences available to a defendant in a defamation case such as; privilege which relates to a statement made on a privileged occasion and within the limits of the relevant privilege. This defence can be absolute or qualified. Absolute privilege arose in the case of *Siwo v Times Newspapers Zambia Ltd*²⁰ in which the appellant sued the respondent

¹⁹ R. Winfield, *Winfield & Jolowicz on Tort*, 16th Edition (London: Sweet & Maxwell 2002) , 408.

²⁰ (1987) ZR 46

for damages for libel. The alleged libel arose out of a 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. The court dismissed the action for libel stating that the words in the news item were a fair and accurate report of proceedings in public in the National Assembly and thereby of absolute privilege.

Secondly, the defense of fair comment which entails criticism of matters of public interest and which comments are made by a person honestly without believing the statement to be untrue. This defense was demonstrated in the case of *Zulu v Times Newspapers (Zambia) Limited*²¹ in which the defendant, the proprietor of a newspaper, published alleged defamatory comments about leaders, referring to them as 'Hangers-on and lacking dedication to the humanistic cause and that others have got away with the TAW scandal'. The court upheld the defence that the words were neither understood to refer or capable of referring to the plaintiff and in respect of the second remark upheld a defence of fair comment. Lastly, justification is a defence which arises when a defendant tries to prove that the alleged defamatory statement is substantially true.

²¹ (1985) ZR 30

1.12 Conclusion

In conclusion, this chapter has achieved its purpose by giving a general introduction to the study and an outline of the same. In doing so, the chapter introduced the subject, defamation. It further, gave a general overview of the law of defamation in general. This chapter, included also included the statement of the problem, objectives, the significance of the study and the methodology. Chapter two which immediately follows will give a general discussion of the law of defamation under the Zambian legal system both as a tort and a criminal offence.

CHAPTER TWO: LEGAL FRAMEWORK GOVERNING DEFAMATORY CONDUCT IN ZAMBIA

2.1 Introduction

This chapter will undertake to discuss the law of defamation under the Zambian legal system both as a tort and as a criminal offence. A discussion of the Zambian legal framework governing defamatory conduct will aid in its effective criticism.

2.2 Current Legal Framework in Zambia

In Zambia the legal framework governing defamatory conduct is twofold, i.e. it is encompassed under both civil and criminal law. In this regard defamation suits can be commenced as a civil suit under the Defamation Act²² or indeed as a criminal suit under the Penal Code²³.

2.3 Civil Defamation in Zambia

A civil suit on defamation under the Zambian legal system enables private individuals, organization or institutions to institute proceedings for defamation under the law of tort²⁴. Civil defamation in Zambia is provided for under the Defamation Act Chapter 68 of the Laws of Zambia. This is essentially a reproduction of the 1952 English Act. Further, all the

²² The Defamation Act Cap 68 of the Laws of Zambia.

²³ The Penal Code Cap 87 of the Laws of Zambia.

²⁴ A tort is a wrongful act committed by a person, causing injury or damage to another. Thus, the law of tort aims at providing redress to persons who have been injured by another through the violation of a duty imposed by general law or otherwise upon all persons occupying the relation to each other which is involved in a given transaction.

common law principles and authorities up to 17th August, 1911 also apply to Zambia in relation to defamation as a tort²⁵.

It is also important to note that defamation as a tort in Zambia is governed by the very principles discussed in the previous chapter. This entails that for one to succeed on a claim for defamation in Zambia, the claimant will have to establish that:

- (i) The words complained of were defamatory.
- (ii) The words complained of must also have been published to a third party.
- (iii) The words must be seen to refer to the plaintiff and must be untrue of him.

Further, the Zambian Defamation Act provides for defences that a defendant in an action for civil defamation can invoke. Section 6 of the Act provides that:

In an action for libel or slander in respect of words contained in two or more distinct charges against the plaintiff, a defence of justification shall not fail by reason only that the truth of every charge is not proved if the words not proved to be true do not materially injure the plaintiff's reputation having regard to the truth of the remaining charges.

The above provision entails that in Zambia, the defence of justification is applicable if a defendant can prove only a part of the alleged defamatory statement to be true. However, this only stands if the false words in a defendant's publication do not materially injure the plaintiff's reputation.

The defence of fair comment is provided for under section 7 of the Defamation Act which provides that:

In an action for libel or slander in respect of words consisting partly of allegations of fact and partly of expressions of opinion, a defence of fair comment shall not fail by reason only that the truth of every allegation of fact is not proved if the

²⁵ E.M.C. Chipimo, *A Survey of the Development of the Law of Civil Defamation in Zambia from 1967 to 1985*. Obligatory Essay 1989, 9.

expression of opinion is fair comment having regard to such of the facts alleged or referred to in the words complained of as are proved.

In the case of *Sata v Post Newspaper Ltd and Another*²⁶ Chief Justice Ngulube, as he then was, in interpreting the above provision stated that 'the defence of fair comment in the *Zambian Defamation Act* allows anyone including the press to make comments on matters of public interest and to make reasonable mistakes in the course of such comments'.

In addition to the above, the Act also provides for privilege as a defence. This privilege can either be absolute or qualified. Absolute privilege is provided for in Section 8 which states that:

A fair and accurate report in any newspaper of proceedings publicly heard before any court exercising judicial authority within Zambia shall, if published contemporaneously with such proceedings, be absolutely privileged: Provided that nothing in this section shall authorise the publication of any blasphemous or indecent matter.

This provision tends to suggest that absolute privilege as a defence can only be invoked in relation to Court proceeding by a judicial authority in Zambia. Nevertheless, this defence also extends to quasi-judicial proceeding but not administrative hearing²⁷.

Further, qualified privilege is provided for under Section 9 of the Act which states that; "Subject to the provisions of this section, the publication in a newspaper of any report or other matter as is mentioned in the Schedule shall be privileged unless the publication is proved to be made with malice."

The qualification inherent in this provision is that, qualified privilege could be defeated by proof of malice, i.e. that the defendant circulated the material for an improper ulterior motive.

²⁶ (1995) S.J. (S.C)

²⁷ M. Mototsi, *A Critical Examination of Some Aspects of the Law of Defamation*. Obligatory Essay 1977, 19.

Like all other torts, the tort of defamation provides remedies to a claimant. Damages are the prime remedy that the court, will grant to a claimant. In *Phiri v The Programme Manager Radio Maria-Zambia*, Chipata Justice Mwanamwambwa stated that:

In assessing damages in a defamation claim, a number of factors may be taken into consideration. One is the conduct of the plaintiff, second is the plaintiff's status, i.e. his position and standing in society, thirdly, is the nature of libel for example, a libel that relates to a person's office, occupation, profession, calling or trade is considered serious and ordinarily attracts big damages. Fourthly, is the mode and extent of the publication and lastly, is the refusal, or absence, of a retraction or apology.

An Injunction is another remedy that the Court can grant to the claimant with the effect of restraining the defendant from doing that which is said to be defamatory to the claimant.

