

SOUTH AFRICA / JUDGMENT

Adams v Makhoye (2974/2019) [2023]

ZANWHC 142 (17 August 2023)

[2023] ZANWHC 142

COURT

North West High Court, Mafikeng

BEFORE

Gura

CASE / FILE NUMBER

2974/2019

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IN

THE HIGH COURT OF SOUTH AFRICA

NORTH

WEST DIVISION, MAHIKENG

CASE

NO: 2974/2019

Reportable:

YES

/ NO

Circulate

to Judges:

YES

/ NO

Circulate

to Magistrates:

YES / NO

Circulate

to Regional Magistrates:

YES / NO

In

the matter between:

A

P ADAMS

PLAINTIFF

and

L

MAKHOYE

DEFENDANT

JUDGMENT

GURA J

- [1] This is an action for delictual damages based on the alleged defamation of character. This judgment deals with both the merits (liability) and the quantum of damages. On 2 December 2019 at 10H15 the Sheriff served the combined summons in this case at the defendant's chosen domicilium citandi et executandi by affixing it to the principal door. The defendant did not enter any appearance to defend the action.
- [2] The plaintiff then launched an application for default judgment where he claims payment in the amount of R1 500 000-00; interest a tempore morae and costs. The material averments in the particulars of claim are that on or about 15 October 2018 the defendant forwarded an email to the North West Management Intervention Brand. This email,

which forms annexure A1 to the particulars of claim reads:

"Hi Mr Brand according to our telephone conversation I formally want to lay complain against the general who is station at phokeng his name is Adams I don't whether is a standard at saps for senior officers to have affair with juniors my wife who is stationing at Rustenburg detective she is having affair in public with the general her name I constable Morongwa Makhoye hope you Will get help from the saps as I am very stranded not knowing were to report or get help ion the issue."

- [3] On the date of trial the only witness who testified was the plaintiff himself, Mr Peter Authur Adams. What follows is his evidence in court. He is a member of the South African Police Services with a rank of Major General based at Bloemfontein as a District Commissioner of the District of Mangaung Metropolitan. At the time of this incident he was a District Commissioner of Bojanala District at Phokeng in North West. At that time his rank was still Major General. At that time he was in charge of ten police stations which increased to twelve later.
- [4] The email in which the defendant accuses plaintiff of infidelity came to his (plaintiff) attention through the office of the Provincial Commissioner of SAPS in North West. It is Luit. Brand who informed plaintiff that there is a complaint against him which had been found in a nodal point for complaints. Luit. General Motswenyane delegated Major General Naidoo to investigate these allegations against the plaintiff. The investigations revealed that the defendant's wife, who is also a police officer, had been having telephone communications with a person whose name she did not reveal but she had been referring to that person as "General". Naidoo told the plaintiff that the message between "General" and defendant's wife was of a sexual nature. That communication was in Setswana language. The only languages which the plaintiff knows is Afrikaans and English.

[5] The plaintiff cannot say how many junior officers saw the defamatory information but many such junior police officers have access to the modal point where members of the public deposit their complaints against members of the SAPS. Thereafter the plaintiff noticed that some police officers no longer had the same respect for him as before. This adversely affected the way the plaintiff communicated with female police officers. This allegation of infidelity dented the plaintiff's reputation to both his juniors and his superiors. On 15 October 2018 the plaintiff was the only police officer with the surname "Adams" at Phokeng district and he was accordingly the only General in Phokeng.

[6] The plaintiff is a father of two young daughters with his wife who is also a member of SAPS. The plaintiff then took the court to his working career before this incident in order to show the court that he was a highly respected commissioned officer of SAPS who was dedicated to his work. In 2012 he was a member of Visible Policing based at Pretoria. During the Marikana massacre, he was deployed to Marikana just two days after the Marikana massacre. He became the

operational commander of the police who were deployed to Marikana. He was then exposed to the North West as a Tactical Commander under difficult circumstances.

