TERERAI MUGWADI

versus

MTANDAZO DUBE

and

ZIMBABWE NEWSPAPERS (1980) LIMITED

and

EDDIE DHLIWAYO

HIGH COURT OF ZIMBABWE

CHIGUMBA J

HARARE, 20, 21, 22 May 2014, 18 June 2014

**Civil Trial**

*B. Maruva,* for plaintiff

*O.T. Gasva,* for 1st, 2nd, & 3rd defendants

CHIGUMBA J: This is a case in which the court has to determine whether the plaintiff was defamed by the defendants. The court also has to consider how much money will be enough to compensate her if it finds that her good name was tarnished by the alleged publication of false statements.

 “Good name in man and woman, dear my lord,

 Is the immediate jewel of their souls;

 Who steals my purse steals trash; ‘tis something, nothing

 Twas mine, ‘tis his and has been slave to thousands;

 But he that filches from me my good name

 Robs me of that which not enriches him

 And makes me poor indeed.”

 **William Shakespeare,**  ***Othello,* Act III Scene 3 lines 155-61**

The following article was published in the Sunday Mail newspaper in Harare, on 3 July 2011

**“TERERAI ON DRUGS”**

**She has been sexually abused by several musicians to the extent that nobody really cares about her anymore.**  **By Mtandazo Dube.**

**The wild child of Zimbabwean music** Tererai Mugwadi is set to be checked into a rehabilitation centrefollowing reports that the 26 year old diva could be hooked on drugs and alcohol. Her behavior has been weird lately, **exhibiting signs and symptoms of alcoholism and drug addiction,** her colleagues in urban grooves music say. So, could she be **the Zimbabwean version of Whitney Houston, or closer to home, the late South African pop singer Brenda Fasie?** Tererai, who had vowed to stay out of trouble, upon her return from a four year degree study in South Africa last year, seems to have gone back to her **wayward behavior.** Urban Groover's Association chairman Eddie Dhliwayo, popularly known as Nitredy said **he would help raise funds to have Tererai checked into a private rehabilitation home.** “**I thought her problem with alcohol and drugs was over”,** said Dhliwayo. “I have personally spoken to her about the problem before and she even came to me saying ‘the talk’ I had with her had helped her immensely.

She vowed she would stay clean and for a while things seemed as if they had improved and we actually believed she had become a better person”. **Urban groovers close to Tererai say she has always been struggling to overcome her addiction to mbanje, alcohol and other hard drugs.** But things had improved last year when she was dating Liberty Mafukidze, her manager at the time. The musicians, who are concerned about their colleague’s situation, **believe that it is the heartbreak she suffered when she broke up with Liberty that has seen her relapse,** plus the other misfortunes that she has had to go through in her life. Although the musicians volunteered the information on conditions of anonymity, their chairman Dhliwayo, said he could not hide behind a finger as “this is a serious matter, which deserves to be treated as such. I am like a big brother to most of these musicians”, said Dhliwayo. “Parents sometimes release their children directly into my care and I take full responsibility for all the things they do”.

Dhliwayo said **his** **association has a plan for troubled Terry,** as Tererai is affectionately known in music circles. “Its only that the country does not have proper Government run drug rehabilitation centers, **otherwise we would have checked her in a long time ago”,** he said. **So now we must raise funds to get her into a private rehabilitation centre or, better still, take her to South Africa where they are better equipped to deal with such problems”.**

The Urban Groover’s Association last weekend raised US1 400-00 for their colleague Luscious, who needed the money to undergo surgery. Dhliwayo says Tererai is not the only one who requires such help, as many of her colleagues in urban groovers circles are also struggling with the same problem. He says **Tererai’s case should be dealt with immediately as she is now exposed to several other dangers like sexual abuse.**

**“Because she cannot control her urge to get drunk or high, and sometimes goes for days hopping from one friend’s place to another, she has exposed herself to several other dangers,” says Dhliwayo. She has been sexually abused by several musicians to the extent that nobody really cares about her anymore.** But I have to care because I know the talent that she has and I am confident the situation can still be dealt with successfully”. Dhliwayo blamed Roki (Rockford Josphats) who has previously been convicted for possessing mbanje, for re-introducing Tererai to drugs. “I hear she is now hanging around with Roki again,” he said. “That boy is not a good influence on anyone- something has to be done quickly to get her away from that Waterfalls drug hub that Roki calls a home”. But Roki strongly denied this. In a recent interview with Roki at his Waterfalls home, where a group of up to 30 youths hang around for the entire day, the bad boy of Zimbabwean music said he was not using drugs and he did not encourage anyone to. When this reporter visited Roki’s residence, Tererai was part of the more than 20 young men and women who were milling around the yard. **She was still wearing the same clothes she had been donning the previous night at a local nightclub.**

**Tererai appeared unsettled and never addressed the issues brought before her in a sensible manner. Roki said then that he suspected Tererai was on drugs. Anenge ave kumhanya bani (I think she is losing her marbles) “**I think she is on drugs or something”. Roki was not even sure what time of the night Tererai had arrived at his house. **Tererai has a history of wild behavior which includes constantly running away from her parents plush farm in Mt Hampden, where her five year old son Gabriel also stays.** She burst onto the limelight as a teenager with her hit song' Waenda' **but was in controversy after she got pregnant and could not point out the father.**  This led to speculation about the possible fathers. Several possible fathers of the baby were listed in the fiasco, including Roki and Sani Makalima. In South Africa, **Tererai failed to complete her degree in Psychology on time. Her time in South Africa is said to have been her turning point, where she moved from just being an alcohol drinker to a hardcore drug addict”.**

The article was accompanied by five pictures; the one in the middle had the following caption: “A LIVELY Tererai during her sober days”. In the other four pictures, the Plaintiff was wearing the same clothes, and she appeared unkempt. In comparison to the picture in the middle, she looked disoriented.

On 18 July 2011, the plaintiff issued summons against the Sunday Mail reporter Mtandazo Dube, the author of the article, Zimbabwe Newspapers (1980) Limited, the publisher, and Eddie Dhliwayo, who supplied information to the reporter, seeking payment of damages in the sum of one million United States dollars, being damages suffered as a result of a malicious, wrongful injurious and defamatory article, as well as interest on that sum at the prescribed rate calculated from 3 July 2011, the date of publication, to the date of payment in full. On 5 September 2011, Plaintiff gave notice to amend the declaration to the summons by identifying the statements in the article which she alleged had irreparably injured her reputation and demeaned her in her public standing. Those statements have been set out in bold typescript in the article which the court has set out in full above.

The defendants in their plea, filed of record on 26 August 2011, denied that the words in the article were written with malice, or that they were wrongful or defamatory of the plaintiff or that the words could be understood by an ordinary reasonable reader as being defamatory to the plaintiff. Defendants pleaded further, that the statements complained of were substantially true, and that plaintiff’s reputation and public standing were already in tatters, and her claim an affront to the law of defamation. The parties filed a joint pre-trial conference minute, on 3 December 2012, in which the following issues were referred to trial:

1. Whether or not the article published by the first, second and third defendants was defamatory of the plaintiff, and if so,
2. What is the quantum of damages for such defamation?

