

Zambia

## Defamation Act, 1953

### Chapter 68

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## Defamation Act, 1953

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# Zambia

## Defamation Act, 1953

### Chapter 68

Commenced on 27 November 1953

*[This is the version of this document at 31 December 1996.]*

**An Act to consolidate and amend the law relating to libel, other than criminal libel, and slander; and to provide for matters incidental thereto.**

#### 1. Short title

This Act may be cited as the Defamation Act.

#### 2. Interpretation

In this Act, unless the context otherwise requires—

"**authenticated report**" means a report, paper, votes or proceedings published by the order or under the authority of the President, the Cabinet or the National Assembly;

"**newspaper**" means any paper containing public news or observations thereon, or consisting wholly or mainly of advertisements, which is printed for sale and is published in Zambia either periodically or in parts or numbers at intervals not exceeding thirty-six days;

"**wireless broadcasting**" means publication for general reception by means of radiotelephonic emissions intended to be received by the public, and "broadcast by wireless" shall be construed accordingly;

"**words**" includes pictures, visual images, gestures and other methods of signifying meaning.

*[As amended by G.N. No. 303 of 1964]*

#### 3. Slander affecting official, professional or business reputation

In an action for slander in respect of words calculated to disparage the plaintiff in any office, profession, calling, trade or business held or carried on by him at the time of the publication, it shall not be necessary to allege or prove special damage, whether or not the words are spoken of the plaintiff in the way of his office, profession, calling, trade or business.

#### 4. Slander of women

In an action for slander in respect of words imputing unchastity or adultery to any woman or girl, it shall not be necessary to allege or prove special damage:

Provided that in any such action a plaintiff shall not recover more costs than damages unless the court before which the action is brought shall certify that there was reasonable ground for bringing the action.

#### 5. Slander of title, etc.

(1) In an action for slander of title, slander of goods or other malicious falsehood, it shall not be necessary to allege or prove special damage—

(a) if the words upon which the action is founded are calculated to cause pecuniary damage to the plaintiff and are published in writing or other permanent form; or

- (b) if the said words are calculated to cause pecuniary damage to the plaintiff in respect of any office, profession, calling, trade or business held or carried on by him at the time of the publication.
- (2) Subsection (1) of section eighteen shall apply for the purposes of this section as it applies for the purposes of the law of libel and slander.

## **6. Justification**

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.

## **7. Fair comment**

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 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.

## **8. Newspaper reports of proceedings in court privileged**

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.

## **9. Qualified privilege of newspapers**

- (1) 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.
- (2) In an action for libel in respect of any such report or matter as is mentioned in Part II of the Schedule, the provisions of this section shall not be a defence if it is proved that the defendant has been requested by the plaintiff to publish in the newspaper in which the original publication was made a reasonable letter or statement by way of explanation or contradiction, and has refused or neglected to do so, or has done so in a manner not adequate or not reasonable having regard to all the circumstances.
- (3) Nothing in this section shall be construed as protecting the publication of any matter the publication of which is prohibited by law, or of any matter which is not of public concern and the publication of which is not for the public benefit.
- (4) Nothing in this section shall be construed as limiting or abridging any privilege subsisting (otherwise than by virtue of section 4 of the Law of Libel Amendment Act, 1888, of the United Kingdom) immediately before the commencement of this Act.

## **10. Plea of publication without malice and negligence, with apology**

- (1) In an action for libel contained in any newspaper or other periodical publication, it shall be competent to the defendant to plead that such libel was inserted in such newspaper or other periodical publication without actual malice, and without gross negligence, and that before the commencement of the action, or at the earliest opportunity afterwards, he inserted in such newspaper or other periodical publication a full apology for the said libel, or, if the newspaper

or other periodical publication in which the said libel appeared should ordinarily be published at intervals exceeding one week, had offered to publish the said apology in any newspaper or periodical publication to be selected by the plaintiff in such action and to such plea to such action it shall be competent to the plaintiff to reply generally, denying the whole of such plea.

- (2) No plea shall be filed under the provisions of subsection (1) unless the defendant, at the time of filing such plea, makes a payment of money into court by way of amends, and any plea filed without such payment into court shall be considered a nullity and may be treated as such by the plaintiff in the action.