2.4 Criminal Defamation in Zambia

Defamation as a crime in Zambia stems from the provisions of Section 69 of the Penal Code
Section 69 of the Penal Code provides that:

Any person who, with intent to bring the President into hatred, ridicule or contempt, publishes any defamatory or insulting matter, whether by writing, print, word of mouth or in any other manner, is guilty of an offence and is liable on conviction to imprisonment for a period not exceeding three years.

From the above provision, it is clear that criminal defamation can either be libel or slander.

Further, that criminal defamation only criminalizes defamation of the President.

Criminal defamation proceedings are instituted by the State on behalf of the President under the criminal jurisdiction of the courts of law.²⁸ Hence, just like in any other criminal proceeding, the burden of proof in criminal defamation lies on the prosecution to prove beyond reasonable doubt that;

²⁸ W. Simutenda, *The Criminalisation of the Defamation of the President and its Impacts on Freedom of Information and Expression*. Obligatory Essay 2008, 3.

- (i) There was a defamatory statement made by the defendant,
- (ii) The defamatory statement was targeted at the President
- (iii) The defamatory statement was intended to bring the president into hatred, ridicule and contempt and,
- (iv) The statement was published to a third party.

If the prosecution fails to prove the above stated elements beyond reasonable doubt, the court is at liberty to find the defendant with a no case to answer and consequently acquit the defendant.

However, where the burden is sufficiently discharged, the court will find the defendant with a case to answer and put him/her on their defence. If the defendant is found guilty, the penalty is imprisonment for a period not exceeding three years. Nevertheless, it should be stated that most cases of criminal defamation that have come before the Courts have not succeeded because the prosecution have failed to discharge the burden of proof beyond reasonable doubt²⁹.

2.5 Emergence of Defamation in Zambia

The history of civil defamation in the Zambia legal system can be traced as far back as the colonial period. Initially Zambia consisted of two separate territories known as the North Western Rhodesia (NWR) and the North Eastern Rhodesia (NER). Later on in 1911, the British South African Company (BSA) combined the two territories to form Northern Rhodesia. It is important to note that on the emerging of the (NWR) and (NER) in 1911 the English common law and statutes in force as at 11th August 1911 were to apply to Zambia

²⁹ The People v Bright Mwape and Fred Mmembe (1995), The People v Hakainde Hichilema (2012).

pursuant to the English Law (Extent of Application) Act³⁰. However, in 1924, the British South African Company rule came to an end and the British government appointed its own Governor to take direct control of Northern Rhodesia³¹.

On 27 November 1953, Northern Rhodesia, now Zambia, enacted the Defamation Act for purposes of consolidating and amending the law relating to libel, other than criminal libel, and slander; and to provide for matters incidental thereto. This Act as already stated is essentially a reproduction of the English defamation Act of 1952. However, despite putting in place these various laws governing the law of defamation, the law of defamation in Zambia had not been invoked in active operation until 1967. Save as provided or judicially modified from time to time, the English common law has continued to apply to Zambia in relation to defamation matters.

The case of *Eastern Province Co-operative Marketing Association (EPCMA) v Zambia Publishing Company Ltd*³² the first case of libel ever recorded in Zambia is highly instructive of the way libel was to develop in relation to models borrowed from English Common Law. In this case, a freelance journalist filed with the Zambia daily mail a story alleging corruption by management of the Eastern Province Co-operative Marketing Association. The management later brought an action complaining that the allegation of corruption was defamatory to the Association. The Court held that, the article complained of was substantially a series of misstatements of facts and therefore the words in the offending article constituted a libelous attack on the Plaintiff, in the conduct of their affairs, affording them the right to maintain this action. Building on this foundation, there has been an increased number

³⁰ The English Law (Extent of Application) Act Chapter 11 of the Laws of Zambia.

³¹ E.M.C. Chipimo, A Survey of the Development of the Law of Civil Defamation in Zambia from 1967 to 1985. Obligatory Essay 1989, 4.

³² (1967) Selected Judgements of Zambia No. 24 of 1970

of defamation cases before the Zambian courts of laws because of people's exercise of human rights.

2.6 Aspects of Defamation under Customary Law

Zambia operates a dual paradigm legal system in which statutory law and customary law operate side by side. Having discussed the aspects of defamation under statutory law, it is also imperative to discuss aspects of defamation under customary law as it applies in Zambia.

Local customary laws are applicable to the majority of indigenous Zambian in a variety of circumstances. The Constitution recognises the validity of customary law even where the same is discriminatory. However, the adjectival law limits the application of customary law that is repugnant or contradicts written law.³³

The customary law of today is very different from what it was in pre-colonial times. As regards defamation, libel defamation which entails publication in written or in some other permanent form including sound recording and wireless transmissions, was not possible at that time due to lack of sophisticated means of communication which were later introduced by the Europeans during colonization. Nevertheless, libel was possible through paintings though most defamation cases took the character of slander.

Since colonization and up to date, libel under customary law has involved as the result of the use of somewhat sophisticated means of publication. It is remarkable to note that actionable defamatory imputations under customary law either as libel or slander extend to allegations of; sorcery, infectious diseases such as syphilis, illegitimacy, adultery or unchastity, incest or

³³ M.M.Munalula, *Legal Process: Zambian, Cases, Legislation & Commentaries* (Lusaka: UNZA Press 2004), 45.

theft³⁴. However, due to customary law being unwritten and the variation existing in different customs, what amounts to defamation in one customary setting may not necessary be so in another. It is as a result of the lack of uniformity in the application of customary law that it has failed to capture effectively the socio-economic development of modern society. Therefore, even though it is applicable to the great majority of Zambian, its authority remains vague and confused to be used in the settlement of defamation disputes under the Zambian courts of law.

2.7 Conclusion

In conclusion, this chapter has achieved its purpose by outlining a general discussion of the law of defamation under the Zambia legal system both as a tort and as a criminal offence. In doing so, the chapter discussed the legal framework governing defamatory conduct in Zambia both as tort and as a criminal offence. The chapter also discussed the emergence of defamation in Zambia before discussing the aspects of defamation under customary law. Chapter three will therefore, discuss the history of the Zambian defamation Act in particular and conduct a comparative study of the provisions of the Act with the common law principles as regards the law of defamation in Zambia.

³⁴ M. Mototsi, *A Critical Examination of Some Aspects of the Law of Defamation*. Obligatory Essay 1977, 13.

CHAPTER THREE: CRITIQUE OF THE LEGAL REGIME GOVERNING CIVIL DEFAMATION

3.1 Introduction

In order to effectively critique the legal framework governing the tort of defamation in Zambia, the discussion that follows will establish the historical account of the Zambian Defamation Act, it will conduct a comparison between some provisions of the Defamation Act and the common law principles of defamation. A conclusion will then be drawn.

