

SOUTH AFRICA / JUDGMENT

## de Villiers v Minister of Justice and Constitutional Development and Another (57558/2014) [2021] ZAGPPHC 443 (2 July 2021) [2021] ZAGPPHC 443

COURT

North Gauteng High Court, Pretoria

BEFORE

T J Raulinga

CASE / FILE NUMBER

57558/2014

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### Source record

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, PRETORIA

CASE

NO:57558/2014

In

the matter between:

PAUL  
JACOBUS DAWID DE VILLIERS  
PLAINTIFF  
and  
THE  
MINISTER OF JUSTICE  
FIRST  
DEFENDANT  
AND  
CONSTITUTIONAL DEVELOPMENT  
ZINHLE  
NDLOVU  
SECOND  
DEFENDANT

## JUDGMENT

## RAULINGA J

1. Plaintiff issued summons against the defendants on or about 5 August 2014 for iniuria and defamation, premised on an incident at the Magistrate Court, Paulpietersburg. On 29 September 2011, when second defendant in the presence of the individuals alleged in paragraph 8 of the plaintiff's particulars of claim, amongst others, allegedly accused plaintiff of stealing books belonging to the Magistrate's Court Paulpietersburg and also stated that she would see him rot in jail for a long time.
2. The plaintiff's action is based on the actio iniuria, which grants relief for any impairment of a person, the person's dignity or the reputation of the person.
3. Albeit that plaintiff instituted two separate claims, one for iniuria and the other for defamation, the plaintiff abandoned his second claim for damages premised on iniuria.
4. The following issues are common cause, on the pleadings, that:
  - 4.1 The defendants' special plea has been abandoned;
  - 4.2 There was an incident on 29 September 2011 at the Magistrate's Court Paulpietersburg;
  - 4.3 Both plaintiff and second defendant were present;
  - 4.4 Amongst others, second defendant asked to check boxes belonging to the plaintiff as he was leaving the office which plaintiff refused to allow; and
  - 4.5 The second defendant, at all relevant times, acted within the course and scope of her employment with the first defendant and the first defendant is therefore vicariously liable in the event that the court finds that the words complained about were in fact uttered by the second defendant.
5. When the trial commenced, the defendants also admitted that the second defendant had said to the plaintiff in the presence of third parties, that she will see him rot in jail for a long time.
6. The disputed facts are related to whether second defendant had uttered the words mentioned in paragraph 4 of plaintiff's particulars of claim and if publication thereof had occurred.
7. The plaintiff bears the onus to prove on a balance of probabilities that the second defendant had accused him of stealing books belonging to the Magistrate's Court Paulpietersburg.
8. In total, four witnesses were called, three by the plaintiff and one by the defendants.

9. The plaintiff testified that he is currently a pensioner, having retired as Chief of the Magistrate's Paulpietersburg on 1 April 2011. When he retired he put his books in boxes and stored them in a store room and locked it with a padlock. He then handed the key to Sibongile who was at that time a cleaner at court.

10.

On 29 September 2011, he together with Mr Fourie went to court to collect the boxes. When he asked for the keys from Sibongile, she told him that the second defendant took the key. Whilst he was waiting with his back toward the wall, he immediately noticed that the door to the storeroom was suddenly opened. He is not the one who opened the door. Upon entering the storeroom, he noticed

that some of the boxes were opened. He suspects it was the second defendant or the officials of the Court who opened the boxes.

11.

Whilst he was waiting, a policeman approached him with a case docket and informed him that the second defendant opened a case of housebreaking against him.

12.

After dropping the first load to his house, before collecting the second load, he went to the police station and requested Constable De Wet and Warrant Office De Wet to accompany him to the Court because he suspected that the second defendant could cause a commotion.

13.

Whilst he was standing outside, the second defendant came to the bakkie and told him that he was a thief and that he would rot in jail for a very long time. He never responded to what the second defendant was saying because he was avoiding a confrontation.

14.

Under cross-examination, he confirmed that he knew the process known as handover, which is done when a person retires or resigns from the Court. That process is supposed to be conducted by the second defendant every six months, but she did not do so. He refused the second defendant to check the boxes. He confirmed that the door of the store-room was locked when he arrived. After the second load he bought a new lock, locked the room and gave the keys to Sibongile. He said all the books were in the store-room. He denied that he broke the padlock with a bolt cutter or a pair of pliers. He thought one of Mr Fourie's labourers broke the lock.

He denied that Constable De Wet saw him breaking the padlock.

15.

The second witness called by the plaintiff was Constable De Wet, who testified that on that day, plaintiff asked him to assist him at Court, to witness when he was removing some of his personal belongings from the store-room. He requested Warrant Officer De wet, (who is his wife) to accompany him to Court.

16.

When he arrived at Court, the store room was already opened. The second defendant at that stage was extremely upset. She insisted that she wanted to inspect the boxes in order to check the books which were missing. She said that the plaintiff was stealing the books and further, that he will die and rot in jail. Thereafter the second defendant left for the police station. Mr Fourie and Mr Lington (who has since passed on) were present when the second defendant uttered those words.