## 11. Unintentional defamation

- (1) A person who has published words alleged to be defamatory of another person may, if he claims that the words were published by him innocently in relation to that other person, make an offer of amends under this section; and in any such case—
  - (a) if the offer is accepted by the party aggrieved and is duly performed, no proceedings for libel or slander shall be taken or continued by that party against the person making the offer in respect of the publication in question (but without prejudice to any cause of action against any other person jointly responsible for that publication);
  - (b) if the offer is not accepted by the party aggrieved, then, except as otherwise provided by this section, it shall be a defence, in any proceedings by him for libel or slander against the person making the offer in respect of the publication in question, to prove that the words complained of were published by the defendant innocently in relation to the plaintiff and that the offer was made as soon as practicable after the defendant received notice that they were or might be defamatory of the plaintiff, and has not been withdrawn.
- (2) An offer of amends under this section must be expressed to be made for the purposes of this section, and must be accompanied by an affidavit specifying the facts relied upon by the person making it to show that the words in question were published by him innocently in relation to the party aggrieved; and for the purposes of a defence under paragraph (b) of subsection (1) no evidence, other than evidence of facts specified in the affidavit, shall be admissible on behalf of that person to prove that the words were so published.
- (3) An offer of amends under this section shall be understood to mean an offer—
  - (a) in any case, to publish or join in the publication of a suitable correction of the words complained of, and a sufficient apology to the party aggrieved in respect of those words;
  - (b) where copies of a document or record containing the said words have been distributed by or with the knowledge of the person making the offer, to take such steps as are reasonably practicable on his part for notifying persons to whom copies have been so distributed that the words are alleged to be defamatory of the party aggrieved.
- (4) Where an offer of amends under this section is accepted by the person aggrieved—
  - (a) any question of the steps to be taken in fulfilment of the offer as so accepted shall, in default of agreement between the parties, be referred to and determined by the High Court, whose decision thereon shall be final;
  - (b) the power of the court to make orders as to costs in the proceedings by the party aggrieved against the party making the offer in respect of the publication in question, or in proceedings in respect of the offer under paragraph (a), shall include power to order the payment by the person making the offer to the party aggrieved of costs on an indemnity basis and any expenses reasonably incurred or to be incurred by that party in consequence of the publication in question;

and if no such proceedings as aforesaid are taken, the High Court may, upon application of the party aggrieved, make any such order for the payment of such costs and expenses as aforesaid as could be made in such proceedings.

- (5) For the purposes of this section, words shall be treated as published by one person (in this subsection referred to as the publisher) innocently in relation to another if and only if the following conditions are satisfied, that is to say:
- (a) that the publisher did not intend to publish them of and concerning that other person, and did not know of circumstances by virtue of which they might be understood to refer to him; or
  - (b) that the words were not defamatory on the face of them, and the publisher did not know of circumstances by virtue of which they might be understood to be defamatory of that other person;
- and in either case that the publisher exercised all reasonable care in relation to the publication; and any reference in this subsection to the publisher shall be construed as including a reference to any servant or agent of his who was concerned with the contents of the publication.
- (6) Paragraph (b) of subsection (1) shall not apply in relation to the publication by any person of words of which he is not the author unless he proves that the words were written by the author without malice.

## 12. Mitigation of damages

- (1) In any action for libel or slander, the defendant may, 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 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 as he had an opportunity of so doing where the action was commenced before there was an opportunity of making or offering such apology.
- (2) In any action for libel or slander, the defendant may give evidence in mitigation of damages that the plaintiff has recovered damages, or has brought actions for damages, for libel or slander in respect of the publication of words to the same effect as the words on which the action is founded, or has received or agreed to receive compensation in respect of any such publication.

## 13. Agreements for indemnity

An agreement for indemnifying any person against civil liability for libel in respect of the publication of any matter shall not be unlawful unless at the time of the publication that person knows that the matter is defamatory, and does not reasonably believe that there is a good defence to any action brought upon it.

## 14. Limitation on privilege at elections

A defamatory statement published by or on behalf of a candidate in any election to any local authority or to the National Assembly shall not be deemed to be published on a privileged occasion on the ground that it is material to a question in issue in the election, whether or not the person by whom it is published is qualified to vote at the election.