3.2 History of the Zambian Defamation Act

The history of the Zambian Defamation Act can be traced as far back as 1939 whilst Zambia was still under colonial rule. In that year the Porter Committee³⁵ was appointed to consider the British law of defamation and to recommend desirable changes³⁶. Interrupted by the Second World War, the Committee did not make its final report until 1948. It summarized the general criticism of the existing common law of defamation as follows;

The law and practice in actions for defamation are said to be; unnecessarily complicated, unduly costly, such as to make it difficult to forecast the result of an action both as a liability and as to the measure of damages, liable to stifle discussion upon matters of public interest and concern, too severe upon a defendant who is innocent of an intention to defame and too favorable to those who in colloquial language, may be described as 'gold-digging plaintiffs'.³⁷

On 5th December 1951, the bill was presented to the UK House of Commons. Its Passage was marked by heated debate but the split was not along party lines. The Bill was later presented to the House of Lords but the changes made to the Bill were minor. Therefore, the

³⁵ The porter committee was constitutes on 31th November 1951 by Dr Porter. The Committee was charged with the responsibility of coming with recommendations that were incorporated in the 1952 Defamation Act.

³⁶ D. Goldberg, *To Dream the Impossible Dream? Towards a Simple, Cheaper (and Expression –Friendly) British Libel Law*. (Working Paper, London, January 20, 2011), 32.

³⁷ D. Goldberg, *To Dream the Impossible Dream? Towards a Simple, Cheaper (and Expression –Friendly) British Libel Law*. (Working Paper, London, January 20, 2011), 33.

English Defamation Act based largely on the Porter Report, became law on October 30, 1952³⁸. On the 27th of November 1953 Northern Rhodesia, now Zambia enacted its own Defamation Act which was essentially a reproduction of the 1952 English Defamation Act. This Act has remained on the Zambian statute books until today.

3.3 A Comparison of the Defamation Act and Common Law Principles on Defamation

3.3.1 Defamation Act

Zambia's Defamation Act is a relatively small piece of legislation with only 19 sections. It is an Act which aims at consolidating and amending the law relating to libel, other than criminal libel, and slander; and to provide for matters incidental thereto. Section 2 of the Act is the interpretation section (also known as a definition section) which only defines four words namely authenticated report, newspaper, wireless broadcasting and words. The Act does not have any provisions relating to what slander is. However, sections 3, 4 and 5 provide for the exceptions to slander. These are an action for slander affecting official, professional or business reputation; slander of woman; or slander of title. Under these exceptions to slander it is not necessary to allege or prove special damages.

Section 6, 7, 8 and 9 provide for defences that can be invoked in an action for defamation. Section 6 provides for the defence of justification. The defence of justification is applicable if a defendant can prove the alleged defamatory statement to be true. The Act does not impose an onus on the defendant to prove that the entire defamatory statement is true. This defence will suffice if a significant part of the defamatory statement is true and the remainder of the words, even though untrue are not capable of materially injuring the plaintiff's reputation. The defence of fair comment as provided for under section 7 is interpreted as allowing

anyone including the press to make comments on matters of public interest and to make reasonable mistakes in the course of such comments. Section 8 provides for the defence of privilege which can be either absolute or qualified. The Act provides that absolute privilege can be invoked in relation to Court proceeding by a judicial authority in Zambia. Section 9 provides for qualified privilege. The qualification inherent in this provision is that, the alleged defamatory statement must not be made with malice. Thus the defence of qualified privilege can be defeated by proof of malice, i.e. that the defendant published the defamatory material for an improper ulterior motive.

Section 12 provides for mitigation of damage. In an action for libel or slander, the defendant may at the time of filing or delivering the plea in such action give evidence in mitigation of damages. This evidence can be based on the fact that the defendant offered an apology at the commencement of the action or at any earlier time.

3.3.2 Common Law

Common law refers to essentially three things;

- (i) The law that was made by the judges sitting in common law courts,
- (ii) It is also that law that applied to the whole of England emanating from common law courts as distinguished from the law of the courts of chancery.
- (iii) The law that applied to England and extended to its colonies, protectorates and dominions.

At common law, defamation is a strict liability tort. As such, a plaintiff can recover without proving any fault on the part of the defendant. Thus, in most common law defamation actions the plaintiff only has to prove that a defamatory statement has been made, that it refers to the

plaintiff and that it has been published. The defendant then has the opportunity to raise a defence, such as the truth of the statement (justification).

Further, at common law, defamatory communications that do not specifically name individuals but attribute discrediting behaviour to unidentified members of a group may constitute defamation. If the group is small and the defamatory sting may attach to each group member, each member of the group may bring a defamation action. However, the larger the group, the less likely it is that a court will permit a defamation action by all the affected group members.³⁹ Corporations and other business entities may also be plaintiffs in defamation suits, where the communication tends to cast aspersions on their business character, such as dishonesty, or deters third parties from dealing with them.

Common law defines slander as an oral utterance, while libel is defined as a more permanent expression such as a written publication or video footage. Libel is said to be actionable per se (i.e. without proof of damage) as opposed to slander which is generally not. However, since early common law, certain slanderous statements were deemed so horrible that reputational injury to plaintiffs could be presumed even without any proof of special damages. The four types of slander that were actionable per se are:

- (i) Communications that directly call into question the plaintiff's competence to perform adequately in her trade or profession;
- (ii) Statements claiming that the plaintiff has a venereal disease;
- (iii) Allegations of serious criminal misbehaviour by the plaintiff and;
- (iv) Suggestions of a lack of chastity in a woman.

Common law recognizes damages as the principal remedy in a defamation action. In most defamation cases, a plaintiff's reputational injury may be presumed, permitting the plaintiff to recover damages without any proof beyond establishing the elements of defamation. In the defamation context, such damages are called "general damages". There are situations, however, where the plaintiff must plead and prove a specific type of loss, called "special damages" in order to get damages over and above the ordinary damages (known as nominal damages in law). The damages recoverable to a plaintiff depend on whether the defamatory communication is considered libelous or slanderous. If slanderous, the courts will consider whether the defamatory statement falls in the category classified "slander per se."

At common law, a plaintiff can often establish a prima facie case of defamation quite easily. Therefore, a defendant often has to look to the available defences in order to avoid liability. At common law, the defamatory communication is presumed false, and it is incumbent upon the defendant to establish truth (justification) as a defence. While the defendant has to show the accuracy and truth of the statement in issue, he/she does not have to show the literal truth of every aspect of the statement. Substantial truth is the test.

Under common law, there are a few contexts that rely so heavily on unfettered speech to the extent that the law provides immunity from liability in defamation. Such unfettered communication is privileged. Absolute privilege typically arises in governmental proceedings involving executive, legislative and judiciary communications.

Qualified privileges under common law have developed due to the recognition that there are certain interests which could be seriously impaired by the common law's strict liability approach to defamation. Qualified privilege is based on the social utility of protecting communications made in connection with the speaker's moral, legal or social obligations. This privilege can be lost in several ways. Examples of when such privilege can be lost are:

- (i) If the defendant makes the defamatory statement without honestly believing that it was true at the of its publication;
- (ii) If no other person in defendant's position would have made the defamatory statement believing it to be true;
- (iii) If the defendant disclosed the information to more people than necessary (that is, excessive publication).