PLAINTIFF’S CASE

 The plaintiff testified and told the court that she is a legal secretary at Mugwadi & Associates, as well as a musician, a singer/songwriter. She told the court that the article which was published by the defendants was destructive, and that it made her career suffer tremendously, because after it was published people believed that she was unable to function. She testified that she received negative comments from her fans on social media networks like face book, watsapp and twitter, and that random strangers would approach her even while she was aboard a commuter omnibus and castigate and ridicule her about the contents of the article.

She became reclusive, and afraid to show her face in public. She said that members of her family received concerned phone calls from family members residing overseas who had read the article online. She lost some lucrative music engagements at high schools such as St Ignatius and Dominican Convent where she had been invited to perform previously, and she was told that she was no longer a suitable role model for young impressionable school children. The plaintiff told the court that prior to the publication of the article her career was flourishing, and her star was rising. She said that, as a mark of her success as a musician, she was in the process of bringing in musical instruments and she had her own band, which was growing.

 The plaintiff told the court that the allegations contained in the article were not true, but they were very damaging because the headline appeared on the front page of the newspaper. She had not broken up with her husband Liberty Mafukidze, who was her fiancé at the time, and who she has never separated from. In fact he accompanied her to the Sunday Mail offices to demand an explanation and they were told that the first defendant had edited the article himself which was contrary to company policy and a violation of journalism ethics. She referred to the letter of demand dated 4 July 2011 addressed to the first defendant in which her legal practitioners demanded a retraction of the story on the front page of the Sunday Mail. To date, no apology was made and no retraction was printed, as demanded.

 The plaintiff told the court that she confronted third defendant and that he denied that he supplied information to the first defendant She stated that she drinks alcohol socially and has never been on drugs, and is not addicted to alcohol or drugs. She was affronted by the tone of the article which she feels criminalises her and implies that as a wild child, she is a person of loose morals who is too free with her affections, who has no value system, and who is so depraved that no one cares about her anymore. She denied that she had ever been sexually abused, and challenged the defendants to supply the names of her alleged sexual abusers. The plaintiff told the court that she admired Whitney Houston, and was dismayed and hurt by the comparison made in the article between herself, Whitney Houston and Brenda Fassie, who were both great singers but self confessed substance abusers, and who came to untimely deaths because of their inability to control their addictions. She denied having a history of drug abuse, and challenged the defendants to produce proof of this history, since drug addiction is a medical condition.

The plaintiff denied that her name was ever on a list of ‘problem children’ discussed at an urban groovers meeting, in April 2010, in connection with alcohol and drug abuse. She denied that third defendant ever intended to raise money to check her into a rehabilitation center out of concern for her ‘wayward behavior’. She accused the urban groovers association of not acting in its members best interests, and of having dubious motives. The plaintiff suggested that if the association members cared that much about her alleged deterioration, they should have approached her father or another member of her family to discuss an intervention, not to take it upon them to raise funds to check her into a treatment center.

 On the issue of the pictures which accompanied the article, the plaintiff stated that the pictures make her look like a disoriented and unkempt alcoholic or drug addict, especially when the four pictures are viewed in contrast to the fifth one in which she was younger, and smiling. She denied posing for those pictures, and told the court that the pictures were taken surreptitiously, after she had expressly refused to give the first defendant an interview, at Roki’s house in Waterfalls. The plaintiff told the court that she had not been wearing the same clothes that she had worn the night before as alleged by the first defendant in the article. Finally she told the court that the father of her son Gabriel is David Mukwedeya, and denied that she had no idea who the father was, or that her son had been fathered by Roki or Sani Makalima.

 Under cross examination, the plaintiff maintained her stance that she had never been discussed in a meeting of the urban groovers association in connection with alcohol and drug abuse. She denied that the minutes of the urban groovers association which first and third defendant sought to rely on were correct, or accurate. She agreed that she was a celebrity, a role model for young aspiring musicians, but denied that she was a public figure. The court generally found the plaintiff credible and believable, and accepted her testimony that after the article was published prople viewed her negatively, and were angry with her and believed the allegations that she was wild, a person of loose morals who was sexually abused by fellow musicians whilst under the influence of illegal substances, who didn’t know the father of her child, and who was so addicted to hard drugs that she was dysfunctional and needed urgent intervention to check her into rehabilitation. The court did not find the plaintiff’s testimony regarding the contents of the minutes of the urban groovers association of 13 April 2010 to be entirely true. Clearly, the issue of excessive drinking was raised and discussed at that meeting in connection with the plaintiff, but, based on the evidence of Enoch Munhenga, there was no discussion in connection with mbanje and other hardcore drugs, and plaintiff’s testimony is to be believed when she alleges that the minutes were tampered with, and did not accurately reflect what was discussed in the meeting that day.

Everisto Elarius Mugwadi

 He testified on behalf of the plaintiff and told the court that he is plaintiff’s father, a legal practitioner, an officer of the court, and a successful farmer. He told the court that his daughter had been defamed by the article which was published in the Sunday Mail of 3 July 2011, and that he had come to court to help her to seek redress, because the article did not state the truth. The witness told the court that he had raised the plaintiff from childhood and that when he read the article; he was stunned, surprised, and taken aback. He told the court that he was shocked and traumatized by the tone of the report, and that he sought out the first and third defendants and demanded an explanation, and that third defendant flatly denied that he had supplied the first defendant with the information that formed the basis of the article.

 Mr. Mugwadi told the court that his daughter had a decent upbringing, which was based on his culture and tradition, and a normal childhood. He said that she is a talented musician. He told the court that his daughter has never exhibited any symptoms of alcoholism or drug abuse, and that, as her father, he would have noticed if there was anything amiss. He described himself as a strict disciplinarian, and said that he believed his daughter when he quizzed her after the article was published, that she is a social drinker who is not addicted to any prohibited substances. The witness told the court that he was surprised and outraged at the suggestion that no one cared about his daughter, that he was derelict in his duty as a father to her, to the extent that an association of young musicians was having to raise money to check his daughter into a rehabilitation centre.

Mr. Mugwadi told the court that his grandson Gabriel was fathered by David Mukwedeya, of the Museyamwa clan. The witness told the court that his daughter did not abuse any prohibited substances while she was studying for her degree in South Africa. He accused the first defendant of sensationalism for the sole reason of improving circulation of the newspapers, and of being unethical, of not verifying the truth, of failing to report in a balanced manner by seeking comments from the plaintiff or members of her family. He said that the article tarnished his image and damaged the Mugwadi name, with family members in the diaspora contacting him to demand that he seek redress.