*[As amended by G.N. No. 303 of 1964]*

## 15. Consolidation of actions

- (1) It shall be competent for a Judge or the court, upon the application by or on behalf of two or more defendants in actions in respect to the same, or substantially the same, defamatory statement brought by one and the same person, to make an order for the consolidation of such actions so that they shall be tried together.
- (2) After any order has been made under the provisions of subsection (1), and before the trial of the consolidated actions, the defendants in any new actions instituted in respect of the same, or substantially the same, defamatory statement, shall also be entitled to be joined in a common

action upon a joint application being made by such new defendants and the defendants in the actions already consolidated.

- (3) In a consolidated action under this section, the court shall assess the whole amount of damages (if any) in one sum, but a separate verdict shall be given for or against each defendant in the same way as if the actions consolidated had been tried separately, and if the court shall have found a verdict against the defendants in more than one of the actions so consolidated it shall proceed to apportion the amount of damages which it has so assessed between and against the said last-mentioned defendants, and if costs of the action are awarded to the plaintiff the court shall thereupon make such order as shall seem just for the apportionment of such costs between and against such defendants.
- (4) For the purposes of this section, "defamatory statement" includes libel, slander, slander of title, slander of goods, and other malicious falsehood.

## 16. Proceedings in respect of publication of authenticated reports

- (1) It shall be lawful for the defendant in an action for libel in respect of the publication by him or his servant of any authenticated report to bring before the court in which such action is commenced a certificate under the hand of the Speaker of the National Assembly or the Secretary-General to the Government stating that the authenticated report was published by the defendant or his servant by the order or under the authority of the National Assembly or the Cabinet, as the case may be, together with an affidavit verifying such certificate, and the court shall thereupon stay such action, and the action and every writ and process issued therein shall be and shall be deemed and taken to be finally put an end to, determined and superseded by virtue of this section.
- (2) Where a defendant intends to bring a certificate before a court under the provisions of subsection (1), he shall give at least twenty-four hours' notice of such intention to the plaintiff in the action.
- (3) Where any action for libel is commenced in respect of the publication of any copy of an authenticated report, the defendant may at any stage in the proceedings lay before the court such authenticated report, and such copy, with an affidavit verifying such authenticated report and the correctness of such copy, and the court shall thereupon stay the action, and such action and every writ and process issued therein shall be and shall be deemed and taken to be finally put an end to, determined and superseded by virtue of this section.

*[As amended by G.N. No. 303 of 1964]*

## 17. Extracts from authenticated reports

In any action for libel in respect of the printing or wireless broadcasting of any extract from or abstract of an authenticated report, it shall be a good defence to show that the matter in question was in fact an extract from or an abstract of an authenticated report and that the publication thereof was *bona fide* and without malice.

## 18. Wireless broadcasting

- (1) For the purposes of the law of libel and slander, the publication of words by wireless broadcasting shall be treated as publication in a permanent form.
- (2) Sections eight and nine shall apply in relation to reports or matters broadcast by wireless as part of any programme or service provided by means of a broadcasting station within Zambia, and in relation to the wireless broadcasting of such reports or matters, as they apply in relation to reports and matters published in a newspaper and to publication in a newspaper, and subsection (2) of section nine shall have effect, in relation to any such wireless broadcasting, as if for the words "in the newspaper in which" there were substituted the words "in the manner in which"

- (3) In this section, "broadcasting station" has the meaning assigned to it by the Zambia National Broadcasting Corporation Act.

*[Cap. 154]*

## **19. Proceedings affected and savings**

- (1) This Act applies for the purposes of any proceedings begun after the commencement of this Act, whenever the cause of action arose, but does not affect any proceedings begun before its commencement.
- (2) Nothing in this Act shall affect the privileges of the National Assembly or the Cabinet, or the law relating to criminal libel.