3.4 Similarities between the Act and the Common Law Position on Defamation

In relation to the similarities, the Defamation Act and the common law principles do not have much in common except for the fact that they both provide for the same forms of defamation. Further, they both have similar defences that can be invoked in a defamation suit. Lastly, they both outline the exception under which slander becomes actionable per se.

3.5 Differences between the Act and the Common Law Position on Defamation

The Defamation Act does not provide for the elements that a claimant in an action for defamation has to prove in order to succeed. On the other hand, common law clearly outlines the elements to be proved in an action for defamation. Thus, in Zambia, the Common law complements the statutory provision of what constitutes defamation. In addition to this, as opposed to common law which expressly provide for categories of individuals that can bring a claim for defamation, the Defamation Act does not make provision for such categories.

The Defamation Act does not provide for the two forms of defamation being libel and slander. Common law on the other hand defines what libel and slander is. Further, despite

the Defamation Act making reference to mitigation of damage, it does not expressly make provision for remedies that are available to a plaintiff in a defamation action. Common law on the other hand grants damages as of right to a successful claimant.

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As regards defences, in *Transparency International Zambia v Chanda Chimba and Zambia National Broadcasting Corporation*⁴⁰ Judge Matibini stated that:

Section 6 of the Defamation Act provides for the defence of justification, the effect of this statutory defence is that a defendant is only required to prove the truth of the sting of the publication while the common law position is that the defendant is only required to prove the literal truth of every fact he has stated.

Further, whereas the Defamation Act restricts instances of absolutely privileged information from judicial proceeding, common law on the other hand extends this scope to include information from executive communications. Further, as regards the defence of qualified privilege, the Defamation Act provides that this defence is negated by proof of malice on the part of the alleged defamer. The common law position on qualified privilege is however different. It is negated by failure to have an honest or objectively reasonable belief that the statement was true and in instances of excessive publication of information. In the case of *Reynolds v Times Newspapers*⁴¹ Lord Nicholls stated that:

The common law solution to this defence is that the court should give regard to all the circumstances when deciding whether the publication of a particular material was privileged because of its value to the public. This solution has the merit of elasticity as it can be applied appropriately to the particular circumstances of individual cases in their infinite variety. It can also be applied appropriately to all information published by a newspaper, whatever its source or origin. In such case, it can be said that common law does not seek to set a higher standard than that of responsible journalism, a standard the media themselves espouse. Further, the elasticity of the common law principle enables interferences with freedom of speech to be confined to what is necessary in the circumstances of the case. This elasticity enables the court to give appropriate

⁴⁰ 2010/HP/1176

⁴¹ House of Lords [2001] 2 AC 127

weight in today's conditions, to the importance of freedom of expression by the media on all matters of public concern.

Another distinct difference between the Act and the common law position is that the latter was too harsh on the plaintiff while the former seeks to strike a balance between different interests. The Act therefore seeks to mitigate the harshness of the common law position. For instance, section 12 of the Act provides for mitigation of damages in an instances were the defendant after giving notice of his intention so to do to the plaintiff at the time of filing or delivering the plea in such action, give evidence in mitigation of damages. This evidence should be to the effect that he made or offered an apology to the plaintiff, in respect of the words complained of, before the commencement of the action or as soon thereafter.

3.6 Commentary

From the comparative study above, it is clear that there are several disparities between the provisions of the Defamation Act and the common law position as regards defamation. According to the Zambian hierarchy of laws, a Zambian statute always takes precedence over common law principles. Therefore, such is the case as regards the interaction between the Zambian Defamation Act and the common law principles in relation to defamation. However, despite this being the legal position, reality tends to suggest otherwise.

The comparison conducted has clearly shown that Zambia to a large extent relies on the common law position as far as the settling of defamation disputes is concerned. The objective of the Defamation Act is to consolidate and amend the law relating to libel, other than criminal libel, and slander; and to provide for matters incidental thereto. However, despite its objective, the Defamation Act does not make any provisions for non- pecuniary (equitable) remedies such as injunction and specific performance. Common law on the other hand only

provides for damages as its principle remedy. This position suggests a lacuna in our own domestic defamation law which creates a problem for courts in administering the Act.

The above position creates uncertainty especially to laymen and therefore blemishes the attributes of a good legal system. This is because a layman may not know for certain which law takes priority over the other in an action for defamation.

In addition, the Defamation Act can be said to be inadequate in present day Zambia. This is attributed to the fact that the Act is archaic and hence not up to date with modern social changes. It should be borne in mind that at the time of enacting the English Defamation Act of 1952, the mischief that the English Act was trying to remedy was not applicable in Zambia. England had its own peculiar problems and so did Zambia. The preamble of the English Defamation Act, which Zambia reproduced, provides that; it is an Act to amend the law relating to libel, other than criminal libel and slander. Hence the spirit of this Act at the time of its enactment did not apply to Zambia. This is because Zambia had no pre-existing law at that time that could be amended. What Zambia essentially needed was to enact a piece of legislation with the aim of establishing the law of civil defamation in Zambia. Therefore, the extensive application of common law over the years is a clear testimony that the English Defamation Act of 1952 was not applicable to Zambia right from the inception and has remained in this state up to date.

The Act does not make provision for most of the relevant issues that aid parties in an action for defamation, i.e., it does not define the relevant legal terms and does not outline the elements that need to be proved in a defamation suit. The 1953 Zambian Defamation Act having been the first ever defamation legislation in Zambia, should have endeavoured to comprehensively cover the subject of defamation by making provision for most of the

pertinent issues dealing with the law of defamation. This would indeed have been helpful to litigants and the public in general.

Further, in today's world with the increase of social networking sites like Twitter, Facebook, twenty four hour news channels on television and the internet the expectation of the public is that there should be defamatory laws that will ensure that the public has unfiltered right to expression and access to newsworthy information⁴². The Zambian Defamation Act currently, clearly does not match up to the above standards. Therefore, it cannot be justified as having a genuine purpose and demonstrative effect of protecting the reputation of individuals or of entities.

England and Wales have had a fairly lively defamation law scene, recently, in Wales; the first Court decision holding that a "tweet" was capable of being defamatory was handed down⁴³. In October 2010, a law firm Reynolds Chamberlain ("RPC"), cited analysis of recent official Judicial Statistics, which the firm said showed that, 298 High Court defamation writs were issued in London in 2009. The figure was up from 269 in 2008 and represented a near 50% increase over a three-year period, the highest level of High Court defamation claims since 1999. Amongst the reasons cited for this increase were (i) a rise in claims relating to allegations of involvement with extremist groups or terrorism, and (ii) the general increase in claims could be attributed to the impact of the internet.⁴⁴

The common law defamation restricts free speech by protecting the public interest in personal reputation. It is based upon the civil and private right of every individual to the unimpaired

⁴²E. Barendt, *Libel and Freedom of Speech in English Law* (London: Oxford University Press, 1997), 39.

