

IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
AT LUSAKA
(Civil Jurisdiction)

2020/HP/0047

BETWEEN

GIVEN LUBINDA

JEAN KAPATA

TASILA LUNGU

AND

MUKOSHA FUNGA

NEWS DIGGERS MEDIA LIMITED

ENVIRONMENTAL INVESTIGATION AGENCY, Inc



1st Plaintiff

2nd Plaintiff

3rd Plaintiff

1st Defendant

2nd Defendant

3rd Defendant

DEFENDANTS' DEFENCE

1. The Defendants make no comment on Paragraphs 1 to 3 of the Statement of Claim, as the same are within the peculiar knowledge of the Plaintiffs.
2. Paragraphs 4, 6 and 7 of the Statement of Claim are admitted and the Defendants shall also aver at trial that the 3rd Defendant is an investigative corporate body whose mission is to protect endangered wildlife, forests and the global climate and to operate at the intersection between increasing global demand, trade; and the accelerating loss of natural resources and species.
3. Paragraph 5 of the Statement of claim is only admitted to the extent that the description of the 2nd Defendants business is accurate. The 2nd Defendant will aver that it was incorporated before the Companies Act number 10 of 2017 but continues to exist under the said Act.
4. The Defendants admit that after extensive and thorough investigations, the 3rd Defendant produced a report entitled "*Mukula Cartel: How Timber Trafficking Networks Plunder Zambian Forests*" referred to in Paragraphs 8 to 11 of the Statement of Claim (the "Report") and that the 1st and 2nd Defendants published opinions and articles citing the said Report.

5. The Defendants deny paragraph 12 of the Statement of Claim and will put the Plaintiffs to strict proof thereof. The Defendants will aver at trial that before publishing the Report, the 3rd Defendant sought the reaction of the Plaintiffs through the Zambian Embassy, but did not get any feedback from them. In the same fashion, on 6th December, 2019, in the morning following the release of the Report, an effort was made by the 2nd Defendant to get a reaction from the Plaintiffs and their reaction, denying the said allegations was published.
6. The 3rd Defendant admits paragraph 13 of the Statement of Claim.
7. As regards paragraph 14 and 15 of the Statement of Claim, the Defendants will rely on the defence of justification at trial and will aver that;
 - i. It is true that high profile figures in the Patriotic Front Government orchestrated and facilitated massive trafficking of Mukula Timber ("Mukula"). In fact, the Patriotic Front Government banned the trade in Mukula to exclude duly licensed traders and allow only those in the then Patriotic Front ("PF") Party Government and their close associates to freely trade in Mukula and other endangered timber species, hence the term "*Mukula Cartel*."
 - ii. It will be shown at trial that the Plaintiffs and their associates were named by various traders to be involved in the illegal trade of Mukula;
 - iii. It is true and will be shown at trial that a housing complex has been built and plots of land allocated in Forest Reserve Number 27 in Lusaka, Zambia and that both the 2nd (Jean Kapata) and 3rd (Tasila Lungu) Plaintiffs are beneficiaries;
 - iv. It will further be shown at trial that the 1st Plaintiff (Given Lubinda) received huge amounts of money from Chinese traders connected to Mukula trade and used that same money to purchase property in Forest Reserve Number 27.
8. The Defendants make no comment on paragraph 16 of the Statement of Claim as the same is within the peculiar knowledge of the Plaintiffs but will put the Plaintiffs to strict proof thereof.
9. The Defendants deny paragraph 17 of the Statement of Claim and will put the Plaintiffs to strict proof thereof. The Defendants repeat paragraph 5 above.