 The court believed the witness when he said that the defendants knew where he lived, and that they knew plaintiff’s husband so it was not feasible or honest to say they tried and failed to publish a balanced article when they never sought a comment or opinion from plaintiff or from members of her family. The court accepted this witness’s evidence that the defendants were not bona fide and that they had ulterior motives in their portrayal of plaintiff’s sexual proclivities, her alleged addiction to alcohol, mbanje, hardcore drugs, the status of her relationship with her husband, and her alleged inability to pinpoint the father of her son Gabriel. The court accepted his evidence that the allegation that plaintiff did not know who fathered her son is simply not true. The court accepted that the allegation that plaintiff graduated from alcohol abuse to hard core drugs whilst she was studying in South Africa is simply not true. First defendant admitted that he had no basis for making the allegations, and third defendant said he knew nothing about plaintiff’s lifestyle while she was a student.

Kudzai Kelvin Chisvo

 He was the plaintiff’s 3rd witness, and he told the court that he has known the plaintiff since they were in high school together, and that, at the time that the article was published he was the secretary general of the urban groovers association. He testified that even though he has known the plaintiff since she was seventeen years old, he has never seen her take drugs. He said that the plaintiff is not a wild child. He told the court that he took the minutes of the urban groovers association on 13 April 2010, at Zimex mall. He flatly denied that there was any discussion at that meeting, of plaintiff’s alleged alcoholism or drug addiction. He said that at that meeting, there were discussions in general about the conduct expected of urban groove artists in general, and specific artists’ names were not mentioned. Mr.Chisvo’s evidence on this aspect is directly contradictory to that given by the defendant’s witnesses. He also denied writing in those minutes that Plaintiff had been reprimanded for alcoholism and drug abuse, or that Roki had been mentioned for possession of mbanje, Diana Samkange for wrecking marriages, and XQ for piracy. He submitted his notes into evidence to buttress his evidence that none of those names were mentioned in that context at the meeting. He tendered what he referred to as an original copy of the minutes of that meeting, and told the court that someone had added a paragraph to the minutes that he had produced, and that paragraph contained false information. Under cross examination, the witness maintained that the minutes had been tampered with, and denied that he was misleading the court.

 The court found that this witness was not truthful or believable on the aspect of the minutes of 13 April 2010. Mr. Munhenga told the court that the issue of plaintiff’s alleged alcoholism was tabled and discussed at that meeting. The court believed Mr. Munhenga, who is plaintiff’s friend and has known her for some time. He had no cause to mislead the court. Mr. Chisvo made a misguided attempt to shield the plaintiff by misleading the court on the aspect of the minutes. What the court accepts is that there was no mention or discussion of addiction to hardcore drugs in respect of the plaintiff, but the issue of drinking alcohol excessively certainly was discussed.

Liberty Simbisai Mafukidze

 Is a sales supervisor who is also a second year journalism student, and plaintiff’s husband. He read the article published by the defendants on 11 July 2011. He told the court that plaintiff is not an alcoholic or a drug addict. He said that he has never separated from her since June 2010 to date, and that the article published untruths that were calculated to assassinate her character. He said that in the month that the article was published he had just become engaged to his wife and was shocked to read about their alleged separation. He was shocked to read that his fiancé needed rehabilitation, and angry that he was not asked to comment or give his side of the story before the article was published. As a student of journalism, he was appalled at the level of malice in the publication of the article which flouted all the journalistic ethics and made no attempt to give a balanced report or to verify the information that formed the basis of the article. He told the court that he was upset because the article depicts the plaintiff as a whore and a prostitute.

 The witness said that the article was read by his friends and relatives in the diaspora, who would telephone him to find out if it was true, especially since they had just become engaged. He said that it was not true that no one cared about the plaintiff anymore. Mr. Mafukidze confronted the third defendant who denied supplying information to the first defendant. He accompanied the plaintiff to the second defendant’s offices to confront the 1st defendant, where they failed to locate him, but were told that he had edited the article himself, in clear violation of journalistic ethics. The witness told the court that third defendant was motivated by malice, and by an ambitious plan to attract funding for the urban groovers association from the ministry of youth. On the issue of the plaintiff’s drinking of alcohol, and in what quantities, the court found this witness guilty of the same thing as Mr. Chisvo; he sought to protect her, and may have been economical with the truth. It does not make sense that random members of the urban groovers association would table her name at their meeting in connection with those of their members who needed discipline in certain aspects of their lives, when there was no basis for doing so. At this juncture, the plaintiff closed her case.

DEFENDANT’S CASE

Mtandazo Dube-1st Defendant

Authored the article that is sought to be impugned. He told the court that he is employed by the second defendant as a senior journalist, and that he joined the second defendant in 2008. He said that his portfolio is arts and culture, and that he frequents places of entertainment, events and functions, trawling for stories to publish in his column. First defendant told the court that he encountered the plaintiff several times at such events, and each time she would be drinking so he decided to investigate her. He said that he had met her at local nightclubs like Londoners, Red Fox, and Sports bar, and that after meeting her at such a nightclub he saw her the next day at Rockford Josphat’s house in Waterfalls wearing the same clothes that she had worn the night before. First defendant said that when he tried to talk to the plaintiff she just mumbled a response, She looked shabby and dirty, she appeared disoriented and ‘high’, on hard drugs, and he suspected that she was drunk and had taken drugs, marijuana or Histalix cough syrup which is abused by local drug addicts who call it ‘Bronco’.

First defendant told the court that he contacted the Third defendant, the chairman of the urban groovers association and he asked him what was wrong with the plaintiff. After protracted negotiations, Third defendant told him that plaintiff’s behavior had been discussed at a meeting of the urban groovers association, and gave him a copy of the minutes of 13 April 2010. First defendant told the court that the plaintiff’s behavior was in the public domain because she loves partying in public, she drinks and dances suggestively in public and frequents nightclubs, while other celebrities like her do their partying in private. He told the court that he compared the plaintiff to Whitney Houston and Brenda Fassie because those two artistes became popular for their talent, their great voices, and for their extravagant lifestyles. The witness told the court that he had anonymous sources for the information that he published that plaintiff was struggling to overcome her addiction to mbanje, alcohol and other drugs.

 He said he quoted third defendant who was his authoritative voice in the story. First defendant told the court that third defendant was his source for the allegation that plaintiff had been sexually abused by several musicians to the extent that no one cared about her anymore. He denied that he was motivated by malice in writing the article and told the court that he trusted the third defendant as a source because they had worked together in the past on similar stories. He denied that he expressly intended to defame the plaintiff. Under cross examination, in answer to the question, “was the article you published the truth? the witness said:”that’s what I managed to come up with”. In my view, that response speaks for itself. When asked to define the word wild he said:”wild partying and bingeing”. He also said that the basis for his conclusion that plaintiff was wild was her public consumption of Carling Black Label beer, a brand which is not associated with nice girls who were well brought up by their families. He said he had seen plaintiff bingeing on Black label beer at City Sports bar and at Red Fox where she was dancing uncontrollably. On the question of hard drugs, he said plaintiff smokes marijuana and abuses a cough syrup, and that he had always suspected her of being an addict but had no proof. He said he never saw her take heroin or cocaine. He admitted that he had no proof that the plaintiff became a hardcore drug addict while she was studying in South Africa. He admitted that the article was widely circulated, even online, and that a lot of Zimbabweans in the diaspora read the article. Finally, first defendant failed to supply the name of the editor who edited the article.