⁴³E. Barendt, *Libel and Freedom of Speech in English Law* (London: Oxford University Press, 1997), 41.

⁴⁴R.P.C. Shaw, "Libel Reform: Draft Defamation Bill Seeks a Legal Balance but Ignores the Costs Issue," *Law Commission Journal* 16 (2011) 33.

possession of his or her reputation and good name. In the case of *Horrocks v Lome*⁴⁵ it was stated that the general rule is that no one may speak falsity of his or her neighbour, and that it is in the public interest that "the law should provide an effective means whereby a man can vindicate his reputation against calumny. Further, the media have not been regarded as having any special duty to inform the public to create a separate head of common law qualified privilege.

The common law, in spite of its robust use in settling defamation suits in the Zambian legal system, has also not lived up to the expectations of modern advancements in the publication and access to information. This is because it is said to be rigid and old to the extent that it is not up to date with the advent of the wide range of means of electronic communication. The rigidity of common law comes from the fact that it operates on the principle of stare decisis. This principle entail that the decision of a higher court is binding on a lower court. Therefore, this bring about the lack of innovation in that courts are obliged to follow previous decisions that bind them without taking into account modern changes in society.

Further, there is also uncertainty in existing case law about the effects of the advent of the wide range of means of electronic communication on liability for defamatory publication and a failure to reformulate the relevant principles or to recognise technology specific exceptions

3.7 Conclusion

In conclusion, this chapter has achieved its intended purpose by criticizing the legal framework governing civil defamation in Zambia. In so doing, the chapter discussed the historical account of the Zambian Defamation Act. This was followed by a comparative study of some provisions of the Defamation Act with the common law principles as regards the law of defamation before making a comprehensive commentary based on the above stated.

Chapter four will therefore, discuss the emergence and development of criminal defamation in Zambia and conduct of its current position.

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CHAPTER FOUR: CRITIQUE OF THE LEGAL REGIME GOVERNING CRIMINAL DEFAMATION IN ZAMBIA

4.1 Introduction

In order to effectively critique the legal framework governing criminal defamation in Zambia, the discussion that follows will outline the emergence and development of criminal defamation in Zambia. It will then conduct a comparison between the current position of criminal defamation in Zambia and that of other top democratic states. A conclusion will then be drawn.

4.2 The Emergence and Development of Criminal Defamation in Zambia

The emergence of criminal defamation in Zambia has its roots in colonial times which date as far back as the time when the evils of defamation and public disorder were closely related. The law that applied to Northern Rhodesia, which is now Zambia, was English law. English law consists of common law, doctrines of equity, statutes and judicial decisions. England does not have a written constitution and a Bill of Rights. This means that the law applicable to England is in the form of conventions, common law and practices that have evolved over a period of time.

Arising from the absence of a written constitution and Bill of rights is the fact that under English law, human rights are protected by common law. In Northern Rhodesia however, the natives had supplementary rights in addition to those under common law. These rights were conferred on the natives pursuant to the Northern Rhodesia order in council of 1924 and the

Royal instructions of 1924. These provisions provided for other rights that were peculiar to natives.⁴⁶

During the colonial era, there was a general common motion and spirited belief that everyone was entitled to freedom of expression. This freedom was said to include freedom to hold opinion and to receive and impart information and ideas without interference. Due to this, there was a positive action in Northern Rhodesia by the colonial Government to respect and protect freedom of expression and information.

Nevertheless, freedom of expression and information were not without limitation. The colonial Government considered it prudent, in the proper administration of the territory as well as to protect the reputation of top officials such as the Governor, to ensure that freedom of expression and information was greatly limited. To limit freedom of expression and information, the colonial Government formulated and used wide sedition and censorship laws. Under Section 53 of the Penal Code sedition law was framed as follows:

Any person who;

- (a) Conspires with people or persons to do any act in furtherance of any seditious intention common to both or all of them; or
- (b) Prints or publishes any word or working with a seditious intention; or
- (c) Sells, offers for sale, distributes or has in his possession any newspaper, book or document the importation of which has been declared to be a seditious publication; or
- (d) Imports into the territory any newspaper, book or document containing any seditious words or writing or any newspaper is guilty of a misdemeanour and is liable to imprisonment for two years.

The case of *R v Chona*⁴⁷ illustrates how the Court interpreted the above provision. In this case, Mainza Chona was the National secretary of the United National Independence Party (UNIP), the main nationalist party. He issued a press statement describing the evil of colonial

⁴⁶ W. Simutenda, *The Criminalisation of the Defamation of the President and its Impacts on Freedom of Information and Expression*. Obligatory Essay 2008, 13.

⁴⁷ R and N.L.R 344

rule. The statement accused that there was no justice whatever under colonial rule anywhere in the world. The accused argued that the words were not seditious and were published merely to identify the errors or defects in the administration of justice and to try and persuade the inhabitants of the territory to procure by lawful means the alteration of the matter he complained of. The High Court nevertheless held that the statement was a seditious publication because it intended to bring into hatred or contempt, and to excite dissatisfaction against the administration of justice in the territory, for the purpose of promoting UNIP's policy of making the territory ungovernable.

The objective of the colonialist was to enact sedition and censorship laws that would limit freedom of expression. This objective could not be justified in a democratic society as a democratic society aims at guaranteeing the protection of the right to freedom of expression.

The law criminalizing defamation of the President which is incorporated under section 69 of the Penal Code soon came into effect. This law was meant to protect the integrity and reputation of the Governor. Further, any document or political utterance which sought to bring the colonial Government into ridicule or contempt was criminalized with maximum imprisonment of two (2) years.

The provisions of Section 69 have remained in existence since its enactment. The case of *M'membe & Bright Mwale v The People*⁴⁸ was the first recorded case in which the provisions of Section 69 of the Penal Code were invoked. The case upheld the constitutionality of Section 69 of the Penal Code which criminalizes the offences of defamation against the President. In this case, the two accused had been charged and convicted in the Magistrate Court with contravening section 69 of the Penal Code for allegedly defaming the President. They appealed on the basis that the law violated the right to

⁴⁸ (1995) S.J. (SC)

freedom of expression. The Court upheld the constitutionality of this section in the code stating that the maintenance of the public character of public men for the proper conduct of public affairs was a very important public interest that ranked alongside freedom of speech. The Court reasoned that this public interest required that they be protected from destructive attacks upon their honour and character and that when the public person was the Head of the State, this public interest was even more self-evident.

The provisions of Section 69 of the Penal Code have continued to be invoked. In 2002, journalists at the newspaper 'The People' were arrested and pressured to disclose a confidential source of information about an article alleging that the President was suffering from Parkinson's disease. The Editor was withdrawn, detained and charged with defaming the President but was later released after they identified the source of the information⁴⁹.