10. The Defendants deny that the article reproduced at paragraph 18 of the Statement of Claim is defamatory and shall aver that the said article is a mere publication of a statement made by former President Edgar Chagwa Lungu denying any involvement in the Mukula trade with no allegations or adverse references made to the Plaintiffs.
11. The Defendants deny that the article reproduced at paragraph 19 of the Statement of Claim is defamatory and will aver at trial that the contents of the said article are true in statement and fact and a fair comment on a matter of public importance, as demonstrated hereunder:
 - i. It will be shown at trial that the general public was convinced that some government ministers, state house officials and close associates of former President Edgar Lungu, who was then President of the Republic of Zambia, were enriching themselves from the illegal trade in Mukula.
 - ii. It will be shown at trial that Zambian Police officers and members of the Zambia Defence Forces were being abused to facilitate the smuggling of Mukula, while arresting and beating up those who attempted to expose the cartel. In fact, the Zambia Association of Timber and Forestry Based Industries (ZATFBI), on various occasions, wrote to the office of the 2nd Plaintiff (Jean Kapata) *inter alia*, to complain about the brutalisation of their members by the Police and the Military, and the unjust confiscation of their legally harvested Mukula.
 - iii. It will further be shown at trial that cabinet ministers and state house officials connected to the Mukula trade, used surrogates and/or fronts in the smuggling business.
 - iv. Further, it will be shown at trial that some vigilant Zambian Youths intercepted trucks carrying illegal Mukula logs and were unfairly treated by the Patriotic Front Government and incarcerated.
 - v. It will be shown at trial that the trucks carrying Mukula belonging to Emmanuel Simangolwa were parked at Garden Police in Lusaka. When the Police were contacted to explain the suspicious Mukula laden trucks, their spokesperson Esther Mwaata Katongo said the matter was being investigated, but the findings have never been revealed to the public to date.

vi. It will be shown at trial that the 2nd Plaintiff (Jean Kapata) signed a contract with Timber Producers Association of Zambia President Charles Masange's company to make chalets for her in Kabompo and that the payment for this contract was to be all kinds of confiscated timber including Mukula. It will also be shown that Mr. Masange was given police escort by the Patriotic Front Government, to move the timber from Chirundu to his processing plant in Makeni Lusaka at the time, when there was an alleged ban of trade in Mukula.

12. The Defendants deny that the article reproduced in paragraph 20 of the Statement of Claim is defamatory of the Plaintiffs and the Plaintiffs will be put to strict proof thereof. The Defendants shall aver at trial that these were opinions and fair comment on a matter of public interest, arising from the revelations made by the then Home Affairs Minister Honourable Stephen Kampyongo, who disclosed on national television that criminals who smuggle Mukula liked using his name and that of the 2nd Plaintiff (Jean Kapata) to smuggle Mukula. The opinion raised questions as to why the said criminals were using their names and not any other minister or government official.
13. The Defendants deny that the article reproduced in paragraph 21 of the Statement of Claim is defamatory of the Plaintiffs and the Plaintiffs will be put to strict proof thereof. The Defendants shall aver at trial that the contents of the article complained of were true in statement and fact and will show at trial that the Patriotic Front Government, of which the 1st (Given Lubinda) and 2nd (Jean Kapata) Plaintiffs were part and with which the 3rd Plaintiff (Tasila Lungu) was associated, was indeed a corrupt government.
14. The Defendants deny that the Opinion reproduced in paragraph 22 of the Statement of Claim is defamatory of the Plaintiffs and the Plaintiffs will be put to strict proof thereof. The Defendants shall aver at trial that the 2nd Plaintiff (Jean Kapata) disclosed in Parliament, in February 2018, that the Zambia Forestry and Forest Industries Corporation Plc ('ZAFFICO') was selling Mukula at less than the market price, and that the money realised from the illegal sale of Mukula was given to the Kawambwa Tea Company Limited, without first remitting the proceeds to the Zambia Government's Treasury through the said treasury account known as Control 99. It is also a fact that the 2nd Plaintiff (Jean Kapata) authorised the said illegal transactions.