 There is no doubt in the court’s mind that the first and third defendants conspired to write the article. They knew that the contents of the article would damage plaintiff’s reputation. First defendant made sure that the headlines were sensational and scandalous. There is no doubt that the publication was circulated widely, and to people in the diaspora. There is no doubt that the plaintiff was held in low regard by ordinary and reasonable members of the public after the article was published, including members of her own family, here and abroad. First defendant relied solely on the information given to him by third defendant, especially on the aspect of addiction to hardcore drugs and other substances, on the issue of sexual promiscuity, on the issue of needing rehabilitation. He failed to verify the information before publishing the article.

Eddie, Hulukani, Dhliwayo Mwaambira-3rd Defendant

 Told the court that he had a good relationship with the plaintiff, since they met around 2007-2008. They used to go to music shows together, and attend meetings of the urban groovers association together. The plaintiff recorded some of her songs at third defendant’s studios. He told the court that plaintiff once brought bottles of beer in her handbag and drank them at his studios before recording a song. He said that he confronted her and she promised to reform. The witness told the court that he has seen the plaintiff abuse alcohol on many occasions at Sports Diner, KFC, Londoners, and that she takes alcohol before going to perform on stage. He admitted being the source of the information in the article written by the first defendant. Third defendant testified that he gave an interview to the first defendant in his capacity as the chairman of the urban groovers association. He confirmed that he told the first defendant that the plaintiff had a problem with alcohol and drugs. He confirmed telling the first defendant that the association wanted to raise funds to check the plaintiff into a rehabilitation centre. Third defendant said that a number of members of the association told him that plaintiff had a problem with drugs and alcohol and begged him to help her. As a result of these reports, the urban groovers association formed a disciplinary committee, and in minutes of the meeting dated 13 April 2010 they agreed to clean up their image, and to discipline their members such as Diana Samkange, MC Villa, Rockford Josphat, plaintiff, and others. He confirmed that he told the first defendant that plaintiff had been sexually abused by fellow musicians. He admitted that he did not verify this allegation with the plaintiff or any of the alleged abusers. He confirmed that he did not engage plaintiff’s parents or her husband who is well known to him. He admitted that he didn’t really know what happened to plaintiff in South Africa, whether she became a hardcore drug addict. Third defendant denied that he intended to defame the plaintiff.

 Under cross examination, third defendant told the court that the only drug that he saw plaintiff abuse, once, at his studio, in the company of ‘Roki’, was mbanje, but other members of the association reported to him regularly about her drug problem. He said the caption ‘wild child’ means that plaintiff takes drugs, parties uncontrollably, is a prostitute and doesn’t know the father of her child Gabriel. He told the court that plaintiff sometimes drinks until she can’t walk straight and that when she is in that condition, he has seen random men touch her breasts. He said that members of the association have taken plaintiff to their homes to protect her when she was in a drunken stupor. Third defendant said plaintiff was once booed off the stage when she was too drunk to perform. On being questioned as to whether plaintiff was addicted to alcohol, marijuana and other hard drugs, third defendant stated that she can’t function without taking alcohol. He admitted that he never told the plaintiff that the association intended to raise funds to check her into a rehabilitation centre.

 The word that comes to the court’s mind to describe the conduct of the third defendant is unconscionable. He chaired an association of young up and coming singers who invented a modern genre called ‘urban grooves’. The association was not registered. They met regularly to discuss their problems and agreed to clean up their image and regulate themselves. He had no mandate to give the minutes of the meeting of the association of 13 April 2010 to the first defendant. He acted like a wolf amongst sheep. He collected information from members of the association, and passed it on to the first defendant for publication, for his own selfish reasons which had nothing to do with concern for their welfare. The article was published a year after the minutes were taken. If third defendant wanted to save the plaintiff, why did he wait a whole year to ‘attempt to save her by naming and shaming her’? If the plaintiff was a hardcore drug addict in April 2010, why was she still standing and functional in 2011?

 Third defendant was motivated by malice, and the desire to milk his position in the urban groovers association, to attract funding, by portraying himself as ‘big brother’, who was watching all the urban groovers and ready to step in and discipline them. In reality he was just an opportunist, who willingly participated in the destruction of the plaintiff’s career, by imputing untruths about her character, and her behavior.

Enoch Manhanga

Told the court that he was not there to testify for the defendants but to clarify the issue of the minutes of the urban groovers association of 13 April 2010.This witness told the court that he is a professional singer and a member of the urban groovers association. He said that he has known the plaintiff since 2002, that they have a cordial relationship, and that they have done some music collaborations together. He told the court that he was present at the meeting of the urban groovers association at Zimex Mall on 13 April 2010. He testified that the minutes of that meeting, exhibit 4, were mostly accurate and correct. The witness told the court that during the meeting, it was mooted that a disciplinary committee be formed for purposes of self regulation and bringing into line errant members of the association. He said Rockford Josphat was mentioned for domestic violence and possession of marijuana, Diana Samkange for husband snatching, XQ for piracy, and plaintiff for drinking alcohol excessively. He said plaintiff was referred to by some members of the association, but he did not remember whether she was present at that meeting, although she used to attend other meetings.

 During cross examination this witness told the court that plaintiff’s witness Kudzai Chisvo was misleading the court when he said that plaintiff’s name never came up in connection with excessive alcohol consumption during the meeting The witness said that the issue of plaintiff’s hardcore drug problem was never discussed during the meeting, and insisted that the 3rd defendant had to explain how that issue ended up in the minutes. The court accepted the evidence of this witness in its entirety. He struck the court as an upright and sober young man who took his profession seriously. The court accepted that there was never any discussion in the urban groovers meeting of 13 April 2010, of plaintiff’s alleged hardcore drug addiction.

 The court accepts that third defendant did not get a mandate from the association to wash its dirty linen in public or to sell its secrets to the highest bidder. The court accepts that plaintiff drank alcohol socially, and that, at times she overindulged, but the evidence does not support the allegation that she was addicted to alcohol, or that she could not function without alcohol. The rest of the allegations in the article published by the defendants were baseless, without foundation, and based on unsubstantiated gossip, unverified information, biased personal opinions of the writer, and at times, pure speculation dressed up and masquerading as fact.

The Law

 A claim for defamation is premised on the *actio iniuriarum*, which is founded in delict, and is designed to protect a person’s dignity. Defamation violates a person’s dignity or reputation. Reputation is the regard in which one is held by other reasonable members of society. One can be held in high regard, which means that one has a good reputation, or in low regard, which means that one has a bad reputation. When one’s good name and standing is harmed, by lowering the estimation in which it was held by ordinary people, in the course of a publication,

then one has been defamed. See *Masuku* v *Goko & Anor* [[1]](#footnote-1), and *Butau* v *Madzianike & 2 Ors[[2]](#footnote-2)* The Supreme Court recently, in the case of *Barbra Makuyana* v *Brigadier General E.A. Rugeje[[3]](#footnote-3)* reiterated that the law is now settled that where the words are alleged to convey a meaning that is *per ser* defamatory, it is the duty of the court to determine the ordinary meaning of the words-in other words the meaning which an ordinary or reasonable reader would attribute to the words-see *The Law of Defamation in South Africa* by Jonathan M Burchell @ p 84-86.