In January 2003, three journalists of the 'Monitor' were arrested after the Paper published an article alleging that the President's brother was involved in corruption. However the matter did not proceed to court. Further, in November 2005, the Post Chief Editor Fred M'membe again pleaded not guilty to a charge of defamation of the President. He was alleged to have published in a 7 November 2005 editorial that "the President had exhibited foolishness, stupidity and lack of humility with regards to the adoption of the proposed new constitution". However, the charges were dropped in 2006.

Most recently, in January 2013, United Party for National Development Leader Hakainde Hichilema, was charged with defaming President Sata. Particulars of the charge were that on 13th January 2013, Hichilema revealed that Sata ordered the Anti-Corruption Commission to stop investigations against Justice Minister Wynter Kabimba. However, on 9th April 2013, the State entered a Nolle prosequi in this matter.

⁴⁹ A.W. Chanda & M. Liswaniso, *Handbook of Media Laws in Zambia* (Lusaka: Zambia Independent Media Association, 2005), 32.

4.3 The Position of Criminal Defamation in Democratic States

The purpose of this section is not to discuss all democratic states but to demonstrate how top democratic states have addressed the issue of criminal defamation. The states discussed in this section represent the top democratic states in America, Europe and Africa.

4.3.1 The United States of America

In the United States of America, the first Amendment to the United States Constitution provides that; "Congress shall make no law...abridging the freedom of speech or of the press."⁵⁰

This entails that freedom of speech in the United States of America is not subject to Parliamentary regulation. The Supreme Court, however, has granted limited protection to the provisions of the First Amendment in relation to defamation. In *New York v Sullivan*⁵¹ the Court held that public officials and public figures may not recover damages for defamation unless they prove, with 'convincing clarity', that the defamatory statement was made with 'actual malice.' That is, with knowledge that it was false or with reckless disregard of whether it was false or not.

In *Curtis Publishing Co. V Butts and Associated Press Walker*⁵² the Supreme Court extended the Sullivan rule to apply to all "public figures" reasoning that public figures have access to the media to counteract false statements and at least to some degree invite the comments to which they are exposed.

In *Gertz v Robert Welch Inc*⁵³ the Supreme Court further stated that;

⁵⁰ Article 1 of the First Amendment of the United States Constitution

⁵¹ (1964) 376 U.S. 254

⁵² 338 US. 130 (1967)

⁵³ 418 U.S. 323 (1974)

We have no difficulty in distinguishing among defamation Plaintiffs. The first remedy of any victim of defamation is self-help using available opportunities to contradict the lie or correct the error and thereby minimize its adverse impact on reputation. Public officials and public figures usually enjoy significantly greater access to the channels of effective communication and hence have a more realistic opportunity to counteract false statements than private individuals normally enjoy. Private individuals are therefore more vulnerable to injury and the state interest in protecting them is correspondingly greater. More importantly, an individual who decides to seek governmental office must accept certain necessary consequences of the involvement in public affairs. Those classified as public figures stand in a similar position. Even if the foregoing guaranties do not obtain in every instance, the communicating media are entitled to act on the assumption that public officials and public figures have voluntarily exposed themselves to increased risk of injury from defamatory falsehoods concerning them.

4.3.2 France

The France “law of July 1881 on Freedom of the Press,”⁵⁴ prescribes punishments for insults to the President, public officials, and foreign dignitaries. This is contained in Article 26 of the Press Law. However, there have been modest reforms in recent years. For example, the “Guigou Law”⁵⁵ in 2000 abolished prison terms, but not fines, for press offenses such as defamation and insult of the President⁵⁶. This was a positive move towards the guarantying of the protection of freedom of expression to some extent. Despite the World Press Freedom Committee (WPFC) Report of 2006 reporting that France’s 1881 law on press freedom has been invoked with increasing vigour and is cited as an example of the way in which a law that was dormant for many years may continue to be invoked, there has been no recent successful prosecutions as regards defamation of the president in France⁵⁷.

⁵⁴ The Law on the Freedom of the Press of 29 July 1881.

⁵⁵ The Guigou Law of 13 November 2000.

⁵⁶ P. Mcracken, *Insult Law: Insulting to Press Freedom, A Guide to Evolution of Insult Laws in 2010* (New York: World Press Freedom Committee and Freedom House, 2010), 155.

⁵⁷ P. Mcracken, *Insult Law: Insulting to Press Freedom, A Guide to Evolution of Insult Laws in 2010* (New York: World Press Freedom Committee and Freedom House, 2010), 25.

4.3.3 Ghana

The Ghanaian Criminal Code initially provided for criminal defamation, however, in 2001 as part of their campaign promise, the John Agyekum Kufuor led government presented a bill to the Ghanaian Parliament for the repeal of criminal libel and seditious laws which clauses governed sedition and defamation of the president⁵⁸. On 27th July 2001, Ghana's Parliament unanimously repealed the criminal libel and seditious laws, which had been used to carve rate a number of journalists and individuals in the past. This move was aimed at guarantying the protection of the right to freedom of expression

As a result of this amendment, any person accused of committing an offense under the repealed law is discharged. The repeal is evidence of the sincerity and commitment to the process of democratic consolidation in the country. It has also been stated that the repeal of these laws, which were enacted during the colonial period to frustrate the freedom of the people and perpetuate servitude should have been done at the time the country gained independence. Therefore, the repeal was the solution as such laws are unworthy of a society to develop on democratic principles on the basis of transparency and accountability in public life.⁵⁹

From the positions of the four jurisdictions discussed above, it is clearly undisputed that the concept of criminal defamation is a legacy of the colonial era. However, as opposed to Zambia that still maintains Section 69 of the Penal Code in her statute book, some of the world's top democratic nations such as the United States of America and Ghana have moved away from the colonial notion of "Insult" laws by putting in place legislation to do away with the criminalization of defamation of the President.

⁵⁸ E. Walters & A. Johnson, *Decriminalising Defamation: An IFJ Campaign Resource for Defeating Criminal Defamation*, (Belgium: International Federation of Journalists, 2005), 18.

⁵⁹ E. Walters & A. Johnson, *Decriminalising Defamation: An IFJ Campaign Resource for Defeating Criminal Defamation*, (Belgium: International Federation of Journalists, 2005), 19.

The First Amendment to the United States Constitution advocates for freedom of the press by providing that congress shall make no law that abridges freedom of the press. In this regard members of the public are free to make comments and criticise of the President without being cited for defaming the President unless with proof of actual malice.

In *St Anant v Thompson*⁶⁰ the Court ruled that; “the actual malice standard does not require any ill will on the part of the defendant. Rather, it merely requires the defendant to be aware that the statement is false or very likely to be false. Reckless disregard is present if the plaintiff can show that the defendant had “serious doubt as to the truth of the publication”.