15. The Defendants deny paragraph 23 of the Statement of Claim and the Plaintiffs will be put to strict proof thereof. The Defendants shall aver at trial that it was established by the Centre for International Forest Research ('CIFOR'), that smuggled Mukula was exported from Zambia with falsified declarations and that, China in fact imported more Mukula from Zambia than what government authorities had declared and recorded. Zambia declared to have exported 3,000 m³ of Mukula logs valued at US\$900,000 in 2016, while China declared Mukula imports from Zambia of about 61,000m³ for an approximate value of US\$87 million. The Defendants will also aver at trial that the Financial Intelligence Centre (FIC), reported in its 2017 money laundering/terrorist financing Trends Report that Zambia recorded ZMW4,454,726 in suspicious cash transactions linked to Mukula trade. This opinion was fairly published on a matter of public interest and it cannot be libellous or defamatory of the Plaintiffs.
16. The Defendants deny that the article reproduced at paragraph 24 of the Statement of Claim is defamatory and will put the Plaintiffs to strict proof thereof. The Defendants will aver at trial that the 3rd Plaintiff (Tasila Lungu) has amassed unexplained wealth which cannot be accounted for from her salary. Until and unless her unexplained extra sources of income are disclosed to the public, it is fair to question how the 3rd Plaintiff (Tasila Lungu) had accumulated so much wealth to be able to build an expensive football pitch; donate hundreds of bags of maize to citizens; donate a police station to the government; and fence off a public forest. Considering that she was named in the Mukula smuggling investigation, the Defendants shall aver that it cannot be defamatory to advise the then President's daughter to delink herself from people who engage in illegal trade of Mukula.
17. Paragraph 25 of the Statement of Claim is denied as the article reproduced in the said paragraph 25, does not mention the Plaintiffs and they will be put to strict proof thereof. The Defendants will further aver that, it is a proven fact that some chiefs in Zambia have been involved in the smuggling of Mukula and questionable dealing in land and other natural resources.
18. The Defendants deny that the Opinion reproduced in Paragraph 26 of the Statement of Claim is defamatory of the Plaintiffs and will aver at trial that:
 - i. The Patriotic Front Party, of which the Plaintiffs were part, used to get its political party funding from corrupt activities, including the smuggling of Mukula.

- ii. The Patriotic Front Party spent huge and unprecedented volumes of money on campaigns across the country that cannot be accounted for.
 - iii. The Patriotic Front Party campaign materials were imported from China where the smuggled Mukula was sold. It will be shown at trial that the 2nd Plaintiff (Jean Kapata) gave export permits for Mukula to Chinese companies that were friendly to the Patriotic Front Party.
19. The Defendants deny that the article reproduced at paragraph 27 is defamatory as alleged or at all and will put the Plaintiffs to strict proof thereof.
20. The Defendants admit paragraph 28 of the Statement of Claim only to the extent that some of the articles and opinions make reference to the 3rd Defendant's publication.
21. The Defendants deny paragraphs 29 and 30 of the Statement of Claim and repeat paragraph 5 above. The Plaintiffs' reaction was sought and the Plaintiffs will be put to strict proof thereof. The Defendants further deny paragraph 30 of the Statement of Claim in as far as it states that the said Report, articles and opinions meant or were understood to mean or were capable of meaning in their natural and ordinary meaning any of the things alleged by the Plaintiffs and they will be put to strict proof thereof.
22. The Defendants deny paragraphs 31 of the Statement of Claim and shall aver at trial that in so far as the words complained of meant that there were reasonable grounds to suspect that the Plaintiffs were involved in the Mukula Trade, they are true in substance and in fact.

Particulars of fact:

- i. The Patriotic Front Government, through the 2nd Plaintiff (Jean Kapata) as Minister of Lands and Natural Resources illegally banned the legitimate trade in Mukula under the pretext that Mukula was among the endangered species when the same government at the same time was permitting the alleged endangered species to be exported in its log form by themselves and their close associates.
- ii. The ban referred to above, did nothing to protect Mukula trees but provided a cover for the then President Edgar Lungu and his associates and various government ministers to trade in Mukula.