17.

Under cross-examination, he confirmed that he made a statement appearing on page 23 of the bundle. Further, that what he testified was the truth. In the statement he said; “Mr De Villiers then took a bolt cutter and clipped the padlock he also used a key which was handed to by the cleaner Sibongile on which Mr De Villiers opened the store room and gained entrance”

In reply, Constable De Wet said that he might have said this as conveyed to him by Mr Fourie. Further, that everybody was upset. It was Fourie who saw the plaintiff break the padlock- he didn't see him, himself. He said that it was a misprint. However, he could not explain how the “misprint” came about.

18.

The third witness to testify was W/O De Wet. That upon her arrival there were many people in the court premises. She could see that the second defendant was upset. The second defendant said that the plaintiff will rot in jail. The boxes were properly sealed. After that, all boxes were loaded in the bakkie. Plaintiff used a new padlock to lock and hand keys to the cleaner.

19.

Under cross-examination, she confirmed that all the boxes were sealed. Further, that the second defendant said that the plaintiff was stealing the books.

20.

The second defendant testified on behalf of the defendants. She testified that she was the Court Manager and her duties amongst others entailed that when people leave the Court she checks all the properties belonging to the Court. That this did not happen when the plaintiff left because when she asked him, he denied and told her that the same process was not followed when he assumed

his duties.

21.

That on 29 September 2011, she arrived at work in the morning. At about 10H00 Sibongile, who was a cleaner came to her office and said she had been sent by the plaintiff, who wanted keys to take out his personal belongings. She went outside and saw a van loading boxes and asked him what the boxes were for and asked to check them. The plaintiff told her that the boxes were his. He asked for a key to open a strong room to collect other boxes. She told him that in the event he wants to take the boxes, she would like to check them. The plaintiff refused her to check or inspect the boxes. The boxes were loaded in the van of Mr Loudorf who was the sheriff.

22.

Later at about 10H40, the plaintiff came back in the company of Constable De Wet and W/O De Wet. Constable De Wet asked her why she was refusing to open the strong room, and she explained to him that she wanted to check the boxes first. She thereafter asked the plaintiff to open the boxes and told him she would not open if he did not give her permission to search. When plaintiff refused to open the boxes she phoned her supervisor who advised her that the plaintiff must do a handover. When she advised the plaintiff about the handover, he still refused, she then noticed that the plaintiff had a big bolt cutter in his possession, apparently ready to cut off the padlock. She then proceeded to the police station and opened a charge of housebreaking against him.

23.

She came back, and on her arrival the plaintiff had already broken the padlock and was in the process of opening the shooter of the door. The plaintiff loaded the boxes in a van and left. He later came back with a new padlock and threw the keys to the second defendant. The second defendant then told him that she was going to the police station to open a case against him. The plaintiff said that, that case won't fly since he knew the personnel working there. At the police station she opened a housebreaking case.

24.

She confirmed that indeed she told the plaintiff that he would rot in jail as in the past he used to tell her that people who commit housebreaking would rot in jail. She does not know what happened to the case. Constable De Wet told her that he was busy taking the finger prints.

25.

Under cross- examination, she said that she didn't open a case of theft, but only of housebreaking. When she was referred to page 16 of the trial bundle in which it appears that she opened a case of housebreaking and theft, she said that the statement was taken down by the police-officer- It was not her handwriting. The police-office attended to the docket.

26.

She was referred to paragraph 3 of a plea, an answer to paragraphs 4 to 7 of the particulars of claim wherein the contents of the particulars of claim were denied and asked to explain the discrepancy as during her testimony she admitted that she told the plaintiff that he would rot in jail. She said she had no answer to it.

27.

She denied that when Constable De Wet and W/O De Wet and plaintiff arrived, the strong-room was opened. She denied that she said that the plaintiff stole the books in the presence of W/O De Wet.

28.

It was submitted on behalf of the plaintiff that the second defendant had uttered the words mentioned in paragraph 4 of the plaintiff's particulars of claim and that publication thereof had occurred, in that the second defendant has admitted that she told the plaintiff that he would rot in jail for a long time. As such publication has occurred in the presence of third parties resulting in the defamation of the plaintiff.

29.

On the contrary, the defendants argue that the second defendant denies having told the plaintiff that he is a thief and that he stole books from the Magistrate's Court, Paupietersburg.

30.

As stated above in this judgment, the plaintiff bears the onus to prove that the violation occurred and, the defendant will have to prove that the publication was not unlawful and intentional.

31.

In South African Associated Newspaper Ltd and Another V Yufar[1], the Court stated that the test for determining whether a statement is defamatory is well-known, it is whether, in the opinion of the reasonable person, the words have the tendency to undermine, subvert, or impair a person's good name, reputation or esteem in the community.

32.

In Khumalo V Holomisa[2], the Court stated the elements of defamation are; wrongfulness and intentional publication of a defamatory statement concerning the plaintiff. Once a plaintiff establishes that a defendant has published a defamatory 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.

33.