Unexpected and far-reaching, this ruling puts a huge obstacle before the plaintiff. As the United States of America Supreme Court made clear in its ruling in the Sullivan case, the Court stated that there is a distinction in defamation cases between private individuals and public figures. Private individuals have the easier task. A private individual simply needs to prove that the defendant acted with intention. But in order for a public figure to prevail, the plaintiff must prove “actual malice” on the part of the defendant. Meeting the test for actual malice is what makes it difficult for a plaintiff to succeed in a claim. The test makes it clear that these principles are very protective of freedom of the press and go a long way in promoting public debate and scrutinizing of public officials and public figures.

On the other Hand, the provisions of section 69 of the Penal Code provide that the plaintiff must prove that the defamatory statement was intended to bring the President into hatred, ridicule and contempt. This entails that the catch word in Zambia is “intention”. Therefore, in Zambia any statement made against the President can be defamatory as long as it is deemed that the accused intended to bring the President into hatred, ridicule and contempt even without proof of actual malice.

⁶⁰ 390 U.S.727. 885

France also has a law that criminalizes defamation of the President. This is contained in Article 26 of the Press Law. However, as opposed to Zambia, the “Guigou Law” abolished prison terms for defamation of the President and now only provides for a fine. This positive move tends to lessen the severity associated with the defamation of the President and in turn enhances the freedom of expression. In contrast, section 69 of the Penal Code provides for imprisonment for a period not exceeding 3 years or a fine. The severity associated with the sentence tends to greatly inhibit freedom of expression in Zambia.

Ghana as opposed to Zambia, has taken a huge step to unanimously abolish the law that criminalized the defamation of the President. This move was motivated by the proposition that such law was unworthy for the development of democratic principles and on the basis of transparency and accountability in public life.

4.4 Commentary

As already eluded to, Section 69 of the Penal Code which criminalizes the defamation of the President has remained untouched on the statute books since its enactment. However, this does not go to show the merits of this particular provision. Section 69 of the Penal Code has been a subject of criticism and interpretation by scholars and judicial officials in recent times.

The biggest question that is asked about this provision is whether it is indeed compatible with the tenancies of a democratic society. i.e. the guarantee of the protection of the right to expression. This is because it tends to inhibit free speech which is a cornerstone of democracy. Free speech is essential in order for a strong and independent media to hold the state to account, to expose corruption and to host national debates on matters of public interest. Without free speech, we cannot hold the President to account; nor could we represent our political views or expose the wrongdoing of the President.

Section 69 is deemed to be vague. As such, it inhibits freedom of expression. This is because it does not clearly lay boundaries as to what kind of a statement will amount to a defamatory statement against the President and what will not. It fails to distinguish between statements affecting a President's personal reputation and those affecting his/her capacity as President. A story about the private life of the President would generally not involve a public issue under even the broadest definition. However, this has not been the case, in 2001 journalists at the newspaper 'The People' were arrested and pressured to disclose a confidential source of information about an article alleging that the President was suffering from Parkinson's disease. The Editor was withdrawn, detained and charged with defaming the President but was later released after they identified the source of the information. In *Malone v Metropolitan Police Commissioner*⁶¹ it was stated that "even though it is impossible to have absolute precision in drafting a law; it should nevertheless indicate the scope and manner of its exercise with sufficient clarity. However, section 69 does not in any way come close to the test established in *Malone*. It is as a result of such that there have been numerous defamation of the President cases that have been brought before the Subordinate Court and ended up being discontinued by the prosecution for lack of a proper case.

Further, the vagueness of section 69 also extends to the fact that it does not stipulate who should bring a claim for defamation of the President. A President is an individual; hence, whether a particular statement is defamatory to his personal reputation or his capacity as President should be left to him to decide. This also implies that he/she ought to be the person to initiate a claim for defamation if he/she feels a particular statement is defamatory to his office. Such is the case in civil defamation. However, the misconception in Zambia is that section 69 has been interpreted as to allow public prosecution officers such as the police to bring a claim for defamation on behalf of the president.

⁶¹ [1979] Ch 344

Section 69 of the Penal code can be said to be discriminatory and hence unconstitutional for being in breach of Article 23 of the constitution. This is because it only criminalizes defamation of the President and not other public officials and private individuals when all are deemed equal at law. It suggests the question, why should defamation of the President “only” be criminal? Even though a President is the number one leader in Zambia, it is not necessary that he/she should receive special protection from defamation suit nor should the penalties against convicted defendants be any greater than for private individuals. Moreover, there is enough civil recourse available to him just like any other citizen. The President should be prepared to tolerate more scrutiny and criticism of their conduct than private individuals.

Lastly but not least, just like any other criminal proceedings, defamation of the president which gives rise to criminal proceeding also has a tendency of delayed trials and hefty sanctions. The net result of such protracted proceedings and sanctions is that the chilling effect on the local community that comprises of writers and journalists is maximized through self-censorship and the potential to impact an entire media community with fear.

4.5 Conclusion

In conclusion, this chapter has achieved its purpose by criticizing the legal framework governing criminal defamation in Zambia. In doing so, the chapter outlined the historical development of criminal defamation in Zambia. This was followed by a comparison of criminal defamation in Zambia with that of other democratic states namely the USA, France and Ghana. A commentary was then made to the effect that section 69 of the Penal Code is not compatible with the tenancies of democracy as it inhibits citizens’ freedom of expression on matters of public concern. Chapter five will therefore outline a general conclusion, findings and recommendations.

CHAPTER FIVE: GENERAL CONCLUSION, FINDINGS and RECOMMENDATIONS

5.1 Introduction

This chapter undertakes to give a general conclusion this paper. It will also outline the findings from interviews conduct in various institutions. This chapter will also outline recommendations of this paper.

5.2 General conclusion

In conclusion, this paper has sufficiently criticized the legal framework governing defamatory conduct in Zambia. It has unveiled the shortcomings of both civil defamation and the criminal defamation pertaining in Zambia.

In so doing, the paper undertook to lay a general foundation of the law of defamation in general. The paper later narrowed down its focus to the legal framework governing defamatory conduct in Zambia. It was established that the legal framework governing defamatory conduct in Zambia is divided into civil defamation and criminal defamation. Civil defamation is governed by the Defamation Act and principles of common on defamation.

Further, the paper turned its focus to criticising the legal framework governing civil defamation in Zambia. The paper conducted a comparison between the provisions of the Defamation Act and common law principles on defamation which later established that the legal regime governing civil defamation in Zambia is inadequate.

The paper further undertook to criticise the legal regime governing criminal defamation in Zambia. To this effect, the paper undertook to compare the Zambian position to that of top democratic States namely USA, France and Ghana representing America, Europe and Africa

respectively. The comparison suggested that criminal defamation is unjustifiable in a democratic State like Zambia. To this effect, the paper has come to the conclusion that the legal framework governing defamatory conduct in Zambia is inadequate as it restricts the right to freedom of expression in various ways. This therefore, calls for legislative reforms that will address the inadequacies of the legal framework governing defamatory conduct in Zambia. Such reforms will consequently strike a desired balance between ones right to freedom of expression and another right to reputation.