 The three stage approach in determining whether the words complained of are defamatory is well established, and set out as follows:

1. First, consider whether the words as specified are capable of bearing the meaning attributed to them, that is, whether the defamatory meaning alleged is within the ordinary meaning of the words.
2. Secondly, assess whether that is the meaning according to which the words would probably be reasonably understood, and
3. Decide whether the meaning identified is defamatory. See *Moyse & Ors* v *Mujuru[[4]](#footnote-4).* This objective approach to determining whether defamation had taken place was endorsed by the full bench of Supreme Court in *Moyse supra.* It had been developed over time, See *Wonesayi* v *Smith NO & Anor[[5]](#footnote-5), Tekere* v *Zimbabwe Newspapers & Anor[[6]](#footnote-6), Zvobgo* v *Kingstons Ltd[[7]](#footnote-7).* In more recent times, the objective approach to defining defamation has been followed in the following cases: *Chinamasa* v *Jongwe Printing & Publishing (Pvt) Ltd & Anor, [[8]](#footnote-8)Madhimba* v *Zimbabwe Newspapers (1980) Ltd[[9]](#footnote-9), Masuku* v *Goko & Anor[[10]](#footnote-10),Butau* v *Madzianike & 2 Ors [[11]](#footnote-11)*

I will now apply the objective test of determining whether there has been defamation, to the facts of this case.

1. Are the words specified in the article in question capable of bearing the meaning attributed to them?

In order to decide whether the plaintiff in this matter was defamed, we will first consider whether the defamatory meaning is within the ordinary meaning of the words, the primary meaning of the words. This is a question of law. The article was headlined “Tererai on drugs”, above that headline the following statement appeared in bold underlined type: “She has been sexually abused by several musicians to the extent that nobody really cares about her anymore”, ‘she got pregnant and could not pinpoint the father, several possible fathers of the baby were listed in the fiasco”. The ordinary meaning of those words is that the plaintiff has a problem with drugs, which has led to her being sexually abused to such an extent that she is now regarded as a person of loose morals, who has no qualms about indulging in sexual intercourse with multiple partners, leading to her being unable to tell who fathered her baby. There can be no doubt, that a statement which imputes that a person takes drugs, which is a crime, and has loose morals is defamatory. See *Lilford* v *Rhodesian Printing & Publishing Co & Anor[[12]](#footnote-12)* , *Khan* v *Khan [[13]](#footnote-13), Moyo* v *Abraham[[14]](#footnote-14).* Clearly, the defamatory meaning alleged is within the ordinary meaning of those words.

 The next statement that plaintiff complains of is being labeled “the wild child of Zimbabwean music”, and that she has “gone back to her wayward behavior”. The dictionary definition of “wild” is; “not under, or not submitting to control or restraint, taking or disposing to take one’s own way, uncontrolled, not submitting to moral control, taking one’s own way in defiance of moral obligation or authority”. Describing a person as wild is tantamount to imputing negative qualities to that person’s behavior, it implies behavior which is unacceptable in polite company. It is clearly capable of being defamatory within the ordinary meaning of those words.

 The plaintiff alleges that she was defamed by the following statements: that “she has been exhibiting signs and symptoms of alcohol and drug abuse”, “she has always been struggling to overcome her addiction to mbanje, alcohol and other hard drugs”, “troubled Terry”, “she cannot control her urge to get drunk or high”, “has a history of wild behavior”. An addict is somebody who is “physiologically and psychologically attached to an activity, habit or substance”, as in drug addict. To be addicted to something is to “devote or surrender oneself to something habitually or obsessively”,[[15]](#footnote-15) for example addicted to gambling. “Addiction is the continued repetition of a behavior despite adverse consequences”. This court has already found that to publish an article which states that someone drinks excessively is defamatory. See *Tekere* v *Zimbabwe Newspapers supra.* It is an inescapable conclusion that, calling the plaintiff an addict to drugs and alcohol is capable of being defamatory, the normal and ordinary meaning of the word addict depicts negative behavior, which is repeated despite adverse consequences, and implies the need for others to intervene in order to save the addict from themselves.

 “…the heartbreak she suffered when she broke up with Liberty has seen her relapse”, “we have to raise funds to check her into a private rehabilitation centre”, “she is now exposed to several other dangers like sexual abuse”, “sometimes goes for days hopping from one friend’s place to another”, “I think she is losing her marbles”, “she was still wearing the same clothes she had been donning the previous night at a local nightclub”. The ordinary meaning of these words is that the plaintiff cannot help herself she loves drinking and drugging and going to nightclubs, she is a vagabond who doesn’t care where she sleeps, and that she has no one to take care of her. Those words are capable of defaming the plaintiff. All the words that the plaintiff complains of are capable of bearing the meaning attributed to them. The defamatory meaning is within the ordinary meaning of the words

1. What is the meaning according to which the words would probably be reasonably understood ?-the ordinary reader test

The second rung of the test involves an analysis of the words complained of, to determine how an ordinary reader of the Sunday mail newspaper would understand them, bearing in mind that the Sunday Mail is a well respected family newspaper. Firstly I am guided by the dicta of GLLESPIE J in *Makova* v *Modus Publications Pvt Ltd[[16]](#footnote-16),* where he said

“It is plainly necessary, when attempting to discover the ordinary meaning of a passage, to strike a balance between subtle analysis and hasty misconception, between cool reserve and excitability. In doing so, in my view, one should nevertheless tend to favor the more reasoned approach to the illogical, for that is the very heart of the definition of a reasonable man. One is entitled to assume of the ordinary reasonable reader that:

‘he gets a general impression and one can expect him to look again before coming to a conclusion and acting upon it” See *Madhimba* v *Zimbabwe Newspapers supra @ 403G-404G, Demmers* v *Wyllie & Ors [[17]](#footnote-17)* and by *Morgan* v *Odhams Press Ltd & Anor [[18]](#footnote-18)*

“*…*the average reader does not read a sensational article with cautious, critical and analytical care…”’ per LORD MORRIS @ 1170 f-g. See also *Dorfman* v *Afrikaanse Pers Publikasies (Edms) Bpk en Andere [[19]](#footnote-19)*

 The ordinary reasonable reader is not super intelligent, highly educated or sophisticated. At first glance, such a reader would immediately become aware that the article was a ‘from grace to grass’ story about the plaintiff, who was healthy and robust and lively during her sober days, but was now allegedly shabby, unkempt, disoriented, and addicted to alcohol, mbanje and other hardcore drugs, and the situation had deteriorated to such an extent that she was now pitiful, and had been sexually abused by her fellow musicians. After formulating this general impression, which is bolstered by the before and after photographs that accompany the article, our ordinary reader of average intelligence and average education would have his attention drawn to the statement that the plaintiff was the wild child of Zimbabwean music who was now unable to control her urge to get drunk or high, and who was now a prostitute and a vagabond, who had run away from home and had no one to take care of her, who could not even identify the father of her child, such that an association of young musicians like her, had taken pity on her and was in the process of raising money to check her into a rehabilitation centre. The ordinary reader would understand the comparison between the plaintiff, Brenda Fasie and Whitney Houston very well. These were great female international singers, with great voices, who had unraveled in the public eye because of well documented substance abuse problems and died, as a result of their addictions.