[7] On 1 December 2012 he was appointed a Cluster Commander, a Brigadier for the Potchefstroom area. He never doubted his ability for he was properly trained and he had the necessary experience. On 31 July 2016 he was promoted to the rank of Major General and posted to the Rustenburg Cluster. In his over 30 years experience at work he has an untainted record. He has never been charged with misconduct. The plaintiff's impression after reading this email is that the defendant portrays him as a person of low morals, who engages in a love relationship with junior police officials. The implication was that he was using his high rank to solicit sex from his subordinates. It dented his confidence because these allegations came unexpectedly

from nowhere. That is the evidence of the plaintiff.

[8] The test in determining whether or not a statement is defamatory is an objective one. The standard is that of a reasonable ordinary and right-thinking reader. The reasonable reader is a person who gives a reasonable meaning to the words used within the context of the document as a whole.[1]

[9] At common law, the elements of the delict of defamation are: (a) the wrongful and

(b) intentional (c) publication of (d) defamatory statement (e) concerning the plaintiff. It is not an element of the delict in common law that the statement be false. Once a plaintiff establishes that a defendant has published a defamatory statement concerning the plaintiff, it is presumed that the publication was both unlawful and intentional. A defendant wishing to avoid liability for defamation must then raise a defence which rebuts unlawfulness or intention.[2]

[10] Yet the plaintiff does not have to establish everyone to these elements in order to succeed. All the plaintiff has to prove at the outset is the publication of defamatory matter concerning himself or herself. Once the plaintiff accomplished this, it is presumed that the statement was both wrongful and intentional. A defendant wishing to avoid liability for defamation must then raise a defence which excludes either wrongfulness or intent. Until recently there was doubt as to the exact nature of the onus. But it is now settled that the onus on the defendant to rebut one or the other presumption is not only a duty to adduce evidence, but a full onus, that is, it must be discharged on a preponderance of probabilities. A bare denial by

the defendant will therefore not be enough. Facts must be pleaded and proved that will be sufficient to establish a defence.[3]

[11] I am satisfied that the defendant made these derogatory allegations against the plaintiff *animo injuriandi* and without just cause. The words used did actually defame the plaintiff's character. His appearance in the witness box was that of a person who felt humiliated and belittled with what he called false allegations against him. Accordingly, the defendant is held liable to plaintiff for damages due to the said defamatory words.

[12] I now turn to deal with quantum of damages and a reference to few cases will be undertaken. In *Manyi v Dhlamini*[4] the court stated:

"In determining quantum in respect of defamation, the Court must have regard to: (i) the seriousness of the defamation; (ii) the nature and extent of publication; (iii) the reputation, character and conduct of the plaintiff, (iv) the motives and conduct of the defendant."

[13] In *Hechter v Benade*[5] the defendant defamed the plaintiff by publishing a statement on Facebook starting a smearing campaign against the plaintiff, accusing

the plaintiff of being a peeping tom. The Court awarded damages in favour of the plaintiff in the amount of R350 000, 00. In the matter of *Tsedu and Others v Lekota and Another*[6] an article was published in *City Press* defaming the respondents. The court awarded damages in the amount of R100 000-00 for each of the respondents.

[14] In the matter of *Becker v Brits*[7] the Plaintiff was a successful farmer, farming in Malmesbury for over 20 years. The Defendant was a pastor to the Plaintiff's family. The Defendant wrote two letters containing defamatory statements about the Plaintiff. In these letters the Defendant stated that the Plaintiff abused alcohol. Plaintiff claimed R500 000.00 in damages. At paragraph 81 of the Judgment, the Court stated:

"Defamation laws are generally aimed at protecting a person's right to an unimpaired reputation and good name. Reputation is the reflection which the individual has in the eyes of society. In Masetlha v President of South Africa and Another [2007] ZACC 20; 2008 (1) SA 566 (CC), the following was stated generally in connection with the career and reputation of an individual, namely:

“ . . . People live not by bread alone; indeed, in the case of career functionaries, reputation and bread are often inseparable.”

At paragraph 82 the court said:

“Reputation and dignity are discrete concepts. Respect for reputation and dignity of others is a requirement of our law with unfortunate consequences for defaulters. Thus, damages arising from defamation, fall to be awarded to an injured party thereto.”

Paragraph 92 of the

judgment:

“The plaintiff contends that damages in the amount of R500 000.00 would be an appropriate award. No mechanical arithmetical calculation is advanced and nor is there any obligation on the plaintiff that such a calculation be advanced. It is well established that a comparison of cases is helpful in quantifying the damages in a defamation claim. Useful as this exercise may be, a comparison of the cases cannot be used as the primary tool to determine the award.”