5.3 Questionnaire Findings

A total number of eight (8) respondents were interviewed from media institutions, law firms and the national assembly.

5.3.1 Media

Two journalists one from the post newspaper and the other from muvi TV were interviewed, they both were aware of the law of defamation. Both journalists were of the view the current legal framework governing defamatory conduct in Zambia is inadequate in that it is abused in a manner that hinders the dissemination of well intended information to the public⁶². The journalists were also of the view that the defamation laws that cover civil defamation in Zambia are inadequate. Both journalists were of the view that the criminalization of the defamation of the President is unjustifiable as there are adequate remedies in civil law other than criminal law. Lastly, both journalists called for legislative reforms in the legal framework governing civil defamation. These reforms should extent to the amending of the law in order to cover up the loopholes that allow for its abuse.

⁶² Mr. Chifuwe, the General Manager for the Post Newspapers stated that 85% of the cases that the Post newspaper has been involved in have been dismissed by the court for lack of a proper case. This goes to show how the current legal regime is prone to abuse.

5.3.2 Law Profession

In relation to the law profession, two lawyers from two different law firms were interviewed. Both lawyers were aware of the law of defamation. The two were of the view that the current legal framework governing defamatory conduct in Zambia is inadequate as it is not abreast with current social changes. Further, both were of the view that the defamation laws governing civil defamation are also inadequate. In relation to whether the criminalization of the defamation of the President is justifiable in a democratic society, the lawyers were of the opinion that it is not because it tends to create a chilling effect on people's right to freedom of expression. To this effect, they both called for legislative reforms in the legal framework governing civil defamation to make it cover for modern social advancements especially in the field of technology.

5.3.3 National Assembly

Two legal drafters from the National Assembly were interviewed. Both were aware of the law of defamation. However, the two had diverging views. Mr. Musonda was of the view that the current legal framework governing defamatory conduct in Zambia is adequate while Mrs. Banda was of the view that it is inadequate as it is not abreast with modern developments in a democratic society. Further, Mr. Musonda was of the view that the defamation laws that cover civil defamation in Zambia are adequate while Mrs. Banda was of the contrary view. In relation to whether the criminalization of the defamation of the President is justifiable in a democratic society like Zambia, both were of the view that it is not as it is archaic and cannot be justified in a democratic society. Lastly, Mr. Musonda was of the view that there is no need for any legislative reforms in the legal framework governing civil defamation as it has sufficiently been developed by case law while Mrs. Banda called for legislative reforms particularly in the area relating to the criteria for determining defamation in different situations and by whom.

5.4 Recommendations

In relation to the findings, this paper recommends the following legislative reforms.

5.4.1 Civil defamation

- Repeal of the Defamation Act and replace it with a new piece of legislation with the objective of establishing the law of civil defamation in Zambia. The Act should be drafted in such a way that it takes into account the peculiar situation of Zambia on defamation as other jurisdiction such as the UK have done. The Act should also borrow from common law and be drafted comprehensively to take into account all pertinent aspects of civil defamation law so as to lessen on the uncertainty that is caused especially to laymen as to which law takes priority over the other between the Act and common law.

- Amend the current Defamation Act to make it conform to the current technological, democratic and social changes. The amendments should also extend to redefining what amounts to defamation in different situations and by whom taking into account the current technological advancements. Further, there should also be the inclusion of new defences to cover for the new scenarios that may amount to defamation.

5.4.2 Criminal Law

- Repeal of Section 69 of the Penal Code to abolish criminal defamation in Zambia. This will guarantee the protection of the right to freedom of expression which is a fundamental right enshrined in the Constitution.

-Amending Section 69 of the Penal Code to include the scope of what should be considered defamatory and this should allow for a narrow interpretation. Further, the amendment should clearly stipulate that the party (President) claiming to have been defamed should bear the onus of bringing a defamation suit at all stages of the proceedings; public prosecutors should play no role in this process. In addition to this, the amendment should make provision for

defences such as reasonable publication, where, in all circumstances, it was reasonable to disseminate the statement, even if it later proved to be inaccurate. Non-pecuniary (equitable) remedies as well as compensatory damages should be included as remedies as opposed to penal sentence.

-Civil law defamation (Defamation Act) should be amended to make provision for the defamation of the President as under civil defamation.

5.5 Conclusion

In conclusion, this chapter has achieved its purpose by providing a general conclusion to this paper. This chapter also briefly outlined the findings from interviews conducted from media institutions, law firms and the legislature. Based on the findings of this paper, this chapter further recommended that various legislative reforms be undertaken to adequately address the inadequacies in the legal framework governing defamatory conduct in Zambia.

BIBLIOGRAPHY

BOOKS

Barendt, E. *Libel and Freedom of Speech in English Law*. London: Oxford University Press, 1997.

Chanda, A.W. & Liswaniso, M. *Handbook of Media Laws in Zambia*. Lusaka: Zambia Independent Media Association, 2005.

Heuston, A.V. & Buckley, R. V. *Salmond and Heustons on Tort*. London: Sweet & Maxwell, 2004.

Jones, M.A. *Textbook on Torts*, 4th Ed. London: Blackstone Press, 1993.

Lewis, P. *Gatley Libel and Slander*. London: Sweet and Maxwell, 1981.

McCracken, P. *Insult Law: Insulting to Press Freedom, A Guide to Evolution of Insult Laws in 2010*. New York: World Press Freedom Committee and Freedom House, 2010.

Munalula, M.M. *Legal Process: Zambian, Cases, Legislation & Commentaries*. Lusaka: UNZA Press, 2004.

Mvunga, M.P. & Ng'ambi, S.P. *Mvunga and Ng'ambi on Torts*. Lusaka: UNZA Press, 2011.

Samuel, G. *Tort: Cases and Materials*. 2nd Ed, London: Sweet & Maxwell, 2008.

Walters, E. & Johnson, A. *Decriminalising Defamation: An IFJ Campaign Resource for Defeating Criminal Defamation*. Belgium: International Federation of Journalists, 2005.

Winfield, R. *Winfield & Jolowicz on Tort*. 16th Edition, London: Sweet & Maxwell, 2002.

OBLIGATORY ESSAYS

Chipimo, E.M.C. *A Survey of the Development of the Law of Civil Defamation in Zambia from 1967 to 1985*. Obligatory Essay 1989.

Mototsi, M. *A Critical Examination of Some Aspects of the Law of Defamation*. Obligatory Essay 1977.

Simutenda, W. *The Criminalisation of the Defamation of the President and its Impacts on Freedom of Information and Expression*. Obligatory Essay 2008.

JOURNAL

Shaw, R.P.C. “*Libel Reform: Draft Defamation Bill Seeks a Legal Balance but Ignores the Costs Issue*”. Law Commission Journal 6 (2011): 30 – 36.

PAPER

Goldberg, G. “*To Dream the Impossible Dream? Towards a Simple, Cheaper (and Expression –Friendly) British Libel Law.*” Working Paper, London January 20, 2011.