Whether the meaning identified is defamatory-the right thinking test

 This final rung of the test involves a determination as to whether the meaning found by the court as that which would probably be assigned by the ordinary reader to the article, was one calculated to bring the plaintiff into contempt and undue ridicule, or to diminish the willingness of others to associate with her, or to lower her in the esteem of right thinking or reasonable members of society generally. See *Velempini* v *Eng Svcs Dept Workers Ctte for the City of Bulawayo & Ors [[20]](#footnote-20), Moyse & Ors* v *Mujuru supra*, *Madhimba* v *Zimbabwe Newspapers supra @* 407F-H*, Simm* v *Stretch[[21]](#footnote-21)* The inescapable inference alluded to by the article published by the defendants in the Sunday Mail, is that the plaintiff was now a spent force, unable to function, an object to be pitied, and ridiculed. The court finds that the article was calculated to make reasonable members of society loath to associate with the plaintiff. She had accomplished much that girls of her age had not. She was a celebrated singer who had produced hit songs. She had fans who communicated with her.

 Right thinking members of society would have been appalled at the implications of the comparison between plaintiff and other female singers who literally drank themselves and abused their substances of choice, to death. Right thinking members of society would have wondered why the plaintiff had allowed herself to spiral out of control. Right thinking members of society would not have wanted their children to continue to admire the plaintiff, or to emulate her. It is my view that the right thinking test was met. All the statements complained of by the plaintiff are found to have been defamatory. The court is satisfied that, having applied the three stage test to the facts of this matter, the plaintiff has discharged the onus on her and established all the three stages of the test. In my view, the plaintiff has established that the defamatory meaning is the meaning by which the words would probably be understood by an ordinary, reasonable reader. I am satisfied that the plaintiff has established that the meaning identified is defamatory on application of the right thinking test. The article is *prima facie* defamatory. See *Ndewere* v *Zimbabwe Newspapers 1980 & Ors [[22]](#footnote-22)* I will now turn to consider the defenses raised.

 The Constitutional Court (Concourt) in its recent judgment on the constitutionality of the offence of criminal defamation[[23]](#footnote-23) had occasion to comment on the South African case [[24]](#footnote-24) which “… recognizes that freedom of expression is a core value of a free and democratic society.” What is noteworthy for purposes of the case under consideration is that the Concourt accepted the conclusion in *Hoho's case supra*, that civil and criminal liability for defamation are equivalent in the extent of their limitation.

 In the context of civil liability for defamation certain limitations have been accepted over the years, bearing in mind that “… civil law exists to provide relief and restitution when one person harms or threatens to harm another’s private interests”. The debate that aims to ventilate the propriety of the limitations on the right to freedom of expression in the context of civil defamation has exercised the minds of academics for some time.

“The law of defamation seeks to balance two competing interests. On the one hand, it recognizes the right of the individual to be afforded protection against harm to his reputation. On the other hand, it also recognizes that the public have a right to free speech and to proper access to information. Put in the context of newspaper reporting it is vitally important that there should be a free press which keeps the public informed, especially about public affairs. This free press should not be stifled by highly restrictive defamation laws. But at the same time the law cannot ignore the fact that newspapers and other broadcasting media are extremely powerful agencies which are able to reach enormous members of the public and that, if they publish defamatory material, the end result can be devastating harm to reputation. It should also be borne in mind that harm to reputation is extremely insidious and once reputation has been damaged it is very difficult to repair the damage”. *A Guide to the law of Delict* by G. Feltoe.

Defences

1. Privilege/ Justification

 The defence of privilege or justification is established by a defendant who can show that he had a duty or interest in publishing the statement that is sought to be impugned or that the people to whom the statement was published had a duty to receive it. The most common *mantra* by defendants under this defence is the plaintiff was a public figure and that the article was published in the public interest. Members of the public in general have a voracious appetite for reading about the peccadillo’s of public figures, or about any alleged shenanigans that they get up to. It is accepted that newspapers have a right to keep the public informed about the behavior of public figures on matters of public interest. Despite the plaintiff’s protestations, the evidence before the court is that she had attained celebrity status with her hit songs and had become somewhat of a role model to young children who followed the urban groovers craze that hit Zimbabwe.

 The question that is exercising the court’s mind, is not whether the question of plaintiff’s moral probity was a matter of public interest. In my view, it was. The issue is whether the defence of justification is available to a defendant who publishes blatant untruths. It is now trite that where there is evidence that such a defendant was motivated by malice, the defence cannot shield him from a plaintiff who has discharged the onus of proving *animus inuriandi.* See *Musakwa* v *Ruzariro[[25]](#footnote-25)*, *Mugwadi* v *Nhari & Anor[[26]](#footnote-26)* It is my view that the contents of the article published by the defendants exceeded the bounds of privilege because it was based on fabrications, especially the minutes of the urban groovers association which the evidence showed had been doctored by the third defendant to reflect a lie, that plaintiff had been censured for being a drug addict.It is my view that first defendant acted recklessly in relying on those minutes without verifying them with their author Mr. Chisvo, with the plaintiff, or any other member of the urban groovers association who had been present at that meeting. He used those minutes as an excuse to sensationalise the article and attract the interest of his readers because plaintiff was a household name, and the fact that she was allegedly hooked on hardcore drugs would have been shocking and scandalous to the readers of a family newspaper like the Sunday Mail. Not only was the article untrue, it was not for the public benefit, it was unsubstantiated and unfounded, and it was calculated to bring plaintiff into disrepute. The article was not even substantially true.

1. Fair Comment

The requirements of the defence of fair comment are as follows:

1. The allegation in question must amount to comment(opinion)
2. It must be fair
3. The factual allegations on which the comment is based on must be true
4. The comment must be a matter of public interest
5. The defence must be based on facts expressly stated or clearly indicated, in a document or speech, which contains the defamatory words. See *Heard* v *Times media Ltd & Anor [[27]](#footnote-27)Madhimba supra[[28]](#footnote-28) , Crawford* v *Albu[[29]](#footnote-29) Tekere* v *Zimbabwe Newspapers supra, Zvobgo* v *Kingstons supra*

 A perusal of the statements complained of by the plaintiff will show that this defence is not available to the defendants because most of the allegations in question do not amount to opinions. The writer did not place certain statements in quotation marks to indicate that they were opinions. For example: “wild child of Zimbabwean music’, ‘set to be checked into a rehabilitation centre’.., ‘seems to have gone back to her wayward behavior’. The first defendant showed that he knows the difference between facts and opinions. He put some of the third defendant’s opinions in quotation marks. For example: “…I thought her problem with alcohol and drugs was over” said Dhliwayo, Unfortunately, most of the statements that ought to have been clearly shown to be comment were not, so there was no fairness.