*[As amended by G.N. No. 303 of 1964]*

## **Schedule (Section 9)**

### **Newspaper statements having qualified privilege**

#### **Part I – Statements privileged without explanation or contradiction**

1. A fair and accurate report of any proceedings in public of the legislature of any part of Her Britannic Majesty's dominions outside Zambia.  
*[As amended by S.I. No. 72 of 1964]*
2. A fair and accurate report of any proceedings in public of an international organisation of which the United Kingdom or Zambia or Her Britannic Majesty's Government in the United Kingdom or the Government of Zambia is a member, or of any international conference to which such Governments send a representative.  
*[As amended by S.I. No. 72 of 1964]*
3. A fair and accurate report of any proceedings in public of the International Court of Justice or any other judicial or arbitral tribunal deciding matters in dispute between States.
4. A fair and accurate report of any proceedings before a court exercising jurisdiction throughout any part of Her Britannic Majesty's dominions outside Zambia, or of any proceedings before a court-martial held outside Zambia under the Naval Discipline Act, the Army Act, or the Air Force Act, of the United Kingdom.  
*[As amended by S.I. No. 72 of 1964]*
5. A fair and accurate report of any proceedings in public of a body or person appointed to hold a public inquiry by the Government or legislature of any part of Her Britannic Majesty's dominions outside Zambia.  
*[As amended by S.I. No. 72 of 1964]*
6. A fair and accurate copy of or extract from any register kept in pursuance of the provisions of any written law for the time being in force within Zambia which is open to inspection by the public, or of any other document which is required by such law to be open to inspection by the public.
7. A notice or advertisement published by or on the authority of any court within Zambia or any Judge or officer of such court.



## Part II – Statements privileged subject to explanation or contradiction

8. A fair and accurate report of the findings or decision of any of the following associations, or of any committee or governing body thereof, that is to say:
  - (a) an association formed in Zambia for the purpose of promoting or encouraging the exercise of or interest in any art, science, religion, or learning, and empowered by its constitution to exercise control over or adjudicate upon matters of interest or concern to the association, or the actions or conduct of any persons subject to such control or adjudication;
  - (b) an association formed in Zambia for the purpose of promoting or safeguarding the interests of any trade, business, industry or profession, or of the persons carrying on or engaged in any trade, business, industry or profession, and empowered by its constitution to exercise control over or adjudicate upon matters connected with the trade, business, industry or profession, or the actions or conduct of those persons;
  - (c) an association formed for safeguarding the interests of any game, sport or pastime to the playing or exercise of which members of the public are invited or admitted, and empowered by its constitution to exercise control over or adjudicate upon persons connected with or taking part in the game, sport or pastime;

being a finding or decision relating to a person who is a member of or is subject by virtue of any contract to the control of the association.
9. A fair and accurate report of the proceedings at any public meeting held in Zambia, that is to say, a meeting *bona fide* and lawfully held for a lawful purpose and for the furtherance or discussion of any matter of public concern, whether the admission to the meeting is general or restricted.
10. A fair and accurate report of the proceedings at any meeting or sitting in any part of Zambia of—
  - (a) any local authority or committee of a local authority or local authorities;
  - (b) any commission, tribunal, committee or person appointed for the purposes of any inquiry by Act or by the President;
  - (c) any other tribunal, board, committee or body constituted by or under, and exercising functions under, any written law for the time being in force within Zambia not being a meeting or sitting admission to which is denied to representatives of newspapers and other members of the public.

*[As amended by G.N. No. 303 of 1964 and S.I. No. 72 of 1964]*

11. A fair and accurate report of the proceedings at a general meeting of any company or association constituted, registered or certified by or under any written law for the time being in force within Zambia or incorporated by Royal Charter, not being a private company within the meaning of the Companies Act.
 

*[Cap. 388]*
12. A copy or fair and accurate report or summary of any notice or other matter issued for the information of the public by or on behalf of the Government of Zambia, a local authority or superior police officer.

## Part III – Interpretation

13. In this Schedule—
 

"**legislature**", in relation to any territory comprised in Her Britannic Majesty's dominions which is subject to a central and a local legislature, means either of those legislatures;

"**local authority**" means a municipal council, or township council;

**"part of Her Britannic Majesty's dominions"** means the whole of any territory within those dominions which is subject to a separate legislature.

*[As amended by S.I. No. 72 of 1964]*

14. In relation to the following countries and territories, that is to say, India, the Republic of Ireland, any protectorate, protected State or trust territory within the meaning of the British Nationality Act, 1948, of the United Kingdom, any territory administered under the authority of a country mentioned in subsection (3) of section 1 of that Act, the Sudan and the New Hebrides, the provisions of this Schedule shall have effect as they have effect in relation to Her Britannic Majesty's dominions, and references therein to Her Britannic Majesty's dominions shall be construed accordingly.

*[As amended by S.I. No. 72 of 1964]*