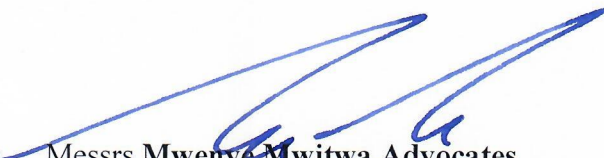
- iii. Some Chinese traders were even kept and worked out of Zambian military barracks to shield the illegal trade in Mukula.
- iv. The Zambia Association of Timber and Forestry Based Industries (ZATFBI) commenced an action under Cause number **2017/HP/1016**, challenging *inter alia*, the said Mukula trade ban. The Judge in that case ruled that the Ban was illegal and it should be reversed. However, the 2nd Plaintiff (Jean Kapata) together with the Government of that time, of which the 1st (Given Lubinda) and 2nd (Jean Kapata) Plaintiffs were part and the 3rd Plaintiff (Tasila Lungu) was associated, ignored the said Judgment and kept the ban while continuing to trade in Mukula with their close associates.
- v. The Patriotic Front government, through the 2nd Plaintiff (Jean Kapata), used State power and the abuse of the Police, Zambia National Service and other security wings to confiscate legally obtained Mukula from various Zambian licence holders and put it in the care of ZAFFICO where it was looted.
- vi. ZAFFICO was being used by Patriotic Front Government officials, including the 2nd Plaintiff (Jean Kapata) to smuggle Mukula under the pretext that they were selling the confiscated Mukula.
- vii. The Financial Intelligence Centre (FIC) reported that in 2018, they received Suspicious Transaction reports (STRs) related to Mukula valued at ZMW 2,156,000.00, despite the ban on Mukula at the time. According to that same Report, many of the individuals in the illegal trade of Mukula established other businesses through the proceeds.
- viii. The 1st Plaintiff (Given Lubinda) received the sum of US\$180,000.00 into his Barclays Bank Account in or about January, 2019 from a Chinese Mukula connected company and used that same money to among other things, purchase property in Lusaka.
- ix. The 2nd Plaintiff (Jean Kapata) gave instructions amounting to a direction to smuggle Mukula out of the country. The said instructions, issued to the Principal Forestry officer in Kabwe, Central Province was for a Chinese Company called ZHELI WOOD to be allowed to export 18 containers of Mukula logs to China. This

instruction from Ms. Kapata was given during a period when she herself had announced a ban on Mukula trade. In the said instruction, the 2nd Plaintiff (Jean Kapata) gave instructions that the Mukula logs should be moved out of the country using any port other than Nakonde Boarder, which at the time had been under watch from citizens who had been on high alert of Mukula smuggling. Furthermore, permits were granted by the 2nd Plaintiff (Jean Kapata) to the Zambia Association of Persons with Disabilities ('ZAPD') where a list of beneficiaries was made but who were unaware of this. Huge tracks of Mukula were cleared by the Zambian military under the pretext of giving land to the beneficiaries. The proceeds from the export of this Mukula were not given to the alleged beneficiaries.

- x. The 2nd Plaintiff (Jean Kapata) gave permits to Marcopolo Tiles Limited of the Wonderful Group of Companies to trade in Mukula even during the ban.
 - xi. The 2nd Plaintiff (Jean Kapata) also had very close ties with Sikale Wood, a company that trades in wood products including Mukula.
 - xii. The 2nd Plaintiff (Jean Kapata) further amassed various properties and huge sums of money during her tenure as Minister.
 - xiii. The 3rd Plaintiff (Tasila Lungu) had at the material time, huge unexplained sums of money, which could not have been acquired through her job.
 - xiv. The Zambia Association of Timber and Forestry Based Industries (ZATFBI) in several letters written to the National Assembly in 2017, cited top government officials and their families as being involved in illegal Mukula trade.
 - xv. Smugglers used the names of government officials whom they knew were linked to Mukula business, including the 1st (Given Lubinda) and 2nd (Jean Kapata) Plaintiffs, to smuggle Mukula. These smugglers using the Plaintiffs' names were neither arrested nor prosecuted and the Plaintiffs had done nothing to stop criminals from using their names.
23. The Defendants, if necessary, even though the Statement of Claim does not particularise the words complained of, will rely on the defences of justification and will also rely on Section 6 of the Defamation Act, Chapter 68 of the Laws of Zambia.

24. The Defendants will also plead in their Defence that the said words were fair comment on a matter of public interest, namely trade in Zambian Mukula.
25. The Defendants deny that the Plaintiffs are entitled to any of the claims outlined in the Statement of Claim or at all
26. **SAVE** as herein expressly admitted, the Defendants deny each and every allegation in the Plaintiffs Statement of Claim as if the same were herein set out specifically and traversed *seriatim*.

Dated the 20th day of January 2022.

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1st Plaintiff

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