 Further, some of the factual allegations made are simply not true. The plaintiff clearly knows the identity of the father of her baby, he is David Mukwedeya of the Museyamwa clan as she testified to and was corroborated by her father. The article does not identify which of the signs and symptoms of alcohol and drug addiction plaintiff exhibited. There was no evidence that plaintiff was addicted to alcohol, mbanje and other hard drugs. The article was unfair to the plaintiff in its implication that she needed rehabilitation to wean her off from alcohol mbanje and other hard drugs addiction, when it had not been proven as a fact, that plaintiff was actually addicted to these prohibited substances.

 The basis of the article seems to be first defendant’s various encounters with the plaintiff at local nightspots and his bias towards young ladies who imbibe a particular brand of beer. Clearly in his mind, such young ladies deserve to be labeled prostitutes, especially when they dance uncontrollably by themselves. Section 326 and 327 of the Zimbabwean Constitution provides that[[30]](#footnote-30). Section 56 of our Constitution provides for equality and non discrimination, more particularly, that:[[31]](#footnote-31) According to CEDAW[[32]](#footnote-32), governments must ensure that nothing stops girls and women from enjoying their rights (such as stereotypes about girls and women). Zimbabwe has been a signatory to this international convention, since 13 May 1991. By virtue of its ratification of the convention, it has a duty to end discrimination faced by women and girls in this country. Discrimination had been defined as ‘unfair treatment by reason of being a girl’, and in Article 5 of CEDAW, there is recognition that there are some roles that are attributed to girls which are based on stereotypes, and that this is discriminatory. Zimbabwe also signed ACHPIRI[[33]](#footnote-33), on 18 November 2003, and ratified it, on 15 April 2008. By implying that the plaintiff was in a space where women and girls are ordinarily viewed as prostitutes, especially if they drink beer, first defendant inadvertently discriminated against the plaintiff, because of that stereotype, which promotes gender inequality, and has a chilling effect on women or girls who are equally talented as their male counterparts, but end up abandoning lucrative careers in that industry, because of that perception.

 First defendant told the court that he started investigating the plaintiff’s behavior after seeing her in various nightclubs holding a bottle of black label beer. In his view nice girls don’t drink that particular brand of beer, and he concluded that plaintiff was of loose morals. In my view, that is a gender stereotype, and it brings into question what the role of law and justice is, in achieving gender equality. First defendant did not see fit to investigate any of plaintiff’s male counterparts who obviously also frequented these nightclubs while plying their trade, they are artistes, singers, who can be engaged to sing anywhere even in nightclubs. The legal sphere has penetrated into many aspects of people’s public and private social spheres, and achieving gender equality is a developmental goal that law and justice should aspire towards.

 Third defendant testified that he saw plaintiff smoke mbanje once, and that he has seen her drunk more than ten times over the space of a few years. The court accepts that his testimony might be true. Does this evidence show addiction to alcohol, mbanje and other hard drugs. In my opinion, it does not. It is insufficient to support such a finding. There was no truth to the allegation that plaintiff was an addict, bearing in mind that to be addicted means, “…to devote or apply habitually to a practice”.[[34]](#footnote-34) It is noteworthy that the minutes of the urban groovers association which were touted as the basis for the allegations in the article, were of a meeting that took place in 2010. The article was written a year later, and third defendant had still not made good his promise to check the plaintiff into a rehabilitation centre. The evidence before the court, which was accepted by the court, is that the minutes of the urban groovers association mentioned plaintiff in the context of excessive consumption of alcohol, and were tampered with to include a reference to mbanje and other hard drugs, in order to give 3rd defendant a basis for the article. This conduct, or conspiracy, between the first and third defendants, is unethical, unconscionable, and the main reason why the defence of fair comment cannot be availed to them. First defendant clearly tried, and failed to get an interview from plaintiff, at Roki’s house. Yet he colluded with his photographer and surreptitiously took the four pictures that were published together with the article, in typical paparazzi style. He violated her right to privacy, especially after she declined to give him an interview.

 It has been held by this court that “A false story cannot be substantially true…no justification or public interest was served in writing and publishing a false story. The defences of justification and public interest are grounded in the truth”. See *Manyanga* v *Mpofu & Ors [[35]](#footnote-35) .* Where the article is based on truth and an opinion is expressly stated as such, and the comment is fair and in the public interest, and the report is balanced and not biased, it is my view that, in that case, that article is a publisher’s dream.

 The final matter for determination is assessment of the quantum of damages. Damages in this jurisdiction have remained modest, see *Tekere* v *Zimbabwe Newspapers, supra, Zvobgo* v *Kingstons supra, Chinengundu* v *Modus Publications Ltd[[36]](#footnote-36).* The factors which a court should take into consideration in assessing an appropriate estimate of damages are settled. They include:

1. The content and nature of the defamatory publication.
2. The plaintiff’s standing in society.
3. The extent of the publication.
4. The probable consequences of the defamation.
5. The conduct of the defendant.
6. The recklessness of the publication.
7. The comparable awards in other defamation suits.
8. The declining value of money. See *Manyanga* v *Mpofu supra @ P14, Butau v Zimbabwe Newspapers, supra @ p9, Garwe* v *Zimind Publishers (Pvt) Ltd & Ors[[37]](#footnote-37), Chivasa* v *Nyamayaro & 2 Ors[[38]](#footnote-38)*

 In this case the content and the nature of the defamatory publication was sensational and scandalous, more suitable to other scandal mongering publications that are in circulation than to a leading and well established family newspaper such as the Sunday Mail. The content of the defamatory publication was largely untrue. It was accepted during the trial that the Sunday mail is a widely circulated newspaper in Zimbabwe, and that in 2011, it was circulated online and reached audiences abroad. The evidence which was accepted by the court is that the consequences of the defamation touched plaintiff, whose musical career has now stagnated, it turned her into a recluse when she became a laughing stock, was ridiculed in public at the supermarket and while using public transport, her fans expressed disappointment via social media, her extended family, her in laws, her friends, her parents and siblings all felt that they had been brought into disrepute by the contents of the article. Her son Gabriel had been named as fatherless, which would haunt him as an adult, her husband and his family were tainted by their association with her after the article was published. Finally, despite being invited to do so, neither first nor third defendants apologized to the plaintiff. This would have mitigated damages.