The second defendant has since admitted that she told the plaintiff that he would rot in jail for a long time. This she said...was a repetition of what the plaintiff in the past, used to tell her that people who commit housebreaking would rot in jail. Put, differently, she didn't mean that the plaintiff is a thief.

34.

The words "you will rot in jail for a long time", should be interpreted in the context of paragraph 6 of the decision in *Le Roux and Others V Dey* [3], in that ...a Court has to determine the natural and ordinary meaning of the publication: how would a reasonable person of ordinary intelligence have understood it- the test is objective. In determining its meaning, the Court must take account not only of what the publication expressly conveys, but also what it implies, i.e. what a reasonable person may infer from it. I agree with the submission that the words "you will rot in jail for a long time" are just a threat to emphasis the displeasure by the second defendant of the negative treatment she received from the plaintiff when he refused to do a handover. In my view these words are not defamatory to the person of the plaintiff.

35.

There is a dispute whether, the second defendant told plaintiff that he is a thief. She also denies that she opened a case of housebreaking and theft at the police station. Her testimony is that, she opened a case of housebreaking, however it was the police officer to whom the matter was reported who entered the word "theft"

36.

In practice when one opens a case on a charge of housebreaking the offence normally presumed is housebreaking and theft. It is therefore not unusual that the police officer opened a charge of housebreaking and theft.

37.

This issue is further marred by the inconsistencies and contradictions in the evidence of the plaintiff's witnesses.

38.

The plaintiff denied that he broke the padlock with a bolt cutter. However, he does not deny that the door was locked. He says that whilst he was waiting with his back towards the wall, he immediately noticed that the door was suddenly opened. The plaintiff does not tell us who opened the door. It is improbable that the plaintiff wouldn't know who opened the door. The only

## conclusion

one can reach is that the plaintiff broke the padlock with a bolt cutter. Moreover, he was in the company of Mr Fourie whom he could have called to refute this allegation.

39.

The plaintiff denied that the second defendant asked him to check the boxes, whereas Constable De Wet testified to the contrary.

40.

Although in his testimony, Constable De Wet said that he didn't see the plaintiff break the pad-lock with a bolt-cutter, in his earlier statement it was he (De Wet) who said that he saw the plaintiff break the pad-lock with a bolt-cutter. This confirms the evidence of the second defendant who testified that before she left for the police station, the plaintiff was standing next to the door in possession of a bolt-cutter. The correct version is therefore that when Constable De Wet arrived, the door was still

locked and that he witnessed the plaintiff break the pad-lock with a bolt-cutter. Indeed, Constable De Wet conceded that he deposed to the affidavit which was referred to above – para 3 of the affidavit.

41.

W/O De Wet testified that she notified lots of boxes in the store room which were properly sealed with colour coded on them. The plaintiff testified that he noticed that some of the boxes were opened and does not know who opened them.

42.

In response to the discrepancies in the evidence of the plaintiff and his witnesses, counsel for plaintiff submits that, the mere fact that there are slight differences in the words which the plaintiff and his witnesses used to convey to the Court what the second defendant had said, is indicative of the fact that everyone testified to the best of his or her recollection and not discussed the matter prior to them testifying. Counsel also submits that these are small differences which are not material. In my view, this is an admission that there are contradictions and inconsistencies in the evidence of the plaintiff and his witnesses, which must be considered in favour of the case for the defendants.

43.

I reiterate that the evidence of the plaintiff's witnesses is mired in these contradictions. In the circumstances one has no choice but, to believe the second defendant when she says she never told the plaintiff that he is a thief. It seems to me that Constable De Wet and W/O De Wet, for unknown reasons had a change of heart and decided to change their story. In particular, Constable De Wet decided to deviate from the contents of his affidavit in which he said that he saw the plaintiff brake the padlock with a bolt-cutter. It may therefore be true that the plaintiff is disingenuous when he says the second defendant told him that he is a thief.

44.

I am therefore convinced that (as the second defendant testified) she never had any suspicion that the plaintiff stole the books. As such, she went to the police station, to open a case of housebreaking and not of housebreaking and theft. She also testified that when she arrived at the store-room, the door was still locked, and it was the plaintiff who opened it after breaking the pad-lock with a bolt-cutter.

45.

It is therefore my considered review that the plaintiff has not established that the defendant has published a defamatory statement that is both unlawful and intentional. The defendant has raised a defence which rebuts unlawfulness and intention.

46.

In the result the plaintiff's claim is dismissed with costs.

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JUDGE T. J RAULINGA

JUDGE OF THE HIGH COURT

Appearance:

Plaintiff's Counsel

: Adv. W Gibbs

Plaintiff's Attorneys

: Venter De Villiers Attorneys

Defendant's Counsel : Adv. M Kgatla

Defendant's Attorney : State Attorneys

Date of hearing

: 28-29 October 2020

Date of judgment

: 02 July 2021

[1] 1969

(2) SA 442 A

[2]

[2002] ZACC 12; 2002

(5) SA 401 (CC) at para [18]

[3] 2010

(4) SA 10 (SCA)

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Prepared on 14 October 2026 · Esheria