Paragraph 93 of the

judgment:

“In Dikoko v Mokhatla 2006 (6) SA 235 (CC) at para [109] – [110], the difficulty that courts face when quantifying damages in defamation cases was rationalized in the following terms, namely:

‘ . . . There is a further and deeper problem with damages awards in defamation cases. They measure something so intrinsic to human dignity as a person’s reputation and honour as if these were market-commodities. Unlike businesses, honour is not quoted on the Stock Exchange. The true and lasting solace for the person wrongly injured, is the vindication by the Court of his or her reputation in the community. The greatest prize is to walk away with head high, knowing that even the traducer has acknowledged the injustice of the slur . . .

And

‘ . . . There is something conceptually incongruous in attempting to establish a proportionate relationship between the vindication of reputation on the one hand and determining a sum of money as compensation on the other. The damaged reputation is either restored to what it was, or it is not. It cannot be more restored by a higher award and less restored by a lower one. It is the judicial finding in favour of the integrity of the complainant that vindicates his or her reputation, not the amount of money he or she ends up being able to deposit in the bank...’

Paragraph 94 of the

judgment:

“In Muller v SA Associated Newspapers Ltd and Others 1972 (s) SA 589 (C) at 595, the court emphasized some of the important factors to be considered to determine the quantum in defamation actions in the following manner, namely:

“...the character and status of the plaintiff, the nature of the words used, the effect that they are calculated to have upon him, the extent of the publication, the subsequent conduct of the defendant and, in particular, his attempts, and the effectiveness thereof, to rectify the harm done.”

The Court finally awarded damages to the amount of R350 000-00 plus costs on the scale as between attorney and client on the High Court scale.

[15] In the current matter, Major General Adams is a police officer of many years in the SAPS with a good track record. He was trusted and respected by his peers and his subordinates looked upon him for guidance. His superiors and his employer placed a high premium on him and that is why he was deployed to the problem area, Marikana, to lead the SAPS team on the ground in a very volatile and sensitive situation where about fourteen people had been either shot or hacked to death. His repute in his career is untainted prior to this incident. The direct result of the defamatory words on this respectable career officer, a husband and a father was to dent his image. His moral dwindled and he lost confidence on himself. I have no doubt that a high degree of harm was caused to his esteem and integrity. Having said that, in regard to the element of publication, I am not convinced that the defamatory information reached the ears and eyes of many police officers. The evidence of the plaintiff on that element was sketchy. All what he said was that junior police officials do fetch complaints from the portal point and they deliver them to superiors. Ordinarily, a certain group of police officers would have been assigned that duty. However, I do accept that even

two police officers would have spread these ugly news to more people.

Order

[16] In the circumstances, the following order is made:

16.1 The defendant is delictually liable to the plaintiff for defamation.

16.2 The defendant to pay damages to the plaintiff in the amount of R230 000-00;

16.3 The defendant to pay costs.

SAMKELO GURA

JUDGE OF THE HIGH COURT

APPEARANCES

DATE OF HEARING: 03 OCTOBER 2022 DATE OF JUDGMENT: 17 AUGUST 2023 FOR THE
PLAINTIFF: ADV D SMIT FOR THE DEFENDANT: NO APPEARANCE

- [1] Johnson v Beckett and Another [1991] ZASCA 175; 1992 (1) SA 762 (A) at 766G – H.
- [2] Khumalo and Others v Holomisa [2002] ZACC 12; 2002 (5) SA 401 (CC) at para 18.
- [3] Booysen v Farrar 2013 JDR 0821 (GNP) at para 13 where quoted from Le Roux and Others v Day (Freedom of Expression Institute and Restorative Justice Centre as Amici Curiae) 2011 (3) SA 274 (CC) at para 85.
- [4] (36077/13) [2018] ZAGPPHC 568 (18 July 2018) at para 22.
- [5] (20595/2016) [2016] ZAGPPHC 1018 (5 December 2016) at para 16.1.
- [6][6] 2009 (4) SA 372 (SCA) at para 25.
- [7] (14156/2019) [2022] ZAWCHC 44 (23 March 2022).

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