 The conduct of both first and third defendants was unethical, deplorable, and unconscionable and motivated by malice. No attempt was made to investigate the story or verify with the plaintiff, her husband her siblings or her parents. Allegations of sexual abuse were made casually, only for the court to establish that they had no basis during trial. The allegation of addiction to hardcore drugs was a fabrication in its entirety. The article was calculated to tarnish plaintiff’s image and to lower her in the eyes of ordinary Zimbabweans, to bring her down from her pedestal, and leave her mired in controversy. The publication was reckless because basic journalistic principles were ignored. Third defendant appears to have edited the article himself, contrary to second defendant’s policy and standing orders.

 In the case of *Zimbabwe Banking Corp Ltd v Mashamhanda,* It was held that:

“…an award of damages for defamation is intended to provide vindication and consolation, not to provide the plaintiff with a financial windfall. Awards in Zimbabwe will generally not equate with those in larger and wealthier economies, but they must take into account the rapid rate of inflation here”.

This case was decided in 1995. Zimbabwe became a multicurrency economy in 2009. Inflation is currently not a factor that should influence the court in assessing the quantum of damages. It is my view that, in order to keep up with current trends, the court should seriously consider the effect that social media like face book, watsapp, twitter and instagram now has on the extent of the publication, for purposes of assessing the quantum of damages. There was evidence in this case that people as far away as America and the United Kingdom, read the article that was published almost at the same time as the plaintiff’s family, because the Sunday Mail is now published online.

Comparable awards in other defamation suits are as follows:

*Chinengundu* v *Modus Publications[[39]](#footnote-39)-ZWD$23 000-00 in 1992*

*Zimbabwe Banking Corp* v *Mashamhanda supra-ZWD$45 000-00 in 1995*

*Chinamasa’s case supra ZWS30 000-00 in 1994*

*Zvobgo* v *Modus Publications Supra-ZWD$20 000-00 in 1995*

*Masuku* v *Goko supra-ZWD$80 000-(revalued)*

*Butau* v *Madziyanike supra- US$ 3000-00*

*Chivasa* v *Nyamayaro supra- US$4000-00*

*Moyo* v *Nkomo & Anor[[40]](#footnote-40) -US$5000-00*

*Manyange* v *Mpofu supra -US$2000-00 and US$5000-00*

 Taking all the above factors into account, including the effect that social media platforms have had on the extent and speed of publication ,as well as our country’s obligations in terms of international and regional protocols and conventions, as well as the provisions in our new Constitution that seek to protect the right to non discrimination on the basis of sex and gender, and gender stereotypes, as well as the fact that our country has now adopted a multicurrency regime, I am satisfied that an award of USD$10 000-00 is justified in this case.

ORDER

In the result, it is ordered that:

Judgment be and is hereby granted in favor of the plaintiff as against the defendants jointly and severally, the one paying and the others to be absolved, for:

1. Payment of the sum of USD$10 000-00
2. Interest thereon *a tempore morae* from the date of judgment to the date of payment in full: and
3. Costs of suit

*Messrs Mugwadi & Associates,* Plaintiff’s legal practitioners

*Messrs Chirimuuta & Associates,* Defendants’ legal practitioners

1. 2006 (2) ZLR 341 (H) @ 347 C-D [↑](#footnote-ref-1)
2. HH 378-12 @ p8 [↑](#footnote-ref-2)
3. SC32/2012 @ p6-7 cyclostyled [↑](#footnote-ref-3)
4. 1998 (2) ZLR 353 (S) @ 356G-H [↑](#footnote-ref-4)
5. 1971 (2) RLR 62 GD/1972 (3) SA 289 RA [↑](#footnote-ref-5)
6. HH 290-68 [↑](#footnote-ref-6)
7. HH 485-86 [↑](#footnote-ref-7)
8. 1994 (1) ZLR 133(H) [↑](#footnote-ref-8)
9. 1995 (1) ZLR 391 (H) [↑](#footnote-ref-9)
10. 2006 (2) ZLR 341(H) [↑](#footnote-ref-10)
11. HH 378-12 [↑](#footnote-ref-11)
12. 1967 (2) RLR 274 (H) [↑](#footnote-ref-12)
13. 1971 (1) RLR 134 [↑](#footnote-ref-13)
14. HH 467-84 [↑](#footnote-ref-14)
15. All the definitions can be found in the Shorter Oxford English Dictionary, Vol I and II [↑](#footnote-ref-15)
16. 1996 (2) ZLR 326 (H) @ 353G-354B [↑](#footnote-ref-16)
17. 1978 (4) SA 619 (D) @ 622F [↑](#footnote-ref-17)
18. 1917 (2) All ER 1156 HL [↑](#footnote-ref-18)
19. 1966 (1) PHJ9 (A) @ 45 [↑](#footnote-ref-19)
20. 1988(2) ZLR 173 (H) @ 178G-H [↑](#footnote-ref-20)
21. 1936 (2) All ER 1237(HL) [↑](#footnote-ref-21)
22. 2001 (2) ZLR 508 (S) @ 511E [↑](#footnote-ref-22)
23. Nevanji Madanhire, & Nqaba Matshazi v Attorney General CCZ2/14, @ p14 [↑](#footnote-ref-23)
24. Hoho v The State [2008] ZASCA 98 @ para 29 “ …Freedom of expression constitutes one of the essential foundations of a democratic society and is one of the basic conditions for its progress and the development of man”. [↑](#footnote-ref-24)
25. 1997 (2) ZLR 533(H) @ 535-537 [↑](#footnote-ref-25)
26. 2001 (1) ZLR 36 (H) @ 41-46 [↑](#footnote-ref-26)
27. 1993 (2) SA 472 (C) @ 477A-G [↑](#footnote-ref-27)
28. @ 410F-H [↑](#footnote-ref-28)
29. 1917 AD 102 @ 125 [↑](#footnote-ref-29)
30. When interpreting legislation, every court .must adopt any reasonable interpretation…that is consistent with any international convention treaty or agreement which is binding on Zimbabwe…customary international law applicable in Zimbabwe. [↑](#footnote-ref-30)
31. S 56(3) Every person has the right not to be treated in an unfairly discriminatory manner on such grounds as…sex, gender… [↑](#footnote-ref-31)
32. Convention on the Elimination of all forms of discrimination against women-Policy and Practice June 2011 [↑](#footnote-ref-32)
33. Protocol on the African Charter on Human and People’s rights (of Women in Africa)-Article 2 of the African Charter on Human and People’s Rights enshrines the principle of non-discrimination on the basis of sex.

Article 3 of the protocol stipulates that:

Every woman shall have the right to dignity inherent in a human being and to the protection of her human and legal rights.

Every woman shall have the right to respect as a person and the free development of her personality. [↑](#footnote-ref-33)
34. Shorter Oxford English Dictionary p 22 [↑](#footnote-ref-34)
35. HH 162-11 @ p11-12 [↑](#footnote-ref-35)
36. HH 132-92 [↑](#footnote-ref-36)
37. 2007 (1) ZLR 209 (H) @ 236-242 [↑](#footnote-ref-37)
38. HH 50-2013 [↑](#footnote-ref-38)
39. HH 135-92 [↑](#footnote-ref-39)
40. HB 38-11 [↑](#footnote-